

MINUTES OF THE LAND USE COMMITTEE MEETING 3-29-2018

The meeting was held at 7 pm in the Town Hall. Present were Dedun Ingram, chair; Tom Collins, Kathy Flaxman, Lees Hartman, Rod Henderer, Eric Murtagh, Stuart Sessions; Barney Rush, Council liaison; and two members of the public, Fred Cecere and Elaine Collins.

Dedun reported that there was no public comment at the public hearing on the building code revisions that was held at the March Town Council meeting. The Town Council unanimously passed the ordinance with those code revisions.

Extension of porches into front setback: Eric noted that a 3-foot extension into the front setback is allowed for porches without any additional side setback and wondered how this provision works with the new provision that allows a front porch to extend 9 feet into the front setback provided the porch is set back at least 13 feet from each side lot line. Do all 9 feet of the porch extension have to be set back 13 feet or only the 6 outermost feet? Answer: if a homeowner wants a porch that extends more than 3 feet into the front setback, the entire porch must be set back at least 13 feet from the side lot lines.

Rear setbacks: Dave Walton has suggested capping the maximum required rear setback at 40 feet. The committee reviewed a set of drawings showing lots of varying widths and depths with their associated required rear setbacks per the current Town ordinance and per the proposed 40-foot setback. The current formula requires a 40 foot rear setback at a lot depth of 129 feet; and a larger rear setback for deeper lots. About one-third of the lots in town are deeper than 129 feet. What role does the current rear setback play in restricting buildings? The drawings showed that even houses with maximum FAR would in most cases have a footprint that falls within the current setbacks, even if a front setback of 30 feet rather than the minimum 25 feet is assumed. On very deep lots the County's lot coverage restriction limits the house footprint (it is more restrictive than a .5 FAR); the current rear setback is not restrictive. Exceptions can of course arise on irregular lots, of which there are many in the Town. Current formulas were developed in part as a way to deal with irregular lots. The interplay of FAR, lot coverage and the rear setback needs to be studied for corner lots, for irregular lots, and for additions to existing houses. It may be desirable to revise the formula, keeping its proportional feature, but reducing the rear setback rather than placing a one-size fits all cap of 40 feet. Next step is to look at some large/irregular lots, and corner lots, in Town to see how current formulas would impact them. In what kinds of cases might the current rear setback formula present a problem?

Floating Zones: The committee looked at these a couple of years ago when the County was revising its zoning code. Most border properties of the Town are potential candidates for floating zones. The Committee discussed the changes to neighborhood character that floating zone development on the Town edges could have but more importantly, the potential creeping destruction of the neighborhood because once a property has a floating zone development, the properties abutting/confronting it become eligible as well. Ideas for Town regulations that might limit impacts of such development were discussed. At the time, the Committee recommended holding a public meeting to find out how residents felt about the potential impacts of floating zone development within the Town. The meeting

was not held due to the resource demands of the Bethesda Downtown Plan and the Committee's assessment that at that time the risk of floating zone development was relatively low.

Recently, a group of residents in the 4500 block of Elm St. (north side) discussed jointly selling their properties to a developer for a floating zone development, the idea being that their properties are currently devalued due to the Purple Line, but selling as a block they could command a better price. Any such deal is probably some time off in the future – after the Purple Line construction is completed. Elm Street properties are particularly vulnerable due to the Purple Line and the potential development of the Bethesda Sport and Health Club property which is zoned to allow a height of up to 145 feet. The 4-H property may be another potential floating zone property – there are rumors that it may be sold.

Despite rezoning via floating zone, properties within the Town would still be covered by current restrictions including setbacks and FAR. Questions to pursue include: could the Town prevent the combining of multiple lots into one (it can weigh in, how much weight would its voice have)? Could the Town adopt different building regulations for non-R-60 zones within the Town (the County has different building regulations for multi-family zones)? The committee suggested that Barney ask the Council whether they want the committee to pursue this issue, for example, to consider additional regulations the Town could adopt that would minimize negative impacts on Town properties from adjacent or nearby floating zone development. Barney noted that it would be best to bring this issue before the new Council. This is a long-term issue but should be kept on the radar.

Side setbacks: The Committee has been asked by Town staff to clarify some of the code provisions pertaining to side setbacks for additions to existing houses with non-conforming setbacks. The Committee reviewed markups to current code that represent the way the Town attorney interprets the existing code. We are waiting to receive some examples and to discuss with Town staff what issues they have seen before attempting to reword the provisions.

Repair vs. replace: The Committee has been asked to provide the Town with guidance with respect to what counts as repair vs. replacement. The Town has a limited number of working definitions. Do any of these need to be modified? Do additional guidelines need to be developed? Montgomery County restrictions on repair depend on the value of what is being replaced as a percentage of total value. Town rules do not depend on value.

Fences: Current rules allow repair but not replacement of nonconforming fences. For fences, repair is currently defined as replacement of 1/3 of a fence per year. The committee agreed unanimously that this should be changed to allow replacement of nonconforming fences so, provided the fence is replaced "in kind" (same height, length, location, same or better materials).

Houses: Distinguishing between repair and replacement of nonconforming parts of houses is difficult because of the need to prevent disguising new construction as "repair" as a way of getting around existing setback requirements. Discussion of this item will be continued at a later meeting.

On behalf of the Council, Barney thanked the committee for its work on the first set of code changes, which went through the Council very smoothly.

The meeting adjourned at 9:00 pm.

Next meeting is scheduled for Thursday, April 26th (fourth Thursday).