

The Easton Planning Commission met on Wednesday, October 2, 2013, at 6:30 p.m. in City Council Chambers, Alpha Building, One South Third Street, Easton, PA 18042. Planning Commissioners Charles Elliott, Ronald Shipman, Dennis Lieb, Bonnie Winfield, and Robert Sun were in attendance. The following Planning & Codes staff members were in attendance: Chief Planner Carl Manges and Planning Executive Secretary Mike Handzo. City Solicitor Joel Scheer was also present.

Mr. Elliott called the meeting to order at 6:31 p.m.

The agenda was approved as presented.

Mr. Lieb requested that the minutes of the September 9 meeting be clarified to unambiguously indicate he had not provided any formal consulting services to the Easton Housing Authority. Mr. Shipman moved, with Ms. Winfield seconding, that the minutes be approved as amended. The motion passed unanimously.

Privilege of the Floor. No members of the public wished to address the Commission.

916 Northampton Street – Special Exception. Mr. Manges read that the applicant, Jonathan Washington, proposes to establish a C3 – General Merchandise use on the first floor of a (A12) Mixed-Use three-story building at 916 Northampton Street. The first floor at this location is currently vacant. The previous use at this location was a Retail Specialty store (Exquisite Fashions). The property is located in the West Ward Zoning District, Block Class C, where the proposed C3 – General Merchandise use is not permitted per Article XIV §595-75. However, the property is also located in the Street Corridor Enhancement Overlay District, where General Merchandise (C3) uses are permitted by Special Exception per Article XXIII §595-126.

A conversation with the applicant on September 17, 2013, revealed that he has proposed to establish a convenience store at 916 Northampton Street. Items to be sold in the store would include beauty supplies, cold beverages, cigarettes, and lottery tickets. The applicant indicated he would be the only employee with this business. The hours of operation are proposed to be Monday through Saturday from 9am – 8pm, and Sunday from 10am - 5pm. The applicant indicated that there is no off-street parking located at the site. According to the applicant, deliveries would be made in a UPS van, and no tractor-trailer deliveries would be associated with this business.

Mr. Manges reported that the proposal was compatible with the criteria for Special Exceptions, as outlined in §595-251. Therefore, he communicated that staff advocates Planning Commission's recommendation to the Zoning Hearing Board for granting a Special Exception request to Jonathan Washington for a General Merchandise (C3) use at 916 Northampton Street with conditions.

Neither the applicant nor representatives of the applicant were present. Mr. Lieb raised concerns about the applicant's absence. He expressed that the sales of cigarettes and lottery tickets do not constitute a service to the neighborhood, and would like to have received more details from the applicant on his intended inventory. Therefore, Mr. Lieb shared his likely intent to vote against the proposal. Mr. Manges explained he had spoken to the applicant recently and reminded him of the meeting date.

Mr. Sun inquired about the frequency of deliveries to the store, with Mr. Manges indicating they would occur once weekly. Mr. Sun asked if the application could be tabled until the applicant could appear. Mr. Elliott informed him that the timetable for zoning appeals would restrict such a course of action.

Mr. Scheer expressed that the Commission raised valid concerns about the proposal's impacts on health, safety, morals, and general welfare. He reminded the Commission that they could recommend denial of the Special Exception, or offer a resolution of no recommendation as they were unable to question the applicant in his absence. Mr. Scheer indicated that the latter option would allow the Commission to note its concerns without voting against the proposal.

Mr. Shipman asked if the Commission could reasonably recommend denial of a Special Exception based on the nature of the use. Mr. Scheer responded that the Commission could evaluate proposals in a broader context than the Zoning Hearing Board, considering the business' compatibility with the community. Mr. Elliott explained that the Zoning Hearing Board was bound to only consider presented evidence of record, and the applicant had a burden of proof to appear before the Board and present a case; the Planning Commission, in contrast, was not bound by presented evidence in the same manner. Mr. Elliott indicated that, if the Planning Commission has

unanswered questions due to an applicant's absence, it can justify offering no recommendation on the grounds of insufficient information.

