

MINUTES
CITY PLANNING COMMISSION
April 18, 2017

Present: Polly Weir (Chair), Desmond Baker, Bruce Brunozzi, Lloyd Budd, Patrick Carter, and Joseph Chickadel (Commission Members); Herb Inden, Gwinneth Kaminsky, and Timothy Lucas (Planning); and Anthony J. Hill (Law).

The meeting was convened at 6:30 p.m. by Polly Weir.

REGULAR MEETING

Approval of the minutes of the March 21, 2017 Planning Commission Meeting

Polly Weir asked the Commission members whether they had any questions or comments regarding the minutes of the March 21, 2017 Planning Commission meeting. As there were none, she called for a motion. Patrick Carter made a motion to approve the minutes, and Bruce Brunozzi seconded the motion. All members voted to approve the minutes.

New Business

Resolution 3-17: Waterfront Development Review WF 1-17: Application requesting Zoning Board of Adjustment approval of a use variance to establish an automobile service and repair facility at 112 A Street, within the W-4 (Waterfront Residential/Commercial) zoning district.

Timothy Lucas from the Department of Planning and Development presented the analysis for Resolution 3-17, which he said included an application requesting Zoning Board of Adjustment approval of a use variance. He said that the purpose of this resolution is to accomplish two things, the first of which is to evaluate the site and proposed automobile service and repair use according to the Waterfront Development Review Standards, and the second is to provide City Planning Commission recommendations to the Zoning Board of Adjustment based on the appropriateness of the proposed use in the W-4 Waterfront District and in context of the neighborhood.

Mr. Lucas stated that the applicant, EUROCAR 2000, is proposing to lease 112 A Street to establish an automotive service and repair business. He explained that the reason this case is being presented is that the Planning Commission is authorized to review waterfront development proposals whenever Zoning Board approval is necessary to establish a use in a waterfront district. He said the Commission is authorized to make recommendations to the Zoning Board of Adjustment to approve or deny these uses.

Mr. Lucas explained that in this case, a variance is being sought to establish a nonconforming automotive service and repair use, and that variances are typically sought in cases where a use is not permitted as either a matter of right or special exception. They are for cases where meeting the provisions of the Zoning Code creates an unnecessary hardship or exceptional practical difficulty, and Zoning Board approval is required.

Referring to a series of slides, Mr. Lucas stated that 112 A Street is located on the southern side of A Street approximately midblock between South Walnut and South Market Streets. He said that the northern side of the block is comprised entirely of residential uses including the River Towers high-rise complex and the Christina Landing townhome community, and that the southern side of the block consists primarily of nonconforming but grandfathered uses. A half-acre property located at the corner of A and South Walnut Streets is currently being used as a parking lot but is actively being marketed for development.

Mr. Lucas showed an aerial photo depicting the subject parcel, which he described as approximately 0.89 acres in size and currently containing three buildings. He said that the main building is located directly on A Street, with two other buildings located in the rear, and that one curb cut allows access to the eastern side of the main building and a small parking area. He said the rear of the lot is accessed via a gate along the eastern side of the main building, and that the lot consists of paved and unpaved areas, and that portions of the rear of the property are enclosed by a chain link fence. The remainder of the site consists of open grassy areas. The entire site falls in the 100-year floodplain.

To help lend context to the surrounding neighborhood, Mr. Lucas showed a slide depicting an oblique aerial photo viewed from above the Christina River. He noted the location of the Christina Landing townhomes, River Towers and the 112 A Street parcel.

Next, a series of slides were presented showing street views of 112 A Street looking northwest along A Street towards South Walnut Street from the southern side of the landscaped island; views from the northern side of the landscaped island directly across from the subject property, showing the Christina Landing and River Towers visible to the northeast; and finally, a view of the Buccini/Pollin Group National Headquarters, located further east along A Street on the southern side, with the River Towers in the background.

Mr. Lucas explained that the W-4 district is intended to protect and encourage investment in well-planned and designed multi-use developments where intensive use is appropriate. He said that the major factors considered when reviewing waterfront development are Design Standards, including site design, view enhancement, and preservation; Riverfront Activity Standards, including use of the river and public enjoyment; and Economic Development Standards, including new employment opportunities and increases to the tax base.

