

**WASHINGTON COUNTY PLANNING COMMISSION  
REGULAR MEETING – OCTOBER 1, 2007**

The Washington County Planning Commission held its regular meeting on Monday, October 1, 2007, in the Washington County Administrative Annex, 80 West Baltimore Street, Hagerstown.

Members present were: Chairman George Anikis, Linda Parrish, Terry Reiber, Clint Wiley and Ex-Officio James F. Kercheval. Staff members present were: Planning Director Michael C. Thompson, Chief Planner Timothy A. Lung, Senior Planner Misty Wagner-Grillo and Administrative Assistant Debra Eckard.

**CALL TO ORDER**

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

**MINUTES**

Ms. Parrish made a motion to approve the minutes of the September 10, 2007 Regular Planning Commission meeting as amended. Seconded by Mr. Reiber. Unanimously approved.

**NEW BUSINESS**

**- VARIANCES**

**Harry and Peggy Strite (SV-07-024)**

Mr. Lung presented for review and approval a variance request from Section 405.11.B of the Subdivision Ordinance to allow an immediate family member lot without public road frontage. The Subdivision Ordinance requires that the lane serving the lot must be completely contained within the original tract that is being subdivided. Mr. Strite owns approximately 190 acres of land located on Snug Harbor Lane, which is a private road off of Kemps Mill Road. Snug Harbor Lanes serves 6 existing lots and crosses through property owned by the Snug Harbor Campground. Mr. Strite recently placed his land in a permanent agricultural preservation easement and all development rights will be sold. Within the agreement, one acre of land was retained for the purpose of creating a lot for an immediate family member. Mr. Lung contacted the Williamsport Fire Department. They are familiar with the lane and have no objection to the variance. Mr. Lung also contacted Mr. Terry McGee of the Washington County Engineering Department. Mr. McGee is opposed to the variance due to the many problems that often arise with lots that are created off of private lanes and involves going through other people's property.

**Discussion:** Mr. Anikis asked who is responsible for maintaining the farm lane. Mr. Strite was present and stated that the Campground maintains the lane in the summer months and he takes care of it in the winter months (snow removal). There was a brief discussion with regard to ownership of the six lots. A portion of the road is owned by Mr. Strite and part is owned by the Campground. Mr. Kercheval asked how the easement would work on the property that is not owned by Mr. Strite. Mr. Strite stated that the lane was established by deed in the 1800's as a permanent right-of-way to the farm and the State has researched this issue and determined that the right-of-way is permanent. He stated that the Campground has no objection to the subdivision. Mr. Kercheval asked if a letter could be obtained from the Campground stating they have no objection to the permanent right-of-way. Mr. Lung suggested contacting the County Attorney's Office to determine if specific language needs to be written into the right-of-way description stating that the right-of-way is non-exclusive.

**Motion and Vote:** Mr. Kercheval made a motion to authorize Staff to approve the variance following a consultation with the County Attorney regarding the language in the deeds covering the right-of-way and contacting the Snug Harbor Campground to confirm that they have no objections to the subdivision. Seconded by Mr. Reiber. Unanimously approved.

**- PRELIMINARY CONSULTATIONS**

**Mackwest Commercial (PC-07-005)**

Mr. Lung presented for review and comment the preliminary consultation for Mackwest Commercial located at the southeast corner of Mt. Aetna Road and U.S. Route 40. The developer is proposing a 4,227 square foot restaurant with drive-thru on 1.51 acres. The property is zoned BL – Business Local. The main points of the consultation focused on the developer's involvement with regard to the County's current plans for improvements at Mt. Aetna Road and US Route 40. The possible future plans for the City of Hagerstown with regard to Paul Smith Boulevard were also discussed. A City representative was not present at the consultation; however, comments were received from the City after the consultation. Staff made several recommendations with regard to the design of the site and a revised concept plan was submitted to address some of the recommendations and comments. At the time the property was rezoned, the applicant's attorney stated that the site was unsuitable for a fast food restaurant with a drive-thru. The rezoning was approved for a BL – Business Local designation. A property cannot be approved for rezoning with conditions restricting certain uses; therefore, any uses allowed in the zoning designation can be placed on the property if all requirements are met. The BOCC did place a condition on the rezoning that the Planning Commission should carefully consider the buffering between this property and the adjoining residential properties.

