

Submitted February 21, 2021

Approved February 24, 2021

**MINUTES OF THE ROCKVILLE PLANNING COMMISSION  
MEETING NO. 3-2021  
Wednesday, January 27, 2021**

The City of Rockville Planning Commission convened in regular session  
via WebEx at 7:00 p.m.  
Wednesday, January 27, 2021

**PRESENT**

Suzan Pitman - Chair

Anne Goodman	Sam Pearson
Charles Littlefield	John Tyner II
Sarah Miller	Rev. Jane Wood

**Present:** Nicholas Dumais, Assistant City Attorney  
Jim Wasilak, Zoning and Development Manager  
Paul Goldstein, Development Review Supervisor

Chair Pitman opened the meeting at 7:00 p.m., noting that the meeting is being conducted virtually by WebEx due to the coronavirus pandemic. Rockville City Hall is closed until further notice to reduce the spread of the virus, based on State and County directives.

**I. RECOMMENDATION TO THE BOARD OF APPEALS**

**A. Special Exception SPX2021-00401 for an Accessory Apartment Within a Single-Family Residential Dwelling at 628 Goldsborough Drive in the R-90 Zone; Jill Clarke and Jeremy Mears, Applicants**

Chair Pitman acknowledged that the applicant is a former neighbor, but that she feels she can consider the application on its merit and without bias. Commissioner Littlefield also acknowledged that he knows and is a former neighbor of the applicants, but also feels that he can consider the application in an objective manner.

Paul Goldstein presented the application, which is recommended for approval, including a finding that the application is in compliance with the Master Plan. The proposal is for an accessory apartment in the basement of the subject property, and will include a kitchenette as well as sleeping and sanitation facilities. He noted that the staff report addressed all of the criteria for the approval, although the presentation will focus on the Planning Commission's role in making a recommendation to the Board of Appeals regarding Master Plan compliance.

Commissioner Wood asked whether sprinklers will be required in the apartment, and Mr. Goldstein responded that any new construction would be required to comply with code. The response from the applicant indicated that it would require smoke and carbon monoxide detectors but not sprinklers.

Jill Clarke, applicant, explained why they were making the application, which is intended to accommodate her mother living in the home.

Commissioner Littlefield stated that he thought the application met all of the criteria and was fully supportive. Commissioners Wood, Miller and Goodman were supportive of the application. Commissioner Goodman supported the multi-generational nature of the proposal. Commissioner Tyner pointed out that he had no concerns, as there would be no new vehicles or exterior construction associated with the application. Commissioner Pearson supported the multi-generational aspect, as was very supportive. Chair Pitman added that she felt that the application supported the spirit as well as the letter of the law.

Jim Wasilak noted that no one from the public would be joining the Commission virtually for the discussion.

Commissioner Littlefield moved, seconded by Commissioner Wood, to forward a favorable recommendation to the Board of Appeals on Special Exception SPX2021-00401, in finding that the application is in compliance with the Master Plan, subject to the conditions as recommended. The motion passed unanimously.

## **II. COMMISSION ITEMS**

**A. Staff Liaison Report** – Jim Wasilak reported that the next meeting will be on February 10, which will consist of a public hearing on the Annexation Plan for the King Buick property and potentially a preview of the Rockville 2040 draft, which will be on the February 24 meeting for final review and adoption.

### **B. Old Business**

1. Update on Open Meetings Act – At the request of Chair Pitman, Mr. Dumais summarized what had occurred related to the Open Meetings Act, the determination of the Compliance Board that there were violations and the Commission's subsequent request of the Mayor and Council for an outside review of the matter.

Mr. Dumais stated that the purposed of the Open Meetings Act was to ensure that public business of an elected or appointed body take place at a noticed public meeting. It outlines certain circumstances when a meeting may be closed to the public, such as to receive legal advice, which is referred to as a closed or executive session. There is a manual that provides guidance from the state for public bodies. It notes that the exception to a public meeting for legal advice is to only receive such legal advice and not for general discussion.

Mr. Dumais noted that he started employment with the City of Rockville and was not present when the alleged violations occurred but described the circumstances. The Commission held closed sessions in 2018 and 2019. For the 2018 closed session, the

Commission held a closed session to obtain legal advice and to consult with staff to discuss pending litigation. The 2019 closed session was held to obtain legal advice. After the closed sessions were held, a complaint was filed with the Open Meetings Compliance Board, which is a state body formed to adjudicate such complaints.