He noted that the Waterfront Standards specifically assign the relative weight to each of these standards when reviewing an application. The W-4 district standards are weighted with Design and Riverfront Activity having major importance and Economic Development having minor importance.

Mr. Lucas said that it is important to note that physical improvements to the site have not yet been proposed by the applicant, and that any future construction or development will need to be evaluated as part of the standard waterfront development review process.

He said that the waterfront analysis considers the proposed use, and noted that because site plans had not been submitted for review, it is unknown if the applicant intends to meet the waterfront design standards. He said that recommendations for the site are being provided by Planning to the Zoning Board for their consideration.

He also noted that Riverfront Activity Standards don't directly apply as the site is not located directly on a river; and that the economic activities as proposed, minimally met the standards.

Mr. Lucas next provided a summary of recommendations prepared based on the Waterfront Standards, as follows:

1. The site shall be landscaped and screened in accordance with Section 48-352 of the Zoning Code.
2. Overnight parking of customer or commercial towing vehicles should not be allowed in the parking lot adjacent to A Street.
3. Holding areas for customer vehicles should be fully screened from view from A Street and neighboring properties.
4. Outdoor storage of supplies, materials, or equipment should not be permitted anywhere on the site.
5. The use of barbed wire on the gate or fences is not permitted in a W-4 district. Any existing barbed wire must be removed, regardless of the outcome of the ZBA decision on the use variance request.
6. All signage must be approved by the City.

Mr. Lucas next addressed the second part of the waterfront analysis, which he said involved determining the appropriateness of the automobile service and repair facility in a W-4 waterfront district. He said that factors considered included visual and other potential impacts to the surrounding properties; impacts to recent investment and future development; and established plans for the South Wilmington neighborhood.

Mr. Lucas said that the potential impact to the surrounding area is substantial, as the proposed automobile use is inconsistent and incompatible with the type of land uses and development supported by W-4 zoning. He said the area is in the process of being transformed by redevelopment, examples of which include the Christina Landing residential development located across from the subject property; the Christina Crossing Retail Center and Shop Rite, located to the south on South Walnut Street; and the Buccini/Pollin Group Headquarters located at Walnut and A Streets. These improvements are helping to better define and stabilize the neighborhood. He added that both the City and State have provided significant investment in upgrading the road infrastructure along A, South Market, and South Walnut Streets to support the Christina Landing redevelopment efforts and to address flooding issues.

Mr. Lucas said the operation of an automobile service and repair facility, which would necessarily include the temporary storage of customer automobiles on the site, has the potential for negative visual impact to properties along A Street. These impacts may also discourage the continued investment and redevelopment of the neighborhood.

Finally, Mr. Lucas concluded his presentation by stating that the Commission's meeting agenda was mailed out to the standard mailing list and posted on the City's Website and in the lobby of the City/County Building. He concluded his presentation by stating that the Department of Planning and Development recommends that the request for a use variance to establish an automobile service and repair facility at 112 A Street be denied by the Zoning Board. He said that the nature of this use is incompatible with adjacent residential uses and current redevelopment of the area in general, and that there are potential negative visual impacts from the automobile service and repair function that could negatively affect adjacent properties and future development.

Ms. Weir asked whether there were any questions from the Commission members.

Lloyd Budd inquired how many current businesses along the A Street corridor between Walnut and Market Streets meet the W-4 designation. Mr. Lucas said that to his knowledge, there were only two operating business, including a grandfathered auto repair shop to the west and the portion of the lumber yard facing A Street, both of which are nonconforming businesses. He said he didn't know if any businesses currently meet the W-4 standards, with the exception of the parking lot at the intersection of Walnut and A Streets, which he believed was conforming.

Mr. Budd asked whether the new owner would have to meet the W-4 waterfront standards should the grandfathered businesses be sold. Anthony Hill responded that the grandfathered status carries on with the property. Mr. Hill responded that regardless of whether the business and property are sold together or the business is sold separate and apart from the property, the grandfathered business would be allowed to continue operating. He continued, stating that only when the business ceases operation for a certain amount of time, would it lose its protected status, and if a new business were to subsequently seek to occupy that location W-4 zoning requirements would have to be met or it would be necessary to seek a variance.

