

Report on

Planning Commission Study and Findings

- Zoning Ordinance Amendments 2013 –

This document was prepared and approved by the Harpers Ferry Planning Commission in support of its recommended amendments to the Zoning Ordinance (Part 13). This report begins with introductory and overview material and proceeds to address the recommended amendments in the order that they appear in the proposed ordinance revision. There are two appendices which contain information and data used by the Commission in its deliberations.

This document will serve to inform the Mayor, Council, residents and property owners regarding the proposed amendments and can serve as background (or source) material for the future.

There are a number of abbreviations used as follows:

HF = Harpers Ferry

ZO = Zoning Ordinance

PC = Planning = Planning Commission

HLC = Landmarks = Historical Landmarks Commission

BZA = Board of Zoning Appeals

CoA = Certificate of Appropriateness (to be) issued by Landmarks

Approved by the Planning Commission on **3 Sept 2013**

Jay Winchester, President

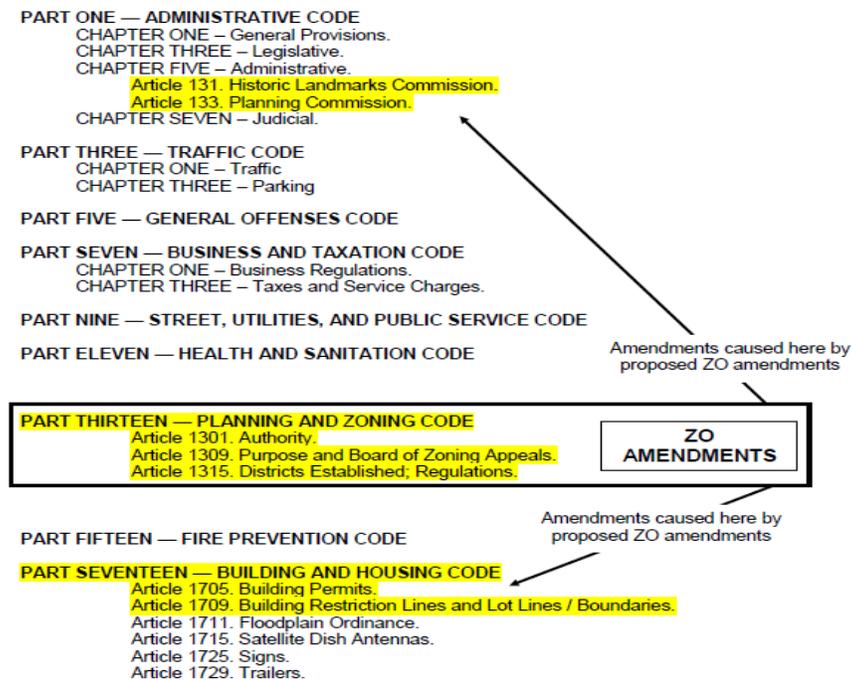
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The analysis and findings in this document arise from considerations of an update to the Town’s Zoning Ordinance (ZO) and related matters, particularly in regard to future development of the Hilltop Hotel complex. A subcommittee had been formed to update several other ordinances and was redirected to this task in early 2012. Several additional contributors participated toward the new goal so the effort was significant and broadly representative of the community. At any time, the ZO working group had 6-10 participants that included:

- 2 members of the Council ordinance committee,
- 4-5 members of the Planning Commission (PC),
- 1 member of the Historic Landmarks Commission (HLC), and
- Several subject matter experts.

This is a substantial fraction of the Town’s governance and also a significant segment of the Town’s voting population (about 6-7%). The full PC has been reviewing the proposed amendments since December of 2012.

Advice was sought from expert attorneys at numerous points and a full legal review is recommended prior to adoption of any version. Lastly, the Commission published preliminary drafts of five key proposed amendments to the ZO which was followed by two informal public workshops a month apart (7 March and 4 April 2013). There was good discussion in both sessions although few attended beyond elected and appointed Town officials. A third public workshop was held on 11 July 2013 for the complete draft of Part 13 along with proposed changes elsewhere to accompany the amendments to Part 13 [i.e., Articles 131, 133 and Part 17]. A diagram for all of the changes is given below.



The public input from all sessions and from written submissions has been discussed thoroughly. Extensive public involvement and input has directly influenced this study as well as its findings and has been reflected in the final draft of the proposed ordinance amendments. We estimate that 10 to 15% of the Town’s voting

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population has been directly involved in the process and well over 1500 hrs of volunteer effort has been invested by many of these individuals in the last year or more with regular legal advice from Mark Sadd on key issues. This has included over 15 hours of public meeting time with opportunity for public input. With this high level of effort and discourse and given no requirement for a formal public hearing for Zoning Ordinance amendments under WV code, the Commission concluded little more could be gained from scheduling one at this time. In fact, the Commission was slightly concerned that holding a formal Public Hearing might imply this was more than an amendment proposal. Council may wish to hold a Hearing, although one is not required to our knowledge, beyond the requisite two public readings.

Overall Goals:

- 1) Establish ordinances that can better withstand legal challenge by aligning with WV State Code requirements and best practices from other municipalities. Doing so will lead to fewer challenges and increase the likelihood of prevailing, if challenged. The first step for us was the Zoning Ordinance.
- 2) Adopt clearer ordinance wording that reflects present practices in the Town and that attempts to increase fairness in the processes. Together with the above goal we seek a clearer, smoother and shorter approval process for most applicants, particularly small projects. The workshops informed us on these points.
- 3) Prepare for a dialog between the Town and a developer of the Hilltop Hotel site by establishing a process with parameters that the Town would find acceptable before any application arrives. We were guided by the goals of the Comprehensive Plan as well as the recent Town visioning process. The three public workshops also informed us on these points.

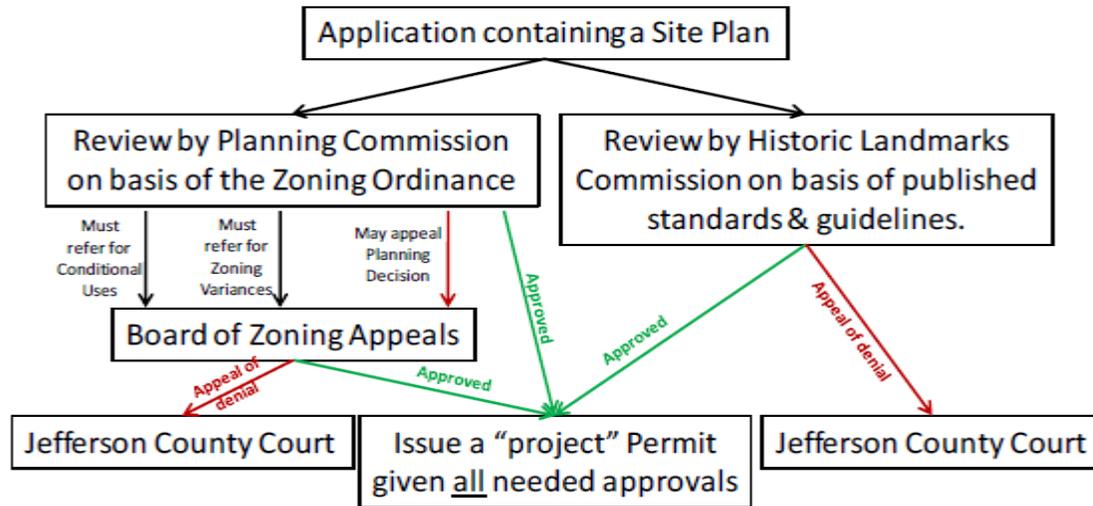
General comments and findings – A number of changes are proposed to better align the ZO to WV State Code requirements. These features include the following:

- PC approval of permits with Brd of Zoning Appeals responsibilities for appeal, conditional use permits, and zoning variances (no Council role after approving ordinances and selecting officials in accordance with WV Code).
- Reductions in the number of members on the PC and the BZA (due to an increasingly limited volunteer pool)

We have also proposed to harmonize the membership requirements and removal procedures for the PC, BZA and HLC. These proposed changes are reflected in offered amendments to Articles 131 and 133 of the Administration Part of the Ordinances. The HLC has reviewed these proposals and concurs with the proposed changes.

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A diagram of the overall proposed approval process – consistent with WV Code – is shown below.



In addition, we propose adoption of three significant changes to the zoning ordinance as follow:

- Introduction of a zoning overlay district for the hotel promontory
- Use of separate “Standards and Best Practices” documents to provide greater detail but not in the ordinance itself.
- Means to mitigate nonconforming uses into approved conditional uses under certain circumstances.

Lastly, we have proposed that some Articles in Part 17 and elsewhere be moved to the ZO Part 13 at this time because some of the Part 17 material is actually of the character of zoning matters. **These deletions and changes should be enacted along with the amended ZO.** Further changes to Part 17 and elsewhere (e.g., Landmarks CoA, adoption of a Building Code, etc.) are in preparation and other improvements are likely to emerge over time. The current proposal is complete and consistent insofar as we can determine.

Please be cautioned that many sections of the current ZO have been relocated within the proposed ZO and several other ordinance segments moved from elsewhere in the ordinances, so the appearance of many changes is misleading.

For that reason we have not provided a “track change” version for the ZO itself but do so for all other proposed amendments.

The following sections provide analysis and findings to accompany the proposed ZO amendments.

Part 13 Zoning Ordinance - Analysis and findings are provided below for significant amendments only. Many small changes are also proposed that clarify or align better with current practices and the proposed text (e.g., new definitions).

1304 RESIDENTIAL DISTRICT: USES

The Commission proposes one significant change, one further clarification regarding a hostel Use, and one deletion as follows:

Finding#1a: Our preference is for residentially zoned properties that are occupied by the owner on a fulltime basis. The benefits to the Town are obtained from an “an active and involved citizenry” resulting in:

1. A tendency toward better maintenance of property
2. Preservation of the historic character and ambiance of the 19th century village
3. Increase potential for stewardship of the community prosperity, security and safety of a small town.
4. Increased potential for larger pool of active volunteer citizens at the government level.
5. Measurable population according to the US Census Residence Rules.
6. Better potential for gaming and lottery revenue for the town (population based revenues)

Several of these benefits have been identified in our Comprehensive Plan and Vision Statement as Town goals. Many of these benefits have also been identified in the 2012 Baseline Report and this Study and Findings document as important Town aspects that which should be considered.

A growing portion of our housing is not owner-occupied as a primary residence and is often a second home that may also be offered as a rental on a short-term basis (holiday or vacation home). The PC finds that the market incentives, particularly in the Harpers Ferry context, for properly maintaining short-term rentals is a good means to better insure preservation of our housing stock absent fulltime owner occupancy or even long-term rental. We also find a greater potential for additional Town revenue generation given the fact that Harpers Ferry has a tourist based economy. Thus, we have clearly allowed short term rental of an entire dwelling to be a permitted residential Use as is a current practice in several instances in Town.

We believe efforts to fill empty residences and encourage infill construction will not be fruitful until we improve trends in the occupation and condition of our housing stock. Thus, we are saying that well-maintained housing is more important than increasing the resident population in less well-maintained housing for the short run. If the fraction of our housing in short term rentals is growing too large over the next 5-10 years, then it is possible to amend the ordinance to discontinue this Use which would have the effect of limiting such Uses to those existing at the time of that amendment after they had been better maintained. We see this as an economic incentive for preservation as well as a means to increase revenue for the Town for the short term at least. The PC will resume work on a rental unit ordinance and a demo-by-neglect ordinance as called for in the 2007 Comp Plan.

Finding#1b: As a residential Conditional Use – subject to BZA review and approval - we have defined and allowed for hostel accommodation under essentially the same provisions as a B&B use. We believe there is a need for such accommodations and it is entirely appropriate given our key location along the Appalachian and C&O Trails as well as a growing trail network in the general area. We do not mean to allow temporary

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accommodation shelters or facilities and have emphasized that point in the draft ordinance. We note that the BZA – in granting such a Conditional Use Permit may attach conditions for approval that could include a stipulation that the Permit would expire upon transfer of ownership. This would avoid a “by right” claim and such Uses in perpetuity.

Finding#1c: We have removed the residential agricultural use. Further regulation of animals for residential uses (not a business) should be clarified in Article 505 at some point.

1305 BUSINESS DISTRICT: USES

No significant changes are made here although the wording has been modified to better reflect current practices and terminology.

1306 OVERLAY DISTRICTS

This section is entirely new and provides an overlay for a hotel complex called the Promontory Overlay. Certain Uses and procedures are established for the Promontory Overlay for the purposes given in 1306.01 and 1306.03.02. We believe there are at least 6 main reasons for establishment of a hotel-based overlay:

- a. Recognizes the historic presence of a hotel since 1888 and therefore the highest and best use for the site
- b. Recognizes an owner who has indicated a desire to build a “signature” or “boutique”(see footnote¹) hotel
- c. Offers a form of planned development for the area including flexibilities with standards
- d. Offers an economic opportunity for restoration of any additional included historical resources
- e. Brings up to 200 jobs and perhaps a number of families who may choose to live in Town
- f. Provides probably the largest revenue generation possible from the site for the Town.

The PC also reviewed the results of the recent Harpers Ferry visioning process and selected a number of community inputs relevant to the objectives and conditions for an overlay district. The tables below come directly from the published results of the town visioning process (see Town website) and the first table lists 9 of 25 responses to question#2 on our vision for the town relevant in any way to the hotel situation, as indicated. Recall that David Benamino synthesized two types of responses to develop this prioritized list of 25 inputs from groups of 3-5 and inputs from individuals, as indicated in the two right hand columns. At the bottom of the table we have calculated the average number of group responses to the 25 items (6) and the same for the individual responses (4). We have colored the participant inputs green for responses that are at or above these averages or, in other words, strong indications of the broadly held vision of the town. The term “Rank” refers to the order of preference expressed by the participants as determined by count with “1” being the topmost response.

