

**WASHINGTON COUNTY PLANNING COMMISSION  
REGULAR MEETING – MARCH 5, 2007**

The Washington County Planning Commission held its regular meeting on Monday, March 20, 2007, in the Washington County Administrative Annex, 80 West Baltimore Street, Hagerstown.

Members present were: Chairman George Anikis, Linda Parrish, Bernard Moser, Sam Ecker, Terry Reiber, Clint Wiley and Ex-Officio James F. Kercheval. Staff members present were: Planning Director Michael C. Thompson, Chief Planners Stephen Goodrich and Timothy A. Lung, Senior Planner Jill Baker, Associate Planner Sara Henke, Land Preservation Planner Holly Thibault and Administrative Assistant Debra Eckard.

**CALL TO ORDER**

Chairman George Anikis called the meeting to order at 7:00 p.m.

**MINUTES**

Mr. Kercheval made a motion to approve the minutes of the regular Planning Commission meeting of February 5, 2007 as amended. Seconded by Mr. Moser. Unanimously approved.

**OLD BUSINESS**

**Hoffman Farms (PC-06-011)**

Ms. Baker presented for review and comments a revised concept plan for Hoffman Farms located along the north side of Cearfoss Pike. The developer is proposing 47 residential dwelling units on 50.84 acres and is zoned A – Agriculture. During the preliminary consultation, the County Engineering Department stated that due to the number of proposed lots, a redundant access would be required. The developer has revised the concept plan to show a stub into Grandview Acres, LLC.

**Discussion:** Mr. Anikis recommended negotiations between Grandview Acres, LLC and Mr. Hoffman to determine the best location for the stub between the two developments. Mr. Divilbiss, attorney for the developer, stated that the stub-in location was determined by the location of floodplains and they would be willing to agree that “to the extent possible”, when it is necessary they would be willing to work with the developer of Grandview Acres LLC to determine where the stub-in should be located. The developer will work closely with Grandview Acres, LLC as the development moves forward. Mr. Reiber asked who would maintain the main access point. Ms. Baker stated that the County would maintain the “actual pavement”. However, the County Engineering Department stated that the County would not maintain the drainage ditches along elongated stretches of road where lots are not fronting it and maintenance would be the responsibility of a Homeowner’s Association.

**NEW BUSINESS**

**- Agricultural Land Preservation District Applications**

Ms. Thibault presented for review and approval Agricultural Land Preservation District Applications. The Planning Commission must determine the following criteria: consistency with the Comprehensive Plan, that the properties are outside the Growth Area and that there are no planned water and sewer services for the properties. The Ag Board previously approved the districts using the following criteria: the property must contain a minimum of 50 acres and must stand alone or 20 acres contiguous with other permanently protected lands; they must have an ag use assessment; a minimum of 50% Class I, II and III soils classification. which have the highest crop yield and productivity. The following properties were considered:

- Kriner Farm, LLC – Application #AD-06-018, Property located at 11065 Dam No. 5 Road, Clear Spring, 268.4 acres
- Theodore Rosenberry – Application #AD-06-015, Property located at 12574 Indian Springs Road, Clear Spring, 104.52 acres
- Robert Martz – Application #AD-06-019, Property located at 11429 White Hall Road, Smithsburg, 88.87 acres
- Edwin E. David – Application #AD-06-001, Property located at 7007 Mariah Furnace Road, Boonsboro, 139.3 acres
- Rodney E. Dill – Application #AD-06-007, Property located at 19911 Mill Point Road, Boonsboro, 168.03 acres

Ms. Thibault stated that there are presently 21,000 acres of property in 10-year ag districts and 20,000 acres of permanently protected lands.

Ms. Moser made a motion to recommend approval of the Agricultural Land Preservation District applications as presented because they are consistent with the Comprehensive Plan and meet all other necessary criteria. Seconded by Mr. Ecker. Unanimously approved with Mr. Kercheval abstaining.

