

## WASHINGTON COUNTY PLANNING COMMISSION

REGULAR MEETING – October 5, 2009  
7:00 PM

### WASHINGTON COUNTY ADMINISTRATIVE ANNEX

#### CALL TO ORDER

#### ROLL CALL

#### PUBLIC MEETING

1. RZ-09-006 – Text Amendment - Article 22, Section 22.21(g) Signs permitted Without Zoning Permit – A proposal to remove time limits on the placement of election signs; Planner: Steve Goodrich \* (See attachment below)

#### MINUTES

1. Minutes of August 31, 2009 Planning Commission regular meeting \*

#### NEW BUSINESS

##### - Modifications

1. Robert Firey, Lot 2 (S-09-050) – Applicant is requesting a reduction of the 50-foot side yard agricultural setback to 15-feet for property location at 14314 Rockdale Road, Clear Spring; Zoned: A(R) – Agricultural Rural; Planner: Cody Shaw \*
2. Paradise Manor, Lot 4 – Applicant is proposing to create a stand-alone parcel along the north side of Cranberry Court and east side of Paradise Church Road; Zoned: RR – Residential Rural; Planner: Lisa A. Kelly \*

##### - Site Plans

1. Allenburg Orchards (SP-09-033) – Proposed pole building for a produce stand along the east side of Smithsburg Pike at its intersection with Barth Spring Lane; Zoned: A(R) – Agricultural Rural; Planner: Lisa A. Kelly \*
2. Eastern Primary School (SP-09-026) – Proposed elementary school to be located at the intersection of Mt. Aetna Road and Yale Drive; Zoned: RS – Residential Suburban; Planner: Tim Lung \*

##### - Forest Conservation

1. Larry and Vicky Rollins – Proposed Forest Conservation easement purchase and tree planting for property located in Hancock for a total of 29.9 acres; Presentation by Elmer Weibley \*
2. Brookmeade Apartments – Request to make payment-in-lieu to meet Forest Conservation requirements by Shaool Brookmeade Development, LLC; Planner: Bill Stachoviak \*

#### OTHER BUSINESS

1. 2008 Annual Report \*
2. Briefing on UGA Report and process; Planner: Steve Goodrich

#### UPCOMING MEETINGS

1. Planning Commission Workshop Meeting, Monday, October 19, 2009, 1:00 p.m., Washington County Administrative Annex, 80 West Baltimore Street, Hagerstown
2. Planning Commission Regular Meeting, Monday, November 2, 2009, 7:00 p.m., Washington County Administrative Annex, 80 West Baltimore Street, Hagerstown

#### ADJOURNMENT

\* *attachments*

The Planning Commission reserves the right to vary the order in which the cases are called.

Individuals requiring special accommodations are requested to contact the Washington County Planning Department at 240-313-2435 Voice/TDD, to make arrangements no later than ten (10) days prior to the meeting. *Notice is given that the Planning Commission agenda may be amended at any time up to and including the Planning Commission meeting.*



## WASHINGTON COUNTY PLANNING COMMISSION

Washington County Administrative Annex  
80 West Baltimore Street  
Hagerstown, Maryland 21740-6003  
Telephone: 240-313-2430  
FAX: 240-313-2431  
Deaf and Hard of Hearing call: 7-1-1 for Maryland Relay

### STAFF REPORT AND ANALYSIS ZONING ORDINANCE TEXT AMENDMENT

RZ-09-006  
September 3, 2009

Upon advice from the County Attorney the Washington County Planning Department is proposing an amendment to Section 22.21 of the Washington County Zoning Ordinance. This section regulates signs and lists certain types of signs that do not require a zoning permit. The section proposed for amendment states:

#### ***Section 22.21 Signs Permitted Without Zoning Permits***

***The following signs are permitted without zoning permit in any district provided the following conditions are adhered thereto.***

***(g) Election signs, provided the signs are not erected more than 45 days prior to a primary or special election. Unsuccessful candidates shall remove signs within 15 days after a primary or special election. All signs shall be removed within 15 days after the general election. Signs shall not interfere with traffic visibility.***

The amendment proposes that all of the text of paragraph (g) that imposes time limits on the placement of election signs be eliminated so that the section reads:

#### ***Section 22.21 Signs Permitted Without Zoning Permits***

***The following signs are permitted without zoning permit in any district provided the following conditions are adhered thereto***

***(g) Election signs, provided the signs do not interfere with traffic visibility.***

In supporting information the County Attorney explains that the American Civil Liberties Union (ACLU) of Maryland has notified the County that such time limits are illegal. An ACLU letter cites two federal district court cases regarding similar durational limits from Baltimore and Prince George's counties in Maryland. The court's decisions in each case concludes that such time limits on the placement of election signs are a form of unconstitutional limitation on free speech of the resident displaying the sign and the candidate. Therefore, such time limits have been determined to be illegal. The 1994 Supreme Court decision in the case of *City of Ladue vs Gilleo* is cited as the precedent for this stance.