¹ We found little that clearly defines a “boutique” hotel but most seem to agree that it not a chain hotel, has special features and is usually less than 150 rooms. Famous “boutique” hotels with many hundreds of rooms exist but are exceptions.

Question #2 = “.....what is your vision for the town’s future?”	“Rank” of 25 items”	(Groups of 3-5) Responses from Meetings	(Indiv) Written Responses
Improved Public Infrastructure	1	18	5
Preservation of historic structures & sites	2	9	9
More commercial opportunities for businesses catering to local economy	4	13	3
Increased focus on outdoor recreation to promote tourism	6	8	4
New Hilltop Hotel that is profitable, but to scale	7	6	6
Integration of new hotel into the town	13	6	0
Sustainable revenue stream that does not depend on liquor or gambling	15	4	2
Improved Streetscape (trees, visuals, signage)	16	5	0
Feel the town is too small for a large hotel project	22	0	3
Average “votes” per each of 24 group items and 13 individual items (i.e., the average weight of a response)		6	4

Regarding the size of a hotel, for example, about 55 responses from attendees said either they envisioned a “New Hilltop Hotel that is profitable, but to scale” (rank=7of25) or said they envisioned “Integration of new hotel into the town”(rank=13of25) while 3 individual responses indicated they felt “the town is too small for a large hotel project”(rank=22of25). Our deliberations and recommendations attempt to reflect these vision outcomes. Similarly, we reviewed the responses to the first question of the visioning process as indicated below and selected key responses relevant to an Overlay District to shape our deliberations further:

Question #1 = “What is it about Harpers Ferry that you like today? What made you move here? What makes you stay?”	“Rank” of 30 items”	(Groups of 3-5) Responses from Meetings	(Indiv) Written Responses
History (including historic architecture, culture & sense of place)	1	24	11
Scenic Beauty & Natural Environment	2	21	11
Sense of Community (“Small town feel”)	3	19	10

Community Interaction & Engagement (Friendliness, knowing your neighbors, feel opinion matters)	4	15	9
Quiet (Peaceful, sanctuary)	5	11	11
Unique Character	6	11	4
Good Place to Raise a family	8	9	5
Preservation & Restoration of Historic Structures	11	8	5
Viewsheds & Vistas	16	6	2
Community Vibe (Sense that community is special)	18	6	1
Tourism (Influx of interesting people)	19	6	0
Protection from encroaching development	20	6	0
Good commercial & residential mix	22	4	6
Good home based occupation location	27	2	0
Low taxes	28	1	1
Absence of cars	29	1	1
Average “votes” per each of 30 group items and 20 individual items (i.e., the average weight of a response)		4.4	4.5

Finding#2a: Standards for both permitted and conditional Uses in the Promontory Overlay mostly stem from a desire to prevent a hotel structure from “looming” over adjacent residential property which includes any residences that may be part of the overlay district. The latter stipulation would facilitate an equitable future return of those properties to the underlying residential zoning should the need arise. Many other standards are an attempt to reflect citizen concerns from our visioning results, ZO workshops, earlier hearings and events while being consistent with the CP, our Town Vision and past practices embodied in earlier versions of the ZO. In particular, **we have attempted to constrain commercial activities in the residences to be very similar to Uses and activities found and allowed in residences elsewhere in Town (e.g. B&B, home occupations, etc.) but supporting the hotel operations.** Essentially we have achieved this by waiving the usual requirement for owner-occupation for certain types of Uses while allowing a bit more mixed use in a single residential unit.

Finding#2b: The Commission believes that unified management of all properties in the Promontory Overlay that are granted these flexibilities of Use is essential. This requirement clarifies responsibilities as well as simplifies communications for everyone about any compliance or enforcement issues. It also insures that any residences within the overlay that are not managed by the hotel must follow all Uses of residences elsewhere in town unless granted a variance by the BZA.

Finding#2c: The unified planning, ownership and management of many properties in the Promontory Overlay offer an opportunity for the hotel owners and the Town to consider preservation across the full inventory of

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historic resources (e.g., structures) in the overlay district. To that end, we find that an overall Historic Resource Plan should be required in the ordinance to optimize the overall return on historic preservation investments.

Finding#2d: Earlier (Finding#1a) we have proposed that residential dwellings - in general - may be used for short-term rental in their entirety. We find that similar residential dwellings in the Promontory Overlay under hotel management should be allowed a mix of uses within the same unit to facilitate operations within the hotel complex while preserving a possible return to use as a residential dwelling. Any residential properties inside the Overlay District that are not under formal agreement(s) for day-to-day hotel management must comply with the same regulations as all other residences in Harpers Ferry, as specified in the ZO.

Finding#2e: We find that a preliminary concept plan is required for the Promontory Overlay for large projects (greater than \$100,000) and must include a physical or digital 3D model of the concept and its surroundings to yield a sense of scale and layout for the proposed project in the overall complex. Absence of such a model or representation in the past for the hotel itself was considered a shortcoming.

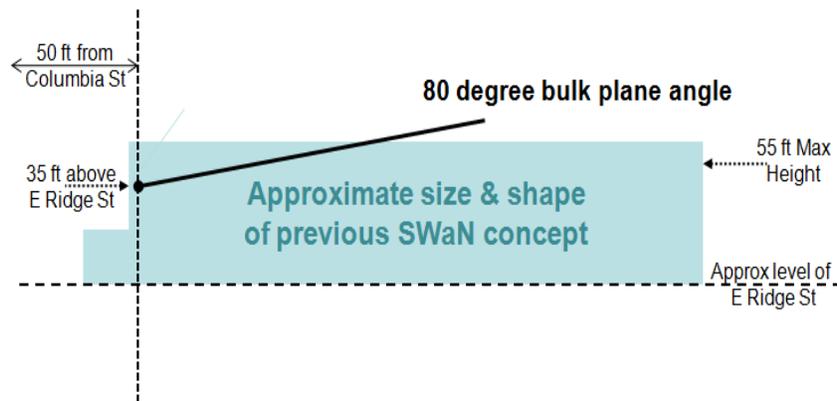
Finding#2f: Uses allowed in the Promontory Overlay District without a Conditional Use Permit are essentially based upon the operations of the hotel in the years prior to its closing plus 10 guest rooms allowed in the hotel-managed residences in the Overlay District (roughly equivalent to accommodations of 2-4 B&Bs). In some sense these are the parameters that the current owners have purchased and hold “by right” under WV code. However, it should be noted that a hotel rebuilt to these capacities under modern standards would probably require a larger footprint or would need to be taller. We find that a taller hotel, particularly growing in height toward the promontory overlook (east) would be preferred to a much larger footprint at the current height. This is reflected in the proposed standards.