## **- Variances**

### **Wendy J. Bergman Cunningham (SV-07-006)**

Ms. Henke presented for review and approval a variance request from Section 405.11.G.5 of the Subdivision Ordinance to allow a panhandle of 1400-feet. The property is 9.63 acres in size located on Mt. Aetna Road and is zoned EC – Environmental Conservation. The remaining lands are 18.4 acres. The applicant's claim for hardship is because they do not want to destroy the existing electric fence and tree line. The applicant proposes to keep the remaining land in pasture. The Mt. Aetna Volunteer Fire Department submitted a letter stating that they have reviewed the property and "find no problems at this time". Comments were also submitted by the Division of Fire and Emergency Services as follows: 1) "From a 9-1-1 viewpoint, once the address is assigned to this lot and driveway, they should be required to display the address at the end of the driveway and along the road." and 2) "The panhandle lot must be wide enough to accommodate the larger fire and emergency vehicles that would be used in the event of a fire or EMS emergency at this location." Ms. Henke stated that the subdivision plat must be submitted to the Planning Department for review and approval contingent upon Fire and Emergency Services comments, Health Department comments, and Engineering Department comments.

**Discussion:** Mr. Anikis asked, if approved, could any further subdivision occur on this property? Ms. Henke stated no further subdivision could occur. There was a brief discussion regarding the location of the fence line.

**Comments:** Mr. Moser stated that he does not approve of long panhandles due to safety issues. Mr. Wiley concurred with Mr. Moser's comment. Ms. Parrish expressed her opinion that she does not usually approve of long panhandles; however, the Mt. Aetna Fire Department did not have any concerns. There was a brief discussion regarding the width of driveways for rescue vehicles. Mr. Anikis expressed his opinion that the driveway should be properly maintained and wide enough for emergency vehicles (a 20-foot width would be desirable).

Ms. Parrish made a motion to grant the variance request. Seconded by Mr. Ecker. The motion passed with Ms. Parrish, Mr. Ecker, Mr. Wiley, Mr. Reiber and Mr. Kercheval voting "Aye" and Mr. Moser voting "Nay".

## **- Site Plans**

### **Pavestone Company (SP-06-060)**

Mr. Lung, on behalf of Ms. Pietro, presented for review and approval the site plan for Pavestone Company located along the east side of Hopewell Road. The developer is proposing to construct a 24,000-square foot plant addition and a 4,800-square foot office addition on a total of 35.5 acres of property currently zoned IG – Industrial General. Public water and sewer currently exists and will serve the site. There are currently 50 employees with 15 additional employees proposed. Parking spaces required are 40 spaces and 40 spaces are provided. Hours of operation are 24 hours per day 7 days per week. No new signage is proposed. A new screened dumpster is proposed and would be located next to the plant addition. Approximate deliveries would be 45 to 50 semi-trailers per day. Building mounted lights are proposed on the office building and plant addition. A variety of landscaping material will be installed around the office building. The site is eligible for the "express procedure" to meet Forest Conservation requirements with a payment-in-lieu in the amount of \$29,185.20 for the entire 21 acre area. Mr. Lung noted that the large storage yard located at the front of the property was installed without site plan approval. The current site plan is attempting to bring the site into compliance. There are a few scattered trees planted along Hopewell Road and Staff believes there should be a more concentrated planting of trees to provide a buffer along Hopewell Road. Staff recommends providing additional screening along the edges of the storm water management pond. Mr. Lung also recommended a condition should be placed on the storage yard for storage of finished products only and not for storage of waste products. Approval from the Health Department is pending. All other agency approvals have been received.

**Discussion:** Mr. Kercheval made an inquiry regarding the storage of waste product on the site and making storage of "finished material only" a condition of the approval process. There was a brief discussion regarding other areas suitable for storage of rubble material. Mr. Lung stated that rubble storage could be shown elsewhere on the site and his recommendation is only for the new storage areas (labeled E and F on the plat). Mr. Anikis made an inquiry regarding air quality issues. Mr. Lung stated that air quality issues are being addressed by the State Highway Administration in conjunction with I-81.

Mr. Moser made a motion to approve the site plan contingent upon an increased buffer zone and replacement of dead trees along Hopewell Road, screening along the storm water management pond, and a recommended identified storage area for finished products and an area for rubble materials. Seconded by Mr. Reiber. Unanimously approved.

