

TOWN OF ABINGDON
PLANNING COMMISSION
REGULAR MEETING
MAY 23, 2005 —7:30 P.M.

The regular meeting of the Abingdon Planning Commission was held Monday, May 23, 2005, at 7:30 P.M. The meeting was held in the Municipal Building, Downstairs Meeting Room.

The meeting was called to order by Mrs. Doris Shuman, Chairman.

ROLL CALL

Members Present:	Mrs. Doris Shuman, Chairman Mr. G. M. Newman Mr. Edward B. Morgan Mrs. Harriett DeBose Mr. Kenneth Mathews Dr. H. Ramsey White	
	Comprising a quorum of the Commission	
Members Absent:	Mr. Richard Stevens	
Administrative Staff:	Mr. Albert C. Bradley, Director of Planning/Zoning Mr. W. Garrett Jackson, Town Planner Mr. J. C. Smith, Town Engineer Mr. Chris Johnson, Assistant Town Manager Mr. Gregory W. Kelly, Town Attorney	
Visitors:	Dr. Jim Moore and Judy Moore Mr. Sam Hurt Mr. Peyton Boyd Mrs. Jan Hurt Dr. Klell Knapps Mr. Allen Pickrell Mrs. Ellie Pickrell Ms. Barbara Chavatel Mr. Gary Kimbrell Ms. Carol Sutton Mr. Tony Holbrook Mr. A. Stockner	Ms. Janice Cowan Ms. Joyce Ferratt Dr. Jim Strine Mr. Charles Thayer Mrs. Kitty Henninger Mr. Scott Chase Mr. Andrew Hargrove Mr. Lee Saul Mr. Randy Harris Mr. Kevin Reap Others

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- (2) Approval of Minutes: Regular Meeting, April 25, 2005
Continued Meeting, May 9, 2005

Dr. White made a motion that the minutes for the regular meeting, April 25, 2005 be approved. Mrs. DeBose seconded the motion, with unanimous approval.

Dr. White made a motion that the minutes for the continued meeting, May 9, 2005 be approved, with the following two (2) corrections:

Page 05-17 (Members Present/Members Absent)

FROM: Members Present: Mrs. Doris Shuman, Chairman
Mr. Edward B. Morgan
Mr. Kenneth Mathews
Dr. H. Ramsey White

TO: Members Present Mrs. Doris Shuman, Chairman
Mrs. Edward B. Morgan
Mr. Kenneth Mathews
Dr. H. Ramsey White
Mr. Richard Stevens

FROM: Members Absent: Mr. G. M. Newman
Mrs. Harriett DeBose
Mr. Richard Stevens

TO: Members Absent Mr. G. M. Newman
Mrs. Harriett DeBose

AND

Page 05-19 (first paragraph, line 2, removing the word “primary”)

FROM: After further discussion, Dr. White made a motion that the Certificate of Appropriateness and preliminary site plan, with Holston Street as the **primary** means of ingress and egress be approved. Mr. Morgan seconded the motion, with unanimous approval.

TO: After further discussion, Dr. White made a motion that the Certificate of Appropriateness and preliminary site plan, with Holston Street as the means of ingress and egress be approved. Mr. Morgan seconded the motion, with unanimous approval.

Mrs. DeBose seconded the motion, with unanimous approval.

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(3) CONSIDERATION OF SUBDIVISION - James D. Moore, Jr., Limited Family Partnership Property (Fairview Historic Property to be conveyed to the Town of Abingdon), property being located on Hillman Highway. Tax Map No. 106 (A) 2.

Mr. Greg Kelly stated that this is a subdivision of two (2) acres from Jim and Judy Moore’s tract of property located on Hillman Highway, to be used as a gift to the Town of Abingdon.

It is the desire of Jim and Judy Moore to donate a small portion of this property at this time, known at Fairview Historic Property, to be used and restored for its historic value.

Mr. Vernon explained to the Commission that this was a last minute addition to the agenda and the Public Works Department had not reviewed the map prior to the meeting, further stating that this is an actual subdivision occurring, therefore, it is required that it be reviewed by the Public Works Department for compliance with the Subdivision Ordinance.

After discussion, Mr. Mathews made a motion that acceptance of this subdivision be approved, subject to its review by the Public Works Department and referred to the Town Council for the June 6, 2005 meeting. Mr. Morgan seconded the motion, with unanimous approval.