During the preliminary consultation, the initial concept plan did not show any buffering. Staff recommended that the concept plan be revised to show the proposed buffering between this property and the adjoining residential property for the Planning Commission's review. The developer is proposing a 15-foot buffer between the edge of the parking lot and the property line using a 6-foot high white vinyl fence with a double row of arborvitae planted 15-feet on center with a mature height of 6-feet. Mr. Lung compared this property with an HI-1 zoning designated property adjoining a residential use. He stated that a 25-foot wide buffer between the edge of the parking lot and the property line would be required with the option to require a fence or vegetative screening or both. The vegetated screening must be 6-feet high at the time of planting with a minimum caliber of 2-inches. Mr. Lung stated that the proposed screening does not meet the level required in an HI-1 zoning designation. A larger area would allow sufficient room for larger diameter trees.

During the preliminary consultation, Mr. Lung expressed his concern for the proposed dumpster location in close proximity to the adjoining residential property. He noted that the loop road for the drive-thru goes completely around the restaurant; therefore, pedestrians cannot enter the restaurant without crossing the loop road. A proposed crosswalk is shown on the concept plan; however, handicap accessibility and pedestrian safety is a major concern. The initial concept plan proposed several separate islands throughout the parking lot. Staff expressed their concern that traffic could enter from US Route 40 and take a shortcut making a left into a parking space instead of driving around the parking lot. Staff recommended that the islands should be connected; however, Mr. Lung is still uncertain about someone trying to go against traffic to quickly reach a parking space.

**Discussion:** Mr. Reiber expressed his opinion that both a vinyl fence and vegetation should be required for buffering. He also suggested a 20-foot buffer area instead of a 15-foot buffer area. Mr. Gordon Poffenberger of Fox & Associates, Inc., consultant, stated that increasing the buffer would possibly eliminate two parking spaces. Mr. Lung stated that 35 parking spaces are required and 55 spaces are being provided.

Mr. Kercheval expressed his opinion that the HI-1 zoning designation buffering requirements should be followed for this site. He also believes the proposed dumpster location should be moved. Mr. Kercheval also asked why trees are not proposed along the other residential property line toward the front of the site. Mr. Lung stated that the storm water management pond will be located in that area and the Engineering Department does not approve of trees planted along the top of the berm of the storm water management pond. He noted that the residential property in question sits lower than the restaurant and there is a retaining wall proposed that should buffer this property.

Mr. Anikis expressed his opinion that the access to the restaurant on Mt. Aetna Road, which is proposed to become a four-lane road, should be right in and right out. He also believes that the drive-thru designed to go around the entire restaurant is unacceptable especially without a crosswalk to ensure pedestrian safety. Mr. Anikis expressed his opinion that the dumpster should be relocated away from the adjoining residential property. He recommends an 8-foot vinyl fence with more plantings and that the HI-1 zoning designation buffering requirements should be followed. Mr. Anikis expressed concern with regard to glare from lights onto the residential properties.

Mr. Kercheval stated that he has spoken to Mr. Doug Wright with the City of Hagerstown's Planning Commission, and Mr. Rodney Tissue, City of Hagerstown Engineering Department, with regard to Paul Smith Boulevard. He stated that the City expressed concern for right-of-way limitations and recommended that the site should be designed to allow for the possible future construction of Paul Smith Boulevard. Mr. Thompson noted that the City does not have any alignment studies for that project. He stated that the Paul Smith Boulevard project is not currently shown on the County's master plan. When a zoning certificate application is received for building purposes and the street is shown on the County's adopted Plan, the County, by Ordinance, has 45 days to have the alignment set and 60 days to negotiate the purchase of the property. Mr. Kercheval suggested that the re-alignment issue should be referred to the Department of Public Works. Mr. Thompson stated that he would be meeting with the City later this week and this issue is one of the items to be discussed at that meeting.

