EXHIBIT NO. 1

29
9-14-02

Docket Item # 23
TEXT AMENDMENT #2002-0003

Planning Commission Meeting
September 3, 2002

CASE: TEXT AMENDMENT #2002-0003
NONCOMPLYING STRUCTURES

ISSUE: Consideration of an amendment to Section 12-102 of the Zoning Ordinance to allow noncomplying structures on King Street in Old Town to convert to residential uses with special use permit approval.

PLANNING COMMISSION ACTION, SEPTEMBER 5, 2002: On a motion by Mr. Robinson, seconded by Ms. Fossum, the Planning Commission voted to recommend approval of the request, subject to compliance with all applicable codes, ordinances and staff recommendations. The motion carried on a vote of 7 to 0.

Reason: The Planning Commission agreed with the staff analysis.

Speakers:

Poul Hertel, spoke with concerns about allowing too much residential and about parking.

David Olinger, Old Town Civic Association, spoke in support.

Rob Kaufman spoke in support.

STAFF RECOMMENDATION: Staff recommends that the Planning Commission on its own motion initiate the following text amendment:

ARTICLE XII: NONCOMPLIANCE AND NONCONFORMITY

Sec. 12-100 **Noncomplying structures**

12-101 *Terms Defined*

. . . .

12-102 *Noncomplying structures.* Noncomplying structures shall be permitted to continue indefinitely and shall be considered legal structures, but subject to the following restrictions:

(A) *Expansion.* No noncomplying structure may be physically enlarged or expanded unless such enlargement or expansion complies with the regulations for the zone in which it is located.

(B) *Reconstruction.* If a noncomplying structure is destroyed, demolished or otherwise removed, it may be reconstructed provided that there is no increase in the floor area ratio, density, height or degree of noncompliance which existed prior to such destruction.

(C) *Repairs and maintenance.* A noncomplying building may be remodeled, renovated, maintained, repaired and altered so long as such work complies with section 12-102.

(D) *Residential reuse.* A building facing the 0 through1500 blocks of King Street which is a noncomplying structure because it exceeds the floor area ratio requirements of the CD zone may be converted from nonresidential to residential use without regard to the CD zone requirements for residential uses if a special use permit is approved to allow the use.

DISCUSSION

This text amendment is designed to allow the reuse of relatively large buildings on King Street in Old Town for residences, a possibility now not allowed by the zoning ordinance. Although prompted to pursue this zoning change by an individual with an interest in a particular property, staff believes that the change has positive potential for Old Town generally.

Existing Zoning Rules for Noncomplying Structures

With the comprehensive rezoning adopted in 1992, many buildings throughout the city became classified as "noncomplying structures." A noncomplying structure is one that does not comply with the new zoning of the property, typically because it is larger than now allowed for new buildings. Most of the land on both sides of King Street in Old Town was changed from the C3 zone to the CD zone. One of the significant changes in the zone regulations was that the 3.0 floor area ratio (FAR) previously allowed, was changed to only allow 1.5 FAR (up to 2.5 with SUP). Although many of the existing buildings on King Street exceed the new zoning's FAR limits, the reduction in FAR was important to control the mass of new infill buildings.

Those buildings that do not meet current zoning because of the 1992 zoning changes are governed by the rules for noncomplying structures under section 12-100 of the zoning ordinance. Under those rules, noncomplying buildings are allowed to remain in perpetuity. They may be repaired, maintained and renovated fully. Elsewhere in the City, those buildings may be removed and rebuilt, as long as the reconstructed building does not exceed the zoning requirements to a greater extent than the prior one did. Most of King Street, however, is part of a historic district and buildings there may not be demolished.

Although noncomplying buildings may continue to exist, they may not be expanded or intensified if the expansion does not comply with current zoning rules. Intensification occurs if a building becomes more noncomplying than it was before and this rule limits the ability of an office building to convert to residential use. The average noncomplying office building On King Street cannot meet the zoning requirements for residential uses in the CD zone and thus becomes more noncomplying with the zone. Even though residential *use* may be permitted in the zone, the building will likely violate the zoning rules for FAR, units per acre, yards and open space for residential buildings. Therefore, to the extent there are buildings on King Street which are larger than permitted by the CD zoning for FAR, they are restricted as to their future potential to convert to residential use.