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(4) PUBLIC HEARING

PROPOSED AMENDMENTS - Amend and reenact the Town of Abingdon Zoning Ordinance to include the following:

1. **Amend Article 8-2. Section 2 Permitted Uses. ~~By Right.~~**
Unless otherwise limited under Section 8-2A, certain uses shall be permitted by right in the OH Old and Historic District specifically designated and located as follows:
2. **Add Article 8-2A. Section 2-A Limited Uses; Special Uses.**
Certain uses shall be limited in the OH Old and Historic District, however, such limitation may be lifted and redefined with a special use permit.

8-2A-1 Effective (date) 2005, with the exception of property which has upon it a building originally constructed and used as a commercial building, all property within the Old and Historic District that is at that time either vacant or put to a residential use as a family dwelling or a bed and board home shall thereafter be restricted and/or limited to that said residential use.

8-2A-2 Notwithstanding the limited use as described above, the uses set forth in each defined section of the OH Old and Historic District may be permitted with a special use permit in accordance with the regulations in Section 17.3 of this ordinance.

This item was tabled from the regular meeting, Monday, April 25, 2005. Motion was made that this item be tabled and re-advertised for a second public hearing, due to the proposed amendments being considered a major change and possibly, there were other citizens who may have concerns regarding this matter, who had not had an opportunity to express their opinions.

The amendments, if adopted by the Town Council, would limit the conversion of residential structures to Special Use Permit. There were several residents of the Old and Historic District in attendance at this meeting who were in favor of the proposed amendments, as well as other residents being opposed. Among those declaring themselves in favor of the amendments were Sam Hurt, Peyton Boyd, Jan Hurt, Allen Pickrell, Ellie Pickrell, Barbara Chavatel, Gary Kimbrell, Carol Sutton, Janice Cowan, Joyce Ferratt, Jim Strine, Charles Thayer, Kitty Henninger, Andrew Hargroves, Dan Caldwell and Rick Humphreys, most of whom were residents and/or owners within the historic district. Those voicing opposition included Lee Saul, Tim Thompson, Mary Thompson and Buddy Mitchell.

Mr. Boyd handed out a letter from Philip Thomason who performed a study of the Historic District in 1998. There followed considerable discussion among those present.

Mr. Hurt stated that for all the reasons stated in his remarks at the last meeting of the Planning Commission, he was again asking that the Planning Commission recommend approval of these proposed amendment to Town Council. He further requested that each person present at the meeting, which he has discussed this matter with, state their name, address, whether or not they are in favor of this proposed amendments, with any other brief remarks. The persons that spoke are as follows:

1. Sam Hurt, lives at 247 East Valley Street, owns other property in district and has lived in the area for six years.
2. Peyton Boyd, lives at 117 West Valley Street, has lived in area since early 1980's, has operated architectural business in a dependent building behind residence since late 1980's. He stated that regarding recommendation of the proposed amendments.
3. Jan Hurt, lives at 247 East Valley Street (also owns property located at 254 East Valley Street), supports the proposed amendments.
4. Klell Knapps, lives at 155 East Main Street, has lived there 30 years, supports the proposed amendments.
5. Alan Pickrell, lives at 223 King Street, has lived in area 30 years, supports the proposed amendments.
6. Ellie Pickrell, lives at 223 King Street, has lived in area 30 years, supports the proposed amendments.
7. Barbara Chavatel, lives at 244 Whites Mill Road, has lived there since 1969, including her husband, both support the proposed amendments.
8. Gary Kimbrell, lives at 244 East Valley Street, has lived there for three years, supports the proposed amendments.
9. Carol Sutton, lives at 102 East Main Street, including her husband, both support the proposed amendments.
10. Janice Cowan, lives at 101 West Valley Street, including her husband, both support the proposed amendments (have been approached twice this year regarding possible business usage).
11. Joyce Ferratt, lives at 245 Whites Mill Road, supports the proposed amendments, also read a letter from Steve Gaylean, Director of Tourism; Abingdon nominated for national award, based upon population, cleanliness, maintenance of environment, preservation of historic and natural features and the unique and original aspects of the community. She stated that she believes a bulk of the revenue coming into Town is from tourism. She doesn't believe tourist come into the Town to see commercialization of Valley Street and other residential areas.
12. Dr. Jim Strine and his wife have lived here two years. One of the things that attracted them to Abingdon was the historic nature and the old houses. Now having restored and honored the Gabriel Stickley House (1836), they hope it will remain historic; he feels that "maintaining the past is a path to the future" and both he and his wife support the proposed amendments very strongly.
13. Tommy Charles Thayer and wife, live at 270 East Valley Street, have lived there for seven years and have lived in Historic District since 1987. He having been born and reared here, return to Abingdon after approximately 30 years, finding it in a historic nature in returning. The real estate on which house stands has been in family since the late 18th century. The existing house in which they live is the third house to stand on the site. He and his wife, Evelyn, both support the proposed amendments.
14. Kitty Henninger, lives at 159 Hill Drive (outside Historic District), however, the oldest house in this area. She and her husband were born and reared in Abingdon. They were away for 30 years and wanted to return to their Old Historic Abingdon area but when they returned, they found that if the commercialization continues it will not be the lovely, historic Abingdon that tourist want to see. Therefore, she strongly approves of the proposed amendments.
15. Scott Chase, wife and two year old son, live at 169 Valley Street, have lived here almost two years, one reason home was purchased in the Historic District was because of the walk-ability of the town, strolling, walking, both strongly approve the proposed amendments.
16. Andy Hargroves, lives at 229 East Valley Street, has lived there 25 years, strongly supports proposed amendments.

