

Planning and Zoning Commission Meeting

Minutes, April 17, 2024

A meeting of the Pocomoke City Planning and Zoning Commission was held in the Council Chambers at City Hall on Wednesday, April 17, 2024. The meeting was called to order at 5:05 PM.

Present: Commissioners: Steven Mills, Nola Tullar, Anne Copeland,
Jessmin Duryea
Director of Planning: Dan Brandewie
City Attorney: Erica Witz

Nola Tullar, Chairwoman, opened the meeting at 5:05PM and noted that the first item on the agenda was follows:

Zoning Case No. RZNE#103-2024, by LMS Homes LLC requesting the following described property be rezoned from R-2 Residence District to R-3, Multi-Family Residential District for the purpose of adding an additional apartment to an existing multi-family dwelling located at: 401 Market Street, Parcel 380, Tax Account ID# 01-022725, further described in a deed recorded among the land records of Worcester County at Liber 8529, folio 28.

Erica Witz administered the oath to anyone wishing to testify.

Dan Brandewie, Planning Director reviewed his staff report. It was entered into the record along with its attachments. This application is submitted by Matthew Chapman, dba as LMS Homes LLC, requesting the following: to rezone from R-2 Residential District to R-3 Multi-Family District the property identified as 401 Market Street, parcel 380. It is presently occupied by a 6-unit apartment. The property contains 11,254 sq. ft of land area (.258 acres) with 6,456 sq. ft. of living area according to SDAT property information. The lot has dimensions of 85' by 142' and fronts both Market and 4th Streets, with parking access off of 4th Street. The applicant seeks to convert the dwelling fronting Market Street to two apartments by adding a separate apartment on the 2nd floor.

Mr. Brandewie stated the structure subject to the interior changes appears to be an older single family dwelling that SDAT shows it to have been built in 1924. The property appears to have been added on in the rear and then again off the side rear portion of the property. The date when these additions were added are unknown. The applicant states that it presently contains one 3-bedroom, two 2-bedroom units, and three 3-bedroom units. An unmarked parking area consisting of approximately 3,000 sq. ft. is accessible of 4th Street. It has rough dimensions of approximately 60' by 50'. The applicant seeks to convert the older structure facing Market Street from a 3-bedroom unit to two 1-bedroom units. The total number of apartments would be seven.

The property is zoned R-2 Residential District according to the official zoning map on the website. Because of this zoning designation, the property use as multi-family is considered non-conforming as this land use is not permitted within the R-2 Zoning District. The present R-2 zoning prohibits adding additional apartments to these structures. The applicant seeks relief by requesting a zoning change to R-

3, multi-family. According to the applicant's statement, the building has been in multi-family use since the 1960's and the R-2 is a mistake in the zoning designation.

The property is served by adequate water and sewer services. The property is adjacent to the Worcester County Library to the north, single family to the east, a vacant lot to west (across the street on Market Street) and an abandoned concrete block building to the south in dilapidated condition. Section 230-52 requires that there be provided 1.5 parking spaces per dwelling unit. It is not known how many parking spaces can be provided on site without more information.

Mr. Brandewie also commented that while it appears that Section 230-53 Multi-family is directed toward major multi-family projects, Section 230-53 B. requires that "all multi-family projects shall provide on-site open space areas at least equal to 25% of the total land area...". Parking cannot be included in this computation. There is some lawn area to the front of the property that may meet this requirement. Section 230-53 E suggests that the Planning Commission can require an additional landscaping plan.

Mr. Brandewie reviewed the procedures under Maryland Law for zoning map amendments as referenced under MD Code Land Use, Division 1, Title 4-Zoning, Subtitle 2, § 4-204. The Planning Commission and City Council must address the following criteria and make findings of fact when making a recommendation or decision on the request. These included:

