

**WASHINGTON COUNTY PLANNING COMMISSION
REGULAR MEETING – DECEMBER 1, 2008**

The Washington County Planning Commission held its regular meeting on Monday, December 1, 2008, in the Washington County Administrative Annex, 80 West Baltimore Street, Hagerstown.

Members present were: Chairman George Anikis, Sam Ecker, Clint Wiley, Andrew Bowen and Ex-Officio James F. Kercheval. Staff members present were: Planning Director Michael C. Thompson, Chief Planner Timothy A. Lung, Senior Planner Lisa Kelly, Planner Cody Shaw, and Administrative Assistant Debra Eckard.

CALL TO ORDER

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

MINUTES

Mr. Bowen made a motion to approve the minutes of the October 20, 2008 Planning Commission Workshop meeting as presented. Seconded by Mr. Wiley. Unanimously approved. Mr. Ecker abstained because he was not present at the workshop meeting.

Mr. Ecker made a motion to approve the minutes of the November 3, 2008 Regular Planning Commission meeting as presented. Seconded by Mr. Kercheval. Unanimously approved.

OLD BUSINESS

Mr. Thompson stated that he has spoken to Mr. Barnhart of the Washington County Health Department regarding fact sheets for sand mound septic systems. Currently, the Health Department does not have any documents available; however, they are in the process of preparing a fact sheet and will forward a copy to Mr. Thompson upon completion. Mr. Thompson noted that sand mounds are no longer considered "special" systems.

NEW BUSINESS

- VARIANCES

Brent & Deanna Bailey (S-08-086)

Mr. Shaw presented for review and action a waiver request from Section 5B.5 of the Zoning Ordinance, which requires a 50-foot Agriculture Land Use Setback. The property is located along the south side of Falling Waters Road in Williamsport. In accordance with Section 5B.5, the Planning Commission may increase minimum setbacks up to 50-feet for properties adjacent to parcels that are actively farmed or parcels with an Agricultural District designation. An adjoining property is being farmed and has an Ag use assessment. The proposed dwelling meets the minimum setbacks for the Environmental Conservation zone, which are a 40-foot front yard setback, a 15-foot side yard setback, and a 50-foot rear yard setback; but, does not meet the 50-foot agriculture setback requirement. Staff recommends reducing the agriculture setback from 50-feet to 35-feet.

Discussion: Mr. Bowen asked for a brief summation explaining the reason for the 50-foot agriculture setback. Mr. Kercheval explained that the setback was established to help avoid conflict between the agricultural land and residential development. Mr. Lung noted that the requirement applies to property not only in an agriculture preservation district but any area being actively farmed. He further explained that in this particular case, the adjoining land is being actively farmed. Mr. Kercheval asked that a note be added to the plat stating that the applicant requested the reduced setback. Mr. Thompson stated that the note would be added with the date that the Planning Commission granted the modification. Mr. Kercheval questioned why a distance of 35-feet was chosen for the setback and if that distance would also apply to accessory structures. Mr. Thompson stated that 35-feet is the distance needed to get the dwelling on the lot as proposed. Mr. Schreiber noted that the proposed setback distance was based on principle permitted uses, not accessory uses.

Motion and Vote: Mr. Bowen made a motion to grant the waiver from Section 5B.5 of the Zoning Ordinance from the required 50-foot agriculture land use setback to 35-feet contingent upon the waiver request and approval date being noted on the plat. Seconded by Mr. Ecker. Unanimously approved.

John Sensenbaugh (SV-08-016)

Ms. Kelly presented for review and approval a variance from Section 405.11.G.5 of the Subdivision Ordinance, which states that panhandles may not exceed 400-feet in length. The property is located along the north side of Partridge Trail in Robinwood and is zoned RR (Residential Rural). There is private access via Dormayne Drive, which is included in the land owned by John Sensenbaugh. A total of six lots access Dormayne Drive. The property owner is proposing to create a 1.33 acre lot for his son from a total parcel of 2.27 acres. The lot would have public road frontage onto Partridge Trail via a panhandle of 715-feet. Included in the agenda packets were comments from the Division of Public Works Land

Development Engineering and the Division of Fire and Emergency Services. The site is served by public water and an individual septic system.