17. Lee Saul, owns property at 334 East Valley Street. He stated that the property has been in his family for 72 years. He was born and reared there. Mr. Saul's grandparents bought the property in 1933. He stated that this area was once a nice residential neighborhood, however, in the 1980's allowance of doctors and lawyers offices have downgraded his property from residential purposes to professional office space. The property has ample room for parking and it would not interfere with traffic on Valley Street. Mrs. Shuman emphasized that if the proposed amendments pass, without a "Special Use Permit" this property could never be sold for business.
18. Dan Caldwell, and wife live at 200 Pecan Street, N.E., ("Patton House" or "Wiley House") have lived there three and one-half years and both strongly support the proposed amendments.
19. Tim Thompson and wife own property at 171 and 171 ½ West Main Street, stated he was speaking in all fairness to himself and his family, stating the talk of this matter seems a threat to their family. The property is more valuable as business rather than residential and he feels this proposal is discriminating. The property has been a residence since 1942, with no intentions of using it as business. He and his wife strongly oppose the proposed amendments.
20. Mary Thompson, owns property at 171 and 171 ½ West Main Street, opposed to proposed amendment, also stated that her friend Joyce Wise (out of Town, in Richmond) is opposed to proposed amendments.
21. Mr. Rick Humphreys, owns property at 119 Park Street. He stated that this is an opportunity to control commercialization, and with a Special Use Permit being allowed to homeowners, he felt that it was in the best interest of the homeowners to think of limiting the commercial zoning.

Mr. Thompson asked if a bed and breakfast is considered business.

Mr. Morgan stated that "yes", a bed and breakfast is considered business, however, according to the Ordinance, they are exempt due to tax incentives, as well as historical credit offered to those that can prove that restoration and improvements have been made to a historic structure. When these requirements meet the tax code, the property can be used for this type business because it still has the appearance of a home residence.

Mr. Thompson stated that a bed and breakfast is allowed to advertise with business signs.

Mrs. Shuman stated that the results of a research of property sold on Valley Street over the past 10 years indicated ten (10) properties were basically sold for businesses and seven (7) properties were sold for bed and breakfast use.

Mrs. Shuman stated that law firms as well as doctors can also receive historical credit for restoration and improvements of historic structures; therefore, the historical credit is not a good argument for this matter. She further stated that a bed and breakfast is required to pay a business license tax and it is considered a business.

Mrs. Hurt stated that doctors, lawyers and even accountants offices were dark at night, whereas a bed and breakfast attract a lively mix of people during the night time as well as day time.

Mrs. Thompson stated that she has walked her dogs on Main Street and Valley Street for the past eight (8) years and the darkness has never bothered her as she has walked.

After a lengthy discussion, Mr. Morgan made a motion to recommend the proposed amendments to the Town Council for approval. Mr. Newman seconded the motion. Of the six members present, Dr. White and Mrs. Shuman, residents of the Historic District, excused themselves from voting.

VOTE: Mr. Morgan Aye
 Mr. Newman Aye
 Mrs. DeBose Aye
 Mr. Mathews Nay
 Mrs. Shuman Abstained
 Dr. White Abstained

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(5) PUBLIC HEARING

PROPOSED AMENDMENTS - Amend and reenact the Town of Abingdon Zoning Ordinance to include the following:

1. **Amend Sec. 17-17. ADULT USES**
 - **Sec. 17-17-1.** Application.
 - **Sec. 17-17-2.** Definitions

These proposed amendments will become the “Adult Uses Ordinance for the Town, if adopted. These additions are to be made a part of the General Provisions of the Zoning Ordinance, Article 17. **This amendment package was advertised as being considered for adoption by the Town Council on an emergency basis**, in order to avoid the customary second reading and thirty day delay after that which follows the amendment process. The definition of the proposed amendments is as follows:

Sec. 17-17-1. Application.

