

**MINUTES OF PUBLIC HEARING
HELD BY THE PLANNING AND ZONING COMMISSION
FEBRUARY 17, 2021**

MEETING HELD VIA ZOOM

ROLL CALL:

Members Present: Eric Prause, Chairman
Patrick Kennedy, Vice Chairman
Michael Stebe, Secretary
Jessica Scorso
Jessica Poland

Alternates Present: Julian Stoppelman
Bonnie Potocki
Teresa Ike

Also Present: Gary Anderson, Director of Planning
Megan Pilla, Senior Planner
Nancy Martel, Recording Secretary

The Chairman opened the Public Hearing at 7:00 P.M. The Secretary read the legal notice when the call was made.

VOLTA CHARGING LLC – continued from February 1, 2021 – To revise the zoning regulations at Art. I, Sec. 2 to add definitions for “Electric Vehicle Charging Station” and “Operator” and to add a new Article IV, Section 24: Electric Vehicle Charging station. – Zoning Regulation Amendment (2020-081)

Attorney Tom Regan, Partner in the Law Firm of Brown Rudnick, LLC, introduced himself. Attorney Regan relayed that, after the prior meeting, they went back and made amendments to the zoning text to allow the applicant to accomplish the goals.

Attorney Regan reported that Article IV, Section 24.01 was changed after speaking with the Cheney Brothers National Historic District Commission, who asked that the charging stations be approved as accessory uses in all zones except the Historic zone. He further stated that they removed “C” from Section 24.01, which was the limitation on charging stations per shopping center and free-standing property. The Commission had suggested that non-signage charging stations not be limited.

Referring to Section 24.02(a), Attorney Regan noted that they added a provision that states no video or audio content shall be permitted, as discussed at the last hearing. Section 24.01(c), according to Attorney Regan, limits the use of charging stations with signage to the Comprehensive Urban Development (CUD) zone only. He reported that they have added “D”

which is the original “C,” which is the limitation on signage, making clear the limitation applies to charging stations with changeable copy. In addition, the Chairman asked for a cross reference to the signage provision, which they have added. Attorney Regan stated that they reworded Article II, Section 9.14.03(f)4 which talks about signage and made it clear that there is an exception for signage in the corresponding charging station section.

Attorney Regan commented that the Staff also had other cleanups, which they added to the provisions.

Mr. Stoppelman stated that, in his opinion, the Historic zone should not be prevented from having non-signage charging stations.

Mr. Anderson noted that he spoke with the Cheney Commission Chairs, and taking it out at this time is not a final recommendation. Not including it at this time is temporary, and the Cheney Commission will be open to including it, especially for the Cheney mills. Planning may go to the Cheney Commission to talk about letting charging stations be added.

Ms. Potocki sought to clarify that, because this is based on the proposed Section 24.02, the location of the charging stations will be reviewed by Staff as it will be permitted by special exception.

Ms. Pilla responded that is correct, but in the revised text in the CUD zone only.

Ms. Potocki assumed that Engineering would review the location in terms of impeding traffic.

Ms. Pilla stated that Engineering would review in that event.

Mr. Stebe questioned whether the Historic zone is an overlay on top of and including residential zones. He speculated on how that would affect Item No. 3, adding to Article II, Section 1.03.01 regarding accessory uses in residential zones. He pointed out that there are residential zones within the Historic zone.

Ms. Pilla explained that the Historic zone, as defined on the zoning map, is actually not an overlay. It is a separate zone and considered a mixed use zone and not a residential zone, meaning that Article II, Section 1 regarding all residential zones does not include the Historic zone.

Mr. Anderson reported that he understands the intent of the question. He added that it was not intended to include the Historic zone and that that is important in the decision; that can be done as well.

Ms. Poland, noting that the first four hours are critical in finding a missing or exploited child, asked how feasible it would be for the charging stations to work with law enforcement to put out Amber Alerts on the signs.

Mr. John Stuckey replied that they are continuing to explore pilot programs for items such as Amber Alerts on the stations. It is not something that could be committed to at this time.

