

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

The Washington County Planning Commission held its regular meeting on Monday, November 5, 2007, in the Washington County Administrative Annex, 80 West Baltimore Street, Hagerstown.

Members present were: Chairman George Anikis, Linda Parrish, Terry Reiber, Clint Wiley, Sam Ecker, Bernie Moser and Ex-Officio James F. Kercheval. Staff members present were: Planning Director Michael C. Thompson, Chief Planners Stephen T. Goodrich and Timothy A. Lung, Senior Planners Jill Baker and Lisa A. Kelly, Planner Chris Cochrane and Administrative Assistant Debra Eckard.

CALL TO ORDER

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

MINUTES

Mr. Reiber made a motion to approve the minutes of the October 1, 2007 Regular Planning Commission meeting as amended. Seconded by Mr. Kercheval. Unanimously approved.

NEW BUSINESS

- SUBDIVISIONS

Regent Park (PP-06-011)

Ms. Kelly presented for review and approval the Preliminary Plat for Regent Park, Lots 1-25 located along the west side of Trovinger Mill Road. The developer is proposing to create 25 single-family residential lots ranging in size from .6 to 4.8-acres for a total development of 34.5 acres and is zoned A – Agriculture. All lots would be served by public water and individual septic systems. All lots would access the new public street. A total of 7.8-acres of forest would be planted or retained on-site to meet the Forest Conservation Ordinance requirements. The State Highway Administration has no objection to the preliminary plat approval as long as the existing brush and vegetation is removed from the intersection of Trovinger Mill Road and Jefferson Boulevard. All other agency approvals have been received. The proposed development is located within the Pangborn Elementary, Smithsburg Middle and Smithsburg High school districts. Pangborn Elementary is currently over-capacity. The new Pangborn Elementary school is projected to open in 2008 and will be at or near capacity upon opening. School capacity will be tested at the final plat stage. Mr. Steve Zoretich of Frederick, Seibert & Associates, consultant, and Mr. Churchey, developer, were present at the meeting.

Discussion: Mr. Zoretich stated that Trovinger Mill Road will be widened per the County Engineering Department's requirements. He also noted that the developer has an agreement with the property owner at the intersection of Trovinger Mill Road and Jefferson Boulevard to remove the existing brush and vegetation, which will significantly increase sight distance at this intersection.

Mr. Moser made an inquiry regarding escrow accounts for the future extension of sewer lines. Mr. Zoretich stated that the City of Hagerstown has no plans at this time to extend sewer service to that area. Mr. Kercheval asked if there are easements or right-of-ways being set aside if sewer were to be extended to that area so the County does not have to purchase land in the future. Mr. Zoretich stated that the sewer lines could be placed in the public street. The City of Hagerstown has requested the developer to loop the water line to the public street and an easement has been created to meet this request. The developer believes that the public easement for the water line between Lots 11 and 12 could also be used for any future sewer lines.

Mr. Reiber noted there is no pedestrian access or sidewalks for the development.

Mr. Anikis made an inquiry regarding the southwest corner of the property that is not buffered with trees. Mr. Zoretich stated there are existing trees in that area that would be retained.

Mr. Kercheval asked if the developer would have an annexation agreement for water service with the City of Hagerstown. Mr. Churchey stated he would sign an agreement with the City.

Motion and Vote: Mr. Moser made a motion to approve the preliminary plat as presented. Seconded by Mr. Reiber. Unanimously approved.

Westfields – Section 6 (PP-07-002)

Ms. Kelly presented for review and approval the Preliminary Plat for Westfields, Section 6 located along the west side of Sharpsburg Pike. The property is zoned A – Agriculture and is located within the Urban Growth Area. The developer is proposing 94 single-family residential lots on 14.93-acres. Public water will be provided by the City of Hagerstown and the Washington County Department of Water Quality will provide public sewer. New public streets will provide access to the proposed lots. There will be approximately 5-acres of open space area within Section 6 and will be the responsibility of the Homeowner's Association. The storm water management facility, constructed as part of Section 4A, will also serve Section 6. Sidewalks will be located along the public street. Total forest conservation requirements for this section is 9.3-acres. Forest Conservation Ordinance requirements will be met by afforestation of 6.05-acres and 3.88-acres of forest retention to the rear of the site. Students will attend

the new elementary school in this development, which is proposed for opening in the fall of 2008. All agency approvals have been received. Mr. Jeremy Holder, Ausherman Homes, and Mr. Steve Cijanovich of Davis, Renn & Associates, were present at the meeting.