Mr. Poffenberger believes that the HI-1 buffering requirements are too harsh for such a small parcel of land. He also stated that the Engineering Department was not concerned with the full movement access off of Mt. Aetna Road, which Mr. Anikis believes should be a right in and right out access only.

Mr. Anikis made an inquiry regarding signage for the property. Mr. Lung stated that the Zoning Ordinance would allow 2 freestanding signs for this site because it has two road frontages.

#### **George Callas, Lots 6-11 (PC-07-006)**

Ms. Wagner-Grillo presented for review and comment the preliminary consultation for George and Tamara Callas for property located along the east side of Bakersville Road. The developer is proposing to subdivide Lots 6-11 on 14.14-acres of land that is currently zoned P – Preservation. Lots 1-5 were approved in January 2005. There is an historic dwelling located on the remaining lands that is identified on the Washington County Historic Sites Inventory and is proposed for retention. The Washington County Engineering Department stated that Fairplay Road is inadequate for this development and must be widened to 16-feet for its entire length. Additionally, sight distance work sheets for all driveway connections, current traffic counts and storm water management will be required. The Washington County Health Department stated that perc tests will be required.

**Discussion:** Mr. Kercheval asked what mechanism the County has to assure that the historic house is retained since the developer is using it to receive an extra exemption lot. Ms. Wagner-Grillo stated that the developer must apply for the historic overlay zoning designation.

Mr. Anikis expressed his concern for the stone dwelling also located on the property that is not listed on the Inventory. Mr. Schreiber of Frederick, Seibert & Associates, consultant, stated he does not know the intentions of the developer with regard to that structure. Mr. Anikis recommended that the Historic District Commission should visit the structure, document and photograph it for the historic register. Mr. Anikis also expressed concern for the retention of the stonewall on the east side of Fairplay Road. Mr. Schreiber stated that proposed Lots 6, 7 and 8 would be conveyed to family members and would be accessed from one common drive. Therefore, the road is adequate in front of these lots. In front of Lot 9 is the only portion of the road that would need to be widened. Mr. Schreiber believes there is approximately 2-feet from the usable portion of the road to the stonewall and believes that the stonewall could be retained.

## **- SITE PLANS**

### **Rite Aid (SP-07-031)**

Ms. Wagner-Grillo presented for review and approval the site plan for Rite Aid Corporation located on Pennsylvania Avenue. The land use is commercial and the property is zoned BG – Business General. The developer is proposing to demolish the existing Playland building and construct a 14,564-square foot Rite Aid pharmacy building on 3.46-acres. Two entrances will serve the site, one off of Pennsylvania Avenue and one off of Maugans Avenue. The hours of operation will be Monday through Saturday, 8:00 a.m. to 10:00 p.m. and Sunday, 8:00 a.m. to 8:00 p.m. Freight and delivery will be one tractor-trailer per week. Landscaping using Leyland Cypress trees will provide a buffer at the west edge of site adjoining the existing residential property. Landscaping will also be provided in the parking islands. Storm water management will be through run-off, which will go to an existing system behind the North Village Shopping Center. A dumpster and private hauler will handle solid waste disposal. Parking required is 29 spaces and 72 spaces will be provided. The City of Hagerstown will provide water service and the Washington County Department of Water Quality will provide sewer service. Two freestanding signs are proposed, one on Pennsylvania Avenue and one on Maugans Avenue. Lighting will be pole and building mounted. Maugansville Fire and Ambulance Company will provide fire and ambulance services. The site qualifies for the use of the “express procedure” to meet Forest Conservation Ordinance requirements. The developer has made the payment-in-lieu in the amount of \$2,265.00. All agencies approvals have been received.