**Clarification:** Staff will review and approve the designated storage areas outlined above.

### **Rampf Molds Industry (SP-07-002)**

Mr. Lung, on behalf of Ms. Pietro, presented for review and approval the site plan for Rampf Molds Industry located along the east side of Western Maryland Parkway at the southwest corner of West Washington Street. This project has been given the "fast track" designation. The developer is proposing a total expansion of 21,200-square feet on a 7-acre parcel. The plan shows an expansion of 17,000-square

feet with an optional additional expansion of 4,200-square feet for the manufacturing facility. Depending upon construction bids, the developer may reduce the total expansion to 17,000-square feet only. Public water and sewer currently serves the site and no additional water or sewerage allocation would be required. No additional lighting or signage is proposed. Proposed freight and delivery services are one per day. There are currently 65 employees with a total of 90 employees proposed after the expansion. Hours of operation are 6:00 a.m. to 12:00 a.m. Monday through Friday. There are 62 existing parking spaces and 52 spaces are required. Additional landscaping is proposed along the front and side of the site. This site was developed prior to the adoption of the Forest Conservation Ordinance; therefore, Forest Conservation requirements would be required only on the newly disturbed area. The site is eligible for the "express procedure" to meet Forest Conservation requirements with a required planting area of 1.08 acres or a payment-in-lieu of \$4,704.48. Approvals are pending from the Engineering Department, Health Department and the Soil Conservation District. A geo-technical report on the storm water management area is required for submittal to the Engineering Department and Soil Conservation District for their review prior to approval. All other agency approvals have been received.

**Discussion:** Mr. Anikis made an inquiry regarding the number of parking spaces provided for 90 employees. A representative from Rampf Molds stated that employees work two shifts.

Mr. Reiber made a motion to approve the site plan contingent upon all agency approvals. Seconded by Mr. Wiley. Unanimously approved.

#### **U.S. Cellular – Huyett North (SP-07-006)**

Mr. Lung, on behalf of Ms. Pietro, presented for review and approval the site plan for U.S. Cellular located along the west side of Salem Church Road on a 166-acre tract of land owned by Robert and Rhoda Martin and is zoned A(R) – Agricultural Rural. The developer is proposing a 199-foot galvanized, gray monopole tower on a 10,000-square foot leased area. The Board of Zoning Appeals granted a special exception for this site in the Fall of 2006 contingent upon the tower being self-collapsing and the tree line along the eastern property line must remain for screening purposes. No water or sewer facilities are required since this is an unmanned site. A 12' x 20' equipment shelter within a 75' x 75' fenced compound. A 25-foot access easement for maintenance purposes will be provided. There will be no lighting on the tower. The tower is designed for a total of four users. The Department of Public Works has made a request to be a co-locator on the tower for county communications equipment. Mr. Kercheval stated that the Department of Public Works would like to have standard language included on the plans for all cell towers to include space for communication systems. The site is exempt from Forest Conservation Ordinance requirements since less than 40,000-square feet of disturbed area will be involved. All agency approvals have been received. In order to insure that the existing tree line is not removed, an easement must be established and recorded. A note should be added to the plan that the cell tower must be self-collapsing as required by the Board of Zoning Appeals. A note would also be required on the plan that the cell tower owner will be responsible for removal of the tower when the tower is abandoned and no longer is in use.

**Discussion:** Ms. Parrish made an inquiry regarding the height of the cell tower and lighting for the tower. Mr. Lung stated that the FAA does not require lighting if the tower is under 200-feet in height. Mr. Kercheval made an inquiry regarding the number of users for the tower. A representative from U.S. Cellular stated that a condition of approval the tower was to be designed for four or more carriers. There was a brief discussion regarding the easement for the tree line. Mr. Reiber made an inquiry regarding lighting requirements on the tower. Mr. Lung believes that the FAA would have jurisdiction regarding lighting.

**Comments:** Mr. Kercheval stated that the Department of Public Works would require a 20-foot vertical space within the facility or fenced yard for a communications building. Standard language should be designed for use on plans for all cell towers. He also noted that if there were any kind of interference with the tower and any of the County's communication systems, it would be the responsibility of the owner of the tower to resolve the conflicts. Mr. Lung noted that a Zoning Ordinance text amendment might be necessary.

Mr. Wiley made a motion to approve the site plan contingent upon an acceptable negotiated easement agreement and conditions as imposed by the Board of Zoning Appeals and the Department of Public Works. Seconded by Mr. Reiber. Unanimously approved.

