

**Date:** May 3, 2019  
**To:** Planning Commission/Board of Zoning Appeals  
**From:** Kelly Passauer, Assistant City Manager/Zoning Administrator  
**Subject:** May 7, 2019 Planning Commission/Board of Zoning Appeals Meeting

**Minutes**

- a. Consider approving minutes of the April 2, 2019 meeting.**  
City staff recommends approving the attached minutes.

## MINUTES

Independence Planning Commission  
Independence Board of Zoning Appeals

Tuesday, April 2, 2019

Veterans Room

Memorial Hall

5:30 p.m.

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### Call to Order

#### Planning Commissioner Present

Mary Jo Meier, Steve McBride, Tony Royse, Philipp Umlauf, Michelle Anderson, and Andy McLenon (outside),

#### Planning Commissioners Absent

Brian Beecham, Barb Emert, and Brent Littleton (outside)

#### Staff Present

Kelly Passauer, Assistant City Manager/Zoning Administrator

#### Visitors

Rusty Arnold, Vic Gorman, Norman Chambers, George and Elaine Glines.

#### Minutes

- a. Consider approving minutes from the March 5, 2019 meeting.

Andy McLenon made a motion to approve the minutes of the March 5, 2019 meeting, Michelle Anderson seconded the motion. The motion carried 6-0.

#### Planning Commission

- b. Welcome new member Tony Royse.

New member Tony Royse was welcomed. Chair Mary Jo Meier asked all the members to introduce themselves, which they did.

- c. Public hearings to consider text amendments to Appendix B-Zoning of the City Code relating to:
  1. Article VIII. Sign Regulations;
  2. Appendix A. "Listing of Permitted and Conditional Uses" relating to "Bus garaging and equipment maintenance",
  3. Article X. Special provisions applying to miscellaneous conditional uses; and
  4. Article IV. Rules and Definitions.

The following staff report was previously provided and summarized by Chair Mary Jo Meier:

***Request from Norman Chambers***

On March 5, 2019 Norman Chambers, representing Gran Villas Assisted Living Facility, appeared at the Planning Commission and requested that a public hearing be initiated to consider a text amendment to the sign ordinance. On March 27, 2019 City staff received the attached email from Mr. Chambers requesting the following modifications to the code shown in yellow:

*803.2. Project announcement and promotional signs:*

- a. *Undeveloped project identification signs:* One nonilluminated or illuminated sign displaying information pertinent to an undeveloped subdivision, apartment project, office building complex, shopping center or industrial district shall be permitted within that ownership, provided that no such sign shall be closer than 200 feet to an occupied dwelling. Such signs shall be permitted on undeveloped tracts of at least ten acres in area and shall not exceed 300 square feet for ten acres plus 150 square feet for each additional ten acres in the development site.
- b. *Bulletin boards:* Outdoor bulletin boards not over six square feet in area for the promotion of a civic, welfare or charitable purpose, when the same are located on the premises of said institutions, will be permitted when specifically authorized by the governing body. They shall not be erected for more than a period of seven days, and shall be the responsibility of the organization for the removal of the sign, and shall have no commercial advertising on the sign.
- c. *Monument signs:* Memorial signs or tablets, names of buildings and date of erection, when cut into any masonry surface or when constructed of bronze or other incombustible material, will be permitted in any zoning district.
- d. *Directional signs:* A limited number of private businesses are located in completely residential neighborhoods and on streets that are not highly traveled. Those businesses could make application for a directional sign to be placed on a main thoroughfare with their name and an arrow indicating direction to the business. All applications for this category of sign will require individual approval.

Mr. Chambers further recommended that a definition for “Directional sign” be added to the Section 403.0 Definitions.

City code 1604.2 provides the following regarding text amendments:

*1604.1. Recommendations:* Upon the conclusion of the public hearing the planning commission shall prepare and adopt its recommendations and shall submit the same, together with a record of the hearing thereon, to the governing body. Said recommendation may be for approval, disapproval or

approval in part and reasons for the recommendations shall be included as appropriate.