Discussion: Mr. Jeremy Holder stated that prior to the issuance of the 250th building permit, the tennis courts, basketball court, all poolside grading, landscaping and the halfway loop would be completed. They have recently sold their 133rd house. He stated that even if they (the developer) wanted to advance the construction of the amenities, the community could not afford to operate the pool or additional amenities.

Clarification: Mr. Holder asked for clarification with regard to approval of final plats. He noted that at the end of this year, Ausherman Homes may record 346 lots after they pay their excise tax advance to the County and if they are in compliance with the phasing schedule outlined in the APFO agreement previously approved by the Commissioners. Sections 3, 4, 5 and 24 lots from Section 6 comprise the 346 lots. In the future, as final plats are submitted for approval, Mr. Holder requested that approval may be given by the Planning Staff. Mr. Thompson stated that as long as the developer is in compliance with their APFO agreement and all other requirements are met, approval may be given by the Staff based on the Planning Commission's policy.

Motion and Vote: Mr. Ecker made a motion to approve the Preliminary Plat as presented. Seconded by Mr. Kercheval. Unanimously approved.

Mr. Reiber made a motion to approve the Forest Conservation Plan as presented. Seconded by Mr. Ecker. Unanimously approved.

OTHER BUSINESS

South Pointe P.U.D.

Ms. Kelly presented for review and approval a proposed change to the revised Final Development Plan for South Pointe PUD and a height restriction issue for the proposed 3-story building located along the north side of East Oak Ridge Drive. Ms. Kelly distributed copies of the Final Development Plan approved in 1991 and the revised Final Development Plan approved in 2003. The property is zoned RS – PUD (Residential Suburban with the PUD overlay). The original Development Plan showed 18, 3-story apartment buildings on 7.9 acres for a total of 216 living units. A pool and tennis courts were included in this plan, which was approved in 1991. In 2003, the developer requested the elimination of the apartment buildings and proposed a 3-story retirement living center on 6.6-acres with 115 living units and 175 parking spaces. Additional townhouses, a swimming pool and gazebo were also proposed on the site. At this time, Mr. Crampton is proposing to eliminate the 3-story retirement center and construct 4, 3-story condominium buildings with a total of 120 units. Underground parking with 152 parking spaces and an additional 88 parking spaces above-ground will be provided. The proposed condominiums will be age-restricted units; therefore, there will be no impact on local schools at this time. The Washington County Engineering Department has reviewed the plan and has no objection to the changes. If approved, the developer must comply with storm water management regulations and all other requirements set forth by the County. The height of the buildings are in question because the Zoning Ordinance is not clear on this issue. The height of the proposed building to the peak of the roof would be in excess of 40-feet. The Zoning Ordinance states, "shall not exceed 3-stories or 40-feet in height"; however, the Planning Commission has the authority to alter the height requirements.

Discussion: Ms. Parrish made an inquiry with regard to the proposed recreational area. Ms. Kelly stated that the swimming pool has been removed. Mr. Crampton stated that the current residents at South Pointe did not expect to have a pool and do not want to be burdened with the additional expenses. The proposed pool was tailored for the residents of the proposed apartments. The current Homeowner's Association fees are \$120 per year and residents do not want those fees to change.

Mr. Moser expressed his concern for the loss of the amenities and the fact that this is the third change requested to the plan that has not been taken to a public hearing. Mr. Crampton stated his opinion that every proposed change has been an improvement to South Pointe. He stated that several current residents of South Pointe have expressed an interest in the condominium units because they would not be responsible for maintenance issues that they currently have even with a small townhouse unit. The proposed condominiums offer several floor plans and added security and convenience with the underground parking. Mr. Moser asked the developer what prompted this change. Mr. Crampton stated that the assisted living center with nursing care was more complex than anticipated and he believes this plan is a good alternative.