Mr. Prause noted that, in the Commission's memo, there are some additions that are marked in blue and some in red. He questioned the difference between the two.

Ms. Pilla explained the proposed revisions from the applicant are in red and Staff changes are in blue.

Mr. Anderson, referring to Mr. Stebe's comment, pointed out that, in the most recent draft, Section 24.01 has language stating "use in all zones with the exception of the Historic zone subject to the following condition."

Ms. Pilla reported minor Staff comments that came in after these revisions and the packet were distributed as follows:

- (1) In the proposed Section 24.02(b), where it states "charging stations may have eternally backlit display screens and that the advertisements may rotate," there was a suggestion from Engineering to replace the word "rotate" with the word "cycle" to avoid confusion.
- (2) The Zoning Enforcement Officer made minor suggestions: First, in Section 24.02(c), where it has been revised to say the signage will be permitted by special exception in the CUD zone only, the ZEO recommends pulling that limitation to the CUD zone out to ensure it is very clear; i.e., ending (c) by saying that it will be "permitted as a special exception" and then make a section (e) to say it would be in the CUD zone only. Second, in Section 24.02(a) regarding the signage, the ZEO recommends specifically stating that the cycling of the advertisements be allowed at a maximum of 8 seconds, which was agreeable to the applicant.

Mr. Prause stated that, in 24.02(c), the last clause that refers to the CUD zone would now break out into its own subsection (e). He asked if that would be a condition of approval or if it is already in the final draft.

Ms. Pilla reported that is not in the final draft in the packets. She assumed it would be a modification for the approval.

Mr. Kennedy inquired if a recommendation putting a limitation of 8 seconds per cycling is in (a).

Ms. Pilla replied that it is correct. It will be put in Section 24.02(a).

Mr. Prause noted that is not something clarified in Article IV, Section 13, the sign section, which Ms. Pilla confirmed. Mr. Prause referred to Section 13.10.11, which states that the message shall change no more than 2 times a day.

Ms. Pilla stated that specifically refers to electronic message board signs, and according to the ZEO, this type of advertising is considered a billboard sign, which is why Staff cross-referenced

Section 13.05.07, stating billboard signs are prohibited, and suggested adding “except in accordance with Article IV, Section 24.02.” The only current zoning regulation limiting the cycling of signage is for electronic message board signs twice in a 24-hour period.

Mr. Prause assumed that the 8 seconds would be a modification that would have to be added to the motion tonight, which Ms. Pilla confirmed.

Mr. Stebe observed that the change of the screen is halfway addressed in 24.02(b) dealing with “rotate.” He speculated whether it would make sense to add the frequency into that section, changing 24.02(b) to, “the charging station display screens may be internally backlit and advertisements may update at a frequency of no more than 8 seconds,” thus taking care of two adjustments at the same time.

Mr. Prause noted that, in 24.02(a), it refers to a maximum of 10 sq. ft. of signage. He assumed that is the sign they are proposing and questioned how competitive the market is.

Mr. Stuckey said that he is unsure if he is enough of an expert to address the entire industry. The nature of their business model dictates that they are on the leading edge, and trying to exist within the current code. He offered that it should be considered on its merit.

Mr. Prause stated that he did not want to exclude other companies by ensuring that one manufacturer could fit the requirement.

Mr. Stoppelman reported that several dealers have charging stations as well as a shopping area. He assumed these non-advertising stations would still be perfectly legal, which Ms. Pilla confirmed.

There were no members of the public to comment.

Ms. Pilla read a written comment from Eugene DeJoannis from the Sustainability Commission.

Attorney Regan stated that, given the limitation to zone, abuse would not be a problem.

MOTION: Mr. Kennedy moved to close the public hearing. Ms. Scorso seconded the motion and all members voted in favor.

