

City of Charlottesville

MEMO



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TO: Planning Commission
FROM: James E. Tolbert, AICP, Director
DATE: January 19, 2010
SUBJECT: **Zoning Changes Related to Belmont**

In July, after the City Council voted on the rezoning on Hinton Avenue in Belmont, staff was asked to work with the neighborhood to address concerns raised during that process. Those concerns were around three areas:

- Noise
- Traffic and Pedestrian Issues
- Zoning/Land Use

Since July we have been working with the neighborhood to address each of these. Changes to the noise ordinance were presented to Council and are under consideration. Improvements to traffic and pedestrian movements were discussed at a neighborhood meeting in December and will be discussed at a larger meeting on January 21st.

Several minor adjustments to the Zoning Ordinance are proposed to address additional concerns. Those are outlined below. The first are specific to the Neighborhood Commercial District. These districts are shown on the maps attached.

1. **Intent, Height, Streetwall Sections – No Change** (Current ordinance sections read as follows)

The intent of the Neighborhood Commercial Corridor district is to establish a zoning classification for the Fontaine and Belmont

commercial areas that recognize their compact nature, their pedestrian orientation, and the small neighborhood nature of the businesses. This zoning district recognizes the areas as small town center type commercial areas and provides for the ability to develop on small lots with minimal parking dependent upon pedestrian access. The regulations recognize the character of the existing area and respect that they are neighborhood commercial districts located within established residential neighborhoods. Any business use should respect the residential character of the district. Within this district the following streets shall have the designations indicated:

Primary Streets: Bainbridge Street, Carlton Avenue, Douglas Avenue, Fontaine Avenue, Garden Street, Goodman Street, Hinton Avenue, Holly Street, Lewis Street, Maury Avenue, Monticello Road, and Walnut Street.

Linking Streets: None

Division 9. Regulations – Neighborhood Commercial Corridor (“NCC”)

Sec. 34-696. Uses.

The uses allowed within this district are those designated within the matrix set forth within section 34-796.

Sec. 34-697. Height Regulations

The following height regulations shall apply to buildings and structures within the Neighborhood Commercial Corridor district, except as provided within section 34-718(a) (stepback requirement):

1. Minimum: None.
2. Maximum Height: Forty-five (45) feet; however, up to sixty (60) feet may be allowed by special permit, subject to streetwall regulations.

Sec. 34-698. Streetwall Regulations

(a) Stepback requirements. The maximum height of the street wall of any building or structure shall be forty-five (45) feet. After forty-five (45) feet, there shall be a minimum stepback of ten (10) feet along at least fifty (50) percent of the length of the streetwall.

(b)Setbacks.

- (1)Primary street frontage: No minimum required; ten (10) feet, maximum.
- (2)Linking street frontage: None required.
- (3)Side and rear, adjacent to low density residential district: Ten (10) feet, minimum.
- (4)Side and rear, adjacent to any other zoning districts: None required.

2. Section 34-699. Buffer Regulations

We propose to increase the buffer requirement adjacent to residential properties from five feet to ten feet. While not a substantial change, we believe this will give a greater degree of protection to neighbors. The change is below:

Adjacent to any low density residential district, side and rear buffers (S-1 type) shall be required, **ten (10) feet**, minimum (refer to section 34-871).

3. Density, Additional Regulations – No Change (Current ordinance sections read as follows).

Sec. 34-700. Density

Other residential development. Residential density shall not exceed twenty-one (21) DUA; however, up to forty-three (43) DUA may be allowed by special use permit.

Sec. 34-701. Additional Regulations

No residential uses shall be allowed on the ground floor of any building.

4. Permitted Uses

We reviewed the permitted uses as shown in the use matrix for the Neighborhood Commercial District. These were reviewed against the few other neighborhood type zoning classifications found in the state to determine appropriate uses for this type of district. As the list below shows, many of the potentially more intense uses are proposed to be removed. The remaining are those things that are more appropriate for a limited commercial area surrounded by

residences. We also reviewed the list to make sure we limited the potential to create any non-conformities that were not intended.

Changes to Permitted Uses

- Residential and Related Uses

- By Right

- Accessory buildings, structures, uses
 - Bed and breakfasts: Homestay, B&B, Inn
 - ~~• Boarding Houses (Convent/Monastery)~~
 - Dwellings: Multi-Family (1-21 DUA), Single-family attached and detached
 - Residential Treatment Facility (1-8 residents)

- SUP

- ~~• Adult assisted living: 4+ residents~~
 - ~~• Nursing Homes: occupancy of up to 4 unrelated persons allowed by right; over 4 requires SUP~~
 - Multi-family (22-43 DUA)
 - Residential Treatment Facility (8+ residents)
 - Shelter care facility