#### **Hagerstown Community College (SP-07-007)**

Mr. Lung, on behalf of Ms. Pietro, presented for review and approval the site plan for the Hagerstown Community College located along the northwest side of Robinwood Drive. The College is proposing a 4,000 square foot addition to the west side of the Technical Innovation Center located adjacent to Scholar Drive and east of the Athletic Recreation Center. The addition will be used for offices and wet labs to support the companies located in the TIC. The project has been given a "fast-track" designation. The hours of operation are Monday through Friday 7:00 a.m. to 9:00 p.m. and Saturday 7:00 a.m. to 4:00 p.m. Existing public water and sewer facilities will serve the site. Proposed routine deliveries are two small box trucks per day. Solid waste would be collected inside the building and taken to a dumpster in the Programs Building. The wet labs will not generate any biohazards. Any type of hazardous material will be handled by an autoclave located inside the building. Fourteen parking spaces will be required for the addition and will be added to the 54 spaces currently required at the TIC building for a total of 68 spaces that are needed. Ninety-four spaces will be provided. The existing loop road will be relocated behind the Career Programs Building and will provide more parking. There will be four building-mounted, full cut-off

type wall pack lights provided on the addition. Additional landscaping is proposed around the addition. The project is exempt from Forest Conservation requirements because there is less than 40,000-square feet of disturbed area. Approvals are pending from the Health Department, Engineering Department, and the City of Hagerstown Sewer Department. All other agency approvals have been received.

Ms. Parrish made a motion to approve the site plan contingent upon all agency approvals. Seconded by Mr. Ecker. Unanimously approved.

#### **Martin's Food Market #444 (SP-06-063)**

Mr. Lung, on behalf of Ms. Wagner-Grillo, presented for review and approval the site plan for Martin's Food Market #444 and a 6-unit retail strip center along with fuel islands located along North Pointe Drive. The site is approximately 9-acres on two parcels and is zoned PB – Planned Business. The Board of Zoning Appeals granted a variance from various parking and setback requirements in April, 2006. The proposed site consists of the food market that contains approximately 85,000-square feet, the six retail shops that are approximately 2,500-square feet each and six gas pumping islands with canopy. Parking spaces required are 395 spaces and 397 parking spaces are provided. The Zoning Ordinance requires a 9' x 20' parking space; however, the BZA granted a variance to allow a limited number of 9' x 18' parking spaces located along the far southern end of the parking lot. Handicapped spaces will be provided. There are two loading areas for the facility. Three access points will serve the site including the existing right-in, right-out onto Pennsylvania Avenue, one entrance onto North Pointe Drive and one entrance onto Long Meadow Road at an existing curb cut. The design of all access points have been reviewed by the County and State Highway Administration have been coordinated with the County's Capital Improvement Project for the re-building of Maugans Avenue and the intersection of Pennsylvania Avenue and Long Meadow Road. The developer will be responsible for the installation of a traffic light at the North Pointe Drive and US Route 11 intersection. Storm water management will be handled by an underground facility under the parking lot. Proposed hours of operation are as follows: grocery store - 24 hours per day 7 days per week, fueling facility 6:00 a.m. to 11:00 p.m., 7 days per week; retail strip 8:00 a.m. to 11:00 p.m., 7 days per week. Public water (estimated 7,100 gallons per day) and sewer (estimated 6,700 gallons per day) will be provided by the City of Hagerstown. Two pylon signs are proposed, one at the North Pointe Drive entrance and one at the Pennsylvania Avenue entrance and a building mounted sign is proposed. Landscaping will be provided throughout the site and within the parking lot islands. An additional 1.33 acres of Forest Conservation is required based on the new disturbed area and will be handled under the "express procedure" with a payment-in-lieu in the amount of \$5,793.48. The County and State Highway's plan for Pennsylvania Avenue improvements propose sidewalks up to this property. Mr. Lung recommended that the developer continue the sidewalk onto this site to tie into their proposed pedestrian system. Approvals are pending from the Health Department, the Washington County Engineering Department, City of Hagerstown Water and Sewer Department, Soil Conservation District and State Highway Administration. All agency comments have been addressed, revisions made to the plat and re-routed to the agencies for their approval.

