

Planning Commission

MINUTES

Wednesday, September 11, 2024, 7:00 PM

Work Session 6:00PM Regular Session 7:00PM Council Chambers Conference Room, City Hall, 114 North Broad Street:

WORK SESSION

1. Call to Order

A work session of the Planning commission of the City of Salem, Virginia, was held in Council Chambers Conference Room, City Hall, 114 North Broad Street, at 6:00 p.m. on September 11, 2024; there being present said Commission members to wit: Denise P. King, Reid Garst, Mark Henrickson; Jackson Beamer; and Nathan Routt, constituting a legal quorum, presided together with Chris Dorsey, City Manager and Executive Secretary, ex officio member of said Commission; Jim Guynn, City Attorney; Mary Ellen Wines, Planning & Zoning Administrator; Maxwell S. Dillon, Planner, and the following business was transacted:

Chair King called the meeting to order at 6:00 p.m. and reported that this date, place, and time had been set for the Commission to hold a work session.

2. New Business

A. Discussion of items on the September agenda

1. Zoning Ordinance amendments
 - a. Storage containers
 - b. Retail sales, smoke shops

3. Adjournment

Chair King adjourned the meeting at 6:51pm

REGULAR SESSION

1. Call to Order

The regular meeting of the Planning commission of the City of Salem, Virginia, was held in Council Chambers, City Hall, 114 North Broad Street, at 7:00 p.m. on September 11, 2024; there being present said Commission members to wit: Denise P. King, Reid Garst, Mark Henrickson; Jackson Beamer; and Nathan Routt, constituting a legal quorum, presided together with Chris Dorsey, City Manager and Executive Secretary, ex officio member of said Commission; Jim Guynn, City

Attorney; Mary Ellen Wines, Planning & Zoning Administrator; Maxwell S. Dillon, Planner, and the following business was transacted:

Chair King called the meeting to order at 7:01 p.m. and reported that this date, place, and time had been set in order for the Commission to hold a regular meeting.

2. Pledge of Allegiance

3. Roll Call

All members of the Commission were in attendance.

4. Consent Agenda

A. **Minutes**

Consider acceptance of the minutes from the August 14, 2024, work session and regular meeting.

On motion by Commissioner Henrickson seconded by Commissioner Routt the minutes of the August 14, 2024, meeting were accepted.

Chair King introduced Nathan Routt as the newest member of the commission.

5. Old Business

Item A. Amendment to the City code Chapter 106 Zoning. Hold a public hearing to consider amending Chapter 106, Zoning, Article IV Development Standards, section 106-406 miscellaneous provisions of the CODE OF THE CITY OF SALEM, VIRGINIA pertaining to storage containers. Continued from the June 2024 meeting.

Chair King opened the public hearing at 7:04 p.m. and asked if anyone would like to speak to this matter.

Mary Ellen Wines, Planning & Zoning Administrator, 21 S. Bruffey Street, appeared before the Commission recalling a time around 2017 when the city came to realize that storage containers or shipping containers had become an extremely popular and economical way for businesses to store products, merchandise, and inventory. As a result of the multitudes of containers that had been inundated in the City, it became apparent to some that it is possible that these containers could potentially be a detriment to our major corridors and could be without regulation. So, in 2017 an ordinance was adopted that would allow storage containers only on a temporary basis, (30) thirty days in residentially zoned properties and (90) ninety days in commercial and industrially zoned properties. Enforcement on that was difficult as staff was limited. As enforcement was increased due to the addition of the Codes Compliance Investigator position it was quickly obvious that that businesses needed that economical storage and that keeping them on a temporary basis really does not help them in the long run. As the ordinance was reviewed, a balance between the needs of the businesses and the detriment to the community was hard to reach.

