

**HISTORIC DISTRICT COMMISSION
JANUARY 2, 2013**

Chairman Michael Lane called the meeting to order at 4:00 p.m. In attendance were Commission members Douglass Gates, Lucy Maddox, Nancy McGuire, Meghan Habas Siudzinski and Robert Yeager, Kees de Mooy, Assistant Housing and Zoning Administrator, Jennifer Mulligan, Stenographer and guests.

Mr. Lane stated that the Chestertown Historic District Commission takes its authority from Chapter 93 of the Code of the Town of Chestertown and operates under the Historic District Design Guidelines that were adopted by the Mayor and Council of Chestertown on October 7, 2002 and revised March 7, 2012.

Mr. Lane stated that the first item on the agenda was the selection of a Chair for 2013. **Mr. Yeager moved to nominate Michael Lane as Chairman for 2013, was seconded by Mr. Gates and carried unanimously.**

Mr. Lane asked if there were any additions or corrections to the minutes of the meeting of December 5, 2012. **Mr. Yeager moved to approve the minutes as submitted, was seconded by Ms. McGuire and carried unanimously.**

Mr. Yeager stated that on page 3 and 4 of the December minutes had two citations which were misrepresented at the December meeting and why the Commission would possibly be looking at the LED sign issue again at this meeting.

Mr. Lane stated that the items on the consent calendar were as follows:

- a. BP2012-137 from Patricia McGee at 228 N. Kent Street for a porch overhang;
- b. BP2012-139 from the Hogan's Building at 100 Memorial Plaza for railings;
- c. BP2012-142 from Jonathan Slocum at 602 High Street for a fence;
- d. BP2013-01 from Physically [Fit]ch at 321 High Street for a sign.

Ms. McGuire asked to remove BP2012-137, BP2012-139 and BP2013-01 from the consent agenda for questions.

Ms. McGuire moved to approve BP2012-142 for a fence at 602 High Street (fence choice #1 with post cap shown in #2) as she was familiar with the property and it was in keeping with the Design Guidelines, was seconded by Mr. Gates and carried unanimously.

The next item on the agenda was BP2012-137 from Patricia McGee at 228 N. Kent Street for a porch overhang. There was nobody present for the application. Ms. McGuire stated that the applicant provided drawings but showed a photo that had molding, brackets, and an overhang. Mr. Lane stated that he was interested to know how the overhang would work with the sloping roof **Ms. McGuire moved to deny the application with an invitation for the applicant to reapply, was seconded by Ms. Siudzinski and carried with four (4) in favor, Mr. Gates opposed.**

The next item was BP2012-139 from the Hogan's Building at 100 Memorial Plaza for wrought-iron railings. Mr. Matt Hogans was present for the application. Mr. Lane read the application into the record. After clarification on the contents of the application, **Mr. Yeager moved to approve the application as submitted as he was familiar with the property and it was in accordance with Section 3.95 Entrances in the Historic District Guidelines, was seconded by Ms. Siudzinski and carried unanimously.**

The next item on the agenda was BP2013-01 from Physically [Fit]ch at 321 High Street for a sign. Mr. Eric Fitch was present for the application. Mr. Lane read the application into the record. Mr. Fitch showed a rendering of what the proposed sign would look like and said that it was the third rendering in the photos. **Mr. Yeager moved to approve the application as he was familiar with the property in question, it was located in the boundaries of the Historic District, would be constructed in accordance with the third picture shown and met the requirements of Section 3.13 Signs in the Historic District Guidelines, was seconded by Ms. Siudzinski and carried unanimously.**

The next item on the agenda was BP2012-26 from Michael Lawrence at 535 High Street. Mr. Stuart Baldwin was present for the application. Mr. Lane read the application into the record. The Commission discussed the application.

Mr. Yeager moved to approve the Advantage-Lok II standing seam metal roof 1" high, 16" wide (Old Zinc Grey) as he was familiar with the property and the roof will meet the Historic District Guidelines 3.7 Roofs, was seconded by Ms. McGuire and carried unanimously.

Mr. Yeager moved to approve "brick molding" to the outer frame edge of the Anderson Woodwright windows as he was familiar with the property and the "brick molding" meets the Historic District Guidelines Section 3.6.3, was seconded by Ms. Siudzinski and carried unanimously.

Mr. Yeager moved to approve to close the opening for the window in the newer rear one storey addition (over the stove) as he was familiar with the property and it was in accordance with the Design Guidelines, was seconded by Ms. Siudzinski and carried unanimously.