Mr. Moser also expressed concern with regard to traffic issues on Oak Ridge Drive. Mr. Kercheval asked if the Engineering Department commented on the change from senior living to condominiums with regard to the change in traffic numbers. Ms. Kelly said they did not give any comments on this issue. Mr. Kercheval stated that there is a petition from the Homeowner's Association at South Pointe for a traffic light on Oak Ridge Drive. Mr. Crampton stated that the Homeowner's Association has already installed three street lights, which has helped significantly especially at night.

Mr. Anikis asked how the sales for elderly housing will be controlled. Mr. Crampton stated that the Homeowner's Association will oversee the process and the declaration of covenants referred to in deeds and on the plats will reflect the restriction. He also stated that the project will be marketed as elderly or age-restricted housing.

Ms. Parrish expressed her concern that the Planning Commission is considering a change without the public's input. She is concerned that people have bought their homes with the expectation that the amenities would be built at a later time and expected their association fees to be raised when the amenities were built. Mr. Crampton stated that the amenities could be added; however, he is concerned for the homeowner that purchased a home several years ago and their homeowner's association fees would be raised significantly. Ms. Parrish believes that the public should be made aware of the change and be given the opportunity to express their opinions.

Mr. Wiley expressed his opinion that the proposed changes may not be significant enough to warrant a public hearing.

Mr. Ecker concurred with Ms. Parrish's comments.

Mr. Kercheval made an inquiry with regard to the size of some of the units and the need for three bedrooms if the units are proposed to be age-restricted. Mr. Crampton stated the units were designed for people who want additional space.

A brief discussion continued with regard to the amenities being eliminated and some of the member's concerns. Mr. Kercheval asked if the Homeowner's Association has been made aware of the changes and what are their expectations. Mr. Crampton stated he could present these changes to the Homeowner's Association to get their opinions. If they would like to have the amenities and are agreeable to the change in their association fees, Mr. Crampton is willing to construct the amenities as proposed in 1991. The HOA's next meeting is scheduled for August 2008; however, Mr. Anikis suggested holding a special meeting to resolve these issues prior to proceeding with plans for future development.

Motion and Vote: Ms. Parrish made a motion to table this issue pending an HOA meeting of the South Pointe residents and receiving their comments with regard to the proposed changes. Seconded by Mr. Moser. Unanimously approved.

RZ-07-004 – Washco Arnett Farm, LLC

Mr. Goodrich presented for review and recommendation a Map Amendment for 29.53 acres of property located along the west side of Maryland Route 65 approximately 1,575-feet south of Col. H. K. Douglas Drive. The applicant, Washco Arnett Farm, LLC, is requesting a change in zoning from HI-2 (Highway Interchange 2) to HI-1 (Highway Interchange 1). During the public hearing held on September 17, 2007, it was the applicant's contention that the zoning should be changed due a change in the neighborhood and a mistake in the original zoning of the property. In the Staff Report previously sent to Planning Commission members, staff's point of view is that the one-mile radius used by the applicant for defining the neighborhood was too large and the alternate neighborhood offered was not well defined. In Staff's opinion, the beginning character of the neighborhood was not well-defined. The applicant did not challenge Staff's point of view that the neighborhood was a mix of residential and commercial uses in the beginning and still is a mix of uses. More commercial development has taken place since the zoning was assigned; however, in Staff's point of view, this has not changed the character of the neighborhood. The applicant proposed that the possibility of residential development was expected when the HI-2 zoning was first applied. Since there have been zoning changes in the neighborhood, specifically from HI-2 to HI-1, the factors that the zoning decisions were made on have changed and thus, constitutes a mistake with regard to the zoning on this property. Mr. Goodrich noted that there have been zoning changes to put more HI-2 zoning in the neighborhood also. The Comprehensive Plan shows this property having a commercial land use category; however, this fact does not convince Staff that a change should be made in the zoning of this property at this time. Staff does not recommend a change in the zoning based on the case presented by the applicant.