Staff is now presenting a code amendment that would allow permanent storage containers on commercial and industrial properties. Residential properties will stay the same. Residents can get a permit and keep a container for (30) thirty days while they are doing work on the home, or while they are moving. If the resident needs additional time, an extension can be granted. If there is a building permit associated with the container then the storage container can stay as long as the permit is active and construction is continuing. As for commercial and industrial properties, new regulations to bring a balance have been proposed. The regulations would state that no vehicle truck body, detachable semitrailer, manufactured home, mobile home, bus trailer, recreational vehicle, or similar equipment shall be used as a storage container in any zoning district. Shipping containers and mobile storage containers, however, can be allowed for non-residential or agriculturally zoned properties. If these containers are only needed for a short period of time, a zoning permit may be issued to allow the temporary use making these containers not to have to adhere to some of the requirements in the proposed ordinance. If these containers need to be temporarily allowed in the right of way, then a Right of Way permit would be needed, and the regulations would apply to this situation per the City's engineering division. If these containers are found to be used as a building for occupancy, swimming pool, or a storage container home and if it adheres to the Uniform Statewide Building Code, then it does not have to adhere to this section either. If a current building permit has been obtained, the containers do not have to adhere to these regulations. If used on a permanent basis for commercial zoned property they would be limited to (2) two containers per acre. There is no limitation on industrially zoned property. If the property is less than (1) one acre (1) one storage container will be permitted. If multiple parcels are owned that are adjacent or contiguous, then the containers can be consolidated on one parcel without having to spread them throughout the adjacent properties. All containers must be placed in a location that does not encroach upon parking spaces, drive aisles, fire lanes, landscaping or stormwater management areas. These containers need to be placed where they will not inhibit sight distances so there will be no safety issues. Each container shall be reported to the Commissioner of the Revenue's office for tax purposes. This is not a new regulation, just reiterating that they should be reporting them. No container shall display any type of signage. No container shall be connected to any public utility services. The stacking storage containers will be prohibited. If the property using the storage container is adjacent to residential property it will be required to have a landscape buffer installed. Additional standards will apply to the City's major corridors including Main Street, Wildwood Road, 4th Street, Thompson Memorial, College Avenue, Electric Road, Texas Street, Roanoke Boulevard, Apperson Drive, South Colorado Street, and Lynchburg Turnpike. These major corridors should be protected as they are the entrances into the city for visitors and future business owners. All containers in the above-mentioned areas shall be painted a singular neutral color, such as black, white, gray, brown, cream, beige, and taupe. All containers must be maintained free of rust, free of deterioration, graffiti, and other decomposition. Containers shall have a maximum length of (20) twenty feet and must be placed behind the front building line of the principal structure.

Vice-Chair Garst stated he would like to commend Ms. Wines and her staff for all the hard work they put into this presentation.

Chair King asked if anyone else had any comments. With no reply, Chair King thanked Ms. Wines.

Chair King asked if there was anyone else to speak on this matter.

Duane Smith introduced himself and stated his address as 1020 S. College Ave. Mr. Smith being in favor of these amendments, spoke to them being a great improvement over the existing rule of carte blanche not being allowed that was adopted in 2017. Mr. Smith questioned if the current containers would be grandfathered or not.

Ms. Wines answered that containers that were in place prior to 2017 would be considered grandfathered.

Mr. Smith, wanting clarification, stated anything prior to 2017, anything (7) seven or (8) eight years ago.

Ms. Wines responded that as long as it has not moved or been replaced it would be considered legal nonconforming.

Chair King clarified that the 2017 date was when the current zoning went into effect.

Mr. Smith stated that his biggest concern with all of this was that most of the people who own the containers that are getting the most complaints are grandfathered in. He explained that he has a number of these containers for his properties, and some of his tenants also have them. Most of the containers are excluded; they are grandfathered and meet these rules because he is already proactive about the regulations for his properties. Mr. Smith noted that he knows of some containers in the valley that have brought about the complaints, and the problem with most of those containers is that they are also grandfathered. This status will not change anything regarding their appearance or location.