**Discussion:** Mr. Kercheval asked if the fuel tanker trucks would be able to navigate through the parking lot? Mr. Robert Glimcher, developer, stated that they have worked with the County on improvements to widen the radius turn for the trucks so a tanker can make the turn to exit onto Pennsylvania Avenue. Trucks will enter the site from Long Meadow Road. Mr. Kercheval expressed his concern regarding the connection between North Pointe Road and Long Meadow Road and believes that the multiple access points appear to be full access points in a short distance. Mr. David Taylor of D.M. Bowman stated that the County installed the curb cuts that currently exist on the site. Mr. Kercheval stated that there are full left and right turns from 3 access points onto a four-lane road (Long Meadow Road). He also stated that, *"as my position as a Commissioner I would never guarantee that would be a full access point from here to eternity because I don't know what we are going to have from traffic issues"*. Mr. Kercheval has talked to Mr. McGee, the County Engineer, how multiple points are going to be put onto a four-lane road. He also noted there is a full-access point across the street as well as a road that enters into the development. Mr. Glimcher believes that the multiple access points will alleviate some of the pressure. Mr. Taylor believes that the installation of the light on North Pointe Drive will influence traffic to utilize that route because it will be the easiest route for people to use. Mr. Glimcher stated that the only way to access the loading docks in the rear of the facility is from Long Meadow Road; however, it is their intent for trucks to exit onto North Pointe Drive. Mr. Kercheval reiterated his concern regarding the full left and right turns onto a four-lane road and stated, *"If the County someday says we want to run a median up through there and limit it to this left lane, we want to be able to do that and expect that we're not going to be told we are going to sue the County or need compensation before you shut that. I just want to make sure that you understand that we're not guaranteeing that's always a left and right in; would be my position on behalf of the Planning Commission"*. A brief discussion continued regarding the full left and right turns onto Long Meadow Road and potential traffic problems that could be caused as the volume of traffic and development in this area continues. Mr. Glimcher stated, *"If a median does happen to be installed at some point in the future, we could still operate and trucks could come out at North Pointe Drive"*.

Mr. Anikis asked when the traffic light on North Pointe Drive would be installed? Mr. Glimcher stated that the traffic light would be installed and operational prior to the opening of the new store.

Mr. Anikis stated he would like to require the installation of an operational of the traffic light concurrent with the store opening.

Mr. Anikis asked why a traffic study was not being required as part of this development? Mr. Thompson stated that a study was done to determine what improvements were needed based on current and

projected land use in the area prior to the improvements on Maugans Avenue and the intersection at Pennsylvania Avenue and Long Meadow Road.

Mr. Ecker made a motion to approve the site plan contingent upon all agency approvals and the installation of an operational traffic light on North Pointe Drive prior to the opening of the store. Seconded by Mr. Reiber. Unanimously approved.

#### **Fort Ritchie Community Center (SP-07-003)**

Mr. Lung presented for review and approval the site plan for Fort Ritchie Community Center located at the northwest corner of Lakeside Drive and Castle Drive in the former Fort Ritchie Military base near Cascade. The project has been given a “fast-track” designation. The proposed community center is located on 2.90 acres and is zoned SED – Special Economic Development area. A 6,900-square foot portion of the existing gymnasium will remain and a 14,294-square foot addition will be added. The community center will contain a gym, exercise areas, community rooms, activity areas, and snack bar with a seating area. Additional parking areas will be provided around the facility. Based on the square footage, 54 parking spaces are required and 76 spaces will be provided including handicapped spaces. There will be 2 employees on the site. Storm water management will be handled through a new bio-retention area. As part of the base closure of Fort Ritchie, a study was completed to review possible mitigation of the effects of the closure on the Camp Ritchie historic district and an agreement called a “Programmatic Agreement” was approved by the Department of the Army, the Maryland Historic Preservation Office, the Advisory Council on Historic Preservation, and Pen Mar Development Corporation. Pen Mar Development is responsible for determining compliance with the “PA”. The gymnasium is considered a temporary World War II wood contributing element and based on the “PA”, demolition of such elements are permitted. There is a provision in the “PA” that redevelopment must comply with design guidelines (that the design of the structure must be in keeping with the overall historic look of the site). The review for “PA” compliance will be by Pen Mar Development Corporation and will be on-going throughout the permit process. The Washington County Historic District Commission has no review or approval responsibility. The building and the site are being designed to meet Federal “Green Building” guidelines, which mean the building and the lighting, etc. should be designed in an energy efficient manner and should provide for renewable resources. All agencies have reviewed the plan and submitted their comments; however, the consultant must submit their revisions for review and approval. One item that does need to be addressed is a concern by 911 and address assignment regarding street names and addresses. Many of the old road names within the development conflict with existing road names and in order to bring this development into compliance with the 911 addressing system, the road names must be evaluated in order to provide addresses for the new buildings. Staff strongly recommends that the Planning Commission should urge COPT to submit an overall concept plan showing the overall design of the site and ownership of the streets and infrastructure. Mr. Lung stated that COPT would like to move forward quickly on site plan approvals for subsequent buildings and he believes that the best way to facilitate these approvals is to present an overall plan for review and comment.

