

A meeting of the Beaufort-Port Royal Metropolitan Planning Commission (MPC) was held on **February 18, 2019** at 5:30 p.m. in the Beaufort Municipal Complex, 1911 Boundary Street. In attendance were Chairman Bill Harris, Commissioners Robert Semmler, Judy Alling, Caroline Fermin, Mike Tomy, and Jim Crower, and David Prichard, City of Beaufort planning.

In accordance with the South Carolina Code of Laws, 1976, Section 30-4-80(d) as amended, all local media were duly notified of the time, date, place, and agenda of this meeting.

Chairman Harris called the meeting to order at 5:30 p.m.

MINUTES

Commissioner Crower made a motion, second by Commissioner Fermin, to approve the minutes of the December 17, 2018 MPC meeting. The motion to approve the minutes as submitted was approved unanimously.

REVIEW OF PROJECTS FOR THE CITY OF BEAUFORT

ZONING ORDINANCE TEXT AMENDMENT – Revising Section 9.12.1.B, pertaining to administrative adjustment of numerical standard for redevelopment or infill

Applicant: City of Beaufort

Mr. Prichard said **Paul Trask** is redeveloping Beaufort Plaza and wants to use 28' light poles in the parking lot and 15' poles in pedestrian areas. The zoning district is T5-UC, which only allows 15' poles, he said; there are existing poles elsewhere in the Beaufort Plaza parking lot that exceed 28'. Mr. Trask feels staff should have leeway to allow deviations from the Beaufort Code for redevelopment and infill when the deviations are "reasonable," given the existing development pattern, and are not "detrimental to the development goals of the city," Mr. Prichard said

Mr. Trask doesn't want to seek relief from the Zoning Board of Appeals (ZBOA), Mr. Prichard said, because a requirement to obtain a variance is that an applicant has a "unique hardship related to the land and its configuration," and "no reasonable use of the land is possible without" a variance. "Technically, those requirements do not exist" in Mr. Trask's case, Mr. Prichard said.

Mr. Prichard said it is not in the interest of the public to "disincentivize reinvestment" in previously developed property, especially when it is vacant or underutilized; however, the Beaufort Code "should not be up for constant renegotiation," and its enforcement should be "fair and consistent." Any administrative adjustment would need to be "principled" and based on the city's goals, he said, and "discretionary relief" must be "bounded by the code . . . serve the public good, and . . . be in accordance with the city's Comprehensive Plan and Civic Master Plan," with "oversight of any" administrative adjustment.

The Civic Master Plan recognizes that there could be an interim period in which there would be “an amalgam” of old and new development patterns while redevelopment areas transitioned to the plan’s goals, Mr. Prichard said.

In a work session on January 8, city council discussed this matter, Mr. Prichard said. “The prevailing sentiment” was to “amend the code to allow staff some limited flexibility in administering numerical standards for redevelopment and infill projects,” he said.

Mr. Prichard read from aspects of the ordinance that are applicable to this application and indicated the proposed changes to the ordinance.

Commissioner Alling asked if there were any percent limits that could be made. Mr. Prichard said, “You could not exceed what is already allowed by law.” The limit is based on the previous standard, he said.

Commissioner Tomy asked about “the philosophy behind changes” like this one that are contrary to the application going through the city’s boards and commissions. There is probably a reason why the light pole standard was made as it is, he said. This proposed amendment offers no recourse for the boards to have any input into decisions made outside of the boards’ purview, Commissioner Tomy said. Mr. Prichard said he personally feels “we need to be careful about giving one, single authority” the power to make such decisions, so they’ve “tried to bound it to within what we want to do with the Civic Master Plan” and/or the Comprehensive Plan.

Mr. Prichard provided an example from a PUD that had an established development pattern. The code “might be imperfect,” he said, and this is “a common sense decision.” Sometimes applications are “punted to the ZBOA,” but then that board has to make a decision that is “outside of the ordinance,” and that is not what getting a variance is meant to do, Mr. Prichard said, if there is “not truly a hardship or a unique situation.” He gave a recent example of this under the Beaufort Code.

Mr. Prichard said what they are trying to do is to allow changes based on the current development pattern. In terms of common sense, there is no reason not to follow the current development pattern, he said, without allowing any one person too much authority to do that.

Commissioner Alling said, with this amendment, the city manager is given some authority over zoning, which she thinks “seems odd”; planners, the ZBOA, and design review boards normally do it. Mr. Prichard said the intent isn’t to involve the city manager but for him to provide oversight when an applicant is given relief.

