

**Minutes of the Planning Board
Regular Meeting - Electronic
December 12, 2022**

Members Present: Neil Brown, Barbara Cromar, Jim Robertson (Chair), Peter Hanley, Andrea Martin, Stuart Glassman, Jon Blatt, (Vice-Chair)

Members Absent: Laura Flores, Tamara Peacock

Staff Present: Matthew Manley, Planning Manager, Lew Holloway, Community Development Director and Tyler Morrow, Planner

I Call to Order. *The Chair called the meeting to order at 4:00 pm. A quorum was established.*

II Approval of Agenda. *Mr. Hanley moved to approve the agenda. The motion was seconded by Mr. Glassman and passed unanimously.*

III Approval of Minutes for the meeting of November 14, 2022. *Mr. Hanley moved to approve the Planning Board minutes of the meeting of November 14, 2022. The motion was seconded by Mr. Glassman and passed unanimously.*

IV Old Business

V New Business

V(A) Zoning Text Amendment – Lighting Ordinance – (P22-100-ZTA). Mr. Manley gave the following background:

Mr. Manley gave a summary of the first version of the lighting ordinance. This is no longer based on the model light ordinance. Several committees have had feedback on the current ordinance. The standards will not apply to single and two-family uses. Land uses impacted will be non-residential and multi-family. The reason for this ordinance is to establish standards for exterior lighting under the General Provisions of the Zoning Ordinance and to establish standards for streetlighting in the City Code of Ordinances. This was a directive made by City Council to Staff.

Mr. Manley gave a presentation concerning the proposed lighting ordinance. This is included in the staff report.

Mr. Manley stated through the presentation, he will be providing you with verbal notes in regards to various “Technical Clarifications” that staff is recommending. These clarifications do not change the substance of the policy decisions presented in the ordinance. They are a result of additional feedback and consideration as staff has continued to work through the draft ordinance. Mr. Manley explained each of the technical clarifications.

Foot candle examples were shown.

He discussed amortization and how long someone has before coming into compliance with the ordinance.

An inventory analysis was shown and explained.

He discussed compliance with the lighting ordinance and city properties. Figures were provided by Duke Energy.

Mr. Manley discussed the zoning ordinance and how the lighting ordinance would be enforced. He also discussed who this would impact.

Chair stated they will open up for questions for staff concerning the zoning ordinance.

Mr. Glassman asked if the county has a similar ordinance. Mr. Manley stated he did not believe the county has an ordinance for lighting. This lighting ordinance would only pertain to the city limits and the ETJ.

Mr. Blatt asked if there were any commercial type buildings that would be exempt. Mr. Manley stated the standards would apply to all commercial uses. There are two types of standards. There are fixtures standards and site standards. The fixture standards have to be compatible with IES, they cannot have any uplight, they have to meet the CCT and CRI standards, they can't be floodlights and they have to be wall pack lights. Mr. Blatt stated no types of properties are exempt, right? Mr. Manley stated those standards he just read off apply to all commercial and multi-family. He stated limits to foot candles at the property line applies to nonresidential adjacent to residential, and to multi-family adjacent to residential – the footcandle limitations only applies if you are adjacent to single-family and two-family, which are lower intensity land uses, and foot candles at the stream buffer are limited for both nonresidential and multi-family. Mr. Blatt stated just to be clear churches, hospitals, schools, they would all have to comply if they adjoin a residence? Mr. Manley stated that is correct. Mr. Blatt stated there is no exemption for any type of use. Mr. Manley stated single-family and two-family are the only uses exempted.

Ms. Cromar asked if the existing uses would have to comply at the end of the eleventh year. Mr. Manley stated they would have to comply after ten years. He discussed a number of parking lots in the city that would have to comply.

Mr. Manley stated there is no fee-in-lieu of compliance. Mr. Hanley stated this sounds like a relatively heavy hammer for small businesses. What happens if they don't comply? Mr. Manley stated that question would be great for later discussion but he is trying to get through the technical questions.

Chair stated after 10 years staff would have to go look and see who doesn't comply and he thinks it should be nuisance driven. He doesn't think we have enough staff to measure every light next to a residential use in the city. It could be nuisance driven.