Mr. Sun moved, with Mr. Shipman seconding, that the Easton Planning Commission note to the Zoning Hearing Board that the Commission is unable to offer a recommendation regarding the applicant's Special Exception request in light of the applicant's failure to appear before the Commission to respond to questions. The motion passed unanimously.

Hackett Park – Special Exception. Mr. Manges read that the applicant, Adams Outdoor Advertising, proposes to construct a digital billboard K1 – Advertising use within the bounds of Hackett Park. The proposed 48' wide, 14' high, 672 square foot digital billboard would display advertising messages to passing traffic on US-22. A 20' wide access easement would facilitate billboard maintenance by the applicant. The property is located in the Expressway Transitional Zoning District, Block Class A, where Advertising (K1) uses are permitted by Special Exception per Article XXIA, §595-121.3

A conversation with the applicant's representative, Jody Cesanek, on September 26, 2013, revealed that Adams Outdoor Advertising intends to adhere to the criteria including illumination concerns listed in the Advertising Use Zoning Permit Application. The Zoning Administrator has determined that the proposal meets the criteria, and no variances are associated with this application. Mrs. Cesanek indicated that they have 25 digital units in the Lehigh Valley. She also indicated that one of these billboards takes approximately 2 weeks to construct.

Mr. Manges reported that the proposal was compatible with the criteria for Special Exceptions, as outlined in §595-251. Therefore, he communicated that staff advocates Planning Commission's recommendation to the Zoning Hearing Board for granting a Special Exception request to Adams Outdoor Advertising for an Advertising (K1) use in the proposed location at Hackett Park with conditions.

The applicant's representative, Lois Arciszewski, and the applicant's counsel, Victor Cavacini, Esq., were in attendance. Ms. Arciszewski indicated that the applicant proposed a 2-sided billboard, with one 14' x 48' sign face oriented toward each direction of travel on US-22. She explained that the proposed billboard meets all regulations of City ordinance in addition to Outdoor Advertising Control Act of 1971 standards necessary for PennDOT permit approval.

Ms. Winfield asked the applicant to clarify the service the billboard would provide to highway travelers, as reported in the staff analysis. Ms. Arciszewski described three benefits: (1) the billboard could be instantaneously updated to provide real-time emergency information; (2) Adams Outdoor Advertising offers community advertising to host municipalities; and (3) Adams offers gratis advertising space as available to local nonprofit organizations. She additionally indicated the billboard could inform the traveling public of relevant local businesses, such as motels and restaurants. Furthermore, Ms. Arciszewski explained the billboard was ideally positioned to notify westbound motorists of incidents in the vicinity of the US-22/PA-33 interchange. Mr. Scheer reported that a clause providing for Adams to display City and emergency announcements was included in the lease.

Mr. Lieb expressed that the billboard would disrupt the natural environment of Hackett Park, and characterized it as a distraction rather than a service. He offered that the Expressway Transitional Zoning District was created in response to prior potential litigation by the applicant, rather than the interest of Easton's citizens. Consequently, he stated his intent to vote against the proposal.

Mr. Sun questioned the applicant on the number of billboards in Easton and the Lehigh Valley, and on the number of firms maintaining billboards in the Lehigh Valley. Ms. Arciszewski provided the figures as requested. In response to a further inquiry by Mr. Sun, she explained that, while emergency messages are broadcast infrequently, the capability to broadcast such messages is more meaningful than its frequent usage. Mr. Sun asked about the potential maximum number of billboards allowed within the entirety of the Expressway Transitional district, with Mr. Manges and Ms. Arciszewski explaining that no more than three (3) to four (4) billboards would be feasible. They described the multiple layers of regulation with which billboards must comply and City ordinance provisions limiting billboards to one per lot. Ms. Arciszewski suggested that the proposed billboard in Hackett Park would likely be the only one constructed in the Expressway Transitional Zoning District fronting US-22, and that market forces and the regulatory landscape would curb potential billboard construction on I-78 within City limits. Further questioning by Mr. Sun revealed that the City contained 17 billboards predating the Zoning Ordinance; Mr. Cavacini explained that these billboards were grandfathered, and irrelevant to the current matter, under state law.