**Discussion:** Mr. Anikis asked if the sidewalk could be continued along Pennsylvania Avenue to the corner of Maugans Avenue. A representative from Associated Engineering Sciences, the consultant, stated that the proposed sidewalk would continue but is not shown on the plan. Mr. Anikis asked if the proposed buffer along the northwest side of the property is adequate to screen the adjoining residential properties. The developer’s representative stated they would plant additional Leyland Cypress at the corner by the dumpster and along the traffic island. Mr. Anikis expressed his concern for traffic crossing several lanes when entering and exiting onto Maugans Avenue and asked if the Washington County Engineering Department had approved this access. The developer’s representative stated that they have collaborated extensively with the County to coordinate this project with the County’s Capital Improvement Project as well as with the State Highway Administration. The developer has been required to construct an accel/decel lane and to provide the entrance onto Maugans Avenue, which will be aligned with Sprigs Avenue.

Mr. Kercheval concurred that additional screening along the northwest side of the property is needed and the sidewalk should be continued along Pennsylvania Avenue to the corner of Maugans Avenue.

**Motion and Vote:** Mr. Kercheval made a motion to approve the site plan with the following changes: to increase the screening along the west side of the property adjoining the Kauffman and Bowers properties with special attention to the corner where the proposed dumpster will be located and the extension of the sidewalk by the developer along Pennsylvania Avenue to the corner of Maugans Avenue. Seconded by Mr. Reiber. Unanimously approved.

### **Maugansville Elementary School (SP-05-006)**

Mr. Lung presented for review and approval the revised site plan for the Maugansville Elementary School. The original site plan was approved in January 2006 with a service road off of Maugans Avenue to the back of the school building. The Board of Education needed to acquire additional land for the access road from an adjoining property owner. Negotiations between the Board of Education and the property owner were unsuccessful; therefore, revisions to the site plan were needed to eliminate the access and to provide service access from the main entrance to the school. There is an existing right-of-way that will provide emergency access to the back of the school building; however, it is not wide enough to be built to the necessary standards to be used on a daily basis. All agency approvals have been received.

**Discussion:** There was a brief discussion with regard to the importance and necessity of the second access. Mr. Lung stated that it would be ideal to have the second access; however, it appears that the site can function without it. Deliveries may be scheduled at a time when buses are not picking up or dropping off students.

Mr. Steve Cvijanovich of Davis, Renn & Associates, consultants, gave a brief summary of the negotiations between the Board of Education and the adjoining property owners for the additional land that was needed for the second access road and why negotiations were unsuccessful. Mr. Cvijanovich also noted that the right-of-way referenced by Mr. Lung is an existing panhandle that is 17.85-feet wide at its narrowest point that goes to Maugans Avenue. The panhandle can be used for emergency access to the back of the school building.

**Motion and Vote:** Mr. Reiber made a motion to approve the revised site plan as presented. Seconded by Mr. Kercheval. Unanimously approved.

## **OTHER BUSINESS**

### **RZ-07-006 – Text Amendment**

Mr. Thompson presented for review and recommendation the Text Amendment to Article 27 of the Washington County Zoning Ordinance. The text amendment deals with requirements for the submission of rezoning cases and documentation that should be provided by the applicant. Mr. Thompson also discussed a proposed change to the procedures for a rezoning case. He noted that the procedures would follow the process as set forth in the State of Maryland's Article 66B. The rezoning process would be as follows: the Planning Commission would hold a public hearing for public comment, a recommendation would be made by the Planning Commission to the Board of County Commissioners, the recommendation would be accompanied by the Staff's report and supplemental material received during the Planning Commission's public hearing, (the public comment period would remain open from the time the application is submitted until the end of the BOCC's public hearing).

**Discussion:** Mr. Reiber expressed his concern that the proposed process would take longer. Mr. Thompson stated it would take approximately 4 to 6 months to complete the rezoning process.

Ms. Parrish stated that her perception is that the public prefers to voice their concerns and arguments to the BOCC because they believe that the County Commissioners do not always go by the Planning's Commission's recommendations. Ms. Parrish asked why the comment period couldn't be left open after the public hearing for public comment. Mr. Anikis explained that information needs to be heard by both the applicant or his representative and the public and the applicant and/or his attorney would not have the opportunity for rebuttal. Mr. Reiber expressed his concern that the Planning Commission would not receive all pertinent information or would receive different information than the BOCC if the public comment period were left open. Therefore, the Planning Commission's recommendation would be based on only the information available to them at the time of their public hearing.