The last item on the agenda was BP2012-117 from the Prince Theatre for the LED sign. Mr. Lane stated that the reason for the hearing was that there was misleading information presented at the December 2012 Historic District Commission meeting. A request was made by the Garfield Center to make a correction. Mr. Lane stated that the Town Attorney's opinion was that the matter should be reheard. He said that the matter was added to the agenda but in order to follow Robert's Rules of Procedure, a formal motion was required to re-hear the application.

Ms. McGuire stated that she was president of the Downtown Chestertown Association and would recuse herself from the application citing a conflict of interest.

Ms. Siudzinski moved to re-hear BP2012-117 application for the Garfield Center for the Arts for an LED sign at 210 High Street, was seconded by Mr. Yeager and carried with four (4) in favor, Mr. Gates opposed.

Mr. Lane stated that this would be considered a de novo hearing and the Commission should review it as though it was the first time the application came before them.

Ms. Cherilynn Widell of 105 N. Water Street gave a presentation citing that she was a founder of the Maryland Association of Historic District Commissions and served as its first Executive Director. She then reviewed her resume.

Ms. Widell stated that she has reviewed numerous times with the National Park Service on consults about issues relating to the Secretary of Interior Standards. She said that their judgment is much more accurate and binding than a State Office such as the Maryland Historical Trust. Ms. Widell stated that her contact with the National Park Service on this particular application has been characterized as having an "air of mystery" or misrepresentation. She said that she called and/or met in person with a number of professionals at the National Park Service, not just one, about whether this sign met the Secretary of Interior Standards and got an unambiguous answer in return. Ms. Widell stated that this programmable sign met the standards.

Ms. Widell stated that she did not base her testimony at the meeting in December solely on the personal opinion of one professional, but several National Park Service employees. She said that a formal opinion can only be obtained through a letter and there was not time to acquire that before the December Historic District Commission meeting. Ms. Widell said that if the Commission felt a formal opinion was necessary, they should request one. Ms. Widell stated that political pressure was unlikely to change the minds of the National Park Service Staff as to whether or not this sign met the Secretary of Interior Standards on Rehabilitation.

Ms. Widell gave her formal opinion as to the LED sign's appropriateness for the Garfield Center for the Arts. She said that from the theatre's beginning it was a riot of color and light, constructed with a lighted sign as part of its historical and architectural character. She said a total of fifty-seven (57) light bulbs lit the building in 1932, creating visual "carnival" to attract an audience.

Ms. Widell stated that the programmable LED sign along with the restored marquee will return color and vitality, two of its defining features, back to the historic building. She said it will be placed in the same location as the fluorescent sign was and would not detract from or conflict with the structure's age, but compliment the overall design. She urged the application to be approved as presented.

Ms. Widell submitted her resume and an official letter from the National Park Service dated December 12, 2012 not related to this application, but towards work that was

completed on another project. She said that she was in regular contact with the National Park Service.

Mr. Philip Dutton stated that Ms. Widell was not representing the Garfield Theatre today, and was only told of the remarks that would be made before the meeting. He said that he just wanted to make that clear before any questions were asked.

Mr. Yeager stated that he researched an article by Ms. Widell about historic buildings in Japan and her point in the article was to make no changes to the exteriors of the buildings. He asked why she would advocate change to the Garfield Center. Ms. Widell stated that each individual building and historic district had to be reviewed with an eye toward the goal. She said that the buildings in Japan were museum quality, but in this application, the Garfield Center was trying to make the downtown as vital as possible.

Mr. Yeager submitted Ms. Widell's article for the record.

Mr. Dutton stated that he wanted to apologize for the misrepresentation at the December meeting. He said that the Garfield Center did not know there was an issue with the testimony and that was not the Garfield Center did business. He thanked the Commission for the time today and said he would like to correct the record as best as they could. He said that he has another professional at this meeting to discuss the Secretary of the Interior Standards.

Mr. Gates asked Mr. Barroll if this was considered a "mistrial". Mr. Barroll stated that this was analogous to a mistrial, noting that there were motions for reconsideration in a courtroom. Mr. Barroll stated that in this situation there was a request from the applicant, based upon information that they received, that there would be a possible perception of impropriety in the first hearing. The Commission agreed to re-hear the applicant and was not bound by any decisions made in the past.

Mr. Barroll left the meeting.

