

THE TOWN OF MILTON PLANNING AND ZONING COMMISSION

IN RE:)
)
AN ORDINANCE TO AMEND)
CHAPTER 220 OF THE TOWN CODE)
ENTITLED "ZONING," RELATING TO)
AMENDMENTS TO THE ZONING CODE.)

ADVISORY REPORT

To: Mayor and Town Council
115 Federal St.
Milton, Delaware 19968
cc: Code Enforcement Officer

Pursuant to Milton Town Code Section 220-99, the Planning and Zoning Commission shall report in writing its recommendations on any proposed amendments of the regulations or districts under the Town Zoning Ordinance (codified as Town Code Chapter 220) to the Town Council and the Code Enforcement Officer.

I. ISSUES CONSIDERED

Proposed changes to code 220-99, which would eliminate the requirement that zoning changes be referred to the Planning and Zoning Commission (i.e., changing "Every proposed amendment, unless initiated by the Planning and Zoning Commission *shall* be referred by the Town Council to the Planning and Zoning Commission" to "Every proposed amendment, unless initiated by the Planning and Zoning Commission *may* be referred by the Town Council to the Planning and Zoning Commission."

Proposed changes to code 220-99, which currently requires a 4/5 vote to overturn the Planning and Zoning Commission's recommendations, to a simple majority.

II. RECOMMENDATION

For the reasons stated herein and on the record at a duly noticed meeting on July 15, 2014, the Commission voted UNANIMOUSLY THROUGH ROLL CALL VOTE to recommend DISAPPROVAL of the above-captioned proposed ordinance.

Moreover, the Planning and Zoning Commission recommends delaying any further changes to the town's Planning and Zoning ordinances (including changing the current supermajority necessary to overrule a P&Z recommendation) until the community completes its Comprehensive Plan.

III. REASON(S) FOR RECOMMENDATIONS

- This action flies in the face of our town's founders' desire to establish a system of checks and balances that is essential to prudent and democratic governance;
- We believe that our town should keep the use of particular knowledge and best practices mandatory, not optional. By making consultation with the Planning and Zoning Commission optional, this action also makes the use of particular knowledge and experience optional. By eliminating the Commission's particular knowledge and experience, the Town Council reduces the level of careful scrutiny and consideration each application should receive.
- This action reduces government transparency and due-process by truncating decision-making processes and eliminating opportunities for public engagement and comment;
- This action – which is purported to create a more business-friendly environment – creates an environment of uncertainty for prospective businesses and investors and, therefore, in-fact creates an environment that is *antagonistic* toward new business development;
- This action does nothing to address what we believe are the real obstacles to business development here in Milton. In speaking to existing and prospective property owners, we are told that the confusion and obstacles are often presented by town staff, who provide inconsistent, contradictory and changing information. If the Council's true intention is to create a more business-friendly environment, we believe this can be more effectively accomplished through more judicious hiring, training and supervision of code-related personnel.
- The framers of our town's planning and zoning ordinances understood that a high bar must be established to overturn the recommendations of the Planning and Zoning commission, in whom specific responsibilities are vested and in whom particular expertise and specific knowledge is maintained. A 4/5-majority vote was established to maintain this high standard and to minimize the development of factions that could overturn these informed recommendations.
- The 4/5s majority provides a check upon Town Council, serving as an obstacle to guard the town against the effects of impulsive or hasty measures and to prevent the "thumb on the scale" of a single council member, who may be overly influenced by special interest groups that might benefit from overturning the Commission's recommendation. The attempt to change this 4/5 requirement to a simple majority is, therefore, particularly troubling and we are strenuously opposed to the change.

IV. CONCLUSION

The Council's move to marginalize the Planning and Zoning Commission comes at a particularly troubling time. Through the Commission's Comprehensive Planning process, we are amassing vast amounts of data and a deep and clear sense of the community's needs and desires. This information and expertise should be embraced and utilized. Instead, the Town Council seems to be trying to create an intentional and permanent way to ignore the expertise of the Planning and Zoning Commission and the expressed desires of the community. We urge the Council to honor the wise intentions of the framers of our town's ordinances and more closely partner with, and more intentionally utilize the expertise of, the Planning and Zoning Commission.

