

1 **Minutes of the New Bern Planning & Zoning Board**
2 **August 6, 2013**
3

4 The regularly scheduled meeting of the New Bern Planning & Zoning Board was held in the City
5 Hall Courtroom, 300 Pollock Street, on Tuesday, August 6, 2013 at 6:30 PM. Mr. Bernard
6 George conducted a 5:30 PM board workshop on the Zoning Amendment Process prior to the
7 regular meeting.
8

9 **Members present:** Mr. Tim Tabak, Chair
10 Mr. Kenneth Peregoy, Vice-Chair
11 Ms. Stevie Bennett
12 Ms. Tiffany Dove
13 Mr. Patrick McCullough
14 Mr. Bill Stamm
15 Ms. Dorothea White
16 Ms. Velda Whitfield
17

18 **Members absent:** None
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20 **Members Excused:** Mr. Jimmy Dillahunt
21 Mr. Paul Yaeger
22

23 **Staff present:** Mr. Bernard George, AICP
24 Planning Division Manager
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26 Mr. Kevin Robinson, AICP
27 City Planner
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29 Chairman Tabak called the meeting to order. Roll call was taken and a quorum declared.
30

31 **Prayer:** A prayer for guidance was given by Mr. George.
32

33 **Minutes:** Minutes from the July 2, 2013 meeting were discussed. Ms. Bennett requested
34 the word “date” be added to lines 154.

35 **Motion** made by Vice-chair Peregoy for approval of minutes with the noted
36 change. Motion was seconded by Mr. McCullough. Minutes were unanimously
37 approved as corrected.
38

39 Chair Tabak provided an introduction to the purpose and responsibilities of the Planning &
40 Zoning Board.
41

42 Chair Tabak questioned if there were any current vacancies. Mr. George advised there is one
43 pending vacancy resulting from the end of Mr. Yaeger’s term. Consequently, the Board of
44 Aldermen has moved quickly to nominate and appoint a replacement who will attend the next
45 meeting in September. Chair Tabak encouraged any public viewers watching who may have an
46 interest in serving on a board to contact Mr. George.

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New Business

A. Continuation of Consideration of a request by the City of New Bern to amend Chapter 26, Article II of the Public Nuisance Ordinance so as to add front yard clotheslines and graffiti to the list of public nuisances requiring abatement.

Staff Comments: Staff Kevin Robinson summarized this item that was discussed at the previous Planning & Zoning Board meeting. According to Mr. Robinson, recently graffiti as well as front yard clothesline issues have been identified on some properties. Staff feels the most effective way to handle these complaints is to list them as a nuisance in the ordinance and allow for proper abatement through the city’s Inspections Division.

Section 26-26, item numbers 1-3 deal with pests, weeds and grass growth. Item number 4 deals with clotheslines/wash lines in a primary area of visual concern: the front yard. Item number 5 deals with graffiti and applies to non-single family residential properties, allowing an additional 15-day time frame for police officers to work with property owners to remove graffiti.

Following the July meeting, staff discussed and determined they would try to enforce clothes lines in the rear and side yards of properties. After further discussion, staff now prefers to focus on the front yard as was initially proposed in the ordinance.

Staff agrees with the police department that enforcing graffiti on single family could be burdensome to some single family property owners and it currently doesn’t seem to be an issue. Therefore staff recommends the board define it now, but address it later should it become a problem.

Public Comments: N/A

Board Discussion: Ms. Bennett advised she completely disagrees with the decision pertaining to graffiti. She noted this topic was discussed at length at the July meeting and it was the consensus of the board that it was to cover single family detached residences. Ms. Bennett feels if they are over ridden by the police department and staff, then the board itself is useless.

Mr. Kevin Robinson advised staff’s intent was not to override the board, that the decisions were based on staff recommendations.

Chair Tabak advised if Ms. Bennett has particular language she would like included, present it and the board will discuss and consider it when making its decision. He suggested the board refer to the previous meetings minutes to ascertain what exactly was discussed.

Vice-Chair Peregoy noted the previous meeting’s discussion on clotheslines in back yards that are visible on the waterfront was not included in the current proposed changes. Mr. Robinson advised staff was unsure how they would effectively enforce this.

93
94 Ms. Bennett offered, speaking as someone who was born and raised on the waterfront of New
95 Bern that if you questioned those who live on the water which yard they consider to be the
96 'front' yard of their property, they all will agree the front yard is the property that faces the
97 waterfront.

98
99 Chair Tabak questioned if it would be possible to add some verbiage noting waterfront is
100 considered front yard for the homes on the water. Mr. George questioned Ms. Bennett on where
101 her family hung clothes during her childhood. She noted her father owned a cleaners business;
102 therefore they didn't have to hang their clothes. But she noted her neighbors at the time hung
103 their clothes on the side yard of the property.