Finding#2g: Conditional Uses allowed in the Promontory Overlay District are determined only upon approval by the Board of Zoning Appeals under specified conditions and standards. These Uses are based upon the following analysis:

Maximum number of Guest rooms – We have examined top-rated hotels in WV and explored the market demands for a hotel for business meetings (see Appendix A). Based upon this analysis it appears to us that a business model for a hotel in our area that seeks to serve business meeting clientele during the week, year round probably needs at least 160-170 guest rooms plus certain facilities to be successful. We welcome such a business model because it should increase visitors to Lower Town year round for the merchants and meets a number of visioning conclusions listed earlier. Accordingly, we propose 160 rooms for the hotel itself, probably a minimum to sustain this business model, to be the maximum Conditional Use. Any more than this would require a zoning variance approved by the BZA as stipulated under WV Code. We also place an upper limit of 20 guest rooms within the hotel-managed residences in the Overlay District (roughly equivalent to accommodations of 4-6 B&Bs) which allows some latitude with respect to the minimum size for this business model.

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Maximum height of a hotel and setbacks – We have aimed for a “stepped” maximum height moving into the complex from Columbia St. Therefore, the maximum building height is restricted to 35 feet (also the residential standard being recommended based on current housing and practices) within 50 feet of property zoned for residential Use (including the underlying zoning). Minimum setback from land zoned residential or a public right of way adjoining a residential zone is proposed as 20 feet (which is a greater setback than the residential standard and much greater than historical setbacks between residential and commercial properties in Lower Town). Maximum height for the hotel complex elsewhere on the property may not exceed 55 ft above existing road grade level or exceed a bulk plane drawn from a 35-foot height at 50 feet into the property or exceed the capacities of existing fire and water services, whichever is less. The angle of the bulk plane is taken as 80 degrees in order to be approximately the line of sight for a pedestrian standing on E Ridge St some distance west of Columbia St. We intend this to mean that such a pedestrian would not see anything taller than the nearest part of the structure which would actually be somewhat lower than allowed for a residential building on the same property (see sketch below). To compensate for this restriction and a restriction on the overall footprint, we allowed a higher maximum height (55 ft) which should have the effect of allowing another story at the east end, subject to BZA and HLC approval. We believe setbacks need not be applied on the Northern or Eastern sides of the Seminary lot of the 1869 sale map (i.e., this now includes a small portion of residentially zoned property as well as the commercial lot all north of E Ridge St) to maximize hotel utilization away from the residential areas.



Maximum hotel footprint - The footprint of the hotel is proposed to be limited to 150% of the current hotel and its existing accessory structures while preserving at least 40% of open space in the buildable area of the District. This is essentially equivalent to the 60% maximum lot coverage being proposed for residential properties throughout the Town except that it emphasizes that the 40% of space must be open. We do not provide any specific constraints for other structures in the hotel complex in favor of the open space standard to control the outcome. The area of the current hotel commercial lot is approximately 32,000 square feet so the proposed maximum total footprint 37,500 sqft must include hotel buildings on other commercial lots which would then be subject to all setbacks on those lots.

Traffic flow - We propose that all traffic to and from the hotel complex must be directed onto Columbia Street to disallow hotel vehicular traffic from nearby residential areas. Street design and signing must be

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included on the site plan and must be done in a manner such that hotel guests and service (and construction) vehicles are not required nor allowed to traverse East Ridge Street west of Columbia Street. If traffic to E Ridge St via connecting streets to Washington St is further restricted by the Town to “residents and their guests” then the traffic on these streets would be lower than any time in the last several decades and these streets would become among the least travelled streets in the Town.

Parking - At a minimum, we recommend parking spaces be provided at a ratio of 1.35 per guest room - to minimize incentives to park elsewhere in Town - and, at a maximum, 2 per guest room but not to exceed a total of 300 spaces (see Appendix A Notes). We encourage use of additional off-street parking provided outside of the District as part of the overall application. We also would allow surface and subsurface parking on adjacent residential property provided that those residential properties would meet existing residential standards if they no longer are part of the overlay provisions at any point in the future. Again, this must ultimately meet the 40% open space standard within the district. It should be noted that these particular lots are about twice as large as most “standard” residential lots in Harpers Ferry by virtue a being about twice as long as lots on other similar nearby blocks.

Maximum seating for restaurant and dining facilities – These simply reflect the current size of the restaurant beyond the hotel requirement (estimated as 2 per guest room on average). See Appendix A Notes.

1311 SITE DEVELOPMENT STANDARDS

The area covered by main structures (dwelling, accessory building(s) driveways, etc.) varies greatly within different areas of the Town. In some very historical instances – particularly in Lower Town - the structures cover nearly the entire lot with little or no setbacks. The usual way to express this coverage is as a percentage of the “buildable area” for a lot where the buildable area accounts for mandatory setbacks on all sides of the lot and subtracts areas with slopes too great to build upon (proposed in the ZO as a slope greater than 1:3 unless a zoning variance is granted by the BZA). We have incorporated these footprint and lot coverage concepts in the proposed ZO. Estimates for the distribution of these areas for residential properties in Harpers Ferry are provided in Appendix B based on data from the Jefferson Co GIS Office. We checked about a third of these data by independent means with very consistent results.

Finding#3: Building and driveway footprints together with representative total area coverage for the residential zone were determined from averages of the footprints and lot coverages for 36 residences facing upon Washington St from about Church St to Union St (see Appendix B). Of these properties, 13 had one or more accessory buildings and 19 had some sort of driveway/parking on the lot itself. We take these to be reasonable values to represent the historic character of the residential area in future development as well as construction infill. In the end we scaled the accessory building footprint to a 2 car garage (about 550 sq ft) and a driveway to nominally 10 ft by 100 ft. Given the high variability, we have also provided a higher upper limit as a Conditional Use under a decision by the Board of Zoning Appeals. Anything larger would require a zoning

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variance from the BZA. For the record, had these proposed standards been applied to these 36 existing, mostly historic, residences we estimate that:

- 27 of 36 dwellings would have met the proposed permitted Use standard for the dwelling footprint
- The remaining 9 (25%) would have met the proposed conditional Use standard under the proposed ZO
- None of the dwellings would have required a variance for the dwelling footprint (2 very close) under the proposed ZO
- 6 of 13 properties would have met the proposed permitted Use for the total accessory building footprint
- 4 of 13 properties (30%) would have required a conditional Use for the total accessory building footprint under the proposed ZO
- 3 of 13 properties (23%) would have required a variance for the total accessory building footprint to under the proposed ZO
- 17 of 24 properties would have met the proposed permitted Use for the total “driveway” footprint
- 3 of 24 properties (13%) would have required a conditional Use for the total “driveway” footprint under the proposed ZO
- 4 of 24 properties (17%) would have required a variance for the total “driveway” footprint to be approved by the BZA under the proposed ZO

These notional outcomes for existing residential homes seem to us as very appropriate for the proposed standards in Harpers Ferry. The standards reflect current practices without being either too high or too low. It should be noted that all the coverage standards are based upon a dominant lot size on the 1869 sale map which is very close to most of these 36 residential lots sampled and is the smallest unit of development in Harpers Ferry. The controlling standard for smaller lots is the maximum buildable area coverage while the maximum footprint standards could apply for larger lots (or parcels) provided that the HLC standards and/or BZA will allow a bigger dwelling. **In this way the Town can clearly sustain building sizes at or below current practices while preserving open space at or above current values.**

1313 NONCONFORMING PROVISIONS

Most nonconformities arise when a change in the ordinances is made that no longer allows some existing feature or Use. This is commonly referred to as “grandfathering.” That is the only way to have a legal nonconformity. Harpers Ferry has many such legal nonconformities that also may have not been well documented over the years and can be a source of some confusion or discontent among residents. As a practical matter, all nonconformities in existence at the time of the ZO “re-enactment” in April of 2010 are now legal nonconformities as noted in the proposed ZO.

