

**WASHINGTON COUNTY PLANNING COMMISSION
REGULAR MEETING – October 5, 2009**

The Washington County Planning Commission held its regular meeting and a public rezoning meeting on Monday, October 5, 2009 in the Washington County Administrative Annex, 80 West Baltimore Street, Hagerstown.

Members present were: Linda Parrish, Sam Ecker, Terry Reiber, Clint Wiley, Drew Bowen and Ex-Officio James F. Kercheval. Staff members present were: Planning Director Michael C. Thompson, Chief Planners Timothy A. Lung and Stephen Goodrich, Senior Planner Lisa Kelly, Planners Cody Shaw and Fred Nugent, Environmental Land Planner Bill Stachoviak, and Administrative Assistant Debra Eckard. Also present was Elmer Weibley, District Manager of the Washington County Soil Conservation District.

CALL TO ORDER

In the absence of the Chairman, Vice-Chairman Terry Reiber called the meeting to order at 7:00 p.m.

REZONING PUBLIC MEETING

RZ-09-006 – Text Amendment

Mr. Goodrich presented for review and comment a proposed text amendment for Article 22, Section 22.21(g) Signs Permitted without Zoning Permit. Currently, the Zoning Ordinance limits the placement of election and campaign signs to 45 days prior to election day and removal 15 days after election day. The proposed amendment would remove the 45 day and 15 day time limits for election and campaign signs. The amendment will state that election signs are permitted without a permit and they may not interfere with traffic visibility. The amendment is needed because it has been determined that time limits on election or campaign signs are an unconstitutional limitation on freedom of speech. Mr. Goodrich cited two federal district court cases and a Supreme Court case, which decided that the time limitations were unconstitutional. He clarified that the time limitations were added to the Zoning Ordinance in 1987 as a result of guidelines established by the State Highway Administration with regard to signs placed along SHA roads.

Discussion and Comments: Mr. Kercheval questioned whether an election sign could be erected prior to the 45 day limit if a permit was obtained for the sign. He also questioned how the cited court cases pertain to the County's Ordinance with regard to permits for election signs. Mr. Kercheval stated he would discuss this issue further with the County Attorney's office.

The Rezoning Public Meeting was adjourned at 7:10 p.m.

MINUTES

Ms. Parrish made a motion to approve the minutes of the August 31, 2009 meeting as amended. Seconded by Mr. Ecker. Unanimously approved.

NEW BUSINESS

- MODIFICATIONS

Robert Firey, Lot 2 (S-09-050)

Mr. Shaw presented for review and approval a request for a waiver of the 50-foot agricultural land use setback to 15-feet. The property is located along the west side of Rockdale Road in Clear Spring and is identified on Tax Map 8, Grid 23, Parcel 30. The proposed lot is 1-acre in size and is zoned Agricultural-Rural – A(R). According to Section 5.A.5 of the Zoning Ordinance, the Planning Commission may increase the minimum setbacks up to 50-feet for properties adjacent to parcels that are actively farmed or parcels with an Agricultural district designation. The applicant, Mr. Robert Firey, is requesting a waiver from the 50-foot setback requirement for a proposed dwelling. The proposed dwelling meets the minimum setbacks required for the A(R) zone, which are 40-feet for the front yard setback, 15-feet for the side yard setback and 50-feet for the rear yard setback. However, the proposed lot cannot meet the 50-foot agricultural setback. Mr. Firey submitted the following information for the Planning Commission members to consider when reviewing this request: the lot is being given to an immediate family member who is very familiar with farming practices; the 50-foot setbacks imposed on a 1-acre lot drastically reduce the available building envelope; the potential to subdivide adjacent lots off in the future negates the need for agricultural setbacks; and, the land directly to the south is wooded with no need for the spreading of manure or spraying of pesticides. Staff has no objection to the modification request.

Discussion and comments: Ms. Parrish asked if a reduction in the setback on the south side is also necessary. Mr. Schreiber of Frederick, Seibert & Associates, the applicant's consultant, stated that a reduction is needed on both sides; however, the south side could accommodate a 25-foot setback. The 15-foot setback on the north side is needed due to the geographic features of the lot.