Mr. Phillip Dutton, President of the Board of Trustees of the Garfield Center, presented the Garfield's proposal for the LED sign, noting that the work done at the Garfield was a rehabilitation and not a restoration. He showed a video of the proposed signage. Mr. Dutton introduced Mr. Jeffrey Halpern.

Mr. Jeffrey Halpern stated he was a principal Architect at Halpern Architects out of Annapolis and Historic Preservation Consultant for Annapolis. He gave a review of his resume, which included 40-years as an architect. He said that he would like to give expert testimony regarding the Garfield's application for the LED sign.

Mr. Halpern stated that on projects such as this, interpretations often differ. He said that Commissions often have to approve not what is ideal, but what is acceptable. Mr. Halpern stated that he thought this application was acceptable although not necessarily ideal. Mr. Halpern stated that where an important architectural feature is missing, a

second acceptable replacement feature, in a new design, could be used taking into account the size, scale and material of the historic building while clearly differentiating from the original as to not create a false sense of history. He said that the exterior of the building has been heavily altered over time and much of the historic fabric has been removed. Mr. Halpern added that the 1960's letter board was not in the period of significance so the applicant wants to use the option of designing something compatible with the remaining defining features of the building.

Mr. Halpern went over each of the ten (10) Secretary of the Interior Guidelines, explaining how the application fit into the context of the Guidelines.

Mr. Halpern stated that the approval could be contingent upon such things as limiting the light level omitted, restricting the frequency of changes so the sign did not appear to be flashing, not being used when the theatre is not in operation, and not using video or other action graphics.

Mr. Halpern stated that the LED sign would be inserted into new doors that were installed and would not take away from the character of the building.

Mr. Halpern stated that the proposal did not anticipate altering historic materials and features. He said that it would be different if the historic features were in place but this space has been altered and the historic elements were removed from that piece of the building. He said that the LED sign would replace the functional role of the missing historic artifact and was compatible with the historic materials and features, and the massing of the 1938 sign panel that at one time did exist, while distinguishing itself as modern technology. Mr. Halpern stated that the LED sign was also totally reversible in the future without impacting the historic components of the building.

Mr. Halpern stated that the Historic District Guidelines of Chestertown stated that internally illuminated cabinet signs, neon "Open" signs and flashing or blinking lights are not permitted in the Historic District. He said that this would exclude the kind of fluorescent backlit letter board that previously existed at this spot. Mr. Halpern stated that 66B and most historic district guidelines allow the Commission to make determinations for exceptional cases.

Mr. Halpern stated that there was a case in the Annapolis Historic Preservation Commission comparable as it forbids neon signs. However, there was an application for an art-deco style sign for a music store. The sign had the shape of a musical note where neon highlighted the edge of the note and was a consistent part of the building from when it was first built. He said that in that one location, neon was appropriate to the history and use of the building and was approved.

Mr. Yeager stated that the term "marquee" was used several times during the presentation. He said that the discussion was not about the marquee, as that was approved without any problem. Mr. Yeager stated that he thought the LED sign would

distract from the unity of the façade. Mr. Halpern stated that the light level from the marquee would be no brighter or dimmer than the LED sign.

Mr. Dutton summarized their application and asked for approval.

Ms. Siudzinski asked if the Garfield Center participated in the I-sign in any way. Mr. Dutton stated that they were listed on the I-sign but did not advertise. He said that the I-sign was totally different from what they were requesting for the Garfield Center. Mr. Newlin stated that the I-sign would not reach the patrons of the theatre showing up in quantity to see a show, or tell them what else is happening in Town, without a cost associated to it. Mr. Newlin stated that this was in a way cross-marketing.

Ms. Siudzinski asked if an interior mounted sign was ever discussed. Mr. Newlin stated that the sign ordinance said that any signage in the windows had to be paper signs, so an interior mounted sign would not be permitted. Mr. Yerkes stated that a sign like that would have to be hung from the ceiling or mounted to a wall and would cover existing historic fabric.

Mr. Dutton stated that he would be happy to accept any changes that the Commission wanted to make to the operating manual for the LED sign. Mr. Yeager stated that they were requesting expertise that the Commission did not have.

Ms. Siudzinski stated that she felt as though members of the Commission were uncomfortable making a decision as the verbiage "LED" was not in their Guidelines as appropriate or inappropriate. Mr. Lane stated that "flashing" was used in the Guidelines and according to the Planning Commission's definition, "an illuminated sign in which the artificial reflected light is not maintained stationary and constant in intensity and color at all times when in use" would be considered flashing. He finished by reading, "any sign that moves or revolves shall be considered a flashing sign".