Discussion: Mr. Reiber asked if a change from HI-2 to HI-1 would allow more flexibility for uses of the property. Mr. Goodrich stated that HI-2 would give the applicant more flexibility for residential development and the HI-1 would allow only commercial uses.

Ms. Parrish expressed her opinion that a mistake was made in the original zoning of the property as HI-2 because it is located near the interchange area where commercial development belongs. She believes residential development in that area would only add to the traffic congestion.

Mr. Wiley disagrees with Staff's assessment that the definition of the neighborhood was too large. He believes you need to look at all the changes that have occurred along the Sharpsburg Pike closer to the interchange. He also expressed his opinion that zoning requests and changes should be withheld until the Urban Growth Area rezoning has been completed. Mr. Wiley stated his opinion that this is part of a greater change that has taken place in this area and the County would be better served with more commercial development in that area.

Mr. Ecker concurred with Ms. Parrish and Mr. Wiley's comments.

Mr. Anikis stated his opinion that the applicant knew what the property was zoned when he purchased it in 2003 and previously proposed the construction of apartments and townhouses in the area zoned HI-2. Mr. Anikis expressed his concern with regard to the portion of the property located on the south side of redesigned Rench Road and the existing residential properties adjacent to the commercial uses would be significantly impacted.

Motion and Vote: Ms. Parrish made a motion to recommend to the Board of County Commissioners approval based on a mistake in the original zoning of the property. Seconded by Mr. Ecker. Unanimously approved. Mr. Kercheval and Mr. Moser abstained. (Mr. Moser was not present at the public hearing.)

Clarification: Mr. Kercheval asked for clarification of Item F (Pg. 13) of the Staff Report and Analysis Following the Public Hearing that states, "A change would create an awkward and difficult to develop arrangement of the 2 zoning categories". Mr. Goodrich stated that the end result, when viewing the property on a map would create an area shaped like an inverted "U", which would be difficult to develop.

RZ-07-005- Walter Lawson

Ms. Baker presented for review and recommendation a Map Amendment for 9.42-acres of property located at 21023 Keadle Road in Boonsboro. The applicant, Walter Lawson, is requesting a change in zoning from RB-E (Rural Business, Existing) to EC (Environmental Conservation). During the public hearing, it was the applicant's contention that a mistake was made in the last comprehensive rezoning of the subject property in 2005. The first point made by the applicant was that the County erred when it assumed that the business would continue in perpetuity. The second point made by the applicant was that the County erred in the zoning of the property by not taking into consideration that only a small portion of the property was being used commercially at the time of rezoning.

Discussion: Mr. Wiley asked for clarification from Page 4 of the Staff Report and Analysis Following the Public Hearing that states, "In this rezoning case, the proposed change from Rural Business Existing to Environmental Conservation is consistent with the Comprehensive Plan for Washington County." Ms. Baker explained that while a decision to approve or deny a rezoning request should not be based solely on consistency with the Comprehensive Plan; however, consistency with the Comp Plan should be evaluated as part of the process. In terms of the change or mistake rule, there are defined guidelines that must be met.

Mr. Kercheval advised the Planning Commission to base their decision on change or mistake, not solely on consistency with the Comprehensive Plan. Ms. Baker stated that in preparing her Staff report, she cited different points that, not individually would prove a case, but when you put them all together they could build upon each other to prove a case.

Mr. Reiber asked if the business could have continued to operate in the Environmental Conservation zoning district as a special exception use. Ms. Baker stated that the business could have operated as a non-conforming use in the EC zoning district until the business wanted to expand or cease operation.

Mr. Moser and Mr. Anikis expressed their opinions that the property should have continued to be zoned EC with the business as a non-conforming use.

Ms. Parrish believes the County rezoned the property without cause and that property owners should be better educated with regard to zoning alternatives.

Motion and Vote: Ms. Parrish made a motion to recommend approval to the Board of County Commissioners based on a mistake in the original zoning of the property and the proposed rezoning is consistent with the County's adopted Comprehensive Plan. The County was negligent in explaining zoning alternatives to the property owner during the comprehensive rezoning process. Seconded by Mr. Reiber. Unanimously approved. Mr. Kercheval and Mr. Moser abstained. (Mr. Moser was not present at the public hearing.)