*1604.2. Amendments to text:* When a proposed amendment would result in a change in the text of these regulations but would not result in a change of zoning classification of any specific property, the recommendation of the planning commission shall contain a statement as to the nature and effect of such proposed amendment and determinations as to the following items:

- a. Whether such change is consistent with the intent and purpose of these regulations;
- b. The areas which are most likely to be directly affected by such change and in what way they will be affected; and
- c. Whether the proposed amendment is made necessary because of changed or changing social values, new planning concepts or other social economic conditions in the areas and zoning districts affected.

It should be noted that text amendments must be approved by the City Commission.

Norman Chambers was present at the hearing. Planning Commissioners were concerned about the proliferation of this type of signage for private businesses in the rights-of-way if this text amendment was approved. The item died with a lack of a motion.

The following staff report was previously provided and summarized by Chair Mary Jo Meier:

***Request from Rusty Arnold representing USD 446***

On November 6, 2018 the Planning Commission held a public hearing to consider rezoning the east side of the 2200 block of North 21st Street from R-4, medium density multifamily dwelling district to M-1, light industrial district for the purpose of constructing a bus barn at this location to serve the school district. The Planning Commission unanimously recommended approval. On November 29, 2018 the recommendation from the Planning Commission was considered by the City Commission, who ultimately tabled the matter until their December 13, 2018 meeting. At the December 13, 2018 meeting a motion was made to approve the recommendation of the Planning Commission to rezone this tract which died due to a lack of a second.

Since that time the school district located another tract and attempted to rezone the tract for this use through Montgomery County, however, this rezoning effort failed.

On March 5, 2019 Rusty Arnold, representing USD 446, appeared at the Planning Commission and requested that a public hearing be initiated to consider a text amendment that would allow “Bus garaging and equipment maintenance” as a conditional use in an R-4, medium density multifamily dwelling district. The City Commission or Planning Commission may initiate text amendments to the zoning code. The purpose of the school district’s request is so that the bus barn

facility could be constructed at the 2200 block of North 21<sup>st</sup> with a conditional use permit, since the rezoning attempt failed.

Specifically, the recommended modification is:

1. Modify “Bus garaging and equipment maintenance” in the permitted and conditional use table to add R-4 as a permitted zoning district for this use with a conditional use permit.

Currently the permitted and conditional use table only allows “Bus garaging and equipment maintenance” as a permitted use in the M-1 and M-2 zones. It does not allow this use as a conditional use in any zone. See table below:

Legend:  
P = Permitted Use  
C = Conditional Use

Land Use Category	Code	Permitted Zoning District													
		A-1	R-1	R-2	R-3	R-4	R-5	O/P	C-1	C-2	C-3	C-4	M-1	M-2	
Bus garaging and equipment maintenance	4214													P	P

City code 1604.2 provides the following regarding text amendments:

*1604.1. Recommendations:* Upon the conclusion of the public hearing the planning commission shall prepare and adopt its recommendations and shall submit the same, together with a record of the hearing thereon, to the governing body. Said recommendation may be for approval, disapproval or approval in part and reasons for the recommendations shall be included as appropriate.

*1604.2. Amendments to text:* When a proposed amendment would result in a change in the text of these regulations but would not result in a change of zoning classification of any specific property, the recommendation of the planning commission shall contain a statement as to the nature and effect of such proposed amendment and determinations as to the following items:

- a. Whether such change is consistent with the intent and purpose of these regulations;
- b. The areas which are most likely to be directly affected by such change and in what way they will be affected; and
- c. Whether the proposed amendment is made necessary because of changed or changing social values, new planning concepts or other social economic conditions in the areas and zoning districts affected.

It should be noted that if this text amendment is ultimately approved by the Commission, it would still require the school district to go through the conditional use permit process, which is similar to the rezoning process. A public hearing would need to be held before the Planning Commission, and their recommendation would be forwarded to the City Commission for final consideration. The recommendation from the Planning Commission could include additional conditions; such as requiring drainage studies, traffic studies,

ensure lighting does not shine onto nearby residential properties, that the area is kept clean of trash, etc. If the City Commission approved the conditional use permit, they could also modify the conditions recommended.

Rusty Arnold, representing USD 446, appeared and requested a text amendment that would allow “Bus garaging and equipment maintenance” as a conditional use in an R-4, medium density multifamily dwelling district. The purpose of the school district’s request is so that the bus barn facility could be constructed at the 2200 block of North 21st with a conditional use permit, since the rezoning attempt failed.

Elaine Glines who resides on Russell Road was concerned about safety with the increased bus traffic.