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

- PRELIMINARY CONSULTATIONS

AMS, LLC (PC-08-007)

Ms. Kelly presented for review and comment, a preliminary consultation for AMS, LLC for property located along the east side of Greencastle Pike, just south of its intersection with Huyetts Crossroad. The property is currently zoned HI-1 (Highway Interchange 1). The developer is proposing to create 8 industrial/commercial lots on approximately 32-acres of land. During the preliminary consultation, the County Engineering Department stated that a Traffic Impact Study would be required. The Engineering Department will also require that the proposed road into the site be extended to the property to the east for interconnectivity with Newgate Boulevard and not terminate in a cul-de-sac. A flood study will be required for the stream that runs through the property and a storm water management plan is required and must comply with the Washington County Stormwater Management Ordinance. The project may require a minimum of two storm water management facilities to avoid problems of the storm water conveyance system near the stream. The Washington County Soil Conservation District provided standard comments regarding the flood plain and sensitive areas. Consideration must be given to the existing stream on the site. The State Highway Administration is requiring a sight distance worksheet. Curb and gutter will be required along Maryland Route 63. The City of Hagerstown will provide water service, which is currently available. The Washington County Department of Water Quality indicated that sewer service is available and would be provided through the Cedar Springs Pump Station. The Planning Department informed the developer that the Urban Growth Area Advisory Committee is currently making recommendations for rezoning properties within the UGA. This site is proposed for the IR (Industrial Restricted) zoning designation. Ms. Kelly recommended a buffer to shield the view from MD Route 63 from any of the buildings. She also suggested that the buildings should be aesthetically pleasing from MD Route 63. During the consultation, attendees discussed the elimination of the panhandles and recommended replacing them with a cul-de-sac.

Discussion: Mr. Bowen asked if the proposed road would be a County road. Ms. Kelly stated it would be a County road. Mr. Bowen then made an inquiry regarding the County's position when taking over new roads. Mr. Kercheval stated that long term plans for the County have proposed the connection of Newgate Boulevard in this area. Mr. Bowen concurred with Staff that the panhandles should be eliminated for this development. Mr. Kercheval recommended that the tree line along the parcels containing the historic properties be retained. Mr. Anikis noted that the historic property listed in the Washington County Historic Sites Survey (Site WA-I-367) has been determined to be eligible for the National Register of Historic Places; therefore, more consideration should be given to additional buffering from the commercial/industrial uses proposed. Mr. Anikis recommended that all forestation requirements should be met on-site. Mr. Schreiber of Frederick, Seibert & Associates, the consultant, stated there are priority areas that would be considered first and the remaining forestation requirements would be met as much as possible on-site.

- SITE PLANS

Deacon Enterprises, LLC (SP-08-048)

Ms. Kelly presented for review and approval a site plan for Deacon Enterprises, LLC for property located along the southwest side of Mt. Aetna Road near its intersection with Colonial Drive. The owner is proposing to construct a dentist's office on a .92 acre parcel (with no remaining lands) zoned BG (Business General). The proposed office will be 3,400 square feet in size, 30-feet in height with one access point on Mt. Aetna Road. The site will be served by public water and public sewer provided by the City of Hagerstown. One sign, which will be 12-feet in height and 30-square feet, is proposed at the entrance. Lighting will be building mounted. Solid waste will be collected and stored inside the building. The hours of operation will be Monday through Friday, 8:00 a.m. to 5:00 p.m. The number of employees proposed is 10 with 2 practitioners. Parking required is 8 spaces and 26 parking spaces are provided. There will be UPS deliveries daily. Storm water management will be provided on site by a bio-retention pond. Landscaping will be provided around the building and throughout the parking lot using boxwood, Green Ash juniper, and pine and spruce trees. The site is exempt from Forest Conservation Ordinance requirements because there is less than 40,000 square feet of disturbed area. Health Department approval is pending. All other agency approvals have been received.