The changes Town Council proposes to Town Code Section 220-99: (1) eliminating the requirement that zoning changes be referred by Town Council to the Planning Zoning Commission for review and recommendation, making that referral instead discretionary and (2) changing the current 4/5s majority to overturn the Commission's recommendation to a simple majority, fly in the face of town's founders' desire to establish a system of checks and balances that is essential to prudent and democratic governance. We unanimously and vigorously oppose both changes for the reasons stated above.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Barry Goodinson', written over a horizontal line.

Barry Goodinson, Chairman

Dated: August 13, 2014

ORDINANCE NO. 2014-_____

**AN ORDINANCE TO AMEND CHAPTER 220 OF THE TOWN CODE, ENTITLED
"ZONING," RELATING TO AMENDMENTS TO THE ZONING CODE.**

WHEREAS, the Charter of the Town of Milton vests power in the Town Council to provide for and preserve the health, peace, safety, cleanliness, ornament, good order and public welfare of the Town and its inhabitants; and

WHEREAS, the Charter of the Town of Milton vests power in the Town Council to zone or district the Town and make particular provisions for particular zones or districts with regard to building or building material, and generally to exercise all powers and authorities vested in the legislative body of cities and incorporated towns under and by virtue of Chapter 3, Title 22 of the Delaware Code; and

WHEREAS, the Town Council of the Town of Milton has previously found it necessary for the aforementioned purposes to enact a zoning ordinance, codified as Chapter 220 of the Town Code; and

WHEREAS, pursuant to Chapter 220, the Town Council of the Town of Milton may, from time to time, on its own motion or on petition or upon recommendation by the Planning and Zoning Commission, amend, supplement or change the boundaries of the districts or the zoning regulations after public notice and hearing; and

WHEREAS, the Town of Milton Planning and Zoning Commission held a duly noticed hearing on _____ and voted _____ in the Advisory Report received by Town Council; and

WHEREAS, The Town Council held a public hearing on _____, as scheduled by prior resolution, with proper notice by publication and my mailing as required by Town Code Section 220-101;

NOW THEREFORE, BE IT ENACTED AND ORDAINED, by the Town Council of the Town of Milton, a majority thereof concurring, that the following revisions hereby be incorporated into Chapter 220 of the Town Code, entitled "Zoning."

Section 1. Amend Section 220-99 of the Town Code, entitled "Advisory report to Town Council," with additions shown by underlining and deletions shown by strikethrough as follows:

Every proposed amendment, unless initiated by the Planning and Zoning Commission, may~~shall~~ be referred by the Town Council to the Planning and Zoning Commission. If referred, ~~t~~The Planning and Zoning Commission shall report in writing its recommendations thereon to the Town Council and the Code Enforcement Officer, accompanied by a full statement of the reasons for such recommendations, prior to the public hearing. If the Planning and Zoning Commission fails to report within a period of 45 days from the date of receipt of notice or such longer time as may have been agreed upon by it and the Town Council, the Town Council may

act without such report. If the Planning and Zoning Commission recommends disapproval of the proposed amendment, or recommends modification thereof, the Town Council shall not act contrary to such disapproval or recommendation except by a ~~four-fifths~~ simple majority vote.

I, **MARION JONES**, Mayor of the Town of Milton, hereby certify that the foregoing is a true and correct copy of the Ordinance adopted by the Town Council of the Town of Milton at its meeting held on the _____ day of _____, **2014**, following a duly noticed public hearing, at which a quorum was present and voting throughout and that the same is still in full force and effect.

MAYOR

SYNOPSIS

This ordinance amends the Town Code's zoning ordinance amendment process. The ordinance confirms the Council's discretion in referring a proposed amendment to the Planning and Zoning Commission, as opposed to the referral being mandatory. Thus, this ordinance removes an inconsistency between the seemingly mandatory referral in Section 220-99 and the ability under Section 220-98 to amend the zoning ordinance on its own motion or upon recommendation by the Planning and Zoning Commission. The ordinance also changes the Council's voting requirement from a 4/5 supermajority to with a simple majority vote in the case of Planning and Zoning recommending disapproval of the amendment or recommending modification of the amendment.