Mr. Scheer explained that, under Pennsylvania Law, if a use is not permitted anywhere within a dedicated zoning district, the City is exposed to an argument of a “*de jure* exclusion” that could result in an applicant seeking a permit to install a sign to pursue the use anywhere within the City. Mr. Cavacini identified billboards as a specifically defined land use under Pennsylvania state law. He indicated that, if a municipality lacked a zone for billboards and consistently denied applications for their construction, it would be practicing *de jure* exclusionary zoning. According to Mr. Cavacini, site-specific relief would be the legal remedy for such a situation. He explained that the City had been notified of a defect in its zoning ordinance, and had cured it appropriately through a zoning amendment.

Mr. Elliott indicated Mr. Cavacini was correct in his recitation of Pennsylvania law. He explained that site-specific relief of billboard proposals could lead to billboards sited at inappropriate locations; consequently, the City created the Expressway Transitional Zoning District to provide a suitable location for billboards within City limits. Mr. Elliott mentioned that the Expressway Transitional Zoning District had been subject to the standard public process for the enactment of all City ordinances, and that policy and principle disagreements did not provide a justification for treating the application in a manner contrary to an adopted City ordinance. Mr. Shipman echoed Mr. Elliott's sentiments, stating that the Commission was not permitted to exclude when the applicant had complied with an adopted ordinance.

Mr. Sun raised concerns about an oversaturation of billboards in the Expressway Transitional Zoning District and in the City at-large. Mr. Cavacini responded by indicating that “fair share” was a valid consideration in the presence of the zoning amendment. Mr. Scheer elucidated that “fair share” does not stipulate equal allocation of space to all users interested in establishing a particular use; it simply requires an appropriate amount of real estate to be dedicated to the use in general. According to Mr. Cavacini and Mr. Scheer, as long as a “fair share” of space exists, the City may validly regulate the number and concentration of billboards constructed.

Mr. Shipman moved, with Mr. Elliott seconding, that the Easton Planning Commission recommend to the Easton Zoning Hearing Board that the request for Special Exception be granted, with conditions, for the proposed Advertising (K1) use located at Hackett Park. Mr. Shipman, Ms. Winfield, and Mr. Elliott voted in favor of the motion. Mr. Lieb and Mr. Sun voted against the motion. By a vote of 3-2, the motion passed.

219 North 3rd Street – Lafayette College Film and Media Studies Center – Final Approval. Mr. Manges read that the applicant, Lafayette College, proposes to demolish an existing building and garage (previously Case Tire), and develop a four-story Film and Media Studies Center at 219 N. 3rd Street. This approximately 22,500 square foot building is proposed to contain a Black Box Theater, a Scene Shop, studio rooms, offices, and storage rooms. The building is designed to be constructed on piers so that the 1st floor would be above the floodplain elevation as defined by the Federal Management Emergency Agency (FEMA). The 1st floor of the building is proposed to be elevated 14'6” above ground level. Beneath the building a plaza and a 14 space parking lot are proposed. This area beneath the building would be illuminated constantly with light columns 24 hours a day, and security would monitor the area. This proposed building would be used by the faculty and students of Lafayette College. The facility would also be open to the public during performances. Additionally with this proposal, the applicant has proposed to consolidate part of the 223 N 3rd Street property into the proposed lot at 219 N. 3rd Street.

