

CITY OF FLORENCE PLANNING COMMISSION
December 13, 2011 ** MEETING MINUTES**

CALL TO ORDER - ROLL CALL - PLEDGE OF ALLEGIANCE

Chairperson Nieberlein opened the meeting of Planning Commission and Design Review Board at 7:01 pm. Roll call: Chairperson Nieberlein, Commissioners Tilton, Wise, Muilenburg and Hoile were present. Commissioners Bare and Peters were absent and excused. Also present: Community Development Director (CDD) Sandra Belson and Senior Planner (SP) Wendy Farley-Campbell.

1. APPROVAL OF THE AGENDA

The Agenda was approved as presented.

2. PUBLIC COMMENTS

This is an opportunity for members of the audience to bring to the Planning Commission's attention any items NOT otherwise listed on the agenda. Comments will be limited to 3 minutes per person, with a maximum time of 15 minutes for all items.

Chairperson Nieberlein noted there were no public present and therefore no need to go into public comment. She also noted that there was no hearings schedule for that evening and the Planning Commission would be working on discussion items.

3. PLANNING COMMISSION DISCUSSION ITEMS

Identification of code amendments to fix current problems with Title 10

Chairperson Nieberlein thanked Commissioner Wise for his review and suggestions to these code amendments.

Commissioner Wise referred to the document that he provided to the Commission and staff, Title 10 Chapter 6 – Design Review and stated that there was only one line that was new legislation; paragraph 8, which states, *“the criteria of the individual zoning districts shall prevail where the applicability of this chapter and individual zoning districts conflict.”* He stated the reason for his suggestion was in the 10 months he had been reviewing applications, on more than one occasion, we have found conflict.

The first one was the octagon building in Old Town. At that time Chairperson Nieberlein and CDD Belson stated that it was their recollection that the intent of the zoning ordinances, that single family and duplex residences, would be subject to Design Review. CDD Belson said the City has recently rewritten the of Old Town zoning district code. There are architectural standards that apply within the downtown area and because of those standards and to ensure compatibility of residential uses in amongst the commercial uses and it would be reasonable to have those go through Design Review and have that additional scrutiny.

CDD Belson agreed that Commissioner Wise' suggestion was a great addition to the code; but she mentioned issues that should be addressed in the Design Review Chapter. There is a listing of different zoning districts that need Design Review and there are cross references. She

suggested eliminating that list and relying on the zoning districts to indicate the need for Design Review.

Commissioner Wise agreed and added that the Design Review Chapter should talk about Design Review and not how you get there. He said there were a few general chapters on non-conforming uses and conditional use permits, but the majority of chapters in Title 10 are zoning districts. He said he left those in there until the Commission had an opportunity to review all of them; although he had taken a quick look through all the zoning districts and in some of them; it was not clear. The Code makes reference to Design Reviews but they are not explicit whether Design Review is required; he thought we could hold off on that.

CDD Belson stated that what was being prepared is for Council is a document for it to initiate the amendment process. The Commission does not need to have the exact language completely worked out for initiation. The Council only initiates the process and does not take formal approval at this time. She said if the Council agrees with the general concepts then staff would do notice requirements, there is the public hearing process and we can find tune as we go. The council had requested some information on solar that came back to them and there is a financial impact in terms of resources and how much staff time it would take. It will be up to the Council as to how much they want staff to take on; they will initiate what ever types of changes they want; then staff will rework it before sending out the notice; given their direction. It would then come to the Planning Commission for public hearing; the Commission would make a recommendation and it would then go to Council for public hearing and final decision.

If the change is that we want to be clear in each zoning district what requires Design Review. Commissioner Wise agreed and said it eliminates paragraph B, F and G.

Commission Muilenburg asked if the wording underlined was added by Commissioner Wise; he replied, yes and the wording with strikeout were the ones he recommended deleting.

Commissioner Wise moved paragraph D, up as it seemed to fit more closely to what shall Design Review, do. He went on to say, he didn't know what paragraph 3 meant; it sounded like it said that the Design Review Board exists in some constant state where it is monitoring things; he said that was not how he understood Design Review; he thought it was activated for a specific purpose.