Residential Conversion

The city has been approached by a developer who wishes to convert a large, vacant building on King Street from its historical office use to residential use. The idea has public benefit from an economic development standpoint, especially because the building in question has long been vacant. If the

building were used for apartments, it would restore the building to active use and a neglected building would be improved physically. The addition of residents in Old Town on King Street is also a good idea because the combination of residents with commercial uses makes the street more active for more of the day. Today, most residents in Old Town live close to but not immediately on King Street. If residents live directly on the street itself, they will use the street and its stores more directly. Although there are potential problems with the noises, odors and congestion of King Street's commercial uses, the mixture of uses from a land use perspective is a good one for both residents and businesses, creating an active, vital urban environment. From a parking standpoint, the demand for parking spaces is typically improved in a mixed use area, because the demand is spread out over different times during the day.

As clear as the potential benefits are from having a mixture of uses on King Street, and from filling a large, long vacant space, staff was concerned that allowing the wholesale conversion of buildings to residential, without regard to zoning, could undermine otherwise important zoning controls, and could lead to more residential uses than would be good for a healthy land use mix, especially in a real estate market heavily weighted toward residential use . Therefore, Staff determined that it was productive to pursue the idea but only if the effect of the proposed zoning change could be limited.

King Street FAR Study

While the noncomplying rules, including the prohibition on residential conversions relate to buildings throughout the city, staff chose for purposes of a potential text change only to focus on buildings in Old Town. In addition, staff determined that its study should be limited, at least at this juncture, to buildings on King Street.

In order to assess the potential impact of allowing all noncomplying buildings on King Street to convert to residential use, staff performed a study of existing structures in the 100 through 1500 blocks of King Street. The zoning ordinance already permits smaller buildings to convert the second and third floors above retail to residential apartments, and excuses some of the zoning rules as an incentive for doing so. See section 4-508. Therefore, staff limited its search for noncomplying buildings to those above four stories. Using the real estate assessment records for floor area calculations, and doing a building by building survey to determine uses, staff found that there are 15 buildings on King Street that exceed FAR limits that would be theoretical candidates for conversion to residential if the zoning ordinance did not prohibit it. See attached chart and map of King Street buildings surveyed.

Staff then reviewed the list of buildings in the attached chart more closely and found that most of the buildings that have the theoretical potential to convert are actually unlikely candidates for residential conversion. Examples include several buildings, such as the Holiday Inn, Tavern Square, and the prior Coca Cola building, that, even in a strong residential market, are difficult to imagine

being desirable to the owners as residential uses, at least in the foreseeable future. The five buildings listed on the chart with an asterisk, however, (601, 725, 805, 814 and 815 King Street) are realistic conversion candidates and would, if this text amendment is adopted, be permitted to change to residential. Fortunately for the economics of the street, the study found that only one of thsoe buildings, 815 King Street, was vacant. From staff's perspective, with only five potential candidates as a practical matter, for an estimated total of 90 additional apartments, the possible negative impacts are not significant.

Proposed Text Amendment

The proposed text amendment adds language to the provisions regarding noncomplying structures. Specifically, it provides that, within the geographical area studied, the 100 through 1500 blocks of King Street, a building that is noncomplying because of FAR, may convert to residential use and not have to comply with those zoning rules otherwise applicable to residential uses in the CD zone. CD zone rules for residential buildings include lot size, units per acre, FAR, open space, yards, frontage, and height. In other words, if a building already exists on King Street, this provision will allow its reuse regardless of the rules typically applied to new residential buildings.

While staff is typically not supportive of allowing residential uses without the required elements, especially open space, it is willing to excuse them in this case. Given the built environment on King Street, the prohibition on removing buildings, and the urban environment there, it is simply not always feasible to provide amenities such as open space and yards after the fact to existing buildings. In addition, it would not necessarily be desirable or compatible with the remainder of the street and the historic district to include those features even if it were feasible. However, the text amendment requires special use permit approval for each residential conversion. If there were a possibility for residential amenities on an individual building, such as a rooftop deck, the feature could be incorporated into the approval as a requirement on a case by case basis. The special use permit requirement also provides some assurance that the number of conversions is kept to an acceptable level. Although staff does not foresee a large number of conversion requests in the future, the special use permit review will allow the City to limit the number of approvals.