The proposed E1-Educational Services and B2-Amusement uses are located in the River Corridor and Other Green Areas Zoning District, Block Class B, where the proposed uses are not permitted per Article XVII §595-88. However, the property is also located in the Street Corridor Enhancement Overlay District where both the E1-Educational Services and B2-Amusements are permitted by Special Exception per Article XXIII §595-126. The property is also located in the Flood Hazard Overlay District, requiring Special Exception approval for development in a floodplain. According to the FEMA Flood Insurance Rate Map 42095C0279 D, 219 N 3rd Street is located in the FEMA defined 100-year floodplain. The base flood elevation is 197 feet, and with the proposed building situated on piers, the 1st floor will be located 9'9” above the base flood elevation. The applicant indicated to staff in a meeting on June 12, 2013, that no hazardous materials of any kind would be stored at this location. The applicant received conditional preliminary approval from the Easton Planning Commission at the July 3, 2013, meeting. The applicant also received their Special Exception approvals from the Zoning Hearing Board on July 15, 2013.

The applicant received concept approval for the replacement of the existing buildings with a new college building for the arts from the Easton Historic District Commission at the December 10, 2012, meeting. They received

conditional approval at the September 9, 2013, Easton Historic District Commission meeting for the façade of the proposed building.

Mr. Manges reported that the proposal was in compliance with the regulations of Article IV, §520-36, Preapplication Requirements, and Article IV §520-37 Subdivision and Land Development Plan. He additionally indicated that the applicant had established suitable flood evacuation procedures. He communicated staff's recommendation that the Planning Commission grant conditional final approval of the plans.

A contingent of the applicant's project team, consisting of Mitch Wein and Mary Wilford-Hunt of Lafayette College and David Zaiser of KSS Architects, was present. Mr. Wein indicated that the applicant accepted the Commission's conditions. Mr. Lieb congratulated the College on its diligent project planning efforts. He expressed his view that the College acts as a beneficial addition to the City, regardless of past architectural and aesthetic criticism he had offered the College.

Mr. Sun inquired about the signage of the proposal. Mr. Zaiser and Ms. Wilford-Hunt presented several renderings to the Commission. Mr. Zaiser explained that the signage's lettering was cloaked by perforated metal to add subtlety and visual interest, and Ms. Wilford-Hunt described the College's intent to produce sculptural signage. Mr. Elliott asked about nighttime illumination, with Mr. Zaiser describing backlit shadow lighting. He further explained that the Historic District Commission had both approved the signage materials and furnished a letter of support to the Zoning Hearing Board. At Mr. Sun's request, Ms. Wilford-Hunt offered a timetable of the construction process.

Mr. Sun moved, with Mr. Shipman seconding, that the Easton Planning Commission grant conditional final approval of the submitted plans titled, "FAMS/Theater – New Building." Mr. Sun, Mr. Shipman, and Mr. Elliott voted in favor of the motion. Mr. Lieb voted against the motion. Ms. Winfield abstained from the vote. By a vote of 3-1-1, the motion passed.

521 North 13th Street (Hogtown) – Final Approval. Mr. Manges read that the applicant, Redevelopment Authority of Easton (RDA), has proposed to annex a portion of N 13th Street Parking Lot (L9 26 1), which is owned by the City of Easton, to their property located at 521 N 13th Street. The applicant and the City of Easton have agreed to subdivide this portion of the City owned lot, and merge it with the Redevelopment Authority property. The lot consolidation would allow the applicant to provide the necessary parking for their proposed Multifamily (A7) use in the currently vacant 4-story building known as the Hogtown Building at 521 N 13th Street. The proposed subdivision is located in the River Corridor and Other Green Areas Zoning District Block Class A, where the proposed A7- Multifamily is not a permitted use per Article XVII §595-88. However, the property is also located in the Street Corridor Overlay Zoning District, where Multifamily uses are permitted per Article XXII §595 – 125.

Mr. Manges reported that the proposal was in compliance with the regulations of Article IV, §520-36, Preapplication Requirements, and Article IV §520-37 Subdivision and Land Development Plan. He communicated staff's recommendation that the Planning Commission grant conditional final approval.