Mr. Blatt discussed this lighting ordinance not being easily understood. He feels it would take a lighting engineer to understand this and be able to enforce it. His concern was it is not easily understandable. He stated a 50% repair could trigger compliance, is changing a light bulb in a light fixture considered repair? Mr. Manley stated that is maintenance. Mr. Blatt asked if they have a definition for what is a repair. Mr. Manley stated this version of the ordinance does not have a distinction for repair. Mr. Blatt stated if it comes to pass, he thinks there should be a definition for repair.

Chair stated coming from the ordinance they first started with, this version is more easily understandable. Mr. Manley clarified that the "easy to understand" reference came from the staff report summary and not the ordinance.

The Board discussed small businesses and how this can affect them. Mr. Blatt was concerned with the effect this would have on small businesses. Mr. Manley explained that lighting is, by its very nature, a very complex topic.

Mr. Blatt stated he presumed enforcement of this would fall on the Planning staff and he is not sure if they are capable today to enforce it. To him this is not easily understandable.

Discussion was made on who would review the lighting plan and if a lighting engineer would need to be hired. Mr. Manley stated no, planning staff would review the lighting plan. He stated a site plan is not required for any building under 5,000 sq. ft.

Mr. Brown stated there would not be less lighting but the lighting would be more shielded.

Mr. Brown stated on 6-19.2 (c) the nominal CCT limit shall be less than 4,000K, shouldn't that be an equal to whatever figure since we are talking limit. This almost implies that you could arbitrarily set the limit at 3,500K because 3500 is less than 4000. Mr. Manley stated the max is 4000. Mr. Brown stated shouldn't that be less than or equal to. He stated the way it is phrased almost implies the limit could be brought down in the future. It should be stated the CCT should be less than or equal to 4000K.

There were no further technical questions.

Mr. Manley continued the presentation concerning street lighting. He presented the different definitions. These are included in the staff report. Ornamental lighting is intended to be capped. There will also be no uplight on street lighting. Compliance with the streetlighting ordinance for city properties was shown.

The Legislative Committee met October 18, 2002 and they were supportive of the new simplified version. Last week it went before the Business Advisory Council there was a very long discussion related to this topic. General feedback was there is no need for a Lighting Ordinance, undue burden on the business community, limits lighting for businesses and safety concerns. Specific feedback was increase .5 FCs to 1 FC, eliminate or expand amortization date – minimum of 15 years, clarify the word "altering". Other concerns were impact on 24-hour businesses and limitations on the stream buffer and enforcement issues.

The Comprehensive Plan Consistency criteria was shown and is included in the staff report.

The Zoning Amendment Standards were shown and included in the staff report. A draft rationale for approval was shown and included in the staff report along with a draft rationale for denial.

Mr. Holloway stated the city does rent all their streetlights from Duke Energy, with the exception of the ornamental lights which are city owned. All the streetlights are on a lease agreement that is paid monthly. He discussed the lights being converted over to LED.

Chair asked about the specific concerns of the Business Advisory Council. Mr. Holloway explained the standards and recommendations from Duke. The BAC looked at the amortization and he also explained the policy decisions that go along with this. He thought staff could address the clarification of "altering". Changing the .5 to 1 is also a policy decision. Staff has presented the same zoning text amendment language that was presented to you today with added technical clarifications. Staff did add the stream buffer standards which were added for Council. The Planning Board can make recommendations to City Council and take into consideration any feedback.

Mr. Brown stated there are six jurisdictions in the mountain of North Carolina that have passed lighting ordinances. One of them does not have amortization. Asheville has a five-year compliance. Black Mountain has a five or fifteen year, it is five years for outdoor advertising and fifteen otherwise. Buncombe County has five years, Woodfin if it's leased from Duke, five years or if your property is altered 35%. Boone has a seven-year city wide compliance.

Chair stated he would open public comment for the zoning text amendment. Mr. Manley stated the Code of Ordinances for streetlighting did not require public comment or a recommendation from Planning Board.

Mr. Brown presented 12 photos to the Board and explained each one.

Chair opened the meeting for public comment.