Parking is the one requirement with which the text amendment does not excuse compliance. Even though staff is aware that none of the buildings that are likely candidates for the text change include parking on site, staff proposes that those uses require a parking reduction special use permit, as would ordinarily be the case, in order to proceed. The issue of parking can then be reviewed on a case by case basis and the number of units, the size of units, and the parking arrangements the owner can provide can be assessed. Commercial uses on King Street are exempt from parking now. Although a difficult issue, the city's policy about parking in Old Town, including for new residential apartment users, is important and there are a number of methods for dealing with the issue. Staff has discussed the subject of the residential conversion scheme with both Old Town and Upper King

Street Civic Associations as well as with the Old Town Business Association and KSMET. All were in support of proceeding with the text amendment, although there remained some questions about parking.

STAFF: Eileen P. Fogarty, Director, Planning and Zoning;
Barbara Ross, Deputy Director.

Attachments: Chart of King Street Buildings
Map of King Street Study

NONCOMPLYING BUILDINGS (FAR) WITH POTENTIAL FOR RESIDENTIAL REUSE: 100-1500 KING STREET

ADDRESSES	NO. OF STORIES	OFFICE	RESTAURANT	RETAIL	RESIDENTIAL	OTHER	GFA**	LOT AREA**	PARKING
1500 King	4	All office Coca Cola building	None	1st Floor Kitchen Store	None	None	111,648	27,912	Unknown.
1420 King	6	All office Nat'l Socity of Professional Engineers	None	None	None	None	57,505	26,463	On-site undergmd garage and surface parking lot
1101 King	3 King / 7 Henry	All office American Society of Travel Agents	1st Floor--Expresso Cafe	1st Floor Vacant	None	Med. Service: Lasik + Beauty Salon	210,970	64,823	On-site parking garage
906 King	3 to 5 stories	All office Firehouse Square	None	None	None	None	24,084	8,297	Surface pking.
901 King	3 to 4 stories	All office	None	1st Floor Rug Store	None	None	14,863	5,165	Surface pking.
815 King*	6	Vacant--Floors 2 to 6	1st Fl--Thai	None.	None.	Vacant.	21,500	4,300	No parking.
814 King*	4	Office--Floors 2 to 4	None	1st Floor – Calico Corners	None.	None.	21,406	5,104	No parking.
805 King*	4	Office--Floors 2 to 4	None	None.	1 apartment.	Beauty Salon Built as hotel	10,494	3,881	No parking.
725 King/ 101 N Columbus*	5	Office condos--Floors 2-5	1st Fl--Bertucci's	None	None	None	21,500	4,300	3 spaces?
601/603 King*	4	Office--Floors 2 to 4	1st Fl--Chipotle	None.	None.	None.	6,696	1,700	Surface pking.
				None.	None.	2nd Floor – For Lease.	8,928	2,246	Surface pking.
515 King	4	Office--Floors 2 to 4 Crestar Building	None.	None.	None.	1st Floor – Bank	82,800	22,627	On-site pking garage.
501 King	4	Office--Floors 2 to 4 Bankers Square	None.	1st Floor – Books a Million	None.	None.	73,000	31,576	On-site pking garage.
480 King	6	Holiday Inn hotel	1st Floor.	1st Floor.	None.	Hotel – Holiday Inn	150,314	39,702	On-site pking garage.
401 King	1 to 5 stories	Office--Floors 1 to 4 Tavern Square	1st Floor.	1st Floor.	None.	None.	181,932	79,713	On-site pking garage.
320 King	5	Office--Floors 1 to 5. Kay Building	None.	1st Floor.	None.	None.	96,549	26,024	On-site pking garage.

* based on real estate assessment data

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King Street Study
Residential Re-Use