In any district in which a use is otherwise permitted, if such use constitutes an “adult use”, as defined herein, the minimum requirements and standards set out in this division shall apply to such use.

Sec. 17-17-2. Definitions.

In this section, unless the context otherwise requires, the following words or terms are defined as set out herein:

Adult bookstore: An establishment that devotes more than fifteen (15) percent of the total floor area utilized for the display of books and periodicals to the display and sale of the following:

- (a) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, tapes, records or other forms of visual or audio representations which are characterized by an emphasis upon the depiction or description of “specified sexual activities” or “specified anatomical areas”, or
- (b) Instruments, devices or paraphernalia which are designed for use in connection with “specified sexual activities”.

An adult bookstore does not include an establishment that sells books or periodicals as an incidental or accessory part of its principal stock-in-trade and does not devote more than fifteen (15) percent of the total floor area of the establishment to the sale of books and periodicals.

Adult use: Any adult bookstore, adult motion picture theatre, adult mini-motion picture theatre, adult motion picture arcade, adult model studio, adult drive-in theatre, or massage parlor, as defined herein.

Adult motion picture theatre: An establishment, with a capacity of fifty (50) or more persons, where, for any form of consideration, films, motion pictures, video cassettes, slides or similar presentation time is devoted to the showing of material which is distinguished or characterized by an emphasis upon the depiction or description of “specified sexual activities” or “specified anatomical areas” for observation by patrons.

Adult mini-motion picture theatre: An establishment, with a capacity of more than five (5) but less than fifty (50) persons, where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are shown, and in which a substantial portion of the total presentation time is devoted to the showing of material which is distinguished or characterized by an emphasis upon the depiction or description of “specified sexual activities” or “specified anatomical areas” for observation by patrons.

Adult motion-picture arcade: Any place to which the public is permitted or invited wherein coin or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors, or other image producing devices are maintained to show images to five (5) or fewer persons per machine at any one (1) time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing “specified sexual activities: or specified “anatomical areas”.

Adult drive-in-theatre: An open lot or part thereof, with appurtenant facilities, devoted primarily to the presentation of motion pictures, films, theatrical productions and other forms of visual productions, for any form of consideration, to persons in motor vehicles or on outdoor seats, and presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to “specified sexual activities” or “specified anatomical areas” for observation by patrons.

Adult model studio: Any establishment open to the public where, for any form of consideration or gratuity, figure models who display “specified anatomical areas: are provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by persons, other than the proprietor, paying such consideration or gratuity.

This provision shall not apply to any school of art which is operated by an individual, firm, association, partnership, corporation or institution which meets the requirements established in the Code of Virginia (1950), as amended, for the issuance or conferring of, and is in fact authorized there under to issue and confer, a diploma.

Massage parlor: Any establishment, whether private or public, operated as a massage salon, bath parlor or similar or similar type of business where any physical or mechanical contact is made to a recipient’s body by another person or mechanical device for the purpose of massaging or stimulating the recipient’s body.

Specified anatomical areas:

- (a) Less than completely and opaquely covered:
 - (1) Human genitals, pubic region,
 - (2) Buttock, and
 - (3) Female breast below a point immediately above the top of the areola, and
- (b) Human male genitals in discernibly turgid state, even if completely and opaquely covered.

Specified sexual activities:

- (a) Human genitals in a state of sexual stimulation or arousal;
- (b) Acts of human masturbation, sexual intercourse or sodomy; and
- (c) Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

Sec. 17-17-3. Requirements and standards.

- (a) No adult use may be established within one thousand (1,000) feet of any other such adult use in any zoning district.
- (b) No adult use may be established within seven hundred and fifty (750) feet of a residentially zoned district, or a school, educational institution, church, public park, playground, playfield, public library or day care center.
- (c) The “establishment” of an adult use as referred to herein shall include the opening of such business as a new business, the relocation of such business, the enlargement of such business in either scope or area, or the conversion, in whole or part of an existing business to any adult use.
- (d) In addition to the requirements set forth in this section, all adult uses shall be required to comply with any other ordinances applicable to the same.

Sec. 17-17-4. Measurements of distance.

All distances specified in this section shall be measured from the property line of one (1) use to another. The distance between an adult use and a residentially zoned district shall be measured from the property line of the use to the nearest point of the boundary line of the residentially zoned district.

After discussion, Mr. Morgan made a motion to recommend the proposed amendments to the Town Council for approval. Dr. White seconded the motion, with unanimous approval.