STAFF REPORT AND ANALYSIS

RZ-09-006

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The offending text appears to be part of the original Zoning Ordinance text that was adopted in 1973. It is clearly an attempt to limit the time that these signs can be displayed, at least in part to limit the visual clutter of such signs that proliferate before and after elections. As noted above, courts have determined that the right to this type of free speech outweighs a desire to limit this type of visual clutter.

No further explanation for the proposed amendment seems to be necessary. The County has been advised by a reputable party that a certain part of its zoning ordinance violates the U.S. Constitution's 1<sup>st</sup> amendment freedom of speech protections. In addition to the supporting references of three court cases the advice contains a simple solution to the problem, deletion of the offending section, which is the remedy the County Attorney recommends and the Planning Department proposes.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stephen T. Goodrich". The signature is written in a cursive style with a large initial "S".

Stephen T. Goodrich  
Chief Planner

WASHINGTON COUNTY PLANNING COMMISSION  
WASHINGTON COUNTY, MARYLAND

ORDINANCE AMENDMENT APPLICATION

PLEASE BE SURE TO COMPLETE THE APPROPRIATE SECTIONS AND SIGN THE APPLICATION.

THE APPLICATION MUST BE ACCOMPANIED BY THE APPROPRIATE FEES. (PLEASE MAKE CHECKS PAYABLE TO: "WASHINGTON COUNTY TREASURER".)

To be completed by the Planning Commission	
Case No.	<u>RZ-09-006</u>
Date Filed:	<u>6-30-09</u>
Fee Paid:	<u>N/A</u>
Hearing Date:	<u>10-5-09 Plan. Comm.</u>

Washington County Planning Dept.

80 West Baltimore Street, Hagerstown

\_\_\_\_\_  
APPLICANT

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
PROPERTY OWNER

\_\_\_\_\_  
ADDRESS

Type of Amendment requested:

**MAP AMENDMENT**

1) Zoning Ordinance:

The applicant hereby petitions for the reclassification of land

Located at \_\_\_\_\_  
Street Name and Number or N S E W side of road, distance N S E W from nearest  
Intersecting road

Consisting of \_\_\_\_\_  
Area in square feet if less than one (1) acre, or in acres if one (1) acre or more

From the \_\_\_\_\_ District to the \_\_\_\_\_  
Present classification Requested Classification

Tax Map: \_\_\_\_\_ Grid: \_\_\_\_\_ Parcel No.: \_\_\_\_\_

Explanation (As described in the "Administrative Procedures for Rezoning Applications"): \_\_\_\_\_

If additional space is needed, please attach a separate sheet of paper)

**REASON FOR THE REQUEST: (Please check one)**

- Change in the character of the neighborhood
- Mistake in Original Zoning

**TEXT AMENDMENT**

Please check one:

Adequate Public Facilities Ordinance	_____
Comprehensive Plan	_____
Forest Conservation Ordinance	_____
Solid Waste Plan	_____
Subdivision Ordinance	_____
Water and Sewer Plan	_____
Zoning Ordinance	<u>  X  </u>

Proposed Text: Deletions should be in brackets, unchanged wording in lower case, and new wording in caps.

Section No.   22.21  

(g) Election signs, provided the signs [are not erected more than 45 days prior to a primary or special election. Unsuccessful candidates shall remove signs within 15 days after a primary or special election. All signs shall be removed within 15 days after the general election. Signs shall] DO not interfere with traffic visibility.

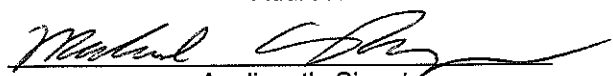
\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Attorney or Agent

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

  
Applicant's Signature

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. My commission expires on \_\_\_\_\_.

\_\_\_\_\_  
Notary Public



**OFFICE OF THE COUNTY ATTORNEY  
WASHINGTON COUNTY, MARYLAND**

Washington County Administration Building  
100 West Washington Street, Room 202  
Hagerstown, Maryland 21740-4735  
Telephone: 240-313-2230  
FAX: 240-313-2231  
Deaf and Hard of Hearing call 7-1-1 for Maryland Relay

June 12, 2008

Deborah A. Jeon  
Legal Director  
3600 Clipper Mill Road, Suite 350  
Baltimore, MD 21211

RE: Washington County Election Signs

Dear Ms. Jeon:

I am in receipt of your letter of June 3, 2008 concerning Washington County's Zoning Ordinance, specifically Art. 22, Div. II, §22.21(g) concerning election signs. I have reviewed your letter and the accompanying case, Bell v. Baltimore County.

As a result of your letter, I spoke to our Planning Department and our Permits Department. I have been told that the timing issues indicated in §22.21(g) have not been enforced in the past. Likewise, the County is not inclined to begin enforcing the timing issues. That said, I recognize that your interest is not merely to determine whether §22.21(g) is now or will be enforced in the future, but also whether the County would consider repealing §22.21(g) as a result of the underlying holding in the Bell case. Given the underlying holding, I expect that my office will recommend to the Board of County Commissioners that the Zoning Ordinance should be amended to repeal §22.21(g). Of course, because §22.21(g) is part of the Zoning Ordinance, certain procedures must be followed regarding public notice, etc., for amending the Ordinance.