CDD Belson said the key part of Paragraph 3 is the portion of the 25% addition so if there is an alteration or new construction that is less than 25% of the footprint; it was not necessarily subject to Design Review. Commissioner Wise asked if it was prudent to go back and check which districts that would apply to. CDD Belson said there are some districts where it was very explicit what needs to go to Design Review and in some it was more implied. She didn't know if there were any conflicts in other zoning districts regarding the 25%. She didn't think there was anything in those districts that mentions the 25% specifically; but she was not clear if it states additions are "subject/not subject to" Design Review.

Commissioner Wise added that the 25% rule applies to non-conforming uses. CDD Belson said it was not explicit in the code but staff had been applying the 25% to Conditional Uses; because of the non-conforming use section that states, "if a non-conforming use or structures expanding more than 25% then it kicks it into a Conditional Use permit," and staff felt it shouldn't be any more rigorous for a Conditional Use permit than it is for non-conforming.

Therefore staff had been applying the standard that if there was a Conditional Use you could expand by 25% (as long as it still complied with the conditions of approval) before it had to come back for another Conditional Use Permit approval. She said that staff would like to add that practice to the code.

Commissioner Wise said the difference with the conditional use permit is that it doesn't apply to single family, where non-conforming it does. CDD Belson said there is a possibility that a conditional use it could apply to single family such as in commercial districts.

Chairperson Nieberlein referred to number 3 where it mentions monitoring; she asked what "monitoring."

CDD Belson said it appeared that we should keep the 25% in there and in non-conforming we would add it to conditional unless anyone sees a reason why we wouldn't, we would keep it in Design Review and that paragraph would have to be reworded, so that's all it's talking about. By head nodding, PC agreed with CDD Belson's recommendation.

CDD Belson asked for clarification that paragraph B would be removed and she suggested that paragraph C should also be deleted because it would be covered in the zoning districts. Paragraph A-3 would be left in and move some of the "use" idea to paragraph A-3. SP Farley-Campbell agreed and said you would not want to lose the "use" as a staff review.

CDD Belson said Chapter 1 – Administration Section – defines what types of changes can be handled administratively. This section was added in a package of amendments handled by Planner Anderson. They are defined as change of use from less intensive to greater intensive and we speak as to how that is measured in terms of square footage; parking space requirements; if it is residential, the density can increase by 10%.

Commissioner Muilenburg expressed his concern that it could cost someone a lot of money for no reason; for example if you are changing from retail to a restaurant where you are going to require more parking spaces; he would understand that. But from one use, same parking space to another use, as a property owner he felt he shouldn't have to.

CDD Belson responded that the change of use would have to trigger a site impact such as increased parking or building expansion for it to require a land use process. CDD Belson said staff would move "use" up into that paragraph 3 and possibly add a reference to that section in Chapter 1 that defines that change in use. SP Farley-Campbell said if it was moved up into 3 it would say that "The Design Review Board **shall**," so it makes the change of use a Design Review action which she didn't think that was what was wanted. CDD Belson said in some cases it would be; there are some changes in terms of intensity and there are some changes that could be approved administratively and other changes that would kick into Design Review Board.

Title 10 Chapter 8 – Nonconforming Uses

Commissioner Wise said that these proposed changes were the result of reviews that the Commission had done. He referred to the document that he had submitted and said that one does not get to rebuild a structure under non-conforming uses if what you are starting with is vacant land, even if there was previously a house on the property; the moment that the

structure was destroyed it could not be restored but "removed," and no longer a non-conforming use.

CDD Belson agreed that there were problems with this particular chapter. She went on to say that what Chapter 4 usually states in most cities; "if it burned down, or there was a major catastrophic event, natural cause and not manmade, that people have the right to be able to build back to what was there before, assuming that it had been legal in the first place." She added that it might be non-conforming but it was legal. She said she thought that needed to stay; because otherwise you are taking away people's ability to do something on the property and it becomes a real hardship on people.

Commissioner Muilenburg agreed and said it was just like the one they just did. CDD Belson said if they had built back what was there it wouldn't have been a problem; the reason it needed to be conditional use is because they built a much larger house. She said they therefore obtained a conditional use permit and the house is not considered to be "non-conforming." Commissioner Muilenburg said the language in the proposed changes prohibits that, and would have eliminated that property owner the opportunity to rebuild the way they are.