- Provisional Use Permit

- Home Occupation

- General and Miscellaneous Commercial

- By Right

- Accessory buildings, structure, uses
 - Art Galleries (GFA, 4,000 SF or less)
 - Art Studio (GFA 4,000 SF or less)
 - Art Workshop
 - Houses of Worship
 - ~~• Bakery, wholesale (GFA 4,000 SF or less)~~
 - Banks, financial institutions
 - ~~• Catering business~~
 - Health clinic (GFA 4,000 SF or less)

- Public health clinic
- Communications facilities and towers (attached cell towers, radio antennae, and the like)
- ~~Data center (less than 4,000 SF)~~
- Daycare facility
- ~~Elementary and high schools~~
- Libraries
- Municipal/government offices, buildings, courts
- Offices: business and professional, medical, philanthropic institutions/agencies, other
- Surface parking
- Photography studio
- Indoor recreational facilities (less than 4,000 SF GFA; on public property only)
- ~~Outdoor recreational facilities (public)~~
- Restaurants: fast food and full service.
- SUP
 - ~~Amphitheater~~
 - ~~Bowling alleys~~
 - Communications facilities and towers (attached facilities visible from an adjacent street or property)
 - Artistic instruction (up to 4,000 SF GFA)
 - Museums (up to 4,000 SF GFA)
 - Outdoor recreational facilities (private)
 - Restaurant/music hall
- Temporary Use Permit
 - Outdoor church services, etc.
- Ancillary Uses
 - Property management uses ancillary to multi-family residential uses.
- Retail
 - By Right
 - Accessory buildings, structures, uses

- Consumer service businesses (up to 4,000 SF GFA)
- Convenience grocery store
- Pharmacy (up to 1,700 SF GFA)
- Other retail stores (up to 4,000 SF GFA)
- SUP
 - Consumer service businesses (up to 10,000 SF GFA)
 - Farmer's market
 - General grocery store (up to 10,000 SF GFA)
- ~~Industrial~~
 - ~~By Right~~
 - ~~Medical laboratory (less than 4,000 SF GFA)~~
 - ~~Pharmaceutical laboratory (less than 4,000 SF GFA)~~

5. Parking

One of the issues raised with the Hinton rezoning was the fact that a property that housed a single-family home could be rezoned and converted to a restaurant without providing additional parking. The current code provides that no parking is required for a change of use unless the structure is enlarged more than 25%. This is a good provision in most cases because it encourages adaptive re-use of properties, especially those of a historic nature. However, in a small commercial zone where conversion can draw customers into a residential area, this provision is probably too liberal. Staff proposes to require parking in the Neighborhood Commercial Zone if the enlargement exceeds 10%.

Division 2. Off-Street Parking

Sec. 34-970. Purpose

The purpose of these regulations is set forth off-street parking and loading requirements for permitted uses, in accordance with the intensity of such uses; and to provide adequate parking for the traveling public, in order to reduce traffic hazards and conflicts between motor vehicles and alternate methods of transportation; to

allow flexibility in addressing vehicle parking, loading, and access issues; to present a variety of strategies to solve parking issues; to encourage walking and alternate modes of transportation; and to maintain and enhance a transportation system that is consistent with environmental goals and clean air.

Sec. 34-971. Applicability

(a) Except to the extent that an exemption is granted, off-street parking and loading spaces shall be provided in accordance with the provisions of this division, at the time of construction, erection, alteration, enlargement or change in use of any building, structure or use. Thereafter, such spaces shall be maintained and kept available for such use, to the extent of the minimum number of spaces required hereunder, unless there is a change of use or floor area.

(b) Any use for which the required amount of parking was approved as of December 15, 1975 shall be considered as conforming as to the parking requirements, so long as the use remains unchanged. Otherwise, only those uses for which parking or loading space was approved and provided prior to the effective date of this chapter shall be considered in conformance with this division, provided the intensity of such use remains unchanged.

(c) For enlargements of existing structures, required parking must equal the sum of those spaces prior to the enlargement and the number of spaces required by these regulations for any additional use area, except in the following circumstances:

(1) Where the enlargement is less than twenty-five (25) percent of the structure's gross floor area, no additional parking is required.

(2) In neighborhood commercial zones where the enlargement is less than ten (10) percent of the structure's gross floor area, no additional parking is required.

(3) The director of neighborhood development services may grant a reduction or waiver of this requirement upon a determination that: (i) space limitations do not permit the provision of additional parking, (ii) there is adequate on-street parking available; (iii) the provision of additional parking

would necessitate the demolition of an existing structure, in whole or in part, and/or (iv) the provision of additional parking would necessitate excavation for underground parking.

(d) For a change of use within an existing structure where there is no enlargement of the existing structure, no additional parking is required.