The Compliance Board found three violations: it found that the Commission took action in closed session, in addition to receiving legal advice and discussing pending litigation. The Commission should have gone into open session to take action after receiving legal advice. In addition, the Board found that the advertisement of the closed session in 2018 was improper in that there was no open session before the closed session on the agenda. Guidance from the State Attorney General has stated that there should be an open session prior to the closed session so that members of the public may watch the body vote to go into closed session. The final violation was that the Commission took too long to adopt the minutes for the closed session, which are required to be adopted as soon as practical. The decision of the Compliance Board was signed by each member of the Commission, acknowledging receipt of the decision.

Mr. Dumais outlined ways to address the violations noted by the Compliance Board. First, minutes will be provided to the Commission for review and approval in a timely manner. Second, any time that a closed session appears on an agenda, it must be preceded by an open session to allow for the vote to go into closed session to occur in public. Lastly, the Commission will be provided clear ground rules regarding the scope of any particular closed session by the City Attorney's office and staff so that violations will not occur as a result of discussions or actions that do not comport with the cited reasons for entering into closed session.

Commissioner Littlefield asked about discussing the facts surrounding an application that had occurred in the past and whether this would require a closed session. Mr. Dumais responded that he does not have the facts of the case and the exact wording of the legal advice. The Commission has the ability to release the privileged legal advice if they so choose. It would be difficult to discuss the facts of the application further without a transcript of the closed session, but Commissioner Littlefield said that he thinks that he has enough information to apply lessons learned to future instances.

Chair Pitman summarized the motion made by the Commission on December 11, 2019, which was transmitted to the Mayor and Council and requested funding for an outside counsel to conduct an evaluation of the violations, so that the Commission could learn what had been done incorrectly, and how procedures could be improved if needed. She stated that the decision should be whether the Commission still wants to request funding via letter to the Mayor and Council, or if commissioners feel that enough information is available so that the violations will not occur again and no outside counsel is needed.

Commissioner Wood stated that she did not think an outside counsel was needed. Commissioner Goodman said that she needed a refresher on what the Commission had done wrong, since it has been a long time since the violations. Commissioner Miller noted

that she was not in favor of funding for outside counsel as the remedies described by Mr. Dumais are sufficient. Commissioner Tyner said that he was the designated member that had been trained on the Open Meetings Act, and that he thought that what Mr. Dumais described had sensitized the Commission and staff on the procedural items for any future closed sessions. Commissioner Pearson was not in favor of funding outside legal counsel, and that everyone seems to understand what needs to happen going forward.

Chair Pitman asked commissioners if there was anything else other than outside counsel that should be done. Commissioner Wood responded that the commission should move forward, and Commissioner Littlefield noted that the Commission may always proceed carefully in similar situations to ensure that the Open Meetings Act is being followed.

In response to Chair Pitman, Mr. Wasilak stated that some communication should inform the Mayor and Council of the Commission's decision to close the loop on the earlier motion. The Chair will write a letter to the Mayor and Council for commission review. Commissioner Tyner suggested that the minutes for this meeting should reflect that the commission understands the issues and remedies surrounding the violations.

Chair Pitman resent the letter from the Commission to the Mayor, requesting that the Commission be a participant in reviewing environmental and open space policy documents in the future, and she expects a response soon. Chair Pitman spoke with the Planning Commission chair for Gaithersburg, who said that it was standard practice for their commission to review such documents. Commissioner Tyner noted that the Commission has received some documents for review via internal procedures rather than directly from the Mayor and Council. Commissioner Littlefield expressed support for hearing about what other commissions are considering.

**C. New Business** – None.

**D. Minutes** – Meeting No. 9-20, April 22, 2020: Commissioner Wood moved, seconded by Commissioner Goodman, to approve the minutes for Meeting No. 9-20 as presented. The motion passed 7-0.

Meeting No. 10-20, May 13, 2020: Commissioner Goodman moved, seconded by Commissioner Pearson, to approve the minutes for Meeting No. 10-20, with the correction noted. The motion passed 7-0.

Meeting No. 11-20, May 27, 2020: Commissioner Tyner moved, seconded by Commissioner Goodman, to approve the minutes for Meeting No. 11-20 as presented. The motion passed 6-0-1, with Commissioner Miller abstaining.

Mr. Wasilak committed to providing minutes in a timely manner.

**E. FYI/Correspondence** – None.

Commissioners and staff thanked Commissioner Wood for her valuable service to the Commission and the perspective she has brought forward over the years.

Commissioner Goodman encouraged other commissioners to share their background with Commissioner Pearson so everyone can get to know each other.

### **III. ADJOURN**

There being no further business to come before the Planning Commission, Commissioner Wood moved, seconded by Commissioner Littlefield, that the meeting be adjourned at 8:09 p.m. The motion was approved unanimously.

Respectfully Submitted,

A handwritten signature in blue ink that reads "R. James Wasilek". The signature is written in a cursive style with a distinct loop at the end of the last name.

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Commission Liaison