Mr. Budd asked how the current rezoning being sought by the applicant would adversely affect the two properties that are currently grandfathered. Mr. Lucas clarified that the applicant is not seeking a rezoning, but rather is applying for a use variance to establish a nonconforming use in the district, noting that a rezoning would involve an entirely separate process. He said that the biggest potential impact would be for the building to remain vacant. He said that the Zoning Manager advised him that if any major development of the property were to occur, such as the installation of lifts or accommodations for a larger business or automotive use, those changes could not exceed fifty percent of the value of the building, otherwise the applicant would be required to bring the entire property up to the current floodplain building standards. Mr. Lucas continued, saying that they must operate below a certain economic value in order to avoid triggering the floodplain requirements, above which the owner or applicant must decide whether they want to invest in a full redevelopment of the property and continue seeking a use variance for the site.

Gwinneth Kaminsky stated that the proposed use variance needed to be evaluated as to how it would impact future development in order to ensure that the intent of the W-4 zoning is maintained. She said that in this case, there is a situation where there are some legal nonconforming uses in operation which would not be permitted to establish today in the W-4 district. Uses were grandfathered because they were in place legally before the area was rezoned to W-4, but the Commission is being asked to evaluate the impact of the use variance on future development that would be permitted under the W-4, which is a higher standard, rather than the impact on the existing grandfathered uses.

Mr. Lucas said it should also be taken into consideration that under the Waterfront Development Standards, the W-4 district is intended to protect and encourage investment, with an emphasis on the protection of the conforming uses and considering the intent of W-4 zoning. He said that it is not the intent to chase out existing businesses, rather the focus should be on future, appropriate development. Ms. Weir added that development should be more compatible with what's been happening at the riverfront recently. Mr. Lucas responded that this was the intent of the twenty-plus year effort to rezone the entire area.

Mr. Brunozzi said that he always thought that city living meant residential, commercial, and even light industrial mixed uses in the same area, but said it looks like everything is being separated to become more like a suburb. He said that having a vacant building on A Street for all these years has not seemed to stop development from occurring across the street or in other areas such as the ShopRite Center. He noted that residences were not included along the South Market and South Walnut corridors, and even along other parts of A Street. He said that housing built on the other side of Market Street and any development proposed in the future may take years to materialize, and questioned if it would be better that the A Street building be occupied rather than sitting vacant for ten or twelve more years. He noted that given the site's design and the building situated across the front of the property, that the business operations will be located in the back of the lot and not seen from the street.

Ms. Weir noted that there is no site plan to make that determination, and Mr. Lucas added that the entire site is visible from the upper floors of the residential towers.

Mr. Brunozzi said that the buildings on the site were nonconforming, yet are basically being treated as being illegal. He reiterated that he thought an urban environment included mixed use and that certain areas were being cleansed of commercial and industrial in an attempt to separate everything.

Mr. Lucas noted that the Zoning Code is intended to guide development, and that the evaluation isn't meant to steer this type of business out of the city, rather it is intended to steer it to a more appropriate zoning, because there is an extensive list of different zoning districts where automotive uses are not only permitted but encouraged.

Mr. Brunozzi asked about the time line for development of the property, and said that if the applicant started operating tomorrow and were to receive an attractive offer on the property, they would likely leave the site quickly. He asked whether it wouldn't be better to have them working onsite in the meantime, until someone comes along that wants to develop the area, rather than keep it vacant.

Ms. Kaminsky responded that the Commission's charge is in fact to evaluate whether the proposed auto use will have a negative impact on the likelihood that future appropriate development would occur. She noted Mr. Brunozzi's comment about the urban environment consisting of mixed uses, and said that W-4 is a mixed use zone that permits certain commercial uses, such as retail and office uses, which are compatible with the residential uses that are also permitted in the zone, and these types of developments are being encouraged along Market, Walnut and A Street and throughout the waterfront.

She said that the nonconforming uses are not illegal as Mr. Brunozzi suggested, but are legally grandfathered because the City acknowledges that these uses were legally operating at the time the area was rezoned to W-4. She said existing legal businesses are not punished through rezoning, and instead are allowed to continue operation with the thought that eventually the area will develop under the new zoning to the point where those other nonconforming uses eventually leave so that the area can develop as intended. She said it just so happens that in the W-4 district automotive repair uses are not acknowledged as being consistent with the type of quality development that is being promoted, and that the charge of the Commission is to decide whether the automotive use being proposed is going to prevent or thwart A Street from thriving under the W-4 zoning.