He questioned the solution for new businesses that may move into space, find they need extra storage, and encounter the same issues his tenants have faced—outgrowing their space but not wanting to move. While there is an option for adding on, they often have inventory that becomes excessive, requiring them to free up some space. He provided the example of one tenant who has equipment he is not currently using, which is stored in a container. Mr. Smith believes these regulations may still restrict new businesses in their potential for growth, despite the need for some rules.

If the requirement is that the containers should be painted a neutral color, then all containers, even those in place before 2017, should adhere to this rule. He pointed out that some containers look quite bad, and there are many old items around, like

old trucks and buildings. Mr. Smith agreed that the current proposal is much better than what is in place now. He acknowledged that if all the rules were enforced, about 400 people in town would be upset. The City of Salem itself has a couple dozen of these containers, including tractor trailers and box trucks that have had their frames removed, all of which are grandfathered and do not meet current regulations. Carter Machinery has a whole row of them.

Mr. Smith thought the rules could still be tweaked a bit. While he sees the proposal as a positive step forward, he is unsure how to appease existing concerns without making things difficult for those who may need additional storage. He pointed out that this approach would not resolve the issues regarding eyesores, especially since some containers have been in place for much longer than others.

He felt that this amendment is an improvement over the current situation, especially compared to a scenario where no one is allowed to have a container. He noted that in his neighborhood, everyone has an outbuilding to store items like lawnmowers, which parallels the need for commercial buildings to have space for storage. The reason for containers at his properties arose from incidents of theft; the Salem Police Department advised him to secure items. The only way to lock things up in a fenced lot is to place them in a container. Mr. Smith mentioned that he stores his lawn equipment, pipes, wire, and other items that would typically be in a shed or outside within a container.

People are interested in purchasing containers, but due to the ongoing discussions, they are uncertain about making such a commitment. He emphasized that these containers are definitely needed and that rules should encourage people to maintain their surroundings. There is a significant gray area surrounding this topic, and residential properties require some provisions as well. He suggested that the timeframe for compliance could be extended from 30 days to 90 days, as projects like kitchen remodels often take longer. Most people do not want a container sitting in their front yard indefinitely.

Mr. Smith acknowledged that Ms. Wines and her team had worked hard on this initiative, and he believes it is much better than before. However, he admitted uncertainty about whether this would be the definitive solution, though he views it as an improvement. He expressed hope that some of the existing issues would be addressed, as they draw attention to the containers located at his properties.

Chair King asked Mr. Smith if the new zoning amendment, allowing tenants to have storage containers, would make them happy as long as they were maintained.

Mr. Smith responded that, based on some conditions outlined in a particular paragraph, some of his properties would still not be allowed to have a container due to their locations on major streets with additional restrictions. He noted that they might be allowed to have one 20-foot container but not two, as they would need a 40-foot one. He emphasized that all containers should be presentable, even those that aren't visible. He mentioned that College Avenue impacts several of his properties, and while some farther down are zoned industrial, others on College

Avenue, 8th Street, or 9th Street remain visible. He questioned whether this meant he would need to put a fence around everything, noting that a 9-foot-tall container would require a 10-foot fence, which would not adequately hide an 8-foot fence in front of it.

Ms. Wines clarified that a landscape buffer is required, not a fence, explaining that a 12-foot fence could be just as intrusive as the storage container itself.

Mr. Smith reiterated that while this amendment is better, he hated to see some tenants potentially without storage because of it. He felt there should be some leeway in the regulations. He pointed out that many thoroughfares, like Apperson Drive, have numerous containers. Skyline Door and Valley Printing have them behind their businesses, which can be seen from the street. The containers along West Main Street are also numerous and will be grandfathered, so their appearance won't change. He noted that the city cannot require their removal, as most owners didn't spend \$6,000 on a storage container for no reason; they genuinely needed them. After sharing his thoughts, Mr. Smith said he wouldn't fuss about the amendment, acknowledging it is a significant improvement, but he wasn't sure it fully captures the spirit of what the Commission intends the ordinance to achieve. He stated that when one needs a storage container, it is essential, but it shouldn't look like an old rusty bucket is thrown in the yard.