TOWN OF MANCHESTER PLANNING & ZONING COMMISSION – To revise the zoning regulations at Art. II, Sec. 15.04.01 to change the requirements for the maximum setback from Main Street; at Art. II, Sec. 15.05 to remove tattoo parlors and/or body piercing studios from the list of prohibited uses in the Central Business District zone; and at Art. IV, Sec. 23 to provide greater flexibility for sidewalk cafes and seasonal vestibules. – Zoning Regulation Amendment (2021-003)

Ms. Pilla stated that the Planning Department is proposing a handful of revisions to two sections: Article II, Section 15, which is the Central Business District; and Article IV, Section 23 regarding sidewalk cafes and seasonal vestibules. She noted that, for the most part, these

revisions are intended to provide greater flexibility for outdoor dining and the use of outdoor spaces by businesses that have needed to utilize that space, particularly in the past year. Another proposal, according to Ms. Pilla, is removing tattoo parlors and body piercing studios from the list of prohibited uses in the CBD. Staff views this as an outdated regulation. They are not strictly prohibited in any other zone and technically fall into the personal care business. The nature of the business has changed, Ms. Pilla continued, and they are generally very professional artistic ventures.

Ms. Pilla explained that one item from the Central Business District section is a proposal to change the setback from the street. The maximum building setback for Main Street is 5 ft. and that is not proposed to change. What is proposed to change, Ms. Pilla reported, is the flexibility of allowing some of that to be set back further.

Currently, the section reads that 80% of a building's frontage must meet this requirement, which means up to 20% of its frontage may be set back further if the space created is a public space. The proposal is to make that more flexible, allowing up to 50% of a building's frontage to be set back further, provided the space created is either a public spatial plaza or an outdoor dining space facility associated with an adjacent restaurant.

Ms. Pilla stated that most of the proposal is geared toward sidewalk cafes. The revision to Art. IV, Sec. 23.01.01 is to allow sidewalk cafes to extend beyond the actual frontage of the operating building, which they are currently not permitted to do, if they receive written authorization from the property owners.

She added that the proposed revision to Sec. 23.02.03 would allow furnishings, tables and chairs to remain outdoors as long as they are secured. As it is currently worded, they are not permitted to remain outdoors at all.

Ms. Pilla added that a proposed revision to Sec. 23.02.04 would allow the use of outdoor heaters, busing stations, trash receptacles and food prep stations, which are currently not allowed at all. As long as they are shown on the site plan and approved by the Health Department and the Fire Marshal's office, it would be appropriate.

The revision to Sec. 23.02.06 would allow sidewalk cafes to use platforms or artificial turf surfaces as part of their outdoor dining space, Ms. Pilla reported, as long as they are shown on an approved plan and acceptable egress is provided in some way.

According to Ms. Pilla, the revision to Sec. 23.03.01 clarifies the allowable operating seasons for sidewalk cafes, which would be April 1st to October 31st.

Ms. Pilla reported that the revision to Sec. 23.03.03 would remove the prohibition on pre-setting tables outside, which is currently not permitted.

Mr. Stebe referred to Sec. 23.01.01, the line stating that the café vestibule shall extend no further than the actual street frontage of the operating restaurant, except that sidewalk cafes may extend beyond the frontage with written authorization from the property owner(s). He questioned which

owners this refers to: the adjacent property owner, or the owner of the building housing the restaurant. In his opinion, there needs to be wording stating it is the property owner of the property that the restaurant will be infringing upon.

Ms. Pilla conveyed that, in writing this, the thought was that typically the restaurant would be a tenant of a building and the adjacent businesses would also be tenants of the same property owner. She acknowledged that will not always be the same.

Ms. Potocki suggested using the word lessor. There must be an agreement between the tenant and the lessor.

Mr. Stebe informed Ms. Potocki that there are a couple of restaurants downtown where the building is owned by the restaurant owner.

Mr. Anderson stated that they were trying to be as flexible as possible. It may be the case that a restaurant owner may seek to use an additional piece owned by another entity. He suggested using, “the owners of the buildings adjacent to the proposed café.”

Mr. Stebe suggested using the language of the co-use parking.

Ms. Scorso thought it should be cross-referenced with the architectural guidelines.

Ms. Pilla was unaware of any concerns or issues, though she is not that familiar with those guidelines.

Ms. Scorso asked if there were concerns about the dates.