She further noted that uses were not being separated out, as previously mentioned, but that the W-4 district is a mixed use zone, and the City can define mixed use any way it chooses, but a choice was made to define W-4 as retail, residential, and office uses which do not to permit the heavier auto repair shops or manufacturing uses. She said a zone allowing those uses could have just as easily been created, but in W-4 those uses aren't permitted because they are not considered compatible with residential and lighter commercial mixed uses along the riverfront that are being promoted.

Mr. Budd asked whether the City had approached Osbourne Auto Repair about their plans on A Street. Ms. Weir replied that the property was grandfathered. Mr. Budd said that he was aware that they were grandfathered, but if they continued doing business in that location for many years, it doesn't matter how developed the surrounding area becomes, because there will still be an auto repair facility in the area.

Mr. Lucas said that the decision for Osbourne Auto Repair to remain in place may be a market driven decision on their part, or if development continues to occur in accordance with the plans that were developed by the community, then the highest and best use of the property may incentivize its sale.

Ms. Kaminsky added that there has been significant investment along A Street in recent years, noting the example of Flooring Solutions, which invested over a million dollars in their A Street property, as well as the location of BPG headquarters on A Street, the Humane Society's multimillion dollar investment to upgrade their facility, and the construction of the Christina River Towers and townhouses. She said that there will be investment along Market Street where DelDOT recently made roadway improvements to address flooding issues, and referenced the multimillion dollar investment on Walnut Street to develop the stormwater wetlands park facility to address flooding in the Southbridge neighborhood. She said that the City is experiencing the type of investments that the W-4 zoning encourages, and it has taken a long time but they are happening now and we don't want to go backwards, but rather continue forward under W-4.

Mr. Chickadel asked whether there is any information to indicate whether the subject site is a brownfield site and whether DNREC has looked at the site. Mr. Lucas responded that it was not a brownfield site, having checked DNREC's navigator website which showed the closest brownfield site being located within the soils under the A Street roadbed, located to the southeast on the other side of Walnut Street.

Mr. Baker informed the Commission members that the Planning Department analysis identified several plans completed by the City, the RDC and developers which provide information on the bigger development picture for the area. Mr. Lucas said his analysis included South Walnut Street Urban Renewal Plan as a reference.

Mr. Baker said the plans are premised on the fact that once there is a realization that these developments can occur, the market place will drive the effort forward, and that it is not about taking people's property to make it compatible with the W-4 zoning.

Mr. Baker stated that he had some questions related to the recommendations in the analysis. He questioned why recommendation #2, which addresses parking in the lot adjacent to A Street, did not also address cars not parking on the street overnight, stating that the City does not want this to occur. Mr. Lucas agreed that cars should not be parking on the street, but said he wasn't sure that inoperable vehicles were legally allowed to park on the street in the first place. Mr. Baker stated that repair shops do place vehicles in the street, as he has observed this condition, and Mr. Lucas concurred.

Mr. Baker noted that he was on A Street earlier in the day and saw a situation where cars were parked on the street across from the Buccini property, and reiterated that the recommendations need to be clear as to their intent. Mr. Hill replied that he didn't know the specific Code requirements with respect to inoperable cars being parked in the public right of way, but that this very well could be unlawful and may be an enforcement issue as opposed to a clarity issue.

Mr. Baker then questioned whether recommendation #4 could be more adamant about not permitting storage anywhere on the site, and state that supplies and materials need to be sheltered. Mr. Lucas responded that outdoor storage of any kind is not currently allowed in W-4.

Mr. Baker asked why it isn't recommended that materials be placed in a shed. Ms. Kaminsky responded that Code Section 48-353 is pretty clear about how storage areas and materials onsite should be screened and landscaped. She also said it is important to note that the recommendations are only being offered in the event that the Zoning Board approves the use variance. While the Planning Department's recommendation is for the use variance to be denied, it is acknowledged that the Zoning Board may not agree. Mr. Baker concurred.

Mr. Lucas stated that without having received a site plan showing how the specific development plans would appear and what they would consist of, these recommendations become a de facto generic list for the Zoning Board's consideration.

Ms. Weir next opened the meeting to the public.