Mr. Gates stated that rather than calling this a sign it should be a "projection device". It was more like a television or something at a ball game. Mr. Lane stated that the applicant has applied for a sign.

Mr. de Mooy stated that the sign ordinance's last review was in 1981 at the behest of the Historic District Commission as there was a concern over an inordinate amount of sign clutter in Town. Mr. de Mooy stated that the HDC's guidelines referred to internally illuminated cabinet signs, neon "Open" signs, and flashing or blinking lights. He said that in the Sign Ordinance it referred to flashing lights or some other illuminated device which has a changing light intensity, brightness, or colors and also states explicitly that signs can only be lighted indirectly. He said that these revisions were passed in 1982 and have been in place until now. Mr. de Mooy stated that that basis for the Guidelines was from the Secretary of Interior Standards, but the option of the HDC was to make those rules more explicit in how they apply to the Historic District. Mr. de Mooy stated that when the Maryland Historical Trust issued its opinion over the appropriateness of the LED sign, they did so in part using the Secretary of the Interior Standards, but also

referred to the HDC Guidelines. Mr. de Mooy introduced Mr. Michael Day of the Maryland Historical Trust.

Mr. Lane read a letter from the Maryland Historical Trust signed by J. Rodney Little and dated October 10, 2012.

Mr. Day stated that he was the Deputy Director of the Maryland Historical Trust. Mr. Day stated that there was a process set forth under Article 66B Section 8 of the Annotated Code of the State of Maryland for Historic District Commissions on various issues that may come up during a review process to ask opinions. He said that the National Park Service was not the end-all of interpretation; it was the Commission in place that could do that. Mr. Day stated that the HDC Guidelines were considered when they looked at the proposal for the Garfield Center's LED sign and determined, based on the HDC Guidelines for Chestertown, that the sign did not meet the Guidelines. Mr. Day stated that the Secretary of the Interior Standards Guidelines were not cited in the Town's rulings; it was the Design Guidelines that were used in motions. Mr. Day stated that the Maryland Historical Trust's opinion was also that the sign was not consistent with the Secretary of the Interior Standards. Mr. Day stated that the Maryland Historical Trust disagreed with the National Park Service on this issue and were more conservative in their decision-making. Mr. Day stated that the decision really came down to whether or not the Commission felt that the sign met the Design Guidelines for Chestertown.

Mr. Day stated that Mr. Halpern pointed out that exceptions can be made from time to time based on a certain building and certain situations. He said that there was a grave difference between the type of signage being discussed in this application and the one that Mr. Halpern discussed in Annapolis. He said that the sign being replaced in Annapolis was a historic feature that was on the building when the building was first built and was part of the historic defining character of that particular building. He said that in the Garfield the sign was never like that and was not replacing a like sign; it was replacing a signboard with a lighting system that was never there.

Mr. Newlin stated that the letter from the Maryland Historical Trust's letter argued against LED lights on the marquee, but the HDC approved that as appropriate. He said that according to the Maryland Historic Trust, the letter board should be kept. Mr. Newlin showed letters that were used on the sign and indicated that the letter board was demolished in 2010. He said that the changes to the Sign Ordinance would still be required.

Mr. Yeager stated that part of the problem the Commission was having is the tactics that the applicant has used in getting approvals. He said that instead of coming in with a full-blown scheme, the applicant has come in piece-by-piece. Mr. Yeager stated that he thought the letter from MHT explained that a mistake was made by allowing the LED lights on the marquee.

Ms. Siudzinski stated that she thought the problem was a static source of light and a dynamic sign. She said that this proposal was for a dynamic sign, unlike anything else in

Town, noting that the theatre was also unlike anything else in the downtown. She said that the Commission had to decide if the theatre was so unique that it would not set a precedent.

Mr. Yeager showed a PowerPoint presentation. He said that theatres built in the era of the Garfield don't show poster boards or letter boards anymore. Most have a simple sign that have their name above the door. He said that some of the largest movie palaces in the world don't have signs showing what their coming attractions were going to be. Mr. Yeager stated that there has been a conflation of what the marquee is and the proposed LED sign.

Mr. Halpern noted that some of the photos showed backlit signs from inside the theatres. He said that that during the daytime hours, the windows appeared black, but at night when the signs were lit it would show, which would be similar to what is being proposed at the Garfield Center.

Mr. Yeager showed some of the capabilities of the LED sign.