Chuck Newton, chair of the Sea Island Coalition, said the organization objects to the amendment to 9.12.1.B of the Beaufort Code. He read from a memo. (*It is attached for*

the record following these minutes.)

Mr. Newton recommended that the applicant apply for a variance through the ZBOA and urged the commissioners to vote to deny the application.

Rikki Parker, Coastal Conservation League, read from a memo. (*It is attached for the record following these minutes.*)

Maxine Lutz said she agreed with Ms. Parker and Mr. Newton. She did not attend the council work session at which this matter was “discussed at length.” In the past, codes enforcement was determined by one person who had “too much authority,” so decisions could “be arbitrary,” and “no one wants to return to that,” she said. Ms. Lutz doesn’t feel “the oversight would be there” with this proposed discretionary relief by administrative adjustment.

Ms. Lutz said she agrees that Mr. Trask’s application should have gone to the ZBOA as a variance request; she believes it didn’t because “it probably wouldn’t have gotten a variance.” She feels that there should be “more transparency” and opportunities for public input, not less.

The intent of this amendment might have been obfuscated by the words in the agenda item about it, Ms. Lutz said. She also pointed out that on page one of the staff report, it says, “The Beaufort Code was *ostensibly* [emphasis added for clarity] designed to implement the vision of the Civic Master Plan,” but in fact, the code *was* designed for that purpose, not “ostensibly.”

Libby Anderson, a Beaufort resident, said when she ran into Commissioner Tomy last week, she brought up this meeting, and he was unclear about the intent of this item on the agenda, which she explained to him would give “the administrator the authority to vary any numerical standard in any section of the code, which seems like a very broad authority to be given to one or two people.” Ms. Anderson later thought their conversation might have been *ex parte* communication, so she came to the MPC to express her concerns with the amendment:

- Predictability for residents, property owners, and developers – If a new building were to be developed on Boundary Street, she said, there would be certain expectations, which Ms. Anderson described (e.g., it would be located close to the street, parking would be in back, there would be “lots of glass,” etc.). A new city manager might not understand the important relationship between urban design and economic development like **Bill Prokop**, the current city manager, does, she said. A developer who wants to build “a new, ‘dollar’-type store on Boundary Street near Walgreens” might tell that city manager that putting the building close to the street doesn’t fit the corporation’s model, that the business must have “one or two rows of parking in front of the street,” and that they can’t accommodate “all those windows,” Ms. Anderson said. If the new city manager

does not understand the Boundary Street Master Plan, the Civic Master Plan, and the Comprehensive Plan, (s)he might allow what that developer wants, but that wouldn't be what the city expects and what other developers have done.

- Transparency – Under the Beaufort Code, many projects are now approved at the staff level, Ms. Anderson said, which is “meant to streamline the development process.” Most projects in the Boundary Street Redevelopment District (if they don’t have a drive-thru) “would just be done at the staff level,” so a scenario like the one above would not have to go to the DRB. All decisions would be made at the staff level, and, with this amendment, that would be done “in conjunction with the city manager.” Also, any new commercial building of less than 10,000 square feet outside of Boundary Street (e.g., on Ribaut Road or Highway 170) is done at staff level. Because the Beaufort Code “was designed with a lot of public input and predictability and certainty, perhaps we [don’t] need all the boards that we did before,” Ms. Anderson said, but this proposal grants “waivers and variances at the staff level,” which she feels “calls all of that into question.”

Mr. Prichard said he approaches his job as “an honest broker.” The way this amendment was worded, he said, was as it was worded in the code; “we weren’t trying to fly under the radar” or to obfuscate the intention of the amendment.

There was no further public comment. Commissioner Semmler said Mr. Trask had proposed this change, but the MPC didn’t know about Mr. Trask’s discussion with staff or the discussion at the city council work session. He said he is “a little bit taken aback [about] how this got to us.”

Commissioner Semmler read from “Conceptual Strip Mall Retrofit Example” on page 160 of the Civic Master Plan and requested that it be included in the minutes for the record. *(It is attached following these minutes.)*

“The way we talked about the future” of commercial development, Commissioner Semmler said, “was the building going up to the road,” for example. He continued to cite the text and gave the following examples: “We *made* McDonald’s go up to the edge of the road,” and did the same thing with Chick-fil-A and Walgreens on Boundary Street, as well the new buildings in Beaufort Town Center. If this amendment is passed, he said, “somebody else can make that decision without talking to anybody [else].”