Motion and Vote: Mr. Wiley made a motion to approve the site plan contingent upon Health Department approval. Seconded by Mr. Ecker. Unanimously approved.

- FOREST CONSERVATION

Victoria R. J. Proulx, Lot 2

Ms. Kelly presented for review and approval a request to use the payment-in-lieu of afforestation for 2.29-acres of land located on Valley Road near Route 340. Ms. Kelly stated that a preliminary/final plat was submitted to the Planning Department along with a Forest Conservation Plan. A letter was received with

the plan from Mr. Tim Kellerman, Senior Environmental Specialist, with Triad Engineering indicating that all requirements of the Forest Conservation Ordinance could not be met on-site. The total tract area is 4.5-acres in size. The Forestation Worksheet indicates that 2.58-acres of forestation, retention, or afforestation would be required. The applicant is proposing to retain .15-acres of existing forest and provide .14 acres of supplemental planting to create the .24-acre span in a priority area of wetlands. The owner is also proposing to use the payment-in-lieu to meet the remaining planting requirement of 2.29 acres. Ms. Kelly noted that the purchaser, Richelle Lewis, is proposing to use the property for agricultural purposes (grazing of cattle and horses); therefore, large areas of open space are needed.

Discussion: Ms. Lewis stated that she currently owns and lives on the property across the road and does not plan to build a house on the subject property at this time. Ms. Lewis and a representative from Triad Engineering displayed photographs of the site during discussions regarding existing forest. Ms. Lewis stated she plans to provide additional buffering for the Proulx's and the Mayberry's. The tree line along Miller Avenue and in the center of the property would be cleared. Mr. Kercheval recommended retaining the tree lines along the west and northeast sides to help buffer the residences in those areas. Mr. Bowen noted that there may be no further subdivision of this property per a decision by the Board of Zoning Appeals as noted on the submitted plat.

Motion and Vote: Mr. Kercheval made a motion to approve the Forest Conservation Plan for approximately 2.29 acres of land and the request to use the payment-in-lieu to meet Forest Conservation Ordinance requirements, contingent upon all tree lines on the north and northwest sides of the property being retained. Seconded by Mr. Ecker. Unanimously approved.

OTHER BUSINESS

Westfields Development

Ms. Kelly presented for review and approval a modification from the required 3-acre parcel to a 2.6-acre parcel to establish a daycare facility in the Westfields cluster development. The property is located along the west side of Sharpsburg Pike and Rockland Drive and is zoned A (Agriculture).

Discussion: Mr. Kercheval expressed his opinion that the daycare facility will be a good amenity for the development.

Motion and Vote: Mr. Bowen made a motion to approve the modification as presented. Seconded by Mr. Kercheval. Unanimously approved.

Hagerstown Gateway (PC-08-002)