Mr. Yeager stated that the Design Guidelines say things like, "should" and "may" but when it gets to internally illuminated cabinet signs, flashing and blinking lights it reads, "are not permitted".

Mr. Halpern stated that when the TV was on showing the PowerPoint it was no brighter than the signs on the wall. He said that there was nothing in the sign ordinance that prevented putting up a bright poster.

Mr. Yeager asked if Mr. Halpern assumed that the sign would only be turned on at night. Mr. Halpern stated that the Commission can approve with conditions and that could be one of them, perhaps using the LED sign only when the theatre is in use. Mr. Halpern stated that a manual was written outlining when the theatre thought it was appropriate to use the sign and how often the signs would change.

Mr. Halpern stated that this one (1) LED sign would help with the proliferation of signs. He said that it would change because it would serve more than one (1) purpose, but how often they changed could also be a condition of approval.

The Commission reviewed the photos submitted of the Prince Theatre from 1932.

Mr. Lane stated that this decision would be precedent setting. He said it did not matter if the Commission thought this was unique to the Garfield Center, it was precedent setting and other entities could request the same type of signage.

Mr. Lane stated that in the Design Guidelines it read that "internally illuminated cabinet signs, neon "Open" signs and flashing or blinking lights are not permitted in the Historic District". He said that the Guidelines also said the Chestertown has a separate Sign Ordinance with requirements that vary by zoning district and all applications had to meet

those requirements. Mr. Lane stated that the flashing definition that the Planning Commission would be using was read earlier for the record.

Ms. Siudzinski asked that if the Commission felt as though the Design Guidelines were behind the times in this instance, would the Guidelines change in order for this to be approved. Mr. Lane stated that was the case, but they would go with what was in print right now.

Mr. Yeager stated that he thought approving this LED sign was a mistake and a mistake that would affect the Town and business district with broad-reaching effects.

Mr. Day stated that he was an author of the 1994 revisions of the State law and wrote for the MAHDC sample guidelines. He said that there was prescriptive language that had the words "shall not" and "do not" which meant it was more for the public to know that it will not be approved and there was verbiage like "should" and "may" where there was latitude in evaluating projects based on the guidelines. He said that in this particular case there was a guideline which did not talk to neon or LED lights but it did say "internally-illuminated" and it fit into this category. Mr. Day stated that this sign was internally lit, it just happened to be electronic. He said that the definition conformed to the existing Guidelines. He said that the Mayor and Council adopted the Design Guidelines for the Commission to use them.

Mr. Halpern stated that the Design Guidelines talked about case lights, or the fluorescent lights that were in place. He said that the MHT recommended replicating the fluorescent light, which would be brighter than the LED light. He said that the issue was that the image changed. Mr. Halpern stated that if the theatre put the fluorescent light back they could apply images; the only difference would be how frequently they changed.

Mr. Dutton stated that change is difficult and was resisted. He said that Towns had to adapt in order to survive. Mr. Dutton stated that the theatre was run like a business and the patrons had to know what was going on, and what better way to do that than with a sign? He said that the sign would represent what they did and they were working very hard to give Chestertown a jewel in the Historic District. Mr. Dutton stated that a patron was willing to give the Town a gift and it would help the Town to be vital and survive. He asked that the Commission have the courage to vote in favor of the sign and let them go through the rest of the process.

Mr. Lane stated that a motion whether for approval or disapproval had to site the section in the Guidelines relative to signs, which was Section 3.13 which would create the finding of fact. He said that if the decision was for approval, any restrictions appropriate should be stated. Mr. Lane stated that if the motion was for disapproval, again Section 3.13 should be used.

Ms. Siudzinski moved to approve BP2012-117 for the Prince Theatre at 210 High Street for an LED screen as submitted, under Section 3.13, as it was not, in fact, an internally illuminated cabinet sign and the definition for "flashing" by the Planning

Commission was not the behavior of the sign, for use of the sign only by the Garfield Center and no succeeding tenants, to be operated under the operation manual presented by the Garfield Center for the Arts for a period of 6-months after installation and then the applicant will return to the Commission for further approval, was seconded by Ms. Maddox and carried with three (3) in favor, Mr. Lane and Mr. Yeager opposed.

Mr. Gates moved to adjourn the meeting at 7:30 p.m., was seconded by Ms. Siudzinski and carried unanimously.

Submitted by:


Jennifer Mulligan
Stenographer

Approved by:

Michael Lane
Chairman