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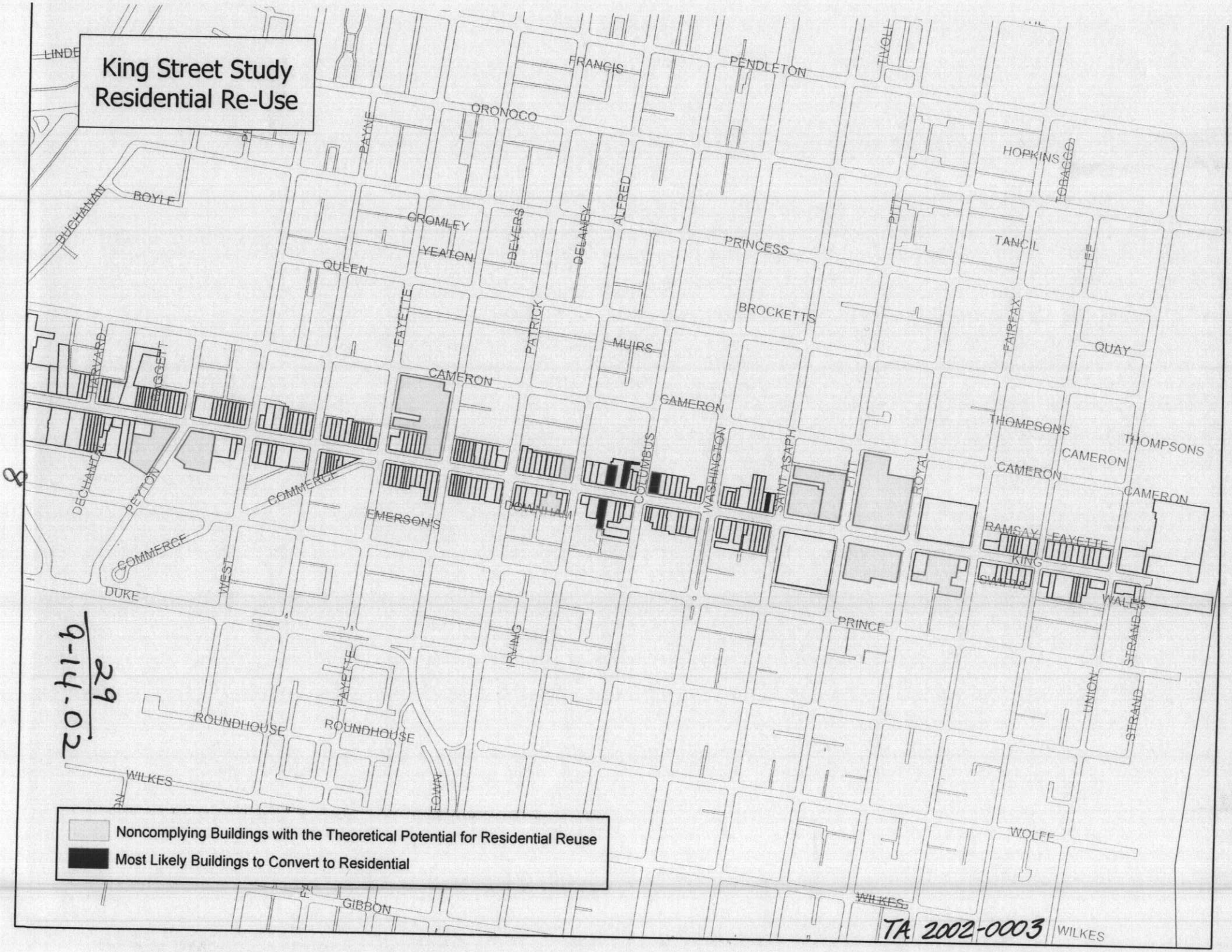
King Street Study
Residential Re-Use
Noncomplying Buildings with the Theoretical Potential for Residential Reuse
Most Likely Buildings to Convert to Residential
LINDE
FRANCIS
PENDLETON
TIVOLI
ORONOCO
PAYNE
HOPKINS
TOBACCO
BOYLE
BUCHANAN
CROMLEY
YEATON
DEVERS
DELANEY
ALFRED
PRINCESS
PITT
TANCIL
LEE
QUEEN
FAYETTE
PATRICK
BROCKETTS
FAIRFAX
QUAY
MUIRS
HARVARD
BAGGETT
CAMERON
CAMERON
THOMPSONS
THOMPSONS
CAMERON
CAMERON
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PEYTON
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ISSUE DESCRIPTION: to ALLOW NONCOMPLYING STRUCTURES ON KING STREET IN OLD TOWN to CONVERT to RESIDENTIAL USES WITH SPECIAL USE PERMIT APPROVAL.

ZONING ORDINANCE SECTION: 12-102

CITY DEPARTMENT: PLANNING + ZONING

ACTION - PLANNING COMMISSION: 9-5-2002 RECOMMEND APPROVAL. 7-0

ACTION - CITY COUNCIL: 9/14/02PH--CC approved the Planning Commission recommendation.