**Discussion:** There was a brief discussion regarding the naming of streets and numbering sequence for addresses. Mr. Anikis asked when an overall development plan would be available and how would that affect the approval of this plan? Mr. Rich Rook, a representative of Pen Mar Development Corporation, stated that Pen Mar is partnered with COPT in this development. He stated that when fire and emergency services respond to Fort Ritchie, building numbers are used and would continue to be used until the addressing issues are resolved. He noted that some streets within Fort Ritchie were named for historical reasons. A representative from COPT stated that they are in the process of refining the overall concept plan. Prior to requesting any further approvals or building permits, he stated that the overall concept plan would be submitted. There was a brief discussion regarding meetings that have been held between the Planning Staff, COPT and Emergency Services to address current and future concerns and plans. The Maryland Historical Trust has reviewed the site plan and given their approval.

Mr. Reiber made a motion to approve the site plan contingent upon all agency approvals. Seconded by Mr. Ecker. Unanimously approved.

#### **Potomac Construction Industrial Ready Mix Plant (SP-07-005)**

Mr. Lung presented for review and approval the site plan for the Potomac Construction Industrial Ready Mix Plant located along the west side of Bottom Road. The developer is proposing to construct a ready mix concrete plant within the permitted area of the Martin Marietta Pinesburg Quarry. The property is zoned IM – Industrial Mineral. The plant would be considered a principle permitted use in the IM zoning district. The approved Mining and Reclamation Plan showed a processing plant and stockpile storage area in the vicinity of this site. Raw material for the ready mix plant would be hauled by truck on existing haul roads from the quarry. The ready mix concrete would be hauled by truck from the existing entrance on Bottom Road near the railroad crossing; therefore, there will be no significant increase in truck traffic. The Maryland Department of the Environment has reviewed the plan and has indicated that an update to the Mining and Reclamation Plan is not necessary. The County currently holds a bond for road damage and road maintenance and will apply to this site. The owner, Martin Marietta, has indicated that they understand that any damages that may be caused by trucks entering the County road from their facility would be covered under their bond. Typical hours of operation are 6:00 a.m. to 8:00 p.m., Monday through Saturday with an occasional 24 hours per day 7 days per week operation. The site plan complies with all performance standards under Section 4.12 of the Zoning Ordinance with regard to emissions, control of dust, vibration, and noise. An MDE Air Quality permit would be required and would be obtained at the permit stage. The site meets the 400-foot setback requirement from a residence per Section 15.5 C. The facility shall not be visible from adjacent public roads per Section 15.5F of the Zoning Ordinance.

There will be one plant operator on site in addition to a truck driver. There is a question of a handicapped parking space at the facility that needs to be addressed with the Department of Permits & Inspections. The entire mining site is exempt from Forest Conservation requirements because it is a permitted mining operation. Address assignment approval is pending. All other agency approvals have been received.

**Additional Comments:** Mr. Lung stated that there needs to be some minor revisions to the wording regarding the performance standards under Section 4.12 and the handicapped parking space issue needs to be addressed.

**Discussion:** Mr. Kercheval inquired about the amount of the bond. A representative from PCI stated that he does not know the amount of the bond; however, it is updated every few years. Mr. Ecker made a motion to approve the site plan contingent upon all agency approvals. Seconded by Mr. Wiley. Unanimously approved.

#### **- Forest Conservation**

##### **Terry & Madeline Yeakle (FS-07-002)**

Ms. Henke provided for review and approval a request for off-site forest retention to meet the requirements of the Forest Conservation Ordinance. The property is located on the south side of Hicksville Road. The proposed off-site retention area is located on Ashton Road and is a portion of an estate of which Mrs. Yeakle is a part. The two properties are approximately 7.8 miles from each other. The proposed location is considered a high priority area and is located near the U.S. Park Service and the Potomac River. If approved, the applicant has offered afforestation at a 2:1 ratio.

Mr. Kercheval made a motion to approve the off-site forest retention request at a 2:1 ratio as proposed. Seconded by Mr. Reiber. Unanimously approved.