Commissioner Wise said in his opinion there was very little difference between a vacant lot and a lot where there was a non-conforming use that had been in its entirety, removed.

Vice Chairperson Tilton said he felt that concern was what was they were talking about.

Commissioner Muilenburg referred to paragraph 32-34, where it talks about structures and not about a lot itself. CDD Belson agreed with the suggestion to replace the word, "replacement" with "restoration" because that is how it is used later in the code and that was an important distinction.

Commissioner Wise said personally, "restoration" means to put it back the way it was, "replacement", means to put something new there and does not give the restraint of "saying you can't go from 700' to 1,500' and say you're just replacing a non-conforming building. If you want to go more that 25% of the original, then you have to have a conditional use permit.

Chairperson Nieberlein asked if she owned a house in the commercial district (non-conforming use) and it burned down and she sold the lot, would the purchaser have to build according to the zone as it goes with the structure and not with the lot.

CDD Belson said it has nothing to do if it is sold; the only issue is the 6 months timing. That house could be rebuilt within 6 months. CDD Belson said in other towns, it's usually a year, but Florence's code only allows 6 months.

Commissioner Muilenburg said he can see a problem if it's not sold or rebuilt within the time limit then the new owner can't build a house. CDD Belson said houses are allowed as conditional uses in some areas. But the property north of town, in the Service Industrial District for example, if that house was destroyed by natural causes, it would have to be rebuilt within 6 months otherwise a house could not be rebuilt there.

The Commissioners asked the process that needed to happen for the property owner to make that time line. Chairperson Nieberlein read from 10-8-4, 23, "Restoration shall be commenced within six (6) months...."

Commissioner Wise said in other districts, "commenced" means putting in a foundation.

Chairperson Nieberlein asked if that shouldn't be stated in the code. CDD Belson said she remembered the attorney had provided the city with an analysis of this code and how it applied to the situation that was before the planning commission. She asked the attorney for assistance in rewording this chapter and she would discuss these questions with him. She thought he would agree with the terminology of "restored." Commissioner Wise referred to page 3 of the document and lines 11, 12 and stated that the second sentence should be removed.

CDD Belson said she would talk to the attorney about the definition and if we need to be more specific about the timing of 6 months. Vice Chairperson Tilton said the 6 month time line should be seriously considered and if they wanted to change it to a year as 6 months is a very short time line to get everything together.

The Commissioners agreed to change line 23 of the document to one year (1) and to leave 6 months as the extension on line 25.

CDD Belson referred to line 27 – Abandonment – for example, Viking Redi Mix has been there for a long time; residences have grown up around them and they are not allowed in that zone. If they cease operations - that would be abandonment. If they had illness, the business shut down and someone else was going to buy it, and it took a while for before they could restart, how long would you want to give them before they can not put that use back? Right now it's 6 months.

The Commissioners discussed the differences of abandonment of commercial and residences; bringing up the safety factor with commercial businesses. CDD Belson referred to the home in "Service Industrial" and if the owner stops occupying the house and is not there for 6 months; should that house be able to be used as a residence after 6 months?

Chairperson Nieberlein said she did not have a problem with a residence, but she did with commercial property. CDD Belson said she did not think a distinction could be made. CDD Belson said there are other conditions in the building code as an attractive nuisance to deal with her concerns.

Vice Chairperson Tilton was comfortable with a year; Commissioner Hoile thought a year was too long. Commissioner Muilenburg asked if it was 6 consecutive months; it was decided it was 6 out of twelve. SP Farley-Campbell said since she had been with the city she did not ever recall utilizing this section of code. Chairperson Nieberlein thought it was important to be clear on this; for instance, if a house burned down, after a month or two; staff contacted the property owner as they knew it was in a commercial district and decisions had to be made in a timeline.

CDD Belson summarized that line 27 would remain the same – she could ask the attorney about the language, it was not a legal question as to the time line.

CDD Belson gave the scenario of business that does not have onsite parking. The store closes down; it is closed for 6 months out of 12 months – and they now want to put it back – they have now lost the ability to do that because they don't meet code, the use is non-conforming; they don't have the on-site parking that is required.