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

Paradise Manor, Lot 4

Ms. Kelly presented for review and approval a request to create a stand-alone parcel along the east side of Paradise Church Road and adjacent to Cranberry Court in Paradise Manor. The property is currently zoned A (Agriculture) and RR (Residential Rural) and the total site is 30.3 acres in size. During the August 31, 2009 Planning Commission meeting, a request was heard by members of the Commission to subdivide the 30 acre parcel into two single-family lots. The Planning Commission denied that request. The developer is now proposing to create a .77-acre building lot adjacent to Cranberry Court, which was the lot size proposed on the previously approved final plat of Paradise Manor in 2004. The remaining 29-acres would be presented on a simplified plat as a lot not for development and for conservation purposes only, which would include all of the forest retention and afforestation areas for the entire Paradise Manor subdivision. Section 318 of the Subdivision Ordinance states that the simplified plat procedure is for the purpose of property line adjustments or for the enlargement of an existing lot of record; it is not intended to be used to create a stand-alone lot for agricultural or conservation purposes. The developer's claim of hardship is that 30-acres would be too large for a single-family residential lot because the forest conservation easement prevents most of the property from being used. The developer purchased the 30-acre lot to construct a gravity sewer line system that would link to an existing sewer pump station on Emerson Drive to serve a proposed development on the west side of Paradise Church Road (known as the Harp property). In order to construct the proposed sewer line, 1.15-acres of land currently in a forest conservation easement area would need to be removed. There are currently no trees in this proposed easement area. The trees were planted; however, they did not survive. The developer is proposing to relocate the forest conservation easement area onto the Harp property and plant trees at a 2:1 ratio. There is no other place on the site (Lot 4) to plant the 1.15-acres of forest. A letter was distributed prior to the meeting to Planning Commission members from the Department of Water Quality regarding the proposed gravity sewer line. A letter was also received by the Commission from adjoining neighbors voicing their concerns with regard to the proposal.

Discussion and Comments: Mr. Ecker asked why the trees could not be replanted on the property. Mr. Schreiber of Frederick, Seibert & Associates, the developer's consultant, stated that the proposed sewer line needs to be placed on the property for the development across the road and there is no other place on the property to plant the trees. An inquiry was made with regard to the sewer easement area and the maintenance of the grass in this area. Mr. Schreiber stated that the owner/developer (Mr. Paul Crampton) would be responsible for cutting the grass in the sewer easement area. Mr. Kercheval noted that the proposed sewer line easement area has not been definitely established. Mr. Schreiber stated that the proposed sewer line is the preferred method to serve the proposed development across the street instead of constructing a new pumping station, which would be an on-going cost to the County. The existing pumping station could be retrofitted with a gravity feed line to serve the proposed development. Mr. Kercheval made an inquiry regarding the upgrades to the existing pump station. Mr. Schreiber noted that the upgrades would not change the appearance to the outside of the pumping station. Mr. Thompson stated that the Department of Water Quality would prefer a gravity feed sewer line; however, there are other options.

Mr. Jason Divelbiss, the developer's attorney, stated that the developer would replant the 1.5-acres of forest on the subject site if the Commission prefers. However, the developer is offering to plant 4.6-acres of forest off-site (on the Harp property) as an alternative. There was a brief discussion regarding a surety bond posted by the previous developer and held by the County for the 1.5 acres of afforestation. Commission members discussed enforcing the bond with the original developer.

Ms. Parrish expressed her opinion that the original developer should replant the 1.5 acres of trees on the original site because it is in a sensitive area and the adjoining property owners were expecting to have the forest there. Mr. Wiley agreed that the original developer should replant the trees, but he is not opposed to the off-site planting. Mr. Bowen expressed his concern with regard to approving an easement for a sewer line for a development that has not been approved by the County. He expressed his opinion that because Mr. Crampton owns the 29-acre parcel, a sanitary sewer easement could be requested anytime after a plat for the proposed development is approved. Mr. Divelbiss pointed out that because the area is encumbered by the forest conservation area, ownership of the property does not guarantee that it would be usable for the intended purpose of a sewer easement in the future. The developer wishes to design the proposed development around a viable course for the sanitary sewer. Mr. Bowen believes that a plat should be prepared showing the proposed forest conservation area for the off-site planting. Mr. Divelbiss stated that the developer would not be opposed to preparing a plat showing the proposed forest conservation area for the off-site planting. Mr. Wiley agreed that a plat should be prepared showing the proposed forest conservation area; however, he believes that the Commission should consider the least expensive cost to the County.