The first speaker was Richard Kendall, who thanked the Commission for the opportunity to speak. He stated that he was the treasurer for the Council of the River Towers at Christina Landing Condo Association. While he is not educated in zoning, he said it was his understanding that the River Towers W-4 zoning was created to redefine the area from industrial to residential with low impact commercial mixed uses in order to attract a residential population who would call the city home. He said that among the two towers and the townhomes on the one hundred block of A Street, there are about 300 families that call this place home, who made a commitment to the image and intent of the current W-4 zoning. He said it was his hope that the City continues its commitment to encourage development congruent with the current riverfront zoning environment. He noted that a demonstration of that commitment was just expressed by a Commission member to deny the application and he suggests another commitment to deny all commercial uses that do not fit within the W-4 zoning. Speaking about the negative impact, he said the high rises overlook the yard where the applicant is developing. He noted that at the corner of A and S. Market Street, the Buccini/Pollin Group is trying to market the lot currently used for parking. He said that across the street, the Condo Association took the initiative to buy two commercial units that the Buccini/Pollin Group once owned, and tried to market those for ten years. He said one was turned into a residential use and that the other is being marketed, but when prospective buyers come in to see the property, they ask about development along A Street and have to be told there is an automobile dealer and that another auto use is coming, and the property can't be marketed. Mr. Kendall said that when he bought his condo eight years ago, a portion of the land across the street at 112 A Street was supposed to be a park because it is in a floodplain. He said it was an ideal place for a park, but he believes the owner of the land is not marketing the property properly under the W-4 zoning requirements.

He noted that a few ideal uses which are not yet on the south side of the river include a library, art gallery, bank, law and medical offices, CPA offices, barber and beauty shops, and a coffee shop.

He said that the site in question has a building on it which, with internal renovations, could be converted into housing with a park developed on the site, drawing more people to the south side of the riverfront.

The second speaker was Susan Cannon, a resident of River Tower. She said she thought that there had been a master plan prepared for this area several years ago by the consulting firm WRT, and that she believed the area where she lives was originally planned for residential. Ms. Kaminsky responded that there is a South Wilmington Comprehensive Plan for South Wilmington that identifies A Street and the surrounding area for W-4 mixed use residential and retail development. She said that the South Walnut Street Urban Renewal Plan also supports W-4 zoning in the area, and further noted that the speaker was correct in stating that there is a master plan prepared by WRT which supported those uses. She concluded that there are several legal planning documents for South Wilmington that support the existing W-4 zoning in the area.

The third speaker was Alice Vandever, who stated that her ancestors had been in Wilmington since the 1600s on Vandever Avenue. She said she lives on the 18th floor of River Tower and that she took pictures today of the site, which she would make available to the Commission. She said it isn't the empty lot shown during the presentation, but rather a junkyard and she had observed a flatbed unloading cars onto the property at 112 A Street. She said her concern is that once the applicant gets approval, cars will be put on the street and that she already has issues with parking her own cars. She said that there is limited parking for visitors, who often have to park at the Amtrak Station when visiting.

Ms. Kaminsky stated that Planning could certainly alert L&I to the activity that Ms. Vandever described, so that they could be cited for any illegal activity.

Mr. Carter asked for clarification that the six items presented under the recommendations were items that are not currently permissible under the W-4 zoning. Mr. Lucas concurred with the exception of the first recommendation, which is a general Code requirement for landscaping requirements that the applicant has to follow.

Ms. Weir asked whether there were any additional questions or comments from the Commission members. As there were none, she called for a vote. Mr. Carter made a motion to deny to request for the use variance as presented in Resolution 3-17, and Mr. Baker seconded the motion. All members voted in favor of Resolution 3-17, recommending denial of the application.

Adjournment

Ms. Kaminsky asked for permission to speak to the Commission prior to adjournment, which was granted by the Chair. She informed the Commission members that the Planning Department hours of operation had changed to 8:30 am to 4:30 pm, Monday through Friday. As such, she asked whether the Commission members would entertain an earlier starting time of 6:00 pm for the monthly Commission meetings. Mr. Carter and Mr. Budd said they were supportive of the change and after a brief discussion, the members agreed unanimously to begin the meetings at 6:00 pm.

Ms. Weir then called for a motion to adjourn. Mr. Carter made the motion to adjourn, and Mr. Budd seconded the motion. All members being in favor, the meeting was adjourned at 7:25 p.m.