104
105 Mr. George advised that it isn't a matter of staff and board members disagreeing because the
106 decision of the Planning & Zoning Board will be transmitted to the Board of Aldermen. Neither
107 staff nor Planning & Zoning Board recommendations are binding on the Board of Aldermen. In
108 all cases the Planning & Zoning Board's recommendations will be impartially relayed and
109 presented to the Board of Aldermen for consideration during its deliberations.

110
111 Mr. Kevin Robinson suggested if the board sees fit to make a revision to the proposed
112 amendment that it includes some sort of screening in the areas of concern.

113
114 Ms. Dorothea White noted she understands how personal observations come into play, but other
115 times when making amendments decisions must be based on the overall public good. Board
116 members must take caution in handling personal situations they may not agree with otherwise
117 they open themselves up to lawsuits. They can't legislate what everyone does. They can place
118 restrictions on the public, but not on everything. It's ok to enforce some restrictions, but it
119 cannot represent limited views and ideas; rather the board must represent the majority of the
120 citizens.

121
122 Ms. Bennett questioned how big a problem the clotheslines really are, as she doesn't see many
123 outside of Trent Court. Mr. Robinson advised he has seen a few, but doesn't feel it's a
124 widespread problem. There have been a few public complaints. Ms. Bennett felt the problem
125 should lessen as more people buy washers and dryers. Mr. Robinson noted that due to the
126 increase in utility costs, many people are now going back to line-drying clothes as a cost saver.

127
128 Chair Tabak questioned if one motion would be sufficient, or if a motion on each item would be
129 more appropriate. Mr. George suggested making separate motions, as there may be additional
130 modifications that may require more discussion to determine the board's consensus as to its
131 recommendation.

132
133 Ms. Bennett advised the waterfront, riverside, issue still needed to be decided. If it's not
134 included, then she suggests exempting it. Chair Tabak noted Mr. Robinson's suggestion of using
135 verbiage that water front is front yard, a clothes line could still be used if properly screened. Mr.
136 Robinson suggested keeping the river front yard as a tertiary area of visual concern, and that
137 screening in a tertiary area of visual concern is considered. Ms. Bennett noted as the ordinance
138 is currently written, if your home is on the waterfront, you will have a street running in front of

139 the home, therefore it's automatically excluded. She suggested adding verbiage defining 'river
140 front' as front yard. Chair Tabak noted side yard would be inferred as available for clotheslines.

141
142 Vice-Chair Peregoy felt discussion was a bit too complicated for an issue that isn't very
143 probable. He agrees with Mr. Robinson on the decision of the waterfront, and feels it's close to
144 insignificant in the overall scheme of things, and could be altered at a later date if it became a
145 bigger issue. Mr. Robinson suggested including screening as a requirement if utilizing the water
146 side of property.

147
148 Mr. Patrick McCullough questioned homes that have two parallel streets, with one lot between
149 the two. Mr. Robinson referenced the side yard suggestion. Mr. McCullough advised he felt that
150 was insufficient in this case, as most of these homes are only 12' apart, which doesn't allow for
151 proper space. Chair Tabak suggested verbiage that included 'commonly known as the front
152 yard' as the primary area.

153
154 Chair Tabak questioned Mr. George on the presentation of the recommendations to the Board of
155 Alderman and if staff would consider discussing the factors the Planning & Zoning Board
156 considered when making their recommendation or if the Aldermen would consider only the
157 decision made by the P&Z Board. Mr. George advised if it's a major issue before the board,
158 staff would include all background information. Typically members of the public will attend the
159 meetings and address the issues as well. Mr. George advised if the board would the discussion to
160 be included in a statement of transmission to the Board of Aldermen, staff would accommodate
161 that as well.

162
163 **Motion:** Vice-Chair Peregoy motioned to adopt Section 26-26, item 4 as written. Mr. Patrick
164 McCullough seconded the motion. Ms. Dorothea White verified that staff made adjustment to
165 this section to strictly limit to the front yard. Mr. Robinson advised this is correct. Chair Tabak
166 re-read the verbiage of item 4, noting any comments relative to screening and/or riverfront
167 restrictions have not been included. Motion was approved by unanimous vote.

168
169 Item number 5 pertaining to graffiti was re-read by Staff Kevin Robinson. Mr. Robinson read
170 and summarized the sections pertaining to graffiti, Section 26-27 and 26-28. Ms. Bennett
171 questioned who would notify the building inspector. Mr. Robinson noted a citizen complaint
172 could be made to the Inspections Division, the Police Department or by an inspector who notices
173 the markings.