Steve McBride moved to recommend modifying “Bus garaging and equipment maintenance” in the permitted and conditional use table to add R-4 as a permitted zoning district for this use with a conditional use permit. The motion was seconded by Philipp Umlauf. The motion carried 5-1 with Andy McLenon casting the dissenting vote.

Andy McLenon moved to recommend modifying “Bus garaging and equipment maintenance” in the permitted and conditional use table to add C-2 and C-4 as permitted zoning districts for this use with a conditional use permit. The motion was seconded by Philipp Umlauf. The motion carried 6-0.

- d. Consider initiating rezoning of the following tracts annexed into the City:
  - 1. Estimated 8.5 acre tract at the Airport Industrial Park; and
  - 2. Estimated 39 acre tract at the West Laurel Industrial Park.

Staff advised that the City Commission previously annexed these tracts into the City, therefore rezoning needs to be initiated. Staff recommended initiating a public hearing to consider rezoning the above listed tracts to M-2, Heavy Industrial. Staff noted that the zoning classification may be modified at the public hearing based on the Lesser change table.

On a motion by Philipp Umlauf, seconded by Tony Royse, the Planning Commission initiated a public hearing to consider rezoning the following tracts annexed into the City:

- 1. Estimated 8.5 acre tract at the Airport Industrial Park; and
- 2. Estimated 39 acre tract at the West Laurel Industrial Park.

The motion carried 6-0.

### **Board of Zoning Appeals**

- e. Consider variance requests from the First United Methodist Church for electronic church signs in a C-3 zoned district at 109-111 East Maple Street and 200 South Penn Avenue.

The following staff report was provided and read by Chair Mary Jo Meier:

## ***Introduction***

The City zoning code establishes standards and requirements but also recognizes that “not one size fits all” and provides for relief from such standards. There are procedures included in the ordinance to provide for exceptions through variances to meet special circumstances if certain criteria are met. There are five conditions that need to be met which are as follows:

- a. That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by any action or actions of the property owner or the applicant;*
- b. That the granting of the permit for the variance will not adversely affect the rights of the adjacent property owners or residents;*
- c. That the strict application of the provisions of the zoning regulations of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application;*
- d. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare;*
- e. That granting the variance desired will not be opposed to the general spirit and intent of the zoning regulations.*

The providing of variances is dealt with on an individual case basis when the standards create an unnecessary hardship. The practice of granting variances should be the exception, rather than the rule. In considering requests for variances the board should consider past actions or precedence, consistency and in the issues being discussed tonight to ensure that no business receives an unfair advantage over competing businesses and the impact of any variance on community aesthetics.

Variances may only be approved for specific development requirements and cannot be considered to permit a land use which is in violation of the zoning ordinance. Types of development requirements in which variances may be considered include lot area coverage, lot size, set back requirements and signage requirements just to name a few.

The decision of the Board of Zoning Appeals is final, and the action of the board is not considered by the City Commission. If either the City Commission or the applicant requesting the variance disagree with the Board of Zoning Appeals’ decision, then the only appeal is to district court.

## ***Overview of Variance Requested***

The Board of Zoning Appeals has received an application from the First United Methodist Church to grant a variance from the sign regulations provided for in the zoning ordinance. Their request is to exceed the percentage of allowable square footage per face for the electronic portion of the signs at 109-111 East Maple Street and 200 South Penn Avenue.

Section 802.2 subsection “b. (1)” provides for the following

*802.2. Residential districts including R-1, R-2, R-3, R-4 and R-5:*

b. *Church signs:*

- (1) One illuminated or nonilluminated detached sign per church, no more than 16 square feet in area, on church premises, indicating activities and services therein provided. Source of illumination shall be so shielded as to not be visible from residential areas.

The City Commission recently approved an ordinance modifying Section 803.6 of the zoning codes as follows:

### **803.6. Attention-Attracting Devices and Electronic Signs:**

- a. Any attention-attracting device, as defined in Section 403.0, is hereby prohibited from use except as hereinafter provided.
- b. Attention-attracting devices and electronic signs, as defined in Section 403.0, shall be permitted in any zoning district for noncommercial purposes if:
  1. Such devices or signs designate time, date, temperature, community service and/ or other similar information regarding a non-profit or charitable organization; and
  2. Receive approval of the City Commission; and
  3. Comply with and follow all requirements and standards designated for their use as set forth in Section 802.5.c.

