

MINUTES OF THE PLANNING COMMISSION MEETING
Wednesday, February 2, 2011
City Council Chambers
2400 Washington Avenue
Newport News, Virginia

PRESENT: Sharyn Fox, Chairwoman; Victor Albea, Vice-Chairman; Cleon Long; Clara Swanson; Wesley Maxwell; J. Doug Coenen, Jr., H. Eugene Roberts; Robert B. Jones; Lorraine P. Austin; (Staff: Sheila W. McAllister, Director of Planning; Kathy James-Webb, Manager of Current Planning; Michael King, Manager of Comprehensive Planning; Angela Hopkins, Senior Planner; Saul Gleiser, Senior Planner; Sandy Hitchens, Planning Technician; Johnnie Davis, Planner; Collins Owens, Jr., Deputy City Attorney; Christine Mignogna, Zoning Administrator)

ABSENT: None

CALL TO ORDER

The Chairwoman called the meeting to order at 2:00 P.M.

INVOCATION

Mr. Roberts read the Planning Commission's purpose as stated in Section 15.2-2210 of the Code of Virginia. He made a motion to adopt the agenda before the Planning Commission. Mr. Albea seconded the motion. The City Planning Commission voted to adopt the agenda by acclamation.

Mr. Maxwell presented the invocation.

MINUTES

The minutes of the January 19, 2011 public hearing were approved as presented.

PUBLIC HEARING

CU-10-276, Youth Challenge of Hampton Roads. Requests a conditional use permit to allow for an automobile sales used car dealership and a small motor vehicle repair service facility on a 1.30 acre parcel located at 5100 Jefferson Avenue and zoned C2 General Commercial. The Parcel No. is 293.00-02-01.

Ms. Angela Hopkins, Senior Planner, presented the staff report (copy attached to record minutes).

Mr. Roberts asked to define "small motor vehicle repair".

Ms. McAllister stated that it is a motor vehicle with a gross vehicle weight rate of 10,000 lbs or less.

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Mr. Roberts asked if small engines for lawnmowers and mopeds would be considered small motor vehicles although they were not considered vehicles.

Ms. McAllister stated small motor vehicle repairs pertained to just vehicles.

Mr. Coenen asked, in regard to the required 10 foot landscape strip on Jefferson Avenue and the 20 foot transitional area in the rear of the property, while those areas are currently paved, is it not an imposition on the owners to have them tear out that pavement and replace it with landscaping, and if the owners have been contacted about this and are they willing to work with that.

Ms. McAllister stated that the 10 foot landscape strip is not inconsistent with what is being required when someone applies for this type of use where there is pavement. If you are trying to improve the corridor and the frontage of the property along Jefferson Avenue, properties being redeveloped and reused will probably be required to install the landscape strip.

Mr. Coenen asked if the applicant is agreeable to this.

Ms. McAllister stated that she did not know, but we feel it is a condition we should attach to this particular type of use.

Mr. Jones asked if the landscaping strip is what is being referred to as a buffer.

Ms. McAllister stated that the landscape strip is up front and the buffer is between the residential zone and the commercial zone at the rear and along the sides of the property. It would just be trees and it is to buffer any noise associated with this use from the residential property.

Mr. Jones stated that there seems to be pavement all the way into the back and the pavement ends right where the opaque fence is.

Ms. McAllister stated that what the applicants are being asked is to install a 10 foot strip of landscaping along that rear to ensure buffering from that residential neighborhood because the fence is opaque, but not completely. A 20 foot fire lane is required by the fire department, so anything else would have to be planted with the remaining buffer, which would probably be about 10 feet within the fence on their property.

Mr. Jones then asked if the repair was just for the 12 cars that would be sold or if it is for any car that needed service.

Mr. Owens stated that they can accept, as a charitable donation, as many cars as people are willing to donate; however, they can only provide or sell, for no profit, cars from that site, to no more than 12 low income people. They can accept donations from any number of people and fix those cars, but to sell them they would have to go through a licensed dealer. They are planning on repairing their fleet vehicles at this location, as well.

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Mr. Jones then clarified that they can fix other cars, but 12 cars are all they can sell from that site.