1. Population Change: The population for Pocomoke City in 2010 was estimated at 4,184. The 2020 census estimates the City's population at 4,295 persons. This zoning change would not increase the population.
2. The availability of public facilities: The parcel is served with both water and sewer service and full city services. There may be more information needed if an additional water connection with a new water meter must be installed. If so, the applicant would be required to pay an additional water impact fee.
3. Present and future transportation patterns: There should be no impact on transportation systems; however, the applicant should be required to demonstrate there is adequate on-site parking. Otherwise, the parking needs of the residents would likely spill over to the library's public parking, or on to other adjacent properties. The applicant may also be required to provide a handicapped parking space. Sidewalks appear to present and generally adequate although there appears to be one sidewalk repair needed near the water meter on 4th Street.
4. Compatibility with existing and proposed development for the area: The change of zoning to R-3, Residential District would appear to inconsistent with the existing land use and R-2 zoning patterns in the general vicinity with single-family homes along 4th Steet and Market Streets. Although it should be pointed out that there are also a number of non-residential land uses in the vicinity as well. The adjacent concrete building is in dilapidated condition and may have been a church or private club at one time. There is also the presence of the library, a nearby church, and beauty parlor across the street. The site is close to the downtown business district.

5. The relationship of the proposed amendment to the local jurisdictions' plan: Within the City's 2014 Comprehensive Plan, the Land Use Plan (Map 3) designated this parcel as "Medium Density Residential" which doesn't recognize multi-family land uses. The land use plan also recognizes the large presence of nearby "Institutional" land uses (shown in blue) given the present of the library and nearby church properties.

Mr. Brandewie noted that the final two criteria to consider are: (1) a substantial change in the character of the neighborhood where the property is located or (2) a mistake in the existing zoning classification. He stated that it is logical to acknowledge that the designation of the property as R-2 was a mistake in that there were multi-family units on the site for many years prior to the 2014 zoning plan update. There have been no significant changes in the character of the neighborhood although the property to the south (the abandoned concrete building) has continue to deteriorate over the years. The single-family dwelling to the east along 4th Street is in marginal condition but this appears to be an enforcement issue. The presence of the building as a multi-family unit does not appear to have had a deleterious or negative impact on the neighborhood.

Mr. Brandewie recommend that the applicant provide additional information the parking standards can be met. With seven potential dwelling units, the site would need 10 to 11 parking spaces (including one handicapped space). The Planning Commission could also ask for additional landscaping around the parking lot area and additional street trees. Additional landscaping could compliment the new library planned across the street.

Sara Chapman representing the owner stated that there are approximately 9-10 parking spaces on the 4th Street side with additional parking on Market Street. Parking spaces are not striped yet.

Nola Tuller asked to clarify the proposed floor plans. Sara Chapman said they seek to convert the dwelling from a two story 3-bedroom house which doesn't fit with the rest of the building that has elderly. They seek to create two one (1) bedroom apartments which would be elderly or veteran type housing.

Discussion followed about the changes to the floor plans, parking and access to the dwellings. There would be two points of entry to both new apartments.

Nola Tuller asked about parking standards. There would be 1.5 spaces needed for each apartment. Mr. Brandewie stated that the Planning Commission and Board of Appeals can offer relief to the parking standards

Sara Chapman commented that they have a concern about the property if it were to catch on fire; they would have to build it back as single family and they would lose affordable-elderly housing. Mr. Brandewie clarified that non-conforming uses are allowed to rebuild. Mr. Brandewie read the provision that multi-family can be rebuilt if damaged by fire if it has been operated as such in excess of 15 years; so, this building would be allowed to be reconstructed.

Nola Tuller asked to clarify the zoning with the bookstore and dwelling units on the property just south of this site on Market Street. Mr. Brandewie stated that was an example where the zoning change went back and forth from a R district to a business district

Jessmin Duryea asked about changes to a non-conforming use such as adding an apartment or modifying an existing apartment. Discussion followed as to when a non-conforming structure can be altered; or if another apartment can be added without violating the zoning. Mr. Brandewie's opinion was that another apartment could not be added if it is a non-conforming use. Sara Chapman stated there would be actually less people living the apartment if it were converted to two (1) one-bedroom apartments.

Monda Marsh stated that the property had been a multi-family home for many years. The property has been there. It should be grandfathered in and is likely not to harm anything. Discussion followed.

There were no additional public comments and Nola Tuller closed this portion of the public hearing.