Finding#4: Jefferson Co recently proposed a means to mitigate existing legal nonconformities by conversion into Conditional Uses if approved by the Board of Zoning Appeals under certain circumstances. We find the voluntary aspect of this approach and the resulting documentation of the outcomes to be very useful for the Town and its residents.

1314 ADMINISTRATIVE ACTIONS

Finding#5: Unnecessary delays for the applicants as well as less productive use of scarce volunteer effort can be avoided by allowing a professional staff member of the Town or other duly appointed individual, termed a Zoning Administrator, to be authorized to approve minor projects and minor changes to previously approved projects if the guidelines to do so are provided in advance and in writing. These delegated authorities should be reviewed and approved by the Town Council in order to assure clarity and provide oversight of both the guidelines and the process. The Zoning Administrator can also be the enforcement agent for the ZO which we have termed a Zoning Inspector. We note that the current fees and costs for a Building Inspector could be applied to this function instead.

1321 BOARD OF ZONING APPEALS

Under WV Code, a Class IV municipality such as Harpers Ferry can have as few as three members on the Board of Zoning Appeals and up to three Alternative Members who serve in the absence of a Member for the duration of the particular item before the Board. All matters before such a Board must have a full complement of three Members to hear the matter and to render a written report which is emphasized by the quorum requirement. These individuals may not serve on any other body within the Town. The Town needs about 30 officials/volunteers to operate the Town. Today these volunteers largely come from a pool of about 100 residents in the general age range of 50-70 years but that pool is projected to drop to about 50 individuals by 2020 using census data and a simple continuation of population trends in the Town over the last 20 years (see visioning baseline report). Consequently, the Town must reduce the size of all Commissions, Boards and committees insofar as possible while seeking to grow professional, expert support staff in these areas.

Finding#6a: Given the exclusion of Members on the Board of Zoning Appeals from other Town activities and the dwindling number of volunteers to serve in such roles, we find three members and 1 or 2 standing alternates are sufficient and wise. It will be essential have a diverse membership on the BZA to avoid recusals by more than one member on the same issue before the BZA. For example, members who reside in the same block or neighborhood, have common permitted Uses (e.g., B&B, home occupations, etc.) or are engaged in similar business or commercial activities should be avoided.

Finding#6b: The Planning Commission should be reduced from 9 to 7 members.

Finding#6c: The Town should hire or obtain services via a multi-year contract for a town administrator/planner who has professional experience and expertise of note in these areas. Such an individual will be required to fulfill the numerous duties now being assigned to Zoning Administrator/Inspector in the proposed amendments.

DESIGNATION OF OVERLAY DISTRICT BOUNDARIES

The Planning Commission chose the initial draft outline for the Promontory Overlay by simply comparing the original SWaN concept plan with our own Comprehensive Plan zoning map. Basically, we took the smaller, contiguous outline consistent with both items. It was a starting point for discussions. We received several comments on this initial proposal. In the end, most written inputs (1) and workshop attendees (about 6) seemed to be in search of a “buffer” between nearby residences and hotel activities within the overlay district. There was no general agreement among these inputs for a particular overlay boundary location. The meaning of “buffer” is also unclear. A relevant definition might be “*any area serving to mitigate or neutralize potential conflict*” as taken from an online dictionary. For PC purposes, we drew guidance from the requirement under Conditional Uses for business zoning activities to be “*at least 25 feet from any adjoining lot in a Residential District.*” This became a PC “rule-of-thumb” for judging minimal “buffering”.

Under the proposed amendments several features should be noted:

- As a Permitted Use, hotel-managed residential units in the overlay can only be used for guests or for business activities not substantially different from B&B and home occupations allowed elsewhere in Town for residential properties. As a Conditional Use, some of these activities may be open to the general public and could create increased “walk-up” or “drive-up” visitor traffic in the form of some “retail” activity not available as residential Use, in general. The key issue here is probably the degree to which these activities become open to the public which will be a matter for the BZA to control. For example, the BZA may not permit these “retail” activities immediately adjacent to private residences and/or they may restrict hours of operation and/or they may grant a Conditional Use for some specified trial period.
- Any vacant, residentially-zoned 1869 sale map lot within the overlay can only have one residential dwelling and one accessory building erected upon it even if subdivided.

Thus we believe there is some level of buffering available between the main hotel operations and private residential properties inside and outside of the overlay which is actually greater than is typically found elsewhere in Town for “buffering” private residences from commercial or Park activities.

In determination of final placement of the overlay district boundaries there are some strong considerations from the Town’s perspective as follows.

General factors favoring a larger overlay district:

- 1) Potentially more historic resources improved and well maintained (economic reality)
- 2) Potentially improved “signature” aspects and economic viability of a hotel
- 3) Greater revenue to the Town (via increased overall business patronage, more property tax and B&O or sales tax).
- 4) Full inclusion of hotel traffic (i.e., Columbia St) and parking within the overlay