Mr. Owens stated that the Dealer Licensing provision, Title 46.2 Section 1508, the provision right after that, Section 1508.1, enacted by the General Assembly, which specifically allows a 501 (c)(3) charity that accepts automobiles as a donation to dispose of up to 12 vehicles. The State Code states "Any nonprofit organization exempt from taxation under 501 (c) (3) of the Internal Revenue Code that (i) receives title to motor vehicles as qualified charitable gifts to the organization, (ii) provides no more than twelve of these donated vehicles in any twelve-month period to low-income persons, as defined in 2.2-5400, in need of transportation, and (iii) receives from the recipients of the vehicles only reimbursement for the costs of repairs, towing, titles, taxes, license fees and inspection fees shall be required to obtain a dealer's license." They do not have to be licensed as a "for profit" dealer and they can do these 12 on-site. They can accept as many as they want as long as they put them out to consignment to a licensed dealer so that they can get the money from them, but that does not allow them to sell them on-site. The problem that we had with them coming in here is, under our provisions, and actually under State law except with this exception, if you sell more than five vehicles from a site in the course of a year, you are considered to be a dealer. To allow them to do the 12, we had to come in with this conditional use permit authorizing a dealership, but we wanted to make sure we restricted it to the 12 so that, should they leave and a commercial car dealership purchase the site, they cannot just come in and start selling hundreds of cars.

Mr. Long asked why recommendation No. 1 "A site plan shall be submitted to and approved by the Director of Engineering" was separated from No. 6. "A vegetative transitional buffer area shall be planted and maintained along the rear of the property between the 20-foot fire lane and the existing opaque fence."

Ms. McAllister stated because it is specifically talking about buffers and landscaping that is not there currently.

Mr. Long stated that it seems like No. 1 would capture that without the No. 6 recommendation.

Ms. McAllister stated no, because otherwise, they would not have to come in with the site plan. What is driving the site plan requirement is the fact that they will probably have to remove some pavement and install the landscaping which is going to kick in the site plan requirement. It will probably be a Class 2 site plan, it is not a detailed site plan, just showing the identification of those areas to be planted because they are not adding to the building.

Ms. Fox declared the public hearing open.

Mr. Travis Hall, 4904 Warwick Boulevard, is the Program Director for Youth Challenge. He informed the Planning Commission that Youth Challenge has served the City of Newport News and Hampton Roads Region for 30 years. Mr. Hall also informed the Commission about the many services the Youth Challenge program offers. Mr. Hall estimated that the

non-profit organization has saved the City of Newport News over \$285,000 annually. The thrift store and the automobile sales and repair play a major role in the services they are able to provide. They appreciate the Planning Department's willingness to consider the services they provide in recommendation for approval. Mr. Hall thanked Ms. Hopkins for her kindness, professionalism, hard work and patience during this application process. They understand and respect the conditions recommended in order for the permit to be approved. They asked that the Planning Commission continue to take into account the services Youth Challenge provides the City and consider a few alternatives to the conditions recommended by the Planning Department.

1. They appreciate the need for the landscaping strip along the Jefferson Avenue frontage of the property. They had already talked about doing that to improve the curb appeal of the property. They ask that the Commission consider an alternative solution along the back of the property. After the 20 foot fire lane, there is approximately 10 feet of asphalt remaining along the rear of the property before the opaque fence line. To vegetate that small strip would not be very cost effective. It would be costly to them and generate little result, especially being inside the fence. They ask that the asphalt inside the fence be allowed to remain and, as an alternative, plant shrubbery along the back of the fence line outside the fence, which is still within their property line.
2. The existing freestanding sign is on their proposed plan to be moved to facilitate traffic flow according to the new parking design. They ask that the Commission consider the movement of the sign be sufficient. The installation of a monument type sign will incur significant expenses. The movement of the sign coupled with the landscaping strip will improve the aesthetics of the property and save the expense of the monument sign. He stated that the more they can save the better off they would be in providing services to the community. The Family Dollar directly across the street, as well as the property south of their location have pole signs. There are no monument type signs within the site at their location, so they ask that a relocated sign be sufficient.
3. Rather than removal of the chain link fence forward of the building, they ask they only be required to remove the fence along the frontage of the property. The fence along the sides of the property gives them separation from the adjacent properties. The property on the north side has a large dog and keeping the fence gives added security. The fence will be painted and maintained in order to present good curb appeal.
4. They understand that the installation and operation of digital video equipment is required by the Police Department for car dealerships. While they are asking for a conditional use permit to sell automobiles, the recommendation also restricts the number of vehicles allowed on the premises. Therefore, they ask that the Commission consider not requiring the video equipment. The requirement of this condition would be very costly to them and based on the restriction on the number of vehicles they are allowed to display, it seems overkill.