Commissioner Semmler cited the text on the “second phase of redevelopment” (e.g., walkable communities, mixed-use development), and said, “A lot of the public had input on this,” as well as the commissioners, who worked very hard on the plan and on the Beaufort Code, and now “one developer is going to the city and saying, ‘I don’t like this. Can we change it?’” to allow what he wants “by just talking to one or two people,” and bypassing the process of taking it to the MPC or the ZBOA. Commissioner Semmler feels this “smacks of cronyism,” and he said he would be voting against it.

Mr. Prokop said there was no workshop; there was a regular council work session at which this was discussed. The Publix store is not going to be on the street, he said, and that has been approved, so it is not a fact that all buildings are now up on the street.

Chairman Harris said redevelopment and infill are different than new development. He doesn't feel there has been a purposeful "hiding of what's proposed here."

Commissioner Tomy said he appreciates the work of the public and their statements. At a training meeting for city board and commission members, he learned that in the state of South Carolina, no one may "hold dual offices" in order to avoid them having "undue influence." He feels this proposed amendment has "the potential to cross that line" with the inclusion of the city manager in signing off on the administrative adjustment.

Citizen boards have expertise that staff might not have, and that is what the city and county are looking for from their boards, Commissioner Tomy said. He added that a lot of communities do allow this kind of thing to happen, though he has not seen it in his work. Every jurisdiction he's worked in relies on its boards for these kinds of decisions because of their members' expertise. He said he has "a real problem [with] this as it's presented to us today."

Commissioner Crower said the amendment to the ordinance does not limit the changes that can be made, "other than in the direction of new standards," which he feels is "way too open to interpretation." This is not just about light poles, he said; "every number in the document is subject to adjustment without restriction." Commissioner Crower added that the public's input had opened his eyes to the issues in the amendment.

Chairman Harris said the MPC was working on the form-based code for quite some time, and the development community's group brought in an attorney who looked at the code in great detail and pointed out things that could lead to lawsuits, among other things. When Chairman Harris read this proposed amendment to the code, he recalled sitting in that room again, so he feels the amendment "needs to be taken apart." He said he "sees the problem" and feels "the conflict in existing development trends and the rules" has "changed things." Even if Mr. Trask doesn't make this change to the light pole heights in Beaufort Plaza, Chairman Harris said, another development might seek to.

Chairman Harris doesn't feel this ordinance change is "the way this should work." He also feels this is not "fair" to Mr. Prichard and the city manager because of the nature of the city manager's job. Any change needs to be "a lot more specific," he feels. He doesn't know why this application couldn't be given to the ZBOA, and perhaps that board's role could be "expanded."

Commissioner Alling said this is "a major change to the zoning code," and it "takes the

power from the citizens and gives it to two people.” If she were Mr. Prichard or the city manager, she said, she wouldn't want this responsibility because it is “a dangerous position to be in” (e.g., because they could be subject to accusations of favoritism). Commissioner Alling said citizens need to be involved, and “their input should never be taken away.”

Commissioner Fermin said she had wondered why the process that has worked before was proposed to be changed. She agrees with everything that has been said by the board and the members of the public.

Commissioner Alling made a motion to recommend accepting the change to section 9.12.1.B of the Beaufort Code. Commissioner Crower seconded the motion. The motion failed unanimously.

ZONING ORDINANCE TEXT AMENDMENT – Revising Section 3.7.2.B.1.d, pertaining to the number of menu or order boards allowed at drive-thru facilities

Applicant: City of Beaufort

Mr. Prichard said there is a trend for drive-thru businesses to have more than one drive-thru lane. The Beaufort Code currently allows only one menu or order board per business, and this proposal would allow one menu or order board for each drive-thru lane. Staff feels the proposed amendment is consistent with the Comprehensive Plan and the Civic Master Plan, he said. He reviewed the specific changes to the ordinance.

Commissioner Crower said he recalls rules about seeing drive-thru boards from the street. He thinks this change could make that more complicated, and he wondered if that had been addressed. Mr. Prichard said he hadn't thought about that. He was thinking that two drive-thru lanes would be parallel to one another, he said, so if you do/don't see one board, you would/wouldn't see two. There was a general conversation about the code as it relates to menu boards not being visible from the street.

Commissioner Tomy said the current code allows a sign of 24 square feet, with 8' of maximum height, “but it doesn't say anything about dividing that into two signs . . . for a double drive-thru or something like that.” He asked if that might be a direction that could be considered. Mr. Prichard asked if Commissioner Tomy was suggesting changing the language to allow multiple signs, as long as the total size of the signs is not bigger than one sign would be. Commissioner Tomy said that's correct. “24-square feet is a huge sign” for a drive-thru, he said.

Commissioner Tomy said the code says that the drive-thru lanes and the boards are not meant to be visible from the street. Commissioner Semmler said the amendment as written would allow a sign right on the street.