#### **OTHER BUSINESS**

##### **RZ-06-016 – Antietam Investments LLC and Sheldon Eby**

Mr. Goodrich presented for review and recommendation the Staff Report and Analysis Following the Public Hearing for rezoning case RZ-06-016 for Antietam Investments LLC and Sheldon Eby. The property is located at 17318, 17320, 17322 and 17326 Virginia Avenue approximately 350-feet east of the intersection with Massey Boulevard and is currently zoned RU – Residential Urban. The applicant is proposing a map amendment and zoning designation of BL – Business Local.

Mr. Goodrich summarized Staff's conclusions for the Commission, as detailed in the Staff Report and Analysis, as follows:

- It is Staff's opinion that the applicant's neighborhood is too large in some directions and does not include adjacent parcels in other directions.
- A clear statement of the neighborhood's character before or after the alleged change was not provided.
- There is clearly an effect on the landscape in this area from the Valley Mall and Cross Pointe Shopping Center, even though the zoning that allows it has been in place since 1973.
- Traffic patterns have changed with the connection of Massey Boulevard to Virginia Avenue, but there is no supporting data for the contention that it has increased or affects the rezoning site.
- In Staff's opinion, the Business Local zoning designation is not logical or appropriate due to the residential development on adjacent parcels and others that were not included in the neighborhood.
- The Business Local zoning is not consistent with the Comprehensive Plan's land use plan map designation.

**Comments:** Mr. Anikis expressed his opinion that residential areas are being destroyed by slowly increasing commercial areas and he agrees with Staff's conclusions. It is his opinion that the request should be denied.

Mr. Moser expressed his opinion that "spot" zoning has led, in part, to the businesses that are currently adjacent to the subject property that was originally platted as a residential neighborhood. Mr. Moser agrees that there have been changes in the area; however, he does not believe there has been a significant change. He agrees with Staff's conclusions and does not believe a case has been made to rezone the property and stated his opinion that the request is not consistent with the County's Comprehensive Plan. [Mr. Moser also expressed his opinion that rezoning applications should be stopped until review of the Growth Area has been completed.]

Mr. Reiber made an inquiry regarding the applicant's argument relative to the "change in character" of the neighborhood. Mr. Goodrich stated that "change in character" can be subject to individual interpretation and Staff believes that although changes have occurred a "change in character" of the neighborhood from residential to business has not occurred.

Ms. Parrish stated that she also has concerns regarding "spot" zoning; however, by listening to comments of residents in the area, she believes that the neighborhood has changed. She also believes that growth needs to be contained within defined areas and the subject property is in an area that is growing. She

noted that during the public hearing there were no objections by neighbors in the area to the rezoning request.

Mr. Moser made a motion to recommend denial of the rezoning application request to the Board of County Commissioners because the applicant has not shown any significant changes in the character of the neighborhood and the request is not consistent with the County's Comprehensive Plan. Seconded by Mr. Wiley. The motion failed with Mr. Moser and Mr. Wiley voting "Aye" and Ms. Parrish, Mr. Reiber and Mr. Ecker voting "Nay". Mr. Kercheval abstained.

Ms. Parrish made a motion to recommend approval of the rezoning application request to the Board of County Commissioners. Seconded by Mr. Reiber.

**Comment before the vote:** Mr. Reiber stated, for the record, that he does not like going against Staff's recommendations; however, during the public hearing there was no opposition to the request and he believes that the neighborhood in this area has changed.

The vote to recommend approval was Ms. Parrish, Mr. Reiber and Mr. Ecker voting "Aye" and Mr. Moser and Mr. Wiley voting "Nay". As Chairman, Mr. Anikis may vote to make a tie or break a tie; therefore, Mr. Anikis voted "Nay" for a final vote of 3 to 3. Therefore, Rezoning case RZ-06-016 will be forwarded to the Board of County Commissioners without a recommendation either for or against the request.

### **RZ-06-017 – Bowman Cavetown, LLC**

Ms. Baker presented for review and recommendation the Staff Report and Analysis Following the Public Hearing for rezoning case RZ-06-017 for Bowman Cavetown, LLC. The property is located at 11840 Maple Road at the southwest corner of Maryland Route 66 and Maryland Route 64 in the Smithsburg Growth Area boundary and is currently zoned RR – Residential Rural. The applicant is proposing a map amendment and zoning designation of BL – Business Local.