Mr. Hall stated they are more than willing to be supportive of the City's plan to improve that part of Jefferson Avenue. Mr. Hall noted that of the 20 conditions, they are only asking the

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Commission to consider alternative solutions to four. The conditions they are being asked to meet are costly. They understand the cost of doing business; however, this move to the location at 5100 Jefferson Avenue was made out of necessity when the lease at their previous location was not renewed so that the owner could expand his used car sales. They have already incurred numerous expenses during this transition and have much to go. As a non-profit that receives no government assistance nor funding from the City, these trying economic times have taken a toll. They commit to meet any requirements asked by the City, they are only asking the Commission to take into account their 30 years of faithful service to this City and alternative solutions to the four recommendations.

Ms. Fox clarified that they would like to plant shrubbery outside of the fence at the rear of the property and asked how much property they have outside of the fence on the rear.

Mr. Hall responded that he did not have an exact number, but approximately 10 to 12 feet, which would give them plenty of room, at least six feet. The area behind the building on both ends, two or three lots down on both ends is closed off so nobody can actually walk through that area. There is no access behind that area at all. It would strictly be for shrubbery.

Ms. Fox clarified that they want to move the pole sign and take the requirement for the monument sign out, and they would like to leave the existing chain link fence along the sides and only remove the fence on the frontage, and take out the video cameras. Ms. Fox asked Mr. Hall if he is aware that the video cameras are something that the Police Department has asked the Commission to put in all of their conditional use permit applications.

Mr. Hall stated yes, but he still felt it was overkill.

Mr. Greg Garrett, whose office is at 11864 Canon Boulevard, spoke in favor of the application and asked the Commission to look at the applicant for who they are in this situation and give them as much possible grace as they can. As a board member for Youth Challenge, he has seen firsthand the benefits the organization provides. Youth Challenge is the only organization Mr. Garrett is aware of effectively dealing with alcoholism and drug addiction in the City of Newport News and really supporting other citizens in other counties in the local area. He stated that if this organization cannot make this thrift store work and make enough profit, it is very likely that Youth Challenge will go out of business. They have an 80+ year old founder that has been the Executive Director of this organization for many years and they need to figure out how they can work to create sustainable solutions so that they can continue this program. The donations and charities are not coming in and for this organization to be willing to come in and try to run a business and do what they are doing is remarkable. As community leaders, he implored the Commission to reach out and do as much as they can for this organization so they can take care of these people.

Mr. Lavon Reynolds, 332 34th Street, is the Public Relations Director and spoke in favor of the application. Mr. Reynolds stated that he went to homes behind the thrift store and asked the neighbors if there were any concerns with their establishment, and no concerns were made known. Mr. Reynolds relayed his personal experience working with Youth Challenge and the positive impact it has made on his life. He expressed his concerns about the

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revenue generated for Youth Challenge, and asked the Commission for leniency on the program because it takes everything they can do to keep the program up and running.

Mr. Terry Martin, whose office is located at 714 J. Clyde Morris Boulevard, spoke in favor of the application. Mr. Martin remarked on his relationship over the past 30 years with Youth Challenge and spoke on behalf of his admiration for the organization. Mr. Martin spoke about the effect Youth Challenge has made in the community. He noted that the thrift store has relocated to a commercial building and that the changes the City is asking are nice, but what Youth Challenge is asking to adjust in these conditions is very reasonable, especially when you are looking at the rear of the store. To have to supply this buffer zone would change what was previously there by another organization. It is unreasonable when you look at what has been there and what is there now, and when they are willing to do the improvements on the back of the property, which would be observed by the neighbors. It would make no difference to locate the buffer within the inside of the property, but could make a difference with regards to the operations of the property. They provide a major service to this community and the adjustments asked for are not at all unreasonable but are costly and it would be difficult to comply. Mr. Martin encouraged the Commission to comply with the requests that Youth Challenge has made, looking at the reality of the good and all that they do and have done for the community. Mr. Martin asked that the Commission take all of that into consideration. Youth Challenge is a super bunch of people that are trying to provide a service to the community and they need the help of the community to do that.

Mr. Albea asked if the Commission votes with the recommendations from staff to keep all of the recommended conditions, would Youth Challenge continue to move forward.