Another scenario; if you have a restaurant that converts to retail, it's still being used, they want to convert back to restaurant - they cannot; they've lost that restaurant ability because they don't have the parking, even though they may have continued to use the building; and have a business there. It's not being a restaurant that requires the parking. If the building is for sale for over 6 months, the owners would lose the ability to reopen, unless they could re-rent the building.

CDD Belson said the question is, “ how important is it to get things to comply with code versus how many rights are you giving the property owners who have an investment.” You are balancing the rights of the property owner versus getting more compliance with community expectations.

Chairperson Nieberlein said she didn't have a problem with it as long as there are other ways to deal with the safety issues and then take and make two sentences out of that paragraph. So it reads, “Non-conforming use for any six (6) months out of every twelve (12) consecutive months shall constitute abandonment.” Take out the “and.” “The pre-existing use shall be deemed to have been terminated and every building, structure and use occupying the premises thereafter shall conform to the regulations of the zoning district in which it is located.”

Commissioner Muilenburg said if a person has a piece of property, it was a restaurant and now it is rented out as retail; he didn't consider that abandonment. CDD Belson said they abandoned the non-conforming restaurant use, the lack of parking made it non-conforming.

It was the consensus of the Planning Commission to change the wording to “six consecutive months,” and make it two sentences on paragraph 16.

CDD Belson said the Planning Commission has to determine if the continuation of a non-conformation use is a public health hazard or detrimental to the health, safety, and welfare of the community. Referring to 10-8-4 – Destruction of Nonconforming Buildings, she said it was not clear what process would be used by the Planning Commission to make that determination. For instance if a house burns down and the owners want to build it back to what it was before; her inclination would normally be to issue a building permit, unless we have complaints about the house. In this section it says that Planning Commission determines...and she felt that was problematic and was one of the questions for the attorney.

CDD Belson said the problem with this chapter was that it mixed the terms non-conforming uses, structures, and lots; and they are not all the same thing.

Comments on Fire District's application for Adjustment to Sign Code

Chairperson Nieberlein noted that this topic was only a discussion item because the sign code was no longer under the jurisdiction of the planning commission. She said it would be going before the City Council's January 3, 2012 meeting.

Commissioner Muilenburg asked how changing image terminology was missed in the Commercial District. He said he thought it had been discussed that they did not want changing image signs in Florence, especially on Highway 101. Chairperson Nieberlein asked if the Planning Commission left out the terminology or did the City Council take it out.

Commissioner Muilenburg said that each district in the sign code, except Commercial, states that changing image signs are prohibited. He said if the Fire District's sign only had words or numbers, it would be considered a reader board. He noted, however, that the sign does display an image of an American Flag which Commissioner Muilenburg said classified it as a changing image sign. He said the sign would be okay if it was only a reader board.

Chairperson Nieberlein stated she had a problem with the color red used on the sign, commenting that it could possibly be confused for brake lights. She said she doesn't think red should be used on signs.

Commissioner Wise stated that he didn't think what the Fire District was asking for had anything to do with an adjustment. He said the Fire District wasn't requesting to move the sign and there was no hardship associated with the sign. He reiterated that he didn't think that request met the criteria for an adjustment. Commissioner Muilenburg commented that having the message change frequently would not provide drivers enough time to read the sign's message. Vice Chairperson Tilton said he believed the Fire District was actually decreasing public safety by having the messages change too frequently and he thought the message could be more effective if it was left up for an hour. Chairperson Nieberlein brought up that there is a condition of approval on the Fire Hall regarding landscaping and that some of that landscaping was removed when the sign was installed; that was a Planning Commission concern. Vice Chairperson Tilton agreed.

Commissioner Wise said there was another problem as the code stated, "That no light source shall create an undue distraction or hazardous condition for motorists, pedestrians or the general public." He said the Fire District's stated objectives were "to get the public's attention and then seconds later we will provide them with a safety message on a road closure or notification on an upcoming safety matter, increasing your survivability plan..."