Mr. Anderson stated that they kept those guidelines in mind. The dates line up with the previous application process of outdoor dining. He said that the executive order did extend it beyond those dates; hopefully, those dates will be appropriate in non-pandemic times. Mr. Anderson reiterated that the intent is to miss the snow season, the road race, and leaf collection.

Ms. Pilla stated that, after researching the shared use parking verbiage, that actually requires an agreement between an owner and the tenant to be filed on the land records.

Mr. Prause asked if the Commission would prefer to adopt that language.

Ms. Pilla expressed her opinion that it is not helpful in this case. She felt that Mr. Stebe’s suggestion of just adding to the end of the sentence, “with written authorization of all buildings adjacent to the outdoor dining space” would be adequate.

Mr. Kennedy was concerned about the intent, speculating whether it is just to have something in writing from the property owner of the building the restaurant is in, or also from the property owners of the adjacent space.

Mr. Anderson reiterated that the intent was primarily to have authorization from the owner of the building the restaurant is located in, but also to allow flexibility in case there was an adjacent space somewhere and the restaurant could continue the cafe in front of another building and the property owner did not have an issue. That flexibility was the intent.

Mr. Prause referred to 23.02.04, where the items that were not allowed (outdoor heaters, busing stations, trash receptacles, food preparation and music) are now allowed. He questioned whether music is limited.

Mr. Anderson assured the Commission that the regulation is referring to piped-in music. He stated that he personally does not have a problem with piped-in music from a radio or a Bluetooth. Obviously, there is an outdoor entertainment ordinance; if it is live music, they will need a special permit. Mr. Anderson did not feel that pre-set tables should be in a zoning regulation.

Ms. Pilla reported that it previously stated that “outdoor heaters, busing stations, trash receptacles, food preparation stations shall not be permitted in the sidewalk café.” The proposed revision allows outdoor heaters, busing stations, trash receptacles, and food preparation stations, which must be shown on the site plan and approved by the Fire Marshal and/or Health Department.

Mr. Prause assumed that music is not regulated at all. It could be covered by outdoor entertainment, which would always require a special permit.

Ms. Potocki pointed out the noise ordinance in town and the residents above some of the buildings as well as businesses. Her concern was with loud music brought to a café and whether it can be regulated by the noise ordinance.

Mr. Anderson confirmed that there is a noise ordinance which regulates the amount of noise allowable from any property. He reminded the Commission that this was discussed when voting on outdoor entertainment.

Mr. Prause stated that, if a restaurant wants to play music outside, it would have to come through the PZC for an outdoor entertainment permit. He thought the Downtown Special Services District should weigh in.

Mr. Kennedy offered that people who live above restaurants assume that it will not be quiet, and it should not be up to the zoning regulations to regulate.

Mr. Prause added that it is up to the zoning regulations, because the regulations currently prohibit that, and if the prohibition is removed, that is a change.

Ms. Pilla reported that the Downtown Special Services District Board of Commissioners reviewed the matter at their January meeting. They voted unanimously to recommend approval. Additionally, there was a review of the sidewalk café portion by CRCOG and they had no comments. They found it to be in line with the regional planning effort.

Ms. Pilla reported that she had received one written comment from Joyce Trainer, 5 Walek Farms Road. She read the letter with her comments.

Ms. Jessica Wagner, 224 Wesley Terrace, Columbia, introduced herself. It was her opinion that a tattoo parlor would be a benefit to all the nearby restaurants. She explained that she and her co-worker both have Bachelor of Arts degrees and are focusing on an art gallery theme, more than an ordinary tattoo studio. Ms. Wagner reported that the industry is changing and, in her opinion, it would not detract from the area.

MOTION: Mr. Kennedy moved to close the public hearing. Ms. Scorso seconded the motion and all members voted in favor.

The public hearing portion of the meeting was closed at 8:00 P.M.

I certify these minutes were adopted on the following date:

March 1, 2021
Date

Eric Prause, Chairman

NOTICE: A DIGITAL RECORDING OF THIS PUBLIC HEARING CAN BE HEARD IN THE PLANNING DEPARTMENT.