Mr. Martin responded that it would be difficult for them to comply, and it would be costly, and it may have some effect on the services that are rendered to the people that they help. There is only so much money and if the things that the City is asking require money, that takes money from the program. It is a lose-lose situation in that regard. They need this operation in order to continue their business, so the additional costs involved in complying could potentially reduce the program that the City receives.

There being no further questions or comments, Ms. Fox closed the public hearing.

Mr. Albea asked what the dimension is behind the fence that belongs to Youth Challenge.

Ms. McAllister stated that, according to the site plan which was recently drawn, the fence is on the property line.

Mr. Albea noted that he had visited the property also and noticed that there was an area between the fences, but he did not know until today that it may be part of their property.

Mr. Maxwell asked what the area is between Spencer Court and Youth Challenge.

Ms. Hopkins stated there are single family houses behind Youth Challenge, and what is between the fence is a small green area.

Ms. Fox stated that if the alternative planting area is along the outside of the fence, that condition could not be changed if we do not know who owns the property on the other side of the fence.

Ms. Hopkins stated that was correct.

Ms. Fox asked how would you get to it to maintain it.

Mr. Roberts stated in the past, there was a city ordinance that did not allow chain link fence to be in the front yard and it had to stop at the front face of the building line. He was not sure how this property, and others, have chain link fences that should not be there. He stated the property is in non-conformance now.

Ms. McAllister stated that this pre-dated that ordinance.

Mr. Roberts stated that this appears to be a new fence.

Ms. McAllister stated that they painted the fence. It is the old fence from McTavish Building Supply.

Mr. Long made a motion to recommend deferring the request to the next Planning Commission meeting. The motion was seconded by Mr. Jones.

Mr. Long stated he would like to know more about the property behind the chain link fence, and if they are able to have the trees planted behind the fence rather than pulling up the pavement in the back.

Mr. Coenen commented on the conditions having to do with the vegetative strip and the required transitional area in the rear of the building. It appears that there is very little room outside of the rear fence to do any planting there. He felt that if they could improve the condition of the opaque fence in lieu of a transitional strip, it only makes good sense that the Commission is allowing a 20 foot fire lane in the rear of the building, but he did not feel that a fire apparatus would want to pull up right adjacent to the rear of a burning building. If we leave the pavement in there, it is approximately, by scale in the site plan, 40 feet from the rear of the building to the fence in the rear and that would allow better safety for public fire apparatus to maneuver in the rear of the building.

Ms. Fox stated she liked the opportunity for staff to look at the four conditions that have been requested to be changed or deleted and see if there is an alternative or if there is any possible way we can restructure them. If not, we cannot. The camera issue is a Police Department request, but it is an opportunity for staff to take a look at this again since we now know what their concerns are.

Mr. Roberts stated personally, he felt that Youth Challenge does a wonderful job in the City. What we have to do as Commissioners is to look at these on a case by case basis from a zoning standpoint and land use and make sure that we are consistent in our views and how

we apply the rules and regulations from one property to another so that we are not showing favoritism, whether it is for a non-profit or a for-profit. There are concessions that are already being made by the recommendations of staff now. The 20 foot transitional buffer to the north side of the property, which is adjacent to the apartments is allowed to be zero because there is no mention of that. They are not saying tear that pavement out and plant it. There is a requirement of 30 feet to the east that is part of the discussion as to whether or not leave all of that pavement or landscape part of that. The other thing to be conscious of is there are single family residences adjacent to the property. They have an interest in who the land owners are adjacent to them, and this being a commercial piece of property, and they do not know all of the activities that can potentially occur on that site, or if there is something occurring that is detrimental to the way they live their lives adjacent to them. One of the tasks we have to look at, as Commissioners, as well as City Council and the Planning staff, is to make sure that there are not things that happen that are detrimental because it is in the interest of the City to protect the neighborhoods. If this site was being developed today, the requirements that we are talking about now would be fully enforced. The landscape strip across the front is required. The parking would have to be landscaped. There is nothing in the language as far as recommendations that has required the current owners to do that. We just need to keep all of that in mind as we deliberate and decide what we are going to do with this particular case.

Vote on Roll Call

For: Jones, Roberts, Maxwell, Albea, Long, Austin, Coenen, Fox

Against: Swanson

Abstention: None

The Planning Commission voted 8:1 to approve deferral the conditional use permit CU-10-276 to the Planning Commission meeting of March 2, 2011.