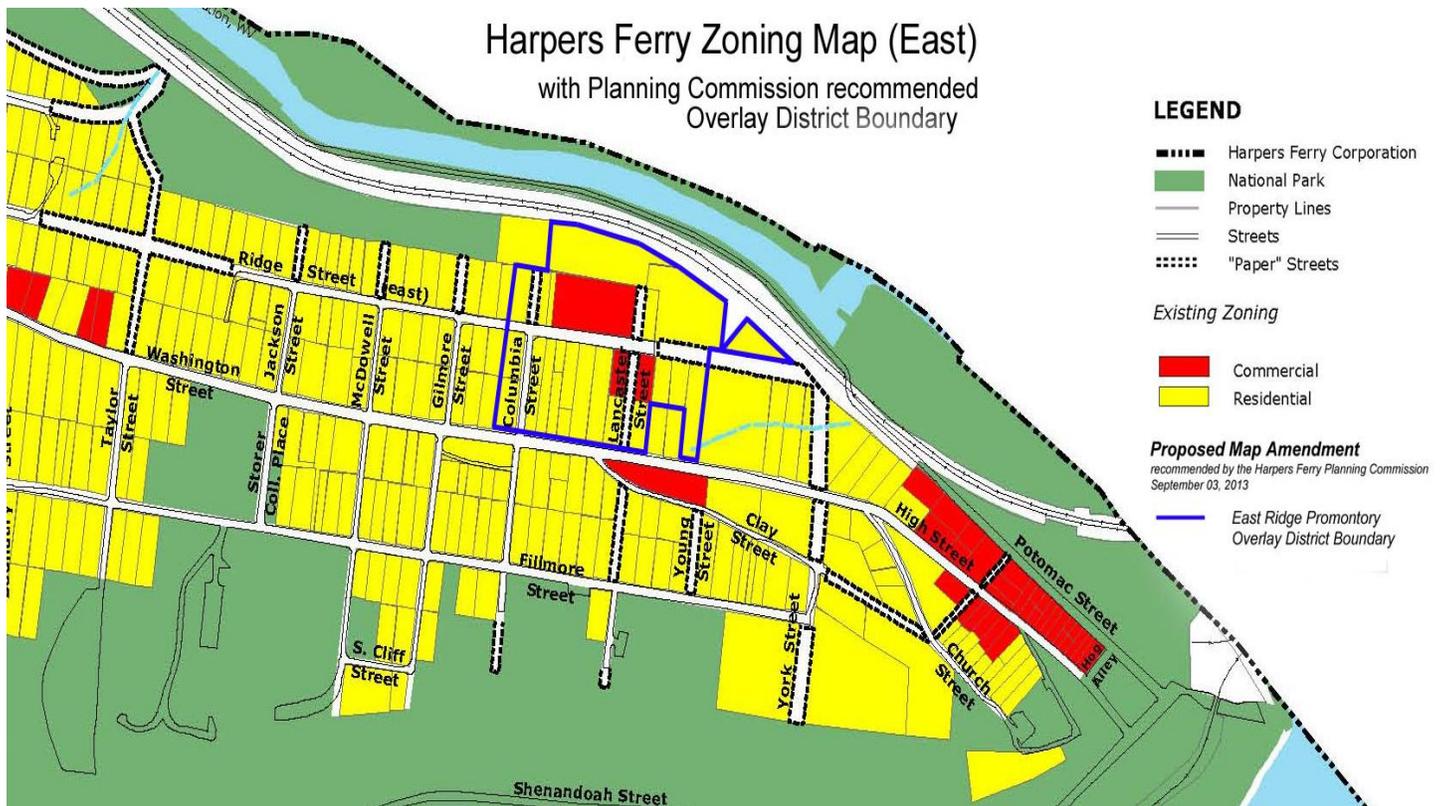
General factors favoring a smaller overlay district:

- 1) Restriction of hotel operations to a smaller space vis a vis adjacent neighborhoods
- 2) Greater potential for increasing the resident population for reasons cited in Finding#1a.

In developing our recommendation we also followed several guidelines as follows:

- a) Ensure an effective “buffer” between hotel activities, particularly traffic and anything of a commercial nature that is open to the public, and the nearby residential neighborhoods outside the overlay.
- b) Insofar as possible use “natural boundaries” (e.g. streets, paper streets, complete parcels, Town limits, etc.)
- c) Avoid bounding adjacent private residences on more than 2 sides with the overlay district (“island”)
- d) Select boundaries that are sustainable in the sense that they do not create strong motivations, economic or otherwise, to steadily grow or shrink the chosen overlay and therefore foster neighborhood instabilities.
- e) Provide flexibility to improve Columbia St for the increase in traffic

Finding#7a: In view of the above factors and guidelines, we have recommended the overlay boundaries shown below. We find the potential benefit to a broader preservation of our historic housing resources to be compelling, particularly in light of the data in the visioning baseline report and the desire for an economically viable hotel from the visioning survey results.



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Finding#7b: The property at 460 Washington St (Bob Johnson's) is somewhat of a unique situation. Mr. Johnson attended a recent special PC meeting and was asked if he had a preference. He stated that he wished to be included because it would improve his property value and his position in ongoing negotiations with SWaN for the sale of his property to them. It was pointed out to him that the current proposed amendments would not allow him any additional Uses for the property unless these were managed by the hotel. He acknowledged this. Thus, we have recommended inclusion in the Overlay District in accordance with our guidelines a) through d) above.

Supplemental Material

Among the objectives established for the Planning Commission under our ordinances are responsibilities to “*Promote the orderly development of the Town environs*” and “*Guide growth of the community in accordance with the adopted Harpers Ferry Comprehensive Plan.*” To these ends, the Commission recognizes that the previous hotel concept plan involved some potential rezoning requests and possible use of paper streets. **Neither topic is addressed in the proposed ZO amendments.** Thus, we provide some background material on these topics to foster an orderly discussion and to assist in consideration of growth consistent with the Comprehensive Plan should these topics arise in another concept for a hotel project.

REZONING

No rezoning is required for the proposed amendments and none are recommended. However, there are some remarkable inconsistencies such as:

- a) Small portions of the original Seminary lot are zoned residential where, in fact, a long term hotel parking lot now exists
- b) One lot directly east of the present hotel – not shown on the 1869 sale map - is zoned residential but probably could not support such development because of topography
- c) The current hotel annex crosses properties zoned in part as business and in part residential

There are also some obvious zoning inconsistencies to contemplate in the future and/or that may be requested by an applicant. For example:

- a) The lots between Washington St and E Ridge St and east of Columbia St have “by right” surface parking for the hotel on the northern end, and the proposed ZO amendments would allow subsurface parking on the northern end of these lots. These lots are about double the 1869 Sale map lot sizes, in general, and particularly adjacent blocks along E. Ridge St. Subdivision of these lots to “standard” HF lots together with rezoning to business for the parking portions would help ensure long term economic viability of the hotel operation while maintaining the zoning requirements of one dwelling per subdivided lot on the 1869 Sale map. Further, it would not affect the de facto balance between residential and business or commercial activities sought in the Comprehensive Plan.
- b) The hillside lots north and east of the Seminary lot cannot be used for residential or commercial development under any likely circumstances but the hotel and Town would both benefit from rezoning to commercial properties by virtue of greater clarity and increased property tax revenue.

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It is important to emphasize that none of these potential zoning changes would alter the de facto balance between residential and commercial property Uses as clearly desired by the Comprehensive Plan and the ZO.

Finding#8: The Town should consider the above zoning challenges eventually. There are three reasons for this: 1) it will make enforcement of standards clearer by distinguishing business from residential zoning, 2) it improves the economic viability of the hotel, and 3) it will increase revenues for the Town. If the Hotel developers seek such a rezoning at the outset, then the Council – as the deciding body for any rezoning requests - could reasonably anticipate requests along these lines and be ready to negotiate terms about changes like the above.