Mr. Kercheval expressed his opinion that the Planning Commission's recommendations are taken very seriously by the BOCC. However, the Planning Commission only views the rezoning cases based on a planning perspective; whereas, the BOCC needs to consider the economic impact, logistics, etc. of each case and how it would affect the entire county. He asked if the Planning Commission's recommendation could be made after the BOCC's public hearing. Mr. Anikis stated that in order for the recommendation to be made following the BOCC's public hearing, the Planning Commission would need to attend the BOCC's public hearing. Mr. Kercheval recommended that two joint meetings should be held, one to present the application and one to present public comment.

Mr. Wiley expressed his opinion that if the Planning Commission makes their recommendation prior to the close of the public comment period, there is no real purpose in the Planning Commission making a recommendation because they do not have all the pertinent facts and information. He recommended that the public comment period could be left open for 10 days following the public hearing and the public would have access to those comments. Mr. Kercheval stated that any public comment submitted following the public hearing does not allow the person making the comment to be sworn in and could be challenged in court. Mr. Wiley suggested that an affidavit should accompany the submittals.

Mr. Anikis stated that the proposed process would increase the applicant's legal costs as well as the public's costs, would prolong the process time period, and would increase Staff's workload.

Mr. Thompson recommended that the Planning Commission continue their discussion regarding the rezoning process at a Workshop meeting later in October. Mr. Reiber requested that the Planning Commission's comments should be sent to the BOCC.

## **Town of Smithsburg Annexations**

Mr. Thompson reported that the Smith Annexation for the Town of Smithsburg, which was presented during the September Planning Commission meeting, was approved by the BOCC. A decision regarding the Cloverly Annexation for the Town of Smithsburg, which was also presented at the September meeting, is pending.

Mr. Thompson also reported that a public hearing will be held for a 30-acre parcel of land owned by the City of Hagerstown where the water reservoir for the Town of Smithsburg is located that is being proposed for annexation into the Town of Smithsburg. He stated that he does not object to the annexation; however, he is concerned about the proposed zoning for the property. The resolution for the annexation is proposing a zoning designation of General Business. This type of use is a special exception in every zoning category for the Town. Mr. Thompson believes the Town should adopt an institutional or community facility zoning classification for this property.

**Motion and Vote:** Mr. Reiber made a motion to recommend to the Board of County Commissioners to grant "express approval" with the condition that the Town adopts an institutional or community facilities zoning designation for this property. Seconded by Mr. Wiley. Unanimously approved. Mr. Kercheval abstained.

### **Proposed Green Fund**

Mr. Thompson reported that the State of Maryland is proposing new legislation for a Green Fund, that would charge an annual fee to every property in Washington County. He explained that a rate of \$.01 per square foot is proposed for the enclosed portion of the house and the first 1,000 square feet of residential property is exempt. The proposed fund would be divided with 50% going to MDE to be distributed to local governments for matching funds for jurisdictions with storm water utilities, storm water management projects, local tree, buffer and stream restoration projects, and technical assistance; 10% would go to DNR and 40% would go to the Maryland Department of Agriculture for stream buffers, covered crops, wetlands, restoration, and technical assistance to the farming community for reducing farm nitrogen and phosphorous.

### **UPCOMING MEETINGS**

1. Regular Planning Commission Meeting, Monday, November 5, 2007, 7:00 p.m., Washington County Administrative Annex, 80 West Baltimore Street, Conference Room 1, Hagerstown
2. Joint Public Hearing, Monday, November 26, 2007, 7:00 p.m., Washington County Court House, Room 1, 95 W. Washington Street, Hagerstown

### **ADJOURNMENT**

Mr. Kercheval made a motion to adjourn the meeting at 9:15 p.m. Seconded by Mr. Reiber. So ordered.

Respectfully submitted,

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George Anikis, Chairman