Ms. Fox stated that this case will be deferred to the March 2, 2011 Planning Commission meeting.

PRESENTATION

Ms. Sandy K. Hitchens, Planning Technician, presented the "2010 CITY WIDE APARTMENT SURVEY AND ASSISTED HOUSING STUDY".

Ms. Hitchens informed the Commission that if anyone would like to obtain a copy of the survey, they can contact her at the Planning Department and she would be happy to mail them one.

Mr. Long asked what the reason was for the shift in the amount of housing choice vouchers from Planning District I to Planning District III.

Ms. Hitchens said she was not sure because the numbers came from the Newport News Redevelopment and Housing Authority, but she could look into it.

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Mr. Long asked, in regard to Table 5, in comparing the cities on the Peninsula, how would they compare to cities on the Southside.

Ms. Hitchens stated that in past years they were not included, because the assisted living survey started last year, but they could be added in the future. For now they went with localities that bordered or were very close to Newport News.

Ms. Fox asked what determines a luxury apartment.

Ms. Hitchens stated there would have to be criteria to consider something luxury.

Ms. Fox stated that it is interesting to note that, even without all of the new multi family housing that is projected to come online in the near future, the demand for apartments in the upper category is going down and the vacancy rate is going up.

Ms. Hitchens stated that vacancy rates overall are up, including the income based housing units. Last year they had 1.5% vacancy rates, and this year it is 1.7%. It is not a big shift, but that is new for them because they normally stay pretty solid in terms of their vacancy rate.

Ms. Fox stated that it would be interesting to see what happens when we have more apartments available.

EXECUTIVE SECRETARY REPORT

Ms McAllister informed the Planning Commission that there are two conditional use permits coming for the March 2, 2011 meeting. CU-10-276, deferred from today, and First Baptist Church will be coming back to amend their conditional use permit for child care center. They would like to remove the condition that requires a state license because of their religious exemption. There will also be two zoning text amendments, one for pawn shops and amendments to the PRD regulations. Ms. McAllister also noted that there will be a work session on various items, including the zoning text amendments that are coming up and the process of plan amendments on February 16, 2011. The time and location is undetermined, so that information will be forthcoming.

COMMITTEE REPORTS

Ms. Fox asked if there were any committee reports. There were no committee reports.

Ms. McAllister stated that there would be no Regulations Committee meeting February 16, 2011 in lieu of the Planning Commission work session.

UNFINISHED BUSINESS

There was no unfinished business to discuss.

NEW BUSINESS

Mr. Eric Jackson, residing at 622 48th Street, addressed the Commission regarding Living Waters Way of the Cross Church who requested a plan amendment to change the land use designation for the property located at 4812 Jefferson Avenue to community facilities during the January 19, 2011 public hearing. Mr. Jackson requested that the study be waived. Time is of the essence for them, and they feel that the study may delay the construction process. The church wants to start submitting the applications for the special exceptions and variances and rezoning, and they want the project to move as expeditiously as possible.

Mr. Albea made a motion that the Planning Commission cancel the request for a comprehensive plan amendment study as recommended by staff. Mr. Maxwell seconded the motion.

Mr. Owens asked for clarification of the plan amendment, if it was prior to a rezoning.

Ms. Fox clarified that it was to do a study for a plan amendment.

Mr. Owens stated that the City Attorney's position to City Council is that, before a positive recommendation for a rezoning goes forward, the rezoning needs to conform to the comprehensive plan.

Ms. McAllister stated that is correct; that is why they requested the study. However, because this is a community facility, and it is permitted in the zones in which they want to expand into, they know they have the option to allow the study, do a rezoning, and they are still going to be required to get variances and transitional buffer reductions. They are requesting to move forward with all of the exceptions and variances and just leave the zoning as is.

Vote on Roll Call

For: Swanson, Roberts, Maxwell, Albea, Long, Coenen, Jones, Fox

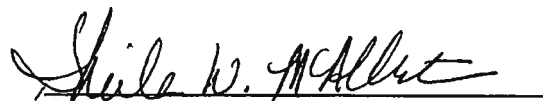
Against: Austin

Abstention: None

The Planning Commission voted 8:1 to cancel the comprehensive plan amendment study.

There being no further business, the meeting adjourned at 3:15 P.M.


Recording Secretary


Executive Secretary