Gretchen Longenbach was in attendance as a representative of the applicant. She briefly described the proposed redevelopment of the Hogtown building. Mr. Shipman asked her if RDA had identified a developer for the project. Ms. Longenbach explained that RDA was currently working toward an agreement with a particular developer, Post Road Management, located through a Request for Proposals process. Mr. Lieb asked if the lot consolidation was being conducted in advance of a more extensive project. Ms. Longenbach responded affirmatively, indicating that providing the Hogtown building with dedicated parking, as opposed to shared spaces with the Karl Stirner Arts Trail, would increase the building's redevelopment potential. In response to questions from Mr. Lieb and Mr. Shipman, Ms. Longenbach indicated that the Karl Stirner Arts Trail would maintain the same number of parking spaces as at present, and that the parking could be reallocated to the Trail if the Hogtown project failed to materialize.

Mr. Lieb moved, with Ms. Winfield seconding, that the Easton Planning Commission grant conditional final approval of the plans. The motion passed unanimously.

Karl Stirner Arts Trail – North 13th Street Parking Lot – Final Approval. Mr. Manges read that the applicant, the City of Easton, has proposed a plan amendment to improve an existing 10-space gravel parking lot along N. 13th Street, as a component of the Karl Stirner Arts Trail. The gravel lot currently serves as a parking

area for the public utilizing the trail. This proposal will enhance this area for the public to park their vehicles safely while enjoying the amenities the trail provides. The site design incorporates a number of features to promote safety and enjoyment to the park visitors.

The Karl Stirner Arts Trail plans received conditional final approval from the Easton Planning Commission on November 4, 2009, and the Zoning Hearing Board granted a Special Exception for development in the floodplain on December 21, 2009. The trail was officially opened to the public in September 2011. A previous plan amendment for the 13th Street Parking Lot also received conditional final approval at the May 17, 2012, Easton Planning Commission meeting.

This plan amendment increases the total amount of parking from 10 spaces to 17 spaces. The extra 7 parking spaces will help alleviate the parking requirements (6) for the Redevelopment Authority's development of the Hogtown project located on the property just south of the parking lot. Additionally, the proposed sidewalk along the existing Hogtown building is proposed to be connected to the existing N 13th Street sidewalk system.

Mr. Manges communicated staff's recommendation that the Planning Commission grant conditional final approval of the plans.

Gretchen Longenbach was in attendance as a representative of the applicant. Mr. Lieb asked her about the possibility of using permeable paving onsite. Ms. Longenbach explained this would not be possible, due to a DEP requirement that the site be capped upon completion of environmental remediation work.

Mr. Shipman moved, with Mr. Sun seconding, that the Easton Planning Commission grant conditional final approval of the plans. The motion passed unanimously.

Comprehensive Plan Update. Mr. Manges reported that a Request for Proposals (RFP) for a comprehensive planning consultant had been issued, and that proposals were due by 3:00 p.m. on October 23, 2013. He indicated that many consultants had expressed interest in the RFP. Mr. Handzo explained the proposal was advertised in the *Express-Times* and on the websites of the American Planning Association and Pennsylvania Planning Association.

Mr. Manges mentioned that an RFP review committee would be convened, and asked the Commission to provide a representative. Mr. Elliott volunteered his service.

Environmental Advisory Council (EAC) Update. Mr. Elliott and Ms. Winfield invited the Commissioners to attend a tree planting in Pioneer Park on Make a Difference Day, October 26, at 9:00 a.m.

Hiring Update. Mr. Shipman requested a status update on the search for a new Director of Planning & Codes. Mr. Manges reported that phone interviews would be held with selected applicants over the coming week to cull a list of applicants for face-to-face interviews. He communicated the City's intent to fill the position by the New Year.

As there was no further business, the meeting was adjourned at 8:21 p.m.