Mr. Lung presented for review and comment a proposed sensitive area stream buffer plan associated with the proposed retail center (Hagerstown Gateway) to be located at the southeast corner of I-70 and US Route 40. A preliminary consultation was reviewed by the Planning Commission in June 2008. The Washington County Subdivision Ordinance and Washington County Zoning Ordinance require a sensitive area review and provision of stream buffers as part of a proposed subdivision or site plan. The Washington County Soil Conservation District reviews all sensitive area and stream buffer requirements. The applicant, Faison, is requesting the Planning Commission's concurrence with the Soil Conservation District's recommendation and/or additional recommendations for addressing the stream buffers. As per the Sensitive Area Ordinance, the applicant has evaluated the site and submitted documentation to the Soil Conservation District for their review and recommendation. A copy of the report entitled, "*Washington County Sensitive Area Buffer Report for Hagerstown Gateway*" was included in the Planning Commission's agenda packets. The site was checked for streams and an analysis was performed to identify stream buffers that would be required. Three streams needing buffer areas were identified on the site. The developer has applied to the Maryland Department of the Environment (MDE) for a joint review of their request to disturb jurisdictional non-tidal wetlands and wetland buffers associated with some of the streams and springs in the area. The proposed impacts on stream buffers would be the removal of 2,500 square feet of wetlands, removal of 360 linear feet of an existing discharge channel, the removal of 1,318 linear feet of a three dot stream associated with the perennial wetlands and fill within an MDE 100 year floodplain, installation of two box culverts or bridge structures and associated fill through a FEMA 100 year floodplain over an existing dry drainage swale and the installation of two bridge structures and associated fill through a FEMA 100 year floodplain over an existing stream (Landis Stream Branch). Mr. Lung explained that normally the sensitive area review and stream buffer requirements are determined by the engineer per the Ordinance's criteria. The stream buffer is applied to the plat or site plan and does not allow any disturbance or work within the buffer area. However, in this case, the developer is proposing disturbance within the stream buffer; therefore, mitigation will be required per the Sensitive Area regulations, which state, "No permanent structures or construction shall be permitted within a stream buffer except those designed to improve water quality in the stream or structures such as fences designed to limit access to the stream." Due to the proposed disturbance within the stream buffer, Mr. Elmer Weibley of the Soil Conservation District, is recommending additional mitigation above the standard requirement for stream buffers. A copy of Mr. Weibley's memo detailing his recommendations was included in the agenda packet. Mr. Weibley's recommendations include:

- 1) Expansion of the proposed wetlands area. The developer has agreed to expand the wetlands area to 4,000 square feet.

- 2) Stream restoration of 1,650 linear feet of Landis Spring Branch. The SCD is requesting plantings in this area. The actual stream buffer, based on the evaluation of the size of the stream, is 24 feet from the center of the stream or 48 feet from side to side. Within that area, plantings of at least 2" caliper at a stocking rate of 100 trees per acre has been requested. All recommendations for mitigation by the SCD are to improve water quality in exchange for the elimination of the spring and buffers, as well as the bridge culvert work. Mr. Weibley does not believe that the trees planted within the stream buffer area should be counted toward Forest Conservation Ordinance requirements. Staff agrees with Mr. Weibley's position; however, the developer is not in agreement. The developer believes they should be allowed to count the trees in the stream buffer area toward the overall Forest Conservation requirements.

Discussion: Mr. Anikis and Mr. Bowen asked why the SCD does not want to count the trees in the buffer area as part of the Forest Conservation requirements. Mr. Lung stated that the intent of the regulation and recommended mitigation is to improve water quality. Mr. Bowen stated that he agrees with planting of the trees to mitigate the disturbance in the stream buffer and the need for better water quality. However, he expressed his opinion that the planting of the trees in the buffer area can satisfy both requirements; therefore, he does not believe it is fair to make the developer plant twice the amount of trees. Mr. Lung stated that if the developer is allowed to count the trees to satisfy both requirements, less trees would be planted effectively decreasing the water quality improvement. He noted that the Corps of Engineers and MDE will also be requiring wetlands mitigation. As part of the Corps of Engineers' and MDE's review, the impacts of eliminating the springhead and the outfall will be reviewed and mitigation will be required. According to Mr. Weibley, both agencies allow stream restorations to be counted toward their mitigation requirements; therefore, Mr. Lung believes that the developer would use these plantings as part of the MDE and Corps of Engineers mitigation requirements also. Mr. Lung noted that the developer, as part of the wetlands mitigation, is applying for a CLOMAR map amendment to the FEMA map to reduce the size of the floodplain.