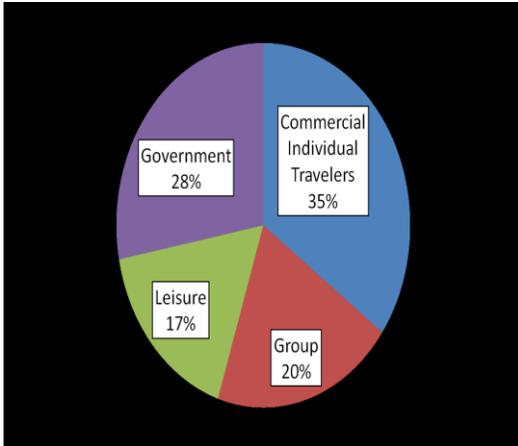
PAPER STREETS

Under these proposed ZO amendments, no disposition of the paper streets is considered and, rightfully, any change is within the purview of only the Council since all streets are publically-owned property. Much is said – again rightly – about preserving public access to the outstanding viewsheds from the Promontory. However, these are separable issues, in our opinion. Preservation of public access to viewsheds can be achieved independently from disposition of any particular paper street, if innovative concepts are explored in any application and subsequent negotiations.

Finding#9: Rather than sale of paper streets – as has occurred in the past – or in lieu of de facto exclusive private use in several instances around town, consideration should be given to long-term lease arrangements for selected paper streets to allow more efficient and effective hotel operations provided that public access to viewsheds can be maintained from both E Ridge St and from Washington St by some means. For example, public access to a hillside promenade via Lancaster (paper street) and from Columbia (paper street) and/or Gilmore (paper street) would not only be such a solution but would undoubtedly become a signature part of a visitor's experience in Harpers Ferry and would make other paper streets available for lease to the hotel. Such leasing of paper streets can be arranged to assure long-term Town ownership under mutually agreeable terms. This would be a new, longterm revenue source. At the same time, consideration should be given to similar leasing of paper streets already consistently used by current residents for their exclusive private use.

Information from - **“Critique/Assessment of the Market and Economic Analysis for a Full-Service Hotel in Downtown Frederick Conducted by Pinnacle Advisory Group and OPX”**
 [http://www.cityoffrederick.com/DocumentCenter/Home/View/1506]

Distribution of Hotel Demand - 2011



200 guest rooms in a full-service, branded property in downtown Frederick

- Minimum of 325 SF to 350 SF per guest room to ensure long-term flexibility among major hotel brands
- Services and amenities

Fitness Center Business Center Wi-Fi Connectivity Swimming Pool
 Ancillary Retail Outlets Food and Beverage Casual Restaurant and Lounge Room Service

- Meeting Space – 14,000 to 15,000 SF of meeting space including 5,000 to 6,000 SF ballroom, pre-function space as well as individual break-out and boardroom configured space
- Differentiate from existing local properties in terms of flexibility, finishes, amenities and higher price point to attract incremental new meeting/banquet business

Updated research (by “Pinnacle” for Frederick hotel) yielded:

- Reaching stabilized operations in Year 4 rather than Year 3
- Same stabilized occupancy - 72%
- Lower ADR - \$140 vs. \$178
- Less leisure, group and commercial individual demand but more government demand

Market Mix	Pinnacle/OPX	HGS
Commercial Individual	22,100	19,400
Group	17,200	16,300
Government	3,300	8,900
Leisure	10,000	7,900
Total Room Nights	52,600	52,600

Estimated Annual Economic/Fiscal Impacts at the Proposed New (Frederick) Hotel

Category	Amount
Direct Spending	\$16.5 million
Indirect/Induced Spending	\$9.4 million
Total Spending	\$25.9 million
Total Jobs	280
Total Earnings	\$9.0 million
Total Tax Revenues	\$1.9 million

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Miscellaneous PC Notes

Here are the numbers for parking spaces:

1.35 spaces per room is the minimum industry & regulatory standard

Clarion Hotel & Conf Center in Shepherdstown has 168 rooms and about 2 spaces per room
(from Google map)

Current hotel has 80 rooms, dining for 350 and about 150 parking spaces. Does this hang together?

Say guests use 1.35 spaces per room and occupancy averages 2 people per room

That's about 110 parking spaces and 160 people for dinner

(leaves 190 seats for walk-in diners).

Now say the remaining 190 diners come in 4 people per car so they need about 48 spaces.

Total estimated parking spaces needed for current hotel approximately is $110 + 48 = 158$. Hangs together!

For the max size hotel that HF would allow:

160 rooms @ 1.35 spaces = 216 (this would also take 2×160 seats for meals = 320)

Allows up to $480 - 320 = 160$ walk-in diners (less than today) who need about 40 parking spaces.

That is a total of $216 + 40 = 256$ parking spaces needed.

If increased to 2 spaces per room and allow same number of walk-in diners as today, then need about 368.

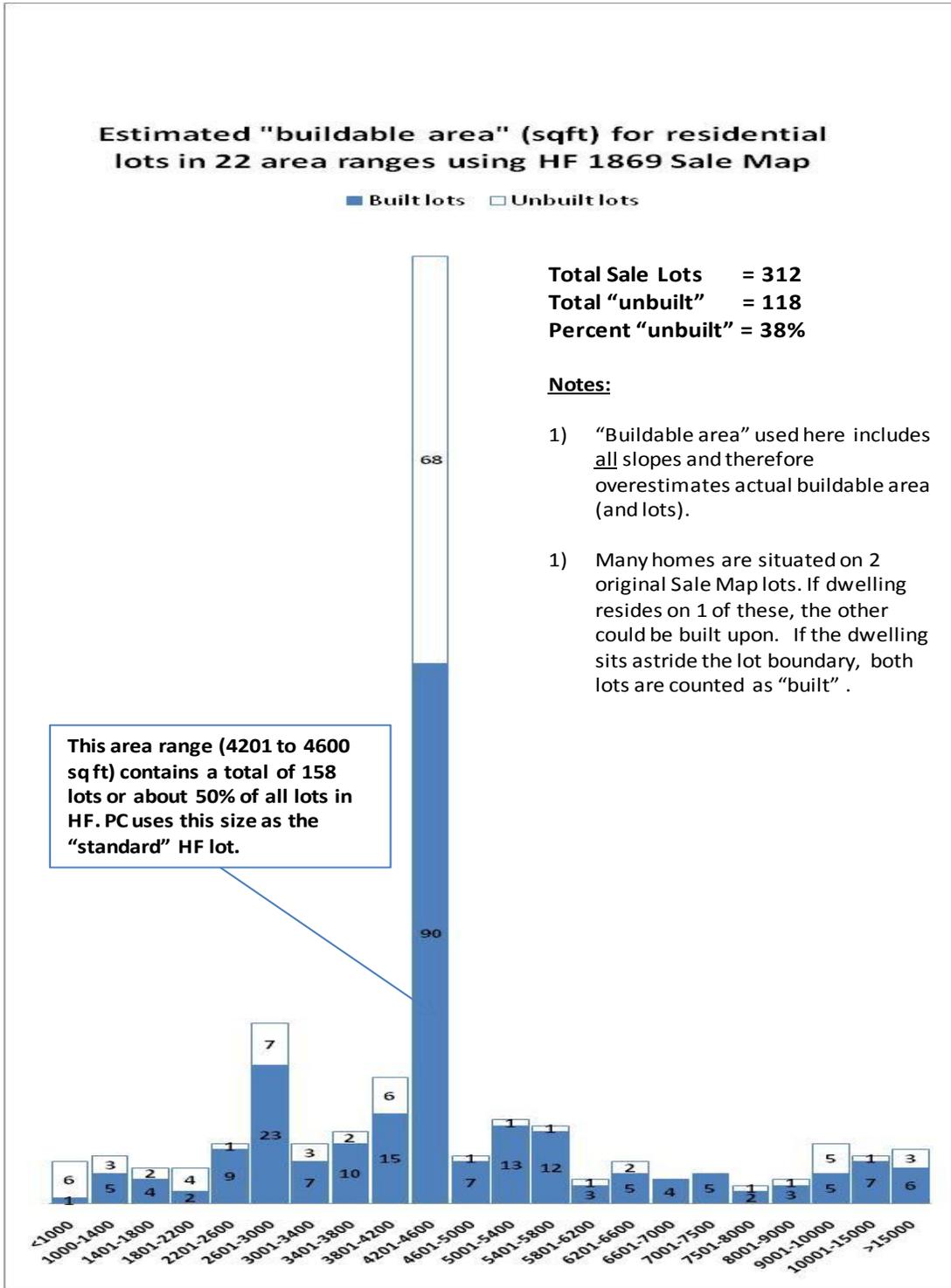
Propose a max number of spaces halfway between these = 300 parking spaces (twice today).