Section 802.5 subsection “c” provides for the following:

***802.5. District C-2, general business district and District C-4, highway commercial district:***

- c. *Electronic sign:* Electronic signs consisting of LED/Reader board electronic changeable copy) or electronic display center (video display sign) as defined in this ordinance are permitted and must meet the following requirements:
  1. ***Detached sign:*** The sign must be a detached sign and the electronic portion may not exceed more than 20 percent of the allowable square footage per face of said detached sign.
  2. *Duration:* Any portion of the message or image must have a minimum duration of eight seconds.
  3. *Off-premises advertising:* All messages displayed shall be directly related to the business for which the sign was constructed.



4. *Setback*: The leading edge of the sign must be a minimum of 100 feet from an abutting residential district boundary.
5. LED/Reader board (electronic changeable copy) signs shall have the following additional restrictions:
  - i. *Limited text*: The text of the sign must be limited to ten words to allow passing motorists to read the entire copy with minimal distraction.
6. Electronic display center (video display) signs shall have the following additional restrictions:
  - i. *Brightness*: The sign must not exceed a maximum illumination of 5,000 nits (candelas per square meter) during daylight hours and a maximum of 500 nits (candelas per square meter) between dusk and dawn.
  - ii. *Dimmer control*: The sign must have an automatic dimmer control to produce a distinct illumination change as required.
  - iii. *Audio or pyrotechnics*: Audio speakers or any form of pyrotechnics are prohibited.

### ***Review of Request***

The applicant is requesting variances to exceed the percentage of allowable square footage per face for the electronic portion from 20% maximum to 50% for the sign at 200 South Penn Avenue (Church); and from 20% to 65% for the sign at 109-111 East Maple Street (Wesley Center). They are not requesting to exceed the maximum size of 80 square feet per face for a freestanding sign in the C-3, central commercial district.

### ***Board of Zoning Appeals Considerations***

In considering the providing of a variance we wish to provide the following information:

- a. *That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by any action or actions of the property owner or the applicant; The only unique situation would be changing technology in regards to signage.*
- b. *That the granting of the permit for the variance will not adversely affect the rights of the adjacent property owners or residents; A neighbor that resides in the apartment complex across the street from the church which is located in a commercial zone has indicated their concerns with the brightness of the sign. The applicant has spoken to the neighbor about these concerns and has agreed to follow the restrictions on brightness of the sign, and to also turn the sign into a night mode at night.*

- c. *That the strict application of the provisions of the zoning regulations of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application;* The 20% maximum would allow the LED portion of a sign at the maximum size allowed in a C-3 district of 80 square feet to be no more than 16 square feet, which the applicant believes would be difficult to read.
- d. *That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare;* It does not appear that the variance will adversely affect public health, safety or general welfare.
- e. *That granting the variance desired will not be opposed to the general spirit and intent of the zoning regulations.* The variance requests are not opposed to the zoning regulations.

***Staff Recommendation***

Staff recommendation is to approve the request and grant variances to exceed the maximum allowable percentage of the electronic portion of a sign for a non-profit entity in a C-3 district from 20% to 50% at 200 South Penn Avenue (Church); and from 20% to 65% for 109-111 East Maple Street (Wesley Center).

Vic Gorman represented the applicant and stated that he had spoken to the neighbors across the street from the sanctuary that do not like electronic signs period. He stated that the sign would complement the sanctuary and community. He further stated that it would be put into sleep mode at night so the electronic sign at the sanctuary will not offend anyone.

City staff indicated that videos are not allowed by current code, and the message must have a minimum duration of 8 seconds in addition to other requirements.

Steve McBride made the motion to approve the request and grant variances to exceed the maximum allowable percentage of the electronic portion of a sign for a non-profit entity in a C-3 district from 20% to 50% at 200 South Penn Avenue (Church); and from 20% to 65% for 109-111 East Maple Street (Wesley Center), seconded by Philipp Umlauf. The motion passed 5-0.

**Adjournment**

The meeting was adjourned with a motion by Andy McLenon, seconded by Philipp Umlauf. The motion carried unanimously.

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Mary Jo Meier, Chair

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Andy McLenon, Secretary