Mr. Garst asked Mr. Smith if he still had concerns about the goal of the code to clean up the visibility of these corridors, reiterating that this might not happen because the vast majority of containers are grandfathered in.

Mr. Smith replied that between Andrew Lewis and Advanced Auto Parts, there are probably a hundred containers in that area, which aren't noticeable unless someone is specifically looking for them. However, some on Apperson and 4th Street stand out significantly. He noted that these grandfathered containers have attracted attention to the rest of them, leaving the answer unclear.

Chair King remarked that some jurisdictions have outlawed storage containers, while acknowledging that businesses do need them.

Mr. Smith replied that in Roanoke City, particularly on Shenandoah Avenue, containers are everywhere. He stated that while residential neighborhoods don't need them, many businesses do, as they often prefer them over wooden storage buildings, which are less durable and secure. He noted that storage containers are sealed to keep out bugs, mice, and weather. He mentioned that he has items that store better in a storage container than in his own basement, as these containers are designed for shipping and can withstand various weather conditions. He cited examples of areas using containers for low-income or affordable housing, stacking them to create complexes.

Mr. Hendrickson inquired about the term "grandfathering," asking when it applies—upon property sale or other conditions.

Ms. Wines explained that containers are grandfathered until they are moved in any way, shape, or form.

Mr. Hendrickson questioned whether this means that if someone sells a property, the storage container could remain indefinitely.

Ms. Wines clarified that while it could stay, if it is replaced or used for different merchandise and then moved, it loses its grandfathered status.

Mr. Hendrickson expressed appreciation for the definition of grandfathering.

Ms. Wines elaborated that the only way to effect change is through development, similar to how new landscaping requirements come about. She noted that while containers last a long time, they might need to be switched out eventually. If no amendment is in place when they are moved, then no change will occur.

Mr. Routt asked if there was any way to bypass the grandfathering status.

Mr. Garst added if there is a different way to regulate those containers that are grandfathered.

Mr. Routt sought clarification on how certain containers received grandfathered status.

Ms. Wines explained that there are uses and structures that don't conform to the new code, which are considered legal nonconforming and may remain. However, they cannot be forced to meet the new code, and the only option is to move forward.

Mr. Hendrickson inquired about alternative ways to regulate the existing containers, particularly those considered eyesores or grandfathered in.

Ms. Wines responded that changes cannot be made through the zoning ordinance, but property maintenance codes might provide some form of regulation. Anything in the zoning ordinance falls under the legal nonconforming status.

Mr. Smith expressed a desire to see the eyesores cleaned up without punishing past or future property owners. He noted that if containers are needed and not detrimental to neighboring properties, they are a benefit. He considered the amendment better than the 2017 ordinance and preferable to having no containers allowed at all. He compared wooden storage buildings to metal containers, stating that the former aren't even equal to the latter.

Ms. Wines stated that it would require significant research from the zoning department to determine which containers are grandfathered. She explained that some have been in place for a while but may have been switched out over the years. If any changes were made after 2017, those containers wouldn't be

grandfathered, despite their long-standing presence. She acknowledged that this would be a difficult and time-consuming process.

Mr. Smith remarked that this situation would affect companies like Lewis Gale and Carter Machinery. He noted that Lewis Gale has had containers around which they have built with infrastructure, and some are even wired.

Mr. Hendrickson sought clarification about whether someone could place a wooden building, such as those sold by Leonard or Anchor, on the property without distinction from a metal storage container.

Ms. Wines responded that under the current code, they could.

Mr. Hendrickson noted that this regulation seems inconsistent.

Mr. Wines clarified that it is regulated, as a permit is required.

Ms. Wines further explained that wooden buildings are considered accessory structures and thus are subject to regulations.