Other changes to the code will impact more than the Neighborhood Commercial Zone. These changes will be applied across all zoning classifications. For some time we have realized we have an issue with places that have live musical entertainment. Our current ordinance contemplates and defines restaurants and also a “restaurant/dance hall”. A restaurant/dance hall is defined the same as a restaurant but where more than 1/8 of the floor area is devoted to standing or dancing to listen to music. This presents several problems:

- By definition the restaurant/dance hall is what we have used to permit uses ranging from the Gravity Lounge (Southern) to the Jefferson Theater. There are no definitions on either side of the scale.
- The 1/8 area is difficult to measure and we have a problem with some of the restaurants outgrowing their limit in an inappropriate manner.
- We believe that the way these are defined anticipated that any restaurant might have something like a piano bar or a small acoustic performance during dinner but that it would be clearly incidental to the primary use as a restaurant. It did not anticipate that a restaurant would be able to advertise musical events and sell tickets unrelated to any meal service.

Four definitions are proposed below. Restaurant, Restaurant all night (unchanged from current ordinance), Restaurant/Music Hall

and Music or Dance Hall. In addition, regulations governing their use and operation are proposed.

Definitions

- A. Restaurant means any place of business wherein foods or beverages are provided for human consumption. The term restaurant includes, without limitation: lunchrooms, cafeterias, coffee shops, cafes, taverns, delicatessens, hotel dining rooms, dinner theaters, soda fountains, and dining accommodations of public or private clubs. A fast food restaurant is one at which patrons order and receive food orders at a counter or window for consumption either on or off-premises. A full service restaurant is one at which patrons are seated at tables or booths, where food orders are taken at and delivered to such tables/booths by wait staff. This definition excludes: bakeries, bed-and-breakfast facilities; catering businesses (where food is prepared for consumption at another site); places that manufacture packaged or canned foods for distribution to grocery stores or other, similar food retailers for sale to the public; facilities licensed by the Department of Agriculture; snack bars and refreshment stands at public recreation facilities, operated for the convenience of patrons of the facility; concession stands at youth athletic activities, if such stands are promoted or sponsored by either a youth athletic association or a charitable nonprofit organization; or any facility exempt from state licensure requirements pursuant to Code of Virginia §35.1-25. Live music or music provided by a disc jockey is only permitted in a restaurant classified as a restaurant/dance hall. This shall not apply to a restaurant with a piano bar or other acoustic music where there is no dancing or standing and tables are not cleared for that purpose.
- B. Restaurant, all night means a restaurant that remains open between the hours of 2:00 a.m. and 6:00 a.m. on any day(s).

- C. Restaurant/Music Hall means a restaurant is the primary use and where live music is provided by bands or disc-jockeys and where a portion of the floor area is used at anytime for dancing or as standing room. This shall not apply to a restaurant with a piano bar or other acoustic music where there is no dancing or standing and tables are not cleared for that purpose.
- D. Music or dance hall: Any place or business open to the general public on a regular basis where dancing is permitted or music concerts provided at which an admission fee is charged; or for which compensation is in any manner received, either directly or indirectly, by cover charge or otherwise, or where refreshments or food or any form of merchandise are served for compensation before, during or after dancing. This is not an establishment where the primary function is as a restaurant.

Additional Regulations

- F. Sec. 34-1174. Restaurants/Music Hall, Music or dance halls and all night restaurants.
For restaurant/music halls, music, dance hall and all night restaurants the following requirements shall apply:
- (1) All such establishments shall comply with all applicable sections of the noise ordinance.
 - (2) Any such restaurant/dance hall that remains open after 12:00 a.m. on any day shall have a security guard on site between the hours of 12:00 a.m. and 6:00 a.m.
 - (3) In the event more than four (4) incidents at a property require police service/response over any two (2) month period, the provisional use or special use permit shall be revoked by the zoning administrator, for the remainder of the then-current calendar year. Following any such revocation, the restaurant may continue to operate, but only in the form of a restaurant that is permitted within the applicable zoning district without the requirement of a provisional or special use permit.

G. Operations of such establishments shall not allow loitering or congregations of individuals in the parking lot or other exterior portions of the premises, except for areas in which the consumption of alcoholic beverages is specifically permitted by the terms of the establishment's alcoholic beverage control license, and shall keep all entrance and exit doors closed at all times of operation, except when patron, employees or other persons are actually entering or exiting the establishment.

H. Such establishments shall be required to implement any other reasonable measures the City Council deems necessary or appropriate to minimize noise or other potential adverse effects upon neighboring areas.

Specific districts where these uses will be allowed will be addressed in the use matrix updates although we do need to move forward with the NCC District. Staff thinking is that restaurants will be allowed by right where they are allowed and restaurant/music hall or music or dance hall uses will be either provisional or special use permit uses in the districts where they are allowed.

In the Neighborhood Commercial District we propose that restaurants be allowed by right and restaurant/music hall and music or dance halls not be allowed at all. This is no change from the current code but we believe that the new definition will provide clarity.

Please let me know if you have any questions.

JET:sdp

Attachment