174
175 Chair Tabak questioned if there was a reason for leaving out previously discussed areas
176 pertaining to private property and single family residences. Mr. Robinson advised staff
177 discussed and went back to what was previously there, as it hasn't been a huge issue for single
178 family graffiti issues and the abatement could be very burdensome to property owners.

179
180 Ms. Bennett questioned the choice to eliminate single family properties from this ordinance just
181 because of the burden the abatement could cause to the property owner. No other ordinance
182 eliminates owners based upon potential burden. She feels a prime potential location for graffiti
183 would be an empty, boarded up house. Her stance is it's an all or nothing choice; include all
184 properties or none.

185 Vice-chair Peregoy agreed with Ms. Bennett. He noted property owners of multi-family or
186 duplex homes could equally be financially strapped as a single family homeowner. Therefore
187 single family homes should not be excluded. The idea is to remove graffiti everywhere.
188

189 Ms. Dorothea White did not feel the ordinance should be as stringent as it is currently written.
190 She pointed out a child could paint something on the side of their family's home that a citizen
191 could report as graffiti.
192

193 Ms. Velda Whitfield questioned specific verbiage in the ordinance, "police department may work
194 with the property owner for proper and timely abatement", requesting clarification on if the
195 property owner is subject to a fine, will there be an investigation on who painted the graffiti. Mr.
196 Robinson advised they are not clear on this. In his research he found a wide spectrum from very
197 vague to very detailed enforcement. The ordinance is meant to provide whatever is necessary for
198 the police department to properly handle the situation.
199

200 Mr. George advised that cooperation between the Police Department and the Inspections
201 Division will determine the perpetrator and if this person has done additional damage in other
202 areas. The proposed ordinance provides a partnership opportunity between the two agencies that
203 seeks to minimize vandalism and crime. Ms. White stated in light of this she felt the board
204 should provide further details in this ordinance as to what is considered graffiti. Ms. Whitfield
205 used an abandoned building as an example for further questions.
206

207 Chair Tabak noted there are multiple issues at hand with the ordinance including single family
208 dwellings as well as determining the appropriate definition of graffiti, and whether to include
209 specifics on vacant versus inhabited dwellings. Vice-chair Peregoy noted the way it is currently
210 written almost defines graffiti by the "authorized or unauthorized" verbiage. Chair Tabak stated
211 with the current verbiage, Ms. White's concern regarding 'graffiti' by a child in the home versus
212 unauthorized graffiti is already addressed. He continued by stating perhaps adding verbiage to
213 include single family wouldn't be that much of an issue.
214

215 Ms. Whitfield questioned whether verbiage should be included specifying vacant versus
216 occupied homes. Vice-chair Peregoy suggested that the graffiti itself, authorized or
217 unauthorized, is the issue, not whether a dwelling is vacant or not. Chair Tabak clarified that the
218 process of the police department working with the inspectors on reported graffiti would mean
219 they would question the property owner as to whether the reported graffiti is authorized, as it
220 might be if a child drew on their own home, versus unauthorized graffiti, as one might find
221 related to gang markings. He also questioned whether to include single family residence
222 verbiage or not.
223

224 Ms. Bennett suggested that with the confusion as to the Police Department and inspectors
225 processes, perhaps the board needed to have a representative from both offices attend a meeting
226 to better clarify and answer the board's concerns. She reiterated her opinion that all structures
227 should be included in the ordinance. Ms. Bennett suggested using verbiage stating graffiti is
228 prohibited within the city limits of New Bern. This would cover all facets. Mr. George
229 suggested utilizing verbiage that states "affixed to any surface of public or private property by
230 any graffiti implement," would cover it.

231
232 **Motion:** Vice-chair Peregoy made a motion to accept and approved Section 26-26 item number
233 5 with the alteration that states ‘otherwise affixed to any surface of public or private property by
234 any graffiti implement’ and eliminate commercial and multi-family verbiage. Chair Tabak
235 confirmed the verbiage change. Motion was seconded by Ms. Stevie Bennett. Motion was
236 approved by unanimous vote.

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239 **B. Report of the Nominating Committee and Election of Officers**

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241 **Board Discussion:** Chair Tabak noted at the July meeting a nominating committee was
242 appointed for the election of officers. He requested the spokesperson provide an update. Ms.
243 Bennett advised the members of the nominating committee unanimously voted for Tim Tabak to
244 be Chairman for the upcoming year, and Kip Peregoy as Vice-chair.

245

246 **Motion:** By acknowledgement of the nominating committee’s recommendation, Ms. Bennett
247 motioned for Tim Tabak to return as Chair and Kip Peregoy return as Vice-Chair. Mr. Patrick
248 McCullough seconded the motion. Motion was approved by unanimous vote.

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251 There being no further business, the meeting was adjourned.

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Tim Tabak, Chairman

Bernard George, AICP, Secretary