After all, they could run a shuttle to Cavalier Hgts for guests (fewer vehicles + encourage walking downtown)

Note: About 175 cars for Park employees come & go weekdays along Fillmore St...not a major impact?

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Appendix B – The data considered by the PC in setting proposed residential standards is provided below. This data comes from the (now) residential lot dimensions on the 1869 (or so) Sale map of the original lots sold in HF and from Jefferson Co. The buildable area was estimated by subtracting the setbacks and calculating the remaining land area but not removing excessively sloped areas.



Footprints of 36 residential properties along Wash St from Boundary St to Church St (sqft)																			
Main Building						Accessory Bldg(s)			Driveway/Parking			Total							
Main building w/roof	Main building (est)	ratio (%)	Equiv side of a square	Attached Garage?	Main building (est)	Use	Total All Accessory Bldgs w/roof	Accessory Total (est)	Equiv side of a square	Use	Driveway + Parking	Drive & park on Lot (est)	Equiv length @ 11 ft width	Use	Total Footprint	Use	Equiv % "Std" Sale Lot Coverage	Use	
1070	874	82	30		874	P									874	P	11	P	
750	586	78	24		586	P									586	P	7	P	
1207	999	83	32		999	P									999	P	13	P	
1377	1154	84	34	N	1154	P					616	436	40	P	1590	P	20	P	
2429	2133	88	46	N	2133	C					559	379	34	P	2512	P	32	P	
1362	1141	84	34	N	1141	P									1141	P	14	P	
1255	1042	83	32		1042	P									1042	P	13	P	
1594	1354	85	37	N	1354	P	337	297	17	P	330	150	14	P	1801	P	23	P	
1702	1454	85	38	?	1454	P	71	62	8	P	765	585	53	P	2102	P	27	P	
1729	1480	86	38	N	1480	P	493	434	21	P	814	634	58	P	2547	P	32	P	
2627	2319	88	48	N	2319	C	705	620	25	C	852	672	61	P	3612	C	46	P	
1349	1129	84	34	N	1129	P	671	590	24	P	649	469	43	P	2188	P	28	P	
2224	1941	87	44	N	1941	C					1301	1121	102	C	3062	P	39	P	
1654	1410	85	38		1410	P	293	258	16	P	1896	1716	156	Z	3384	C	43	P	
2519	2218	88	47	1.5	1818	P					2170	1990	181	Z	3808	C	48	P	
1252	1040	83	32		1040	P									1040	P	13	P	
2305	2017	88	45	N	2017	C	844	743	27	Z	2652	2472	225	Z	5232	Z	66	Z	
2607	2301	88	48	N	2301	C									2301	P	29	P	
1230	1020	83	32		1020	P					492	312	28	P	1332	P	17	P	
1036	843	81	29		843	P									843	P	11	P	
1810	1555	86	39	N	1555	P					982	802	73	P	2357	P	30	P	
1420	1194	84	35		1194	P					689	509	46	P	1703	P	22	P	
1310	1093	83	33		1093	P					729	549	50	P	1642	P	21	P	
1746	1495	86	39		1495	P					376	196	18	P	1691	P	21	P	
1462	1233	84	35		1233	P					171				1233	P	16	P	
2316	2027	88	45	N	2027	C	517	455	21	P	1105	925	84	P	3407	C	43	P	
2299	2011	87	45	N	2011	C	932	820	29	Z	3058	2878	262	Z	5709	Z	72	Z	
2318	2029	88	45	N	2029	C	1236	1088	33	Z	1634	1454	132	C	4571	C	58	C	
1878	1618	86	40	N	1618	P	778	685	26	C	531	351	32	P	2654	P	34	P	
1795	1541	86	39	N	1541	P					341	161	15	P	1702	P	21	P	
1330	1111	84	33		1111	P					1355	1175	107	C	2286	P	29	P	
1592	1353	85	37		1353	P	684	602	25	C					1955	P	25	P	
1284	1069	83	33		1069	P									1069	P	13	P	
1369	1147	84	34		1147	P									1147	P	14	P	
2267	1981	87	45	N	1981	C	714	628	25	C	1188	1008	92	P	3618	C	46	P	
1659	1415	85	38	N	1415	P									1415	P	18	P	
N=36							N=13				N=24								
Ave =	1442	85						560				911	83		"Std" Sale Lot = 7900 sqft of buildable area				
Median =	1382	85					602					634	58						
Big12 Ave =	1978	87										1404	128						
Biggest7 Ave =	2120	88					741					1829	177						
											Ave w/o Bgst =	431	43						
Note: Estimate for a 2 car garage is about 26Wx21D=546																			

Permitted Use?	Up to: 1600 (plus up to 500 sqft for attached garage)	550 (for detached garage) 250 (for all others)	1000	3150	Total footprint not to exceed 50% coverage of buildable area
Conditional Use? (BZA)	Up to: 2300 (subject to CoA standards for compatible bulk)	700	1400	4400	Total footprint not to exceed 60% coverage of buildable area

	Main Bldg (36)	Access Bldg (13)	Driv/Park (24)	Total Footprint (36)	"Std Lot" Coverage (36)
P-permitted	27	6	17	28	33
C-conditional	9	4	3	6	1
Z-variance	0	3	4	2	2

Threshold	# Cond use (of 36)	%
at 1600	9	25%
at 1500	13	36%
at 1400	17	47%
at 1300	19	53%
at 1200	21	58%