Mr. Smith added that obtaining a permit for an accessory structure is possible.

Ms. Wines affirmed that in commercial and industrial areas, there are fewer regulations.

Mr. Beamer reiterated that storage containers are superior to wooden buildings.

Mr. Smith remarked that while he could have a row of wooden buildings, he could not have a row of shipping containers, stating that the latter are a better structural option.

Mr. Garst questioned whether a storage container is considered an accessory structure.

Ms. Wines confirmed that they are not.

Mr. Smith contended that there should be no distinction between a wooden building and a storage container since both are delivered and moved in similar ways, differing only in material.

Ms. Wines clarified that storage buildings must meet building code requirements, such as foundation and anchoring, which adds additional regulatory layers that storage containers do not have. A mobile storage container is not classified as an accessory structure and is treated differently.

Mr. Beamer noted that wooden structures must maintain a five-foot setback.

Ms. Wines confirmed this is dependent on the zoning district, stating that commercial and industrial zones have zero side yard setbacks, while residential zones require a five-foot setback.

Mr. Smith commented on the complexity of the regulations, noting that they are evolving as the prevalence of shipping containers in the U.S. increases, with a significant percentage never leaving the country.

Ms. Wines stated that shipping containers are industrial, possessing a different aesthetic. She pointed out that while some corridors contain industrial properties, there must be a balance since there is no perfect ordinance that will satisfy everyone.

Mr. Smith expressed his support for most aspects of the ordinance, emphasizing that the needs of tenants in the future are his primary concern.

Chair King stated that a zoning ordinance can be amended.

Mr. Smith reiterated his support for most of the ordinance but expressed that it remains restrictive for new businesses, particularly those that are growing. He noted that his tenants typically rent containers after needing additional space for over ten years, and as the property owner, he does not want them to move.

Mr. Beamer noted that many tenants often lack alternative locations.

Chair King thanked Mr. Smith for his comments and inquired if anyone else wished to speak on the matter.

Barney Horrell, of 3553 Carvins Cove Road, addressed the Commission, stating that he initially had no intention to speak but began reflecting on the true purpose of planning and zoning. He emphasized that planning and zoning involve long-term goals for a community and that creating an ordinance like this signifies a long-term vision for where the community is headed. He cautioned that attempting to tailor an ordinance to address immediate concerns may be misguided.

Chair King asked if anyone else had anything to add. With no further response, the public meeting was closed at 6:51 PM.

Chair King solicited comments or motions from the commissioners.

Mr. Hendrickson acknowledged the validity of both Mr. Smith's and Mr. Horrell's comments, thanking them for their input.

Commissioner Beamer echoed Mr. Hendrickson's sentiments, appreciating the insights shared. He recognized that while the ordinance was anticipated, the discussion highlighted areas for improvement. He expressed gratitude for everyone involved in compiling information for the ordinance and noted that with two new commissioners, a collective effort is needed to finalize the ordinance, suggesting it

might be prudent to move the decision to the following month's meeting. He proposed appointing Mr. Smith to a committee for further discussion.

Commissioner Garst agreed that some good points were brought up. One being concerned about the unattended consequences of people just home-steading these containers and not improving them because they are grandfathered. The problems are not going to be rectified by this change. The biggest offenders are not going to be incentivized to make the changes this is trying to make.

Commissioner Beamer commended Commissioner Garst.

Chair King asked for any other comments. No one came forward. She asked for a motion.

Commissioner Beamer made a motion to table the amendment until the November meeting.

Chair King asked if there was a 2nd.

Commissioner Henrickson asked if an amendment could be made to the motion to work a little bit more in a direction to solve the issues that have been raised. Let staff work on it a little more.

Commissioner Routt stated that was the intent of the motion. Knowing the planning and zoning department worked hard on it and gave the commission ample opportunity to see several drafts. Now that it is in front of the Commission it seems different, like it is real. If it were tabled it shouldn't be left up to the planning and zoning department to come up with something, help is going to be needed. The help should come from the Commission or other people, it needs to be a collaborative effort.