Chairman Harris said if two drive-thru lanes are allowed, it seems that they would need two signs. Commissioner Semmler said the restaurants that have two signs got variances

to allow that. Mr. Prichard said Chick-fil-A went to the ZBOA, which granted the restaurant a variance, but “there is no way there is a true hardship, which is the standard for a variance.” He said this “doesn't follow the code,” and he feels the solution is to modify the code.

Commissioner Tomy said Mr. Prichard’s point is that staff doesn’t want to have this situation in the future; he recommended re-writing the amendment to allow two boards as long as the restaurants do not exceed the code’s allowable square footage for the signs, “and [they] still have to comply with the code.”

Mr. Newton said when he read this proposed amendment, his understanding was that when a drive-thru lane splits in two, they want a menu board for each lane. Chairman Harris said that’s how he understood it as well.

There was no further public comment. Mr. Prichard said the way the code is written, you couldn't have two menu boards with only one drive-thru lane. This would allow two menu boards if there are two drive-thru lanes.

Commissioner Alling said two lanes could be designed in such a way that they’d only need one board, so she asked why the city “would grant two boards to everyone with two” drive-thru lanes. She recommended that the ZBOA should determine if there should be a variance for two boards. Mr. Prichard said this couldn't meet the ZBOA’s criteria for a variance. Commissioner Alling said in that case, then the restaurant doesn’t “need a second menu board.”

Chairman Harris asked if there is “a problem” at the restaurants that have two menu boards. Commissioner Tomy said it could be “a complicated design scenario” to have two lanes. He recommended denying this proposal and instead allowing one menu board per drive-thru lane, but limiting the board’s to about half the allowed square footage, which would create less of an impact on the site and the public’s view.

Chairman Harris said there is “a limiter,” which is how fast restaurants can get cars in and out of the drive-thru lanes. He doesn't think having two drive-thru lanes is “arbitrary.”

Mr. Prokop said safety was a concern at Chick-fil-A, which is why they needed two lanes. He suggested looking at a standard-size board that “doesn’t have to be 24-square feet.”

Mr. Prichard said he is trying to be “an honest broker.” He suggested the commission make a motion for its recommendation. If the commissioners want to direct staff to do something different, they could suggest that.

Commissioner Fermin made a motion to recommend approval of the amendment as written. Commissioner Alling seconded the motion. The motion failed on a vote of 3-3.

Commissioner Tomy said he'd like to ask staff to look at this and come back with another amendment if they feel that's appropriate. Chairman Harris agreed. The overall square footage of the sign was an issue, he said, and there needs to be clarity about the changes, including the possibility of using one sign for two lanes.

UPDATE OF CITY COUNCIL ACTIONS

Mr. Prichard said he didn't have an update because council hasn't met recently. Commissioner Tomy asked if the city staff could give a report to the MPC about how council votes on what the MPC recommends. Chairman Harris said that information is what is usually in the city update.

Commissioner Semmler said the Port Royal town council and Mayor Murray "didn't even make a motion to vote" on a proposed "video billboard," and they have specified "no new billboard signs" in the town. He feels the Town of Port Royal should be publicly acknowledged and given a "pat on the back."

Merritt Patterson said in the minutes of the December 17, 2018 MPC meeting, he is referred to as a member of the steering committee for the Lady's Island Plan, but his brother Allen serves on that committee. *[A check showed that reference – on page 1 of the minutes – is to Allen Patterson. – steno.]*

Mr. Patterson asked about the role of the MPC on Lady's Island Plan projects. Chairman Harris said he doesn't know the answer. Commissioner Semmler, chair of the Lady's Island Plan steering committee said, "We need public meetings for each project." **Rob McFee** is supposed to be working on those projects, he said. The steering committee has asked this question, and Commissioner Semmler thinks this would be a good issue to bring up at the Northern Regional Planning Implementation Committee meeting on March 3. He said they need to specifically ask what the process is "for each one of the transportation projects within the Stantec study that's part of the Lady's Island Plan." Commissioner Semmler concluded, "We've made a promise that the public would be involved in that."

Mr. Newton said Mr. McFee and **Christopher Inglese**, county attorney, told him that each project would have two public meetings as part of the process; there was no mention of the MPC. He said he had heard that it would "not be a requirement" that these projects "go through a public body per se." Commissioner Semmler said he would ask at the Northern Regional Plan meeting and try to get an answer.

There being no further business to come before the commission, **Commissioner Alling made a motion to adjourn**, and the meeting ended at 6:56 p.m.