Erica Witz reviewed language from the state law on the subject of spot zoning and discussed a previous zoning case similar to this one at 823 2nd Street. Spot zoning is illegal. It is where the zoning differs from the zoning around it. This could be the situation here and may be a problem. Discussion followed about the history of the property and its nonconforming status and nearby zoning patterns.

Mr. Brandewie noted that there are some other factors to consider such as how far do you go out when looking at the map; is it applied to just adjacent properties or does one go out to a half-mile. Surrounding land use patterns could also be considered in the context of the zoning change. In this case there is a library, church, beauty parlor, and dilapidated buildings nearby that may not be not accurately zoned as well. Both the land use plan and the zoning maps also are not very detailed as we have had 4 to 5 situations with long term abandoned dwelling units that were multi-family and were not allowed to be converted back to multi-family. Discussion followed.

Anne Copeland made a motion to amend this parcel from R-2 to R-3 because it is already used as a multi-family home and this will meet the needs of a group of people that need smaller apartments.

Jessmin Duryea asked if there could be a conditional use applied here. Mr. Brandewie stated that at the present time there are no provisions to allow additional apartments in an R-2 zoning district. There are some discussions at the state level to encourage this possibility but there is nothing in the current code to permit this.

Monda Marsh asked about spot zoning and if it were rezoned would it set a precedent? Is there any way without rezoning it that it could remain so that its documented. She stated there are two multi-family houses on her block that were there and she is OK with that because they have been there for years; but if they were coming in, as similar to the situation on 823 2nd Street and how long they were vacant; she would be opposed to that; is there a way they can remain multi-family without rezoning?

Ms. Witz again restated that they can remain the way it is as multi-family use without rezoning. It has been a continuing use. Is this spot zoning if it were changed to R-3? In my opinion it does look like it is but there could be some counter arguments as Mr. Brandewie mentioned.

Monda Marsh asked again if the current zoning would allow the owners to make the proposed changes to add an apartment. Mr. Brandewie stated that in his opinion, no, because you would be expanding a use not permitted in that district. Discussion followed about zoning text amendments.

Anne Copeland reiterated her motion to approve the zoning change for her previous reasons. Discussion followed about the meaning of it being grandfathered in. Ms. Witz restated that the change from R-2 to R-3 appears to be the only way the owner can do this under the present zoning.

Motion failed due to lack of a 2nd.

Jessmin Duryea motioned to deny the request on the basis that it could be viewed as spot zoning; he is not necessarily opposed to what they are doing but that there should be another outlet for it. Seconded by Nola Tuller. Motion carried with Jessmin Duryea, Nola Tuller, Steven Mills voting yes; Anne Copeland voting no. Motion carried for denial of the rezoning with a vote of 3-1 in favor of denial.

Old Business

Cannabis Zoning Text Amendment: (Recommendations needed due to changes in State Law)

Mr. Brandewie reviewed the proposed zoning changes including the City Attorney's Power Point presentation covering the topic. There have been additional changes since last year to the state law to provide protections to places of worship; adding distance and separation requirements to residential areas and increase distance requirements between dispensaries, defining cannabis, and to clarify the prohibition on consumption in all districts. He has added those recommended changes in the proposed zoning text as it relates to the definitions, and in the B-1, B-2 and M-1 zoning districts. While the Governor has not signed it into law yet, it is anticipated that he will. Discussion followed. He also noted that maps were sent out showing the impacts of the distance requirements. With all of the protected places, it would not be possible to place cannabis dispensaries in the downtown B-1 district. The city-owned industrial parcels off of Broad Street would likely not be impacted. There would be a small commercial area along Market Street at the south end that may be impacted.

Jessmin Duryea made a motion to approve the zoning text changes; 2nd by Steven Mills. Motion carried by a 4-0 vote in favor.

Review of Draft Rules of Procedures for Planning Commission. Mr. Brandewie handed out a revised copy of the draft rules of procedures and reviewed changes from the last draft. Minor changes were suggested.

Comprehensive Plan update discussion. Mr. Brandewie noted no real movement on the plan update yet but did mention that he did receive a survey form Mayor Nock. This survey could be used as a model.