Mr. Anikis invited Mr. Divelbiss, attorney for Faison, to make a brief presentation on behalf of his client. Mr. Divelbiss gave a brief summation of Faison's stream restoration efforts. He believes that the trees planted within the 48-foot area should be counted toward mitigation for the disturbance of the stream buffer and Forest Conservation requirements. He noted that the Sensitive Area Ordinance and the Forest Conservation Ordinance do not prohibit the developer from being credited for both mitigation requirements using the same planting area. Mr. Dave Trostle of Frederick, Seibert & Associates, Faison's consultant, gave a more detailed presentation using a colored drawing to show the area that the developer is proposing to mitigate for SCD and FCO requirements, which is approximately 2.4 acres. He also reviewed the requirements of MDE and the Corps of Engineers. The wetland area, which will be controlled by MDE, requires 2,500 square feet of mitigation. The developer is proposing 4,000 square feet of mitigation. The Corps of Engineers cited areas of concern at two of the stream crossings, which the developer will be required to mitigate (approximately 210 linear feet). Mr. Trostle stated that the developer is proposing to pipe the water from the spring head to the wet pond. The developer is also proposing to restore the "meandering" of the Landis Spring Branch to help reduce the sediment loads. Currently, the stream is approximately 3,000 feet long and upon completion of the proposed improvements the stream will be 4,000 linear feet long. A buffer will be provided along the entire length of the stream.

Discussion: Mr. Bowen expressed his opinion that the developer is addressing the water quality issues with their proposed mitigation. He stated that he believes it is his responsibility as a Planning Commission member to enforce the laws approved by the County Commissioners (i.e. Forest Conservation Ordinance). As long as the developer is meeting the specified requirements, Mr. Bowen stated he is "totally against" requiring the developer to "go above and beyond". Mr. Ecker concurred with Mr. Bowen's comments. Mr. Kercheval asked what the developer is requesting from the Planning Commission at this time. Mr. Divelbiss stated that the developer is asking the Planning Commission to accept the proposed mitigation plan for the meandering stream efforts. Mr. Kercheval stated he is not opposed to the mitigation plan per Staff's recommendations. Mr. Wiley concurred.

There was a brief discussion regarding Forest Conservation requirements including Mr. Weibley's recommendation that stream buffer planting not count towards forest conservation and the developer being allowed to count "street trees" as part of their mitigation requirements. These issues will be brought before the Planning Commission at a later date. The Commission has requested that Mr. Weibley be present at the meeting when these issues are discussed. Mr. Thompson stated that an amendment to the Forest Conservation Ordinance will be required in order to allow street trees to be counted as part of the mitigation for Forest Conservation.

City of Hagerstown Annexation – Norfolk/Southern Railroad (A08-08)

Mr. Thompson presented for review and recommendation a request from the City of Hagerstown for annexation of approximately 95 acres of land located south of the current City of Hagerstown boundary below Wilson Boulevard, west of Downsville Pike, east of Virginia Avenue and north of Oak Ridge Drive. The applicant is proposing to develop the property for the off-loading and storage of new motor vehicles, a rail to truck transfer point. Mr. Thompson reminded the Commission that this request was previously presented to them and received their recommendation for approval contingent upon certain conditions and was presented to the BOCC. The annexation proceeded to the BOCC; however, no action was taken by the Commissioners prior to the annexation request being withdrawn. At this time, there is some

question if express approval is required from the BOCC. The applicant is proposing an IG (Industrial General) zoning designation under the City of Hagerstown's Zoning Ordinance. The property is currently zoned PI (Planned Industrial) by the County. The industrial uses permitted in IG (Industrial General) and IR (Industrial Restricted) zoning districts are permitted in the Planned Industrial (PI) zoning district. Mr. Thompson noted that there is not a significant difference in the proposed use; however, there is a significant difference in the process required for a Planned Industrial project. Staff is recommending the previously discussed conditions as well as one additional condition for approval (all recommended conditions were outlined in a memo included in the agenda packet).

Mr. Thompson has discussed, with the County Attorney, whether or not conditions can be placed on an "express approval" request and if "express approval" is necessary in this case. The County Attorney believes the process is the issue and not the change in zoning. The County Attorney also indicated that if the City does not believe express approval is necessary, the City can proceed with the annexation. Mr. Thompson expressed his opinion that the concerns of the Planning Commission and the BOCC should be forwarded to the City. The concerns include: effects to the residential development across the street from the subject site, traffic, buffering, lighting, and access to the site. Mr. Thompson noted that the railroad is proposing the use of 100-foot light poles.