Thank you for bringing this matter to our attention. If you have any questions, do not hesitate to give me a call.

Very truly yours,

Andrew F. Wilkinson  
Assistant County Attorney





PUBLIC WORKS

RECEIVED

DEBORAH A. JEON  
LEGAL DIRECTOR

June 3, 2008

JUN - 4 2008

COUNTY  
COMMISSIONERS

President John F. Barr  
Washington County Board of Commissioners  
100 W. Washington Street, Room 226  
Hagerstown, MD 21740

Dear President Barr:

As we head toward the 2008 general election, we write on behalf of the American Civil Liberties Union of Maryland to call your attention to a recent federal district court decision finding unconstitutional a Baltimore County ordinance regulating political yard signs. *Bell v. Baltimore County*, 2008 WL 1953475 (D.Md. Mar. 31, 2008). Washington County has a similar provision, article 22, div. II, § 22.21(g) of the Washington County Zoning Ordinance, which we understand to be your current law.<sup>1</sup> Like the Baltimore County law, the Washington County law restricts the length of time political lawn signs may be displayed by residents on their private property.

AMERICAN CIVIL  
LIBERTIES UNION OF  
MARYLAND FOUNDATION  
3600 CLIPPER MILL ROAD  
SUITE 350  
BALTIMORE, MD 21211  
T/410-889-8555  
F/410-366-7838  
WWW.ACLU-MD.ORG

OFFICERS AND DIRECTORS  
SARA N. LOVE  
PRESIDENT

SUSAN GOERING  
EXECUTIVE DIRECTOR

C. CHRISTOPHER BROWN  
GENERAL COUNSEL

Specifically, your ordinance exempts from zoning permit in any district “[e]lection signs, provided the signs are not erected more than 45 days prior to a primary or special election. Unsuccessful candidates shall remove signs within 15 days after a primary or special election. All signs shall be removed within 15 days after the general election.” Washington County, Md., Zoning Ordinance, art. 22, div. II, § 22.21(g).

The United States District Court for the District of Maryland repeatedly has found similarly-worded provisions to violate the First Amendment, including the recently invalidated Baltimore County law. That law banned residents from posting political campaign signs on their private property beyond a limited window of time surrounding the election. Judge Catherine Blake found the regulation to be an “unconstitutional durational limit on political residential signs.” *Bell v. Baltimore County*, 2008 WL 1953475 at \*1 (D.Md. Mar. 31, 2008). Judge Blake noted that many courts have recognized “the importance of official campaign signs and the message they provide” as a form of protected speech. *Id.* at \*2. This type of regulation is not narrowly tailored when it specifically restricts campaign signs. *Id.* Enclosed is a copy of Judge Blake’s decision.

The *Bell* ruling followed a 1999 federal district court ruling that struck down a similar provision of the Prince George’s County Code. *Curry v. Prince George’s County*, 33 F. Supp. 2d 447, 448 (D. Md. 1999). There, Judge Peter J. Messitte held that the Prince George’s ordinance unconstitutionally infringed First Amendment rights “insofar as it impose[d] durational limitations on the posting of political campaign signs by individuals at their private residences.” *Id.* at 448. The court found that, while valid regulations for

<sup>1</sup> Please advise us if this understanding is incorrect.

private, residential property "may include size, shape and location restrictions upon campaign signs, they may not include durational ones." *Id.* at 454-55.

A restriction on the amount of time a political campaign sign may be displayed on private property restricts the First Amendment rights of both the resident and the candidate. *Curry*, 33 F. Supp. 2d at 449 n. 3. The Supreme Court said in *City of Ladue v. Gilleo*, "[d]isplaying a sign from one's own residence often carries a message quite distinct from placing the same sign someplace else, or conveying the same text or picture by other means. Precisely because of their location, such signs provide information about the identity of the 'speaker.'" 512 U.S. 43, 56 (1994).

Like the sign ordinances the court has found unconstitutional in Prince George's and Baltimore Counties, the Washington County ordinance restricts the amount of time residential property owners may display political signs, and thereby unconstitutionally restricts the First Amendment rights of both residents and candidates.

AMERICAN CIVIL  
LIBERTIES UNION OF  
MARYLAND

We realize that some laws of questionable constitutionality remain on the books long after enforcement ceases. Perhaps this is the case with this regulation. For this reason, we request that you let us know whether Washington County enforces this law. If so, kindly tell us the details of each enforcement over the past three years.

Even if you are not actively enforcing your sign law, the continued retention of a law that unconstitutionally limits speech has a chilling effect upon residents. Accordingly, we urge you to consider repealing the portions of your sign ordinance that offend the Constitution.

We would appreciate it if you or your attorney would contact one of us after you have a chance to review this request to advise us of the county's thoughts about the matter.

Thank you for your consideration.

Sincerely,



Deborah A. Jeon  
Legal Director



Peter Montefusco  
Law Clerk

Enclosure