Ken Gordon, Norm's Minit Mart, 140 Sultana Drive stated he is on the Business Advisory Committee. The amortization is an undue hardship for current businesses. He was not in favor of the stream buffer requirement for lighting. The IES standards does limit the output for a site. This does limit the lighting for a site. It is scary to think about losing part of your business in ten years. The nuisance-based enforcement is not practical because staff will be overwhelmed. It would not be fair to businesses. Selective enforcement could be a problem. This is not cost effective.

Susan Frady, Executive Director for Partners for Economic Progress stated they did try to give you an ordinance that people could read and understand. First on enforcement for the .05 from commercial to residential they discussed this a lot. Debbie Bell is here, and she may be able to talk to it better. For instance, where Jon Blatt's office is, right beside him is a house. If you are going to try and figure out how much light is going from Jon's property to the residential property next door at the property line, then you are going to have to have them turn their lights off and she is not sure that is going to happen. She doesn't see staff picking a night to measure the lighting and have every residential property next to commercial shut off their lights so it can be measured. That will be a pretty big enforcement problem. Concerning the 10 years, they have the 50% rule that is the same for all nonconforming uses so she is not sure why they want to do the 10 years for lighting. She did the amortization on billboards and that amortization was 5 ½ years and at the end of that they started enforcement. She looked in the minutes of the City Council meeting and 10 years later the Board of Adjustment was still hearing appeals. That was for billboards that you could measure very easily. Something that simple went 15 ½ years before it was completely dealt with. That was with a lot on contracts, attorneys and sign companies. The Board of Adjustment had to hire an attorney to represent the Board because the City Attorney was representing staff. There was a lot of cost. She says to you, having lived it, all that cost is going right back to the city taxpayers. Is that what they want to do with lighting? Lighting is going to require an engineer, a lot of review of plans that we don't have because again, Matt told you anything under 5,000 sq. ft. doesn't have a lighting plan. The city is going to have to pay to create one or have someone go out and look at all those lights and determine yes or no on those small businesses. There are so many things they are not thinking about and trying to weigh the cost of that verses what we are getting, she is not sure that she can see that tax burden on the taxpayers. You have the 50% rule for everything else and it seems to be working. She is not sure why you wouldn't stick with that. One thing they talked just a little about at Business Advisory and after Matt gave the numbers today, she wanted to read back to them what she heard and see if they agree with this. Lew said all streetlights in the city are leased from Duke so those will be brought into compliance. They gave you the cost for the units themselves. When they had asked Duke Energy about if businesses came into compliance whether or not they would have to pay an installation fee and they were told yes. Maybe the city is exempt from that but nobody else is. She knows they are supposed to be talking about the fact that the streetlights are going under the City Code rather than the Zoning Ordinance but that is exempting them from the Zoning Ordinance, so she thinks that's a concern. What Matt read there is 238 ornamental lights the city owns, 49 of those are uncapped. Every one of those is exempt from the ordinance as an ornamental light. So right there the city is exempting themselves from complying because they have ornamental lighting that they do not want to change, 238 of them, 49 uncapped. Is that fair? Can you tell the businesses they have to do theirs, but the city is exempt because theirs are ornamental? There is so much to this, and she thinks everyone agrees this is a complicated issue so let's not just rush and adopt something we are not sure about and put a burden of 10 years to comply on businesses when we have no idea what that cost is going to be and then pass that on to the taxpayers.

Lynne Williams, Chadwick Avenue (Zoom) stated she is support of Dark Sky compliance and they have been talking about it with City Council and other boards for years now and she does think it is a really forward-thinking idea. Fifteen years from now, it is the next generation that will get to see the night sky. They need to look forward to what this will bring to our community. Concerning the amortization as a resident and having to deal with floodlights on their property she doesn't like to think that she will have to wait 10 years for this to change. Concerning rest and mental health this is a big burden on them. This is a community concern. She feels this is an important step to move forward as a city.

Ken Fitch, 1046 Patton Street (Zoom) stated we need to think about legacy properties. He was also concerned about churches and the effect on them. Is the church a public building or is this separate and not granted an exception? He was concerned about religious symbols that are lit being problematic. He was concerned about the definition of "stream". He thought the minutes that Ms. Frady referred to was very important. He was also concerned with reflective light and ways to deal with that.