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(6) CERTIFICATE OF APPROPRIATENESS - RENEWAL OF SPECIAL USE PERMIT, Scott’s Cars, 176 Jonesboro Road

Mr. Newman explained that he has discussed the matter of this temporary office structure with Scott Gobble and that Mr. Gobble had explained to him that the owners of this property on Jonesboro Road were not willing to sell, pending the uncertainty of other developments in that area and that it would be foolish to build a more permanent structure on leased property. Mr. Newman then recommended that the Commission extend the permits for this structure for another year in light of this information.

Mr. Newman then made a motion to extend Scott Gobble’s Certificate of Appropriateness and Special Use Permits for one more year until Mr. Gobble’s situation becomes resolved. Mr. Newman’s motion was seconded by Mrs. DeBose and unanimously approved.

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(7) CONSIDERATION OF PRELIMINARY SUBDIVISION PLAT - The Falls Plaza, LLC, Ernest Coburn, Representative, 301 Falls Plaza, Abingdon, Virginia 24210, property being located on Russell Road. Tax Map No. 104 (7) 4.

Dr. Coburn explained to the Commission that he was in the preliminary stage of subdividing the Falls Plaza property and presented the map of the proposed division. Mr. Morgan asked if the proposed

street served the property of James A. Brown and Dr. Coburn answered that the street, as proposed, would serve Mr. Brown and others who wished to have a Town street for this purpose. Dr. Coburn further explained that a part of the cul-de-sac was situated on Mr. Brown's property and that this would certainly make the street available to that property.

Joyce Ferratt asked if that street might eventually be connected through the remainder of Mr. Brown's farm into Clark Street. Mr. Newman replied that there was no answer to that question at this time. The consideration here was only for the subdivision of the Falls Plaza property as proposed by Dr. Coburn.

Mr. Morgan made the motion to approve the Preliminary Plat of the Falls Plaza property, as proposed by Dr. Coburn, with many of the remaining details to be satisfied prior to the Final Plat stage. The motion was seconded by Mrs. DeBose and unanimously approved.

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- (8) **CONSIDERATION OF PRELIMINARY SUBDIVISION PLAT - Old Town Village Subdivision (Prestige Properties of Abingdon/Representative, 790 C West Main Street, Abingdon, Virginia 24210 and Holbrook Surveyors, Tony F. Holbrook/Representative, 115 Solar Street, Bristol, Virginia 24201), property being located between Hurt Street, Hagy Street and Colonial Road. Tax Map No. 18 (6) 6A, 6B, 7B, 18, 19 & 24.**

Mr. Tony Holbrook, surveyor, and Mr. Kevin Reet, owner, explained the proposed townhouse development between Colonial Road, Hagy Street and Hurt Street to the Commission and stated that adequate water and sewer were already available to the site. They noted that the proposed development had 16 townhouse units to be developed between Colonial Road and Hagy Street with the construction of a new street named Village Court leading off of Hagy Street. Three of the said units will actually front on Colonial Road. The developers further noted that parts of this property consisting of tracts numbered 18, 19 and 24 would not be developed at this time, while a portion of tract #24 would serve as a detention pond for the entire development.

Mr. Jim Smith, Town Engineer, stated that, in his opinion, the proposed Preliminary Plat met the drafting and content requirements of Article 8 of the Subdivision Ordinance. Mr. Smith explained the requested waivers from the developers as follows:

1. Right of way on Fugate Street, on the west boundary of the project to be waived from 25' from centerline to 20' total with no sidewalks or curbing at this time.
2. Taper of 3:1 on the proposed Village Court waived to 1:1 to avoid encroaching on the property to the east of such street since that property does not belong to the owner.
3. Required sidewalk on Colonial Road is requested for waiver due to its interference with existing drainage swale and the toe of the existing slope. Pavement will be expanded to 15' from centerline and curb and gutter (CG-6) added.
4. Defer improvements to Fugate Street and Hurt Street until such time as lots 18, 19 and 24 are developed.

Mr. Stockner, a resident of Fugate Street presented to the Commission photos of a ditch near 239 Fugate Street which were taken on April 8, 2005 after a "light rain". Mr. Stockner stated that the ditch often overflowed and partially blocked Fugate Street. Mr. Vernon noted that the developers proposed no development on Fugate Street at this time, but that Mr. Stockner's concerns could be addressed at such time as something is proposed there.

Mr. Morgan made a motion to approve the Preliminary Plat of the Olde Towne Village Subdivision as proposed by Prestige Properties of Abingdon with further discussion to be considered during the Final Plat stage. The motion was seconded by Dr. White and unanimously approved.

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There being no further business, a motion was made, duly seconded, and unanimously approved that the meeting be adjourned. The meeting was adjourned at 9:15 PM.

Doris Shuman, Chairman

G. M. Newman, Secretary