Chair King stated that there seems to be a real problem with the storage containers that may be grandfathered and any further change in what we have in front of us is still not going to resolve that issue. We need to start somewhere. We can always amend zoning ordinances, but we need to start somewhere.

Commissioner Garst asked if it should be put on property maintenance.

Commissioner Beamer stated that he would amend his motion that we continue to the November meeting. The Commission needs to work with staff to address the concerns brought before the Commission.

Chair King asked if there was a 2nd

Commissioner Henrickson seconded the motion.

Commissioner Garst stated that he wants to make sure that the work that we do addresses the current problems with appearance as well as sets forth the vision of what we are trying to do in the future.

Chair King called for a roll call.

Mr. Routt, aye; Mr. Henrickson, aye; Mr. Beamer, aye; Mr. Garst, aye; Chair King, nay.

Chair King asked for the second item to be read.

6. New Business

A. Amendment to the City Code – Chapter 106 Zoning

Hold public hearing to consider enacting Chapter 106, Zoning, Article III, Use and design standards, section 106-310.25 and Amending Chapter 106, Zoning, Article II, District Regulations, Section 106-214.2(B)(5) Commercial use Types, Article VI. Definitions and use types, Section 106-602.9 Commercial use types of the CODE OF THE CITY OF SALEM, VIRGINIA pertaining to retail sales, smoke shop.

Chair King opened the public hearing at 7:42pm

Max Dillon, Planner, 21 S. Bruffey Street appeared before the Commission stating he hoped he had a little more of a straightforward item to present to the Commission. He stated in July of 2024, the Virginia General Assembly adopted legislation allowing localities to regulate the retail sale locations of tobacco products, nicotine, vapor products, alternative nicotine products, or hemp products intended for smoking. For any such retail sale location the City may prohibit a retail sale location on property within (1,000) one thousand linear feet of a child day care center of a public, private, or parochial school. As a result, staff proposes creating a use type, "Retail Sales, smoke shop," which distinguishes general retail sales from the retail sale of tobacco, nicotine, or hemp products. That new use type will be permitted in the HBD Highway Business District zoning designation by Special Exception Permit, and would be subject to the following use and design standards:

- No retail sale location of tobacco products, nicotine vapor products, alternative nicotine products, or hemp shall be located within (1,000) one thousand feet of a child day care center or a public, private, or parochial school.
- All windows and doors facing the street right of way shall be maintained as transparent and shall not be tinted or obscured. Smoking, vaping, or other related products and paraphernalia shall not be displayed as to be seen from adjacent properties.

Existing businesses that fall into this new use can remain in a legal nonconforming status until they cease to operate for a period of two years or longer.

Chair King asked if anyone had any questions for Mr. Dillon.

Mr. Beamer asked if the cigarette store near Andrew Lewis Middle school would be grandfathered in.

Mr. Dillon answered if it is currently operating it would be allowed to continue to operate until the use changes or it is vacant for (2) two or more years.

Mr. Henrickson inquired about the store on Chestnut Street because it is located near First United Methodist they have a daycare, there is one behind Ridge View Bank.

Mr. Routt pointed out that the store on Chestnut Street is just a convenience store and it is not affected by this ordinance.

Mr. Dillon noted that cigar and hookah lounges are not included in this definition. They have been considered a use not provided in the past and they will be continued to be interpreted that way.

Chair King asked if anyone else wanted to speak. With no one speaking up the public meeting closed at 7:45pm.

Chair King inquired if there were any comments from Commissioners, if not a motion would be entertained.

Commission Reid moved to recommend approval as written.

Commissioner Routt seconded the motion.

Mr. Routt, aye; Mr. Henrickson, aye; Mr. Beamer, aye; Mr. Garst, aye; Chair King, aye.

Chair King adjourned the meeting at 7:46 pm.