Chair closed public comment when no one else wanted to speak.

Mr. Manley showed a USGS map he explained Section 17-3 and blue line streams. He explained the 30' stream buffer and the 20' transitional area.

Ornamental lighting was discussed. The Model Light Ordinance acknowledged that some consideration needs to be given to those lights and that is where that language came from. Chair asked what the 49 ornamental lights are. Mr. Holloway stated the 49 are on a black pole and are globed. They are up and down 7th Avenue and the globe doesn't have a top on it at all. Mr. Manley stated they are pedestrian scale and are used for lighting the sidewalk. They are popular in historic districts. He discussed the two city parking lots that have them.

Mr. Manley stated, concerning enforcement, there is a lot of talk about turning off lights to measure foot candles and things of that nature. That is not something city staff will be going out to do upon adoption of this ordinance. Enforcement would only be done if they had a nuisance situation and staff would have to address that on a case-by-case basis. Otherwise, we are looking at the 10-year amortization and at the end of that 10 years identifying properties that are noncompliant. They do not know what those tools are going to be available in 10 years to measure light or if it will involve field work at all given advancements in technology. He also discussed enforcement efforts that can be conducted by Planning staff during normal business hours to identify non-residential and multi-family properties that border single-family/two-family properties using GIS and then doing site visits on those specific properties to observe the presence of non-compliant light fixtures (ex. floodlights, unshielded wall packs, etc.) and observing the orientation of lighting that could contribute to site lighting limits at the property line. Mr. Manley used this illustration to convey that a lengthy and costly lighting professional-led / after-hours enforcement effort is not a forgone conclusion when it comes to enforcement at the end of an amortization date.

Ms. Cromar discussed having a grandfather clause or a size clause. Mr. Manley stated there are different caveats in other places, but amortization is basically eliminating the grandfather clause.

Chair discussed signage and how not all signs are in compliance with the current sign ordinance requirements. There is a case for non-amortization. Chair stated this will move on the City Council without a recommendation from the Planning Board. Mr. Holloway stated after 45 days City Council can take up this zoning text amendment without a recommendation from Planning Board.

Discussion was made on the need of a lighting ordinance. Discussion was made on county buildings and county buildings within the city's zoning jurisdiction would have to comply. There is an exemption for public buildings.

Changes were discussed. Mr. Brown discussed the MLO and the things that have been given up for this ordinance. He discussed the curfew. He wanted to point out how much has been modified.

The amortization was discussed. Ms. Martin, being a small business owner thought 10 years was more than fair. Mr. Brown stated without 10 years, he would not support this.

Mr. Brown moved Planning Board recommend City Council adopt an ordinance amending the official City of Hendersonville Zoning Ordinance, Article VI. – General Provisions adding Section 6-19, revising Section 6-2. Nonconformities and Section 6-13. Nuisances and Article VII. Development Review and Article XII. Definition of Terms, based on the following:

1. (This includes the 10-year amortization) The petition is found to be consistent with the City of Hendersonville 2030 Comprehensive Plan based on the information from the staff analysis and the public hearing, and because: The petition aligns with the Comprehensive Plan's goals to minimize the negative impacts of growth (Strategy LU-3.5) and to protect wildlife habitat (Strategy NR-1.2).

2. We [find] this petition to be reasonable and in the public interest based on the information from the staff analysis and the public hearing, and because:

- 1. The proposed text amendment establishes standards which allow for the sufficient and safe lighting of sites while reducing negative impacts on people, plants and animals.***
- 2. The proposed text amendment establishes standards which address light pollution, an issue of growing international, national and regional concern.***
- 3. The text amendment would ensure that both public lighting and private, nonresidential and multi-family residential lighting would meet standards that minimize light pollution.***

Mr. Glassman seconded the motion. The vote was 4 in favor and 3 opposed. Motion passed.

VI Other Business

VI(A) Approval of Annual Schedule of Regular Meetings. Mr. Blatt moved to adopt the annual schedule for the regular monthly meeting dates. Mr. Hanley seconded the motion which passed unanimously.

VII Adjournment – The meeting was adjourned at 7:04 pm.

Jim Robertson, Chair