Ms. Baker stated that the neighborhood was not reasonably defined. She noted that Maryland case law generally supports the theory that the definition of a neighborhood should not be a rigid standard but rather a flexible definition that allows variation between different conditions; however, the neighborhood should be limited to "the immediate environs of the subject property". Staff does not believe that considering properties that are a mile away but not adjacent to the site is a reasonable definition of a neighborhood. The applicant presented five points during their testimony to support their reasoning for a "change in the character of the neighborhood" as follows:

1. The other three corners of the intersection have been developed commercially.
2. There has been a significant increase in the population of the election district since the original zoning.
3. The upgrade signalization combined with the increased traffic flow has created a need for more commercial uses.
4. Four different rezoning requests were outlined in their defined neighborhood that the applicant felt contributed to the change.
5. Water and sewer services could reasonably be extended to the property.

The applicant also presented a change for a mistake in the original zoning of the property that they based on two main points, as follows:

1. The property is located within an area where commercial growth and development should have been perceived by the County.
2. The County should have anticipated, with the improvements of Maryland Route 64 and the subsequent property takings within that area, a larger commercial area would be needed.

Ms. Baker addressed the applicant's "change in the character of the neighborhood" and the "mistake in original zoning" arguments in her Staff Report and Analysis.

**Comments:** Ms. Parrish stated her opinion that there has been a change in the character of the neighborhood due to the increase in traffic and the existing businesses in the area.

Mr. Reiber asked that if the site were developed for a commercial use, what happens to the road structure in the area of Paden Avenue and who would be responsible for any upgrades or changes that may be needed. Mr. Thompson stated that all necessary traffic studies and road frontage requirements would be required as part of the site plan approval process and the developer would be responsible to make the necessary upgrades and changes to the roadways as directed by the State Highway Administration

Mr. Moser expressed his opinion that this is another example of "piecemeal" zoning in a residential area where an existing house is situated on the property proposed for rezoning. He believes there are already traffic problems and safety issues that need to be addressed in this area and if the property is developed as a commercial site, the life of the residents in the area will dramatically change. Mr. Moser also stated that the Town of Smithsburg has concerns regarding sewer capacity issues.

Mr. Anikis asked if the County's BL (Business Local) zoning designation is equivalent to the Smithsburg's General Commercial zoning designation. Mr. Thompson stated that it is consistent with Smithsburg's zoning designation and the request is consistent with the Town of Smithsburg's Comprehensive Plan.

Mr. Reiber made a motion to recommend approval of the rezoning application request to the Board of County Commissioners based on consistency with the Town of Smithsburg's Comprehensive Plan zoning designation. Seconded by Ms. Parrish. The motion failed with Mr. Reiber and Ms. Parrish voting "Aye" and Mr. Moser, Mr. Ecker and Mr. Wiley voting "Nay".

Mr. Moser made a motion to recommend denial of the rezoning application request to the Board of County Commissioners because it is not consistent with the County's Comprehensive Plan. Seconded by Mr. Wiley. The motion passed with Mr. Moser, Mr. Wiley and Mr. Ecker voting "Aye" and Ms. Parrish and Mr. Reiber voting "Nay".

### **Discussion on Future Rezoning**

There was a brief discussion regarding a temporary moratorium on individual piecemeal requests dealing with rezonings boundary changes to the Urban/Town growth areas or changes to the Water and Sewer Master Plan until the update of the Comprehensive Plan is completed. By consensus, Planning Commission members requested that Mr. Thompson prepare a letter to the Board of County Commissioners requesting the moratorium. The Commission suggested that language be included that would allow an individual property subject to review as part of urban/town growth areas to proceed with a piecemeal request upon the granting of a waiver by the Board of County Commissioners. Mr. Reiber recommended that all Planning Commission members should sign the letter.

### **UPCOMING MEETINGS**

1. Joint Rezoning Hearing, Monday, March 12, 2007, Washington County Court House, 95 West Washington Street, Court Room #1, Hagerstown
2. Regular Planning Commission meeting, Monday, April 2, 2007, 7:00 p.m., Washington County Administrative Annex, 80 West Baltimore Street, Hagerstown

### **ADJOURNMENT**

Ms. Parrish made a motion to adjourn the meeting at 9:40 p.m. Seconded by Mr. Ecker. So ordered.

Respectfully submitted,

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George Anikis, Chairman