Commissioner Wise said the District also said "the more information we can impart to the public in the time it takes to approach the display, the better." Commissioner Muilenburg commented that he didn't consider drivers trying to read the sign from the time they approach it to when they pass as safe. Chairperson Nieberlein commented that there is also the flashing pedestrian crossing near the Fire Hall, so there is a lot going on in that area. She didn't believe drivers should be trying to read a board while dealing with everything else in that area.

Commissioner Wise asked if anyone in the Commercial Sign District could put up changing image signs.

Vice Chairperson Tilton said the problem is that the sign changes messages more than once an hour, which is not allowed by the Sign Code. He said one of his concerns is that when the PC had looked at constitutionality issues while working on the Sign Code, they found they could not dictate content. Vice Chairperson Tilton said he was worried that a precedent would be set where others could put up signs with messages changing more than once an hour. He noted

that the Fire District stated it was the only public entity in that area, so it would not be an issue with other businesses.

Chairperson Nieberlein said that she thought public agencies should be held to the same standard as anyone else in the community. Commissioner Wise commented that if this sign is truly about public safety, it should take the whole city into account. He said he saw no evidence that the City Emergency Management team was consulted first. Commissioner Wise said he thought the sign should be "static" and if there is an emergency, the city should "turn a blind eye" to the fact (the sign) is changing more frequently.

Vice Chairperson Tilton said he looked at the Sign Code and it stated "protect the health, safety, property and welfare of the public." He commented that he didn't think the sign does that, and he thought the sign degrades it. Vice Chairperson Tilton asked if they allowed the sign to change messages more than once per hour, would it set a precedent for other signs?

CDD Belson said she would be writing the staff report for the city council on this adjustment request and the options she was thinking of presenting were:

1. Change the Code, allowing others in the Commercial Zoning District the same rights.
2. Stating the Fire District has to comply with the Code unless there is a declared emergency, which would allow them to change the image on the sign more frequently in order to get out necessary messages.
3. Not granting the adjustment and hold the District to the Code's standards.
4. Granting the District the adjustment and not have it apply to any other businesses and property owners.

CDD Belson noted that this is a Council decision, not a land use decision which could be appealed. Vice Chairperson Tilton asked if the Council has to decide if the adjustment request meets the criteria in the code before making a decision. CDD Belson said, to her, the frequency of change on the sign is considered a numeric adjustment and that was why she thought the District could ask for an adjustment, although she admitted she was reading it "in a more generous sense."

Commissioner Muilenburg said that the issue is whether the District would be allowed to make letters and symbols changes or can they change their image. CDD Belson said staff went over the minutes from the Sign Code work sessions and, at one point, there was discussion about how frequently the images should be allowed to change. She said it was then they decided they would check in with the School District and find out how frequently they would want their images to change. CDD Belson said it was not clear in the minutes whether anybody ever did check in with the School District.

Vice Chairperson Tilton said when he reads the criteria for adjustments; he thought numerical adjustments referred to where the sign was located or for how high the sign was. Chairperson Nieberlein said she has great deal of respect for the Fire Department and the Fire Chief, noting they give an inordinate amount of personal time for training, etc. She noted that this wasn't anything personal against the fire department; she just would like them to abide by the same rules as everyone else.

Vice Chairperson Tilton asked if the Commission wanted to draft written comments for the Council's January 3rd meeting. It was decided that Vice Chairperson Tilton would do a draft letter. Chairperson Nieberlein would review the letter before signing it.

Commissioner Muilenburg said he doesn't have a problem with the image changing more than once an hour, as long as it's reasonable. He said his problem was with drivers trying to read a sign that's constantly changing. Vice Chairperson Tilton said he thought once an hour was sufficient and would actually be more effective. Commissioners agreed that they found the color red on the sign distracting, particularly in the area where the sign is located.

4. DIRECTOR'S REPORT

CDD Belson reported that there would be a Transportation Open House at the Florence Events Center February 1st 4 to 6:30 pm. She said a draft transportation plan would be completed by that date.

5. CALENDAR

ADJOURNMENT

With no further business Chairperson Nieberlein closed the meeting at 9:18 p.m.

APPROVED BY THE FLORENCE PLANNING COMMISSION ON THE 28 DAY OF
February 2012

FLORENCE PLANNING COMMISSION


JAN NIEBERLEIN, CHAIRPERSON