Discussion: Mr. Kercheval stated that he does not agree with Staff's recommendation and he believes that express approval is necessary. He also stated that he has not discussed the legal issues with the County Attorney, which could influence a change in his position. However, he needs to discuss the issue prior to making a decision. Mr. Kercheval expressed his opinion that the requested zoning is incompatible with the surrounding residential area. He believes that the Planned Industrial zoning district is very different from the Industrial General zoning district. He also believes that additional buffering should be required along the north end of the property to protect the existing residential development, as well as the areas previously recommended. Mr. Wiley and Mr. Ecker concurred with Mr. Kercheval's comments. Mr. Bowen expressed his opinion that express approval should be required so the County has more leverage when the annexation is discussed. He expressed concern that the proposed use would have an impact on the residents in the area already in the area. There was a brief discussion regarding access to the site. Mr. Anikis expressed his opinion that significant screening is needed along the northern, western and southern boundaries of the site. He expressed concern regarding the proposed 100-foot light poles. Mr. Anikis suggested that truck traffic from the site be required to use Oak Ridge Drive to Downsview Pike and should not be allowed to enter Halfway Boulevard. Mr. Thompson stated that other trucks use the road to Halfway Boulevard; therefore, it may be difficult to prohibit trucks from this site from using the same route. Mr. Anikis asked if the hours of operation can be restricted so trucks are not unloaded on weekends and late at night. Mr. Kercheval stated that when the property is annexed, the County will not have any control over these issues. Mr. Thompson noted that the City does have a Noise Ordinance that may help to address the hours of operation. Mr. Anikis asked if Mr. Thompson could attend the public hearing to represent the County Planning Commission and to voice their concerns. Mr. Thompson stated he would make a request to the County Commissioners to attend the public hearing. He noted he would make changes to his original recommendation before presentation to the BOCC.

Policy #8 – Planning Commission Policies and Resolutions

Mr. Thompson presented a request to delete Policy #8 of the Planning Commission Policies and Resolutions. Policy #8 states, "The Director shall have the authority to recertify all non-recorded one or two single-family residential lot subdivision plats with the understanding that each plat would be reviewed to assure that the original site conditions are unchanged and also that the said plat be recorded within a 30-day period". Mr. Thompson noted that the Ordinance states that plats are to be recorded within two (2) years from approval. Changes to the Ordinance are being considered.

Motion and Vote: Mr. Bowen made a motion to delete Policy #8 from the Planning Commission Policies and Resolutions. Seconded by Mr. Ecker. Unanimously approved.

Discussion: Mr. Anikis noted that in the Policies and Resolutions, reference is made to "Executive Director" and "Planning Director". He recommended that if both phrases are referring to the same person, changes should be made for consistency throughout the document.

Re-adoption of By-laws

Mr. Thompson stated that the Planning Commission's By-laws, which were adopted in 2005, have not been recorded per Article XI of the By-laws. The County Attorney's office has recommended that the Planning Commission re-adopt the By-laws, which will then be recorded. Mr. Kercheval questioned the following sentence from Article IV, Section 1, which states, "The Commission shall hold at least one regular meeting each month". He noted that the Commission might not hold a meeting due to lack of items for the agenda. Mr. Thompson stated he would check on this issue and report to the Commission at next month's meeting.

NEXT MEETING

1. Monday, January 5, 2009, 7:00 p.m., Regular Planning Commission meeting, Washington County Administrative Annex, 80 West Baltimore Street, Hagerstown

ADJOURNMENT

Mr. Ecker made a motion to adjourn the meeting at 9:10 p.m. Seconded by Mr. Bowen. So ordered.

Respectfully submitted,

George Anikis, Chairman