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 proposed Text Amendment would require additional information to be submitted as part of the rezoning application process. Mr. Thompson noted there were discussions with regard to several changes that were recommended as follows: a minimum scale for drawings should be established; other language to be added with regard to the definition of a neighborhood; the time limitation to re-file an application if it is denied.

Motion and Vote: Mr. Reiber made a motion to recommend approval to the Board of County Commissioners as drafted and presented. Seconded by Mr. Wiley. Unanimously approved. Mr. Kercheval and Mr. Moser abstained. (Mr. Moser was not present at the public hearing.)

City of Hagerstown – Jones Homes LLC Annexation

Mr. Thompson presented for review and recommendation an annexation request from the City of Hagerstown for Jones Homes, LLC. The request for annexation is for an existing lot and adjoining vacant parcel consisting of approximately 20,000-square feet that is adjacent to the City of Hagerstown. The property is located on Linwood Road adjacent to the southwestern boundary of the City of Hagerstown west of Virginia Avenue at the intersection of Wellington Avenue. The property appears to have previously been subdivided into Lots 209 and 210 with an existing house on Lot 210, while Lot 209 is vacant. The owner is proposing to subdivide the property into two lots and develop the vacant lot. The City of Hagerstown boundary bisects the property, including the existing house. The applicant is requesting R-1 zoning upon annexation, which is consistent with the existing RU (Residential Urban)

county zoning designation. The proposed zoning is also consistent with the Low Density Residential designation on the 2002 adopted Comprehensive Plan.

Motion and Vote: Mr. Reiber made a motion to recommend approval of the annexation request to the Board of County Commissioners. Seconded by Mr. Ecker. Unanimously approved. Mr. Kercheval abstained.

City of Hagerstown – Bowman, Hollyhock and Venetian Investments Annexation

Mr. Thompson presented for review and recommendation an annexation request from the City of Hagerstown for Bowman, Hollyhock and Venetian Investments. The request for annexation is for a parcel of land consisting of approximately 12.25-acres that is adjacent to the City of Hagerstown. The property is located on Broadfording Road adjacent to the I-81/MD Route 58 interchanges on the west side of I-81. The property is located just north of the new commercial development with Best Buy and the Center at Hagerstown. The property is currently the location of several single-family dwellings. Information has been provided that the proposed development will consist of a hotel, bank, convenience store and several commercial buildings with a total square footage of approximately 68,450 square feet. The applicant is requesting C-2 (Commercial General) zoning upon annexation, which is consistent with the existing HI-1 (Highway Interchange) County zoning designation. The property is designated for Industrial Flex on the 2002 adopted Comprehensive Plan and HI-1 is consistent with this designation. After review of the request, Staff recommends that Broadfording Road should be annexed and improved to its full width to City standards and the portion of the roadway fronting the site to MD Route 58 be renamed to Garland Groh Boulevard. Mr. Thompson noted that the City of Hagerstown staff agrees with this recommendation.

Motion and Vote: Mr. Moser made a motion to recommend approval of the annexation request to the Board of County Commissioners based on the proposed zoning being consistent with the County's zoning designation of the property and to support Staff's recommendations with regard to road improvements. Seconded by Ms. Parrish. Unanimously approved. Mr. Reiber and Mr. Kercheval abstained. (Mr. Reiber abstained due to conflict of interest.)

UPCOMING MEETINGS

1. Joint Public Hearing, Monday, November 26, 2007, 7:00 p.m., Washington County Court House, Room 1, 95 W. Washington Street, Hagerstown
2. Regular Planning Commission Meeting, Monday, December 3, 2007, 7:00 p.m., Washington County Administrative Annex, 80 West Baltimore Street, Conference Room 1, Hagerstown

ADJOURNMENT

Mr. Moser made a motion to adjourn the meeting at 8:45 p.m. Seconded by Mr. Ecker. So ordered.

Respectfully submitted,

George Anikis, Chairman