Mr. Kercheval began a brief discussion regarding changes he believes are necessary to the "not for development" note shown on the plat. Mr. Thompson stated that Staff would work with the County Attorney's office regarding this issue.

Motion and Vote: Mr. Ecker made a motion to approve the request to create a .77-acre stand-alone parcel with a 29.54-acre remaining parcel "not for development", which should be noted on the plat with language determined acceptable by Staff and the County Attorney's office. Seconded by Mr. Wiley. Unanimously approved.

Motion and Vote: Mr. Ecker made a motion to approve the request for the sanitary sewer easement with Staff to determine where the trees should be planted to meet the requirements of the Forest Conservation area. Seconded by Mr. Wiley.

Discussion: Ms. Parrish asked for clarification to determine the amount of afforestation that is needed to meet the requirements of the Forest Conservation area. Mr. Bowen stressed his opinion that a plat is needed to show where the Forest Conservation area would be located.

Vote: The motion failed with Mr. Ecker and Mr. Kercheval voting "Aye" and Mr. Wiley, Ms. Parrish and Mr. Bowen voting "no".

Motion and Vote: Ms. Parrish made a motion to table the approval of the sewer easement and Forest Conservation area until plans have been submitted showing the proposed development (on the Harp property), the proposed sanitary sewer line location (where they are running and how they are feeding the sewer) and the area proposed for afforestation. Seconded by Mr. Bowen. The motion passed with Mr. Bowen, Mr. Kercheval and Ms. Parrish voting "Aye" and Mr. Ecker and Mr. Wiley voting "No".

- SITE PLANS

Allenburg Orchards (SP-09-033)

Ms. Kelly presented for review and approval a site plan for Allenburg Orchards located adjacent to the owner's private lane, Barth Spring Lane, and Raven Rock Road along Route 491 northeast of Smithsburg. The property is zoned A(R) – Agriculture Rural. The owner is proposing to construct a 3,328 square foot produce stand and pole building for his orchard business. The building will be located on Mr. Allenburg's property along with other existing sheds and storage buildings. No new signage is proposed. Proposed lighting will be wall-pack and dusk to dawn lights. Solid waste will be collected in an indoor storage receptacle and disposed of by a private hauler. The hours of operation would be July through November, 9:00 a.m. to 6:00 p.m. Monday through Friday, 9:00 a.m. to 6:00 p.m. on Saturday and 12:00 noon to 4:00 p.m. on Sunday. There will be two employees. Parking required is six spaces and 12 spaces will be provided including one handicapped space. There will be one box truck per week making deliveries. A sand filter will be used for storm water management purposes. The site is exempt from Forest Conservation Ordinance requirements because there will be less than 40,000 square feet of disturbed area. Final approvals are pending from the State Highway Administration and the County Engineering Department.

Discussion and Comment: Mr. Kercheval asked who owns Barth Springs Lane. Mr. Schreiber of Frederick, Seibert & Associates, the owner's consultant, stated that the property owner owns the lane in fee simple title. Mr. Allenburg, owner, noted that the produce stand will contain 660 square feet of space and the rest of the building will contain cold storage facilities and a sorting area.

Motion and Vote: Mr. Ecker made a motion to approve the site plan as presented. Seconded by Mr. Bowen. Unanimously approved.

Eastern Primary School (SP-09-026)

Mr. Lung presented for review and approval a site plan for the proposed Eastern Primary School located at the northeast corner of Mt. Aetna Road and Yale Drive. The property is located in the Urban Growth Area and is zoned RS – Residential Suburban. The site is approximately 52-acres in size, contains approximately 17 acres of forest, and currently contains the Children's Village of Washington County and a barn. As noted on the Staff Report, the site contained a log house and barn referenced in the County's Historic Sites Inventory as I-438, which was demolished in 1975. An existing storm water management pond is located in the northwest corner of the property. There is a 100-year flood plain area associated with the site, which is contained within the confines of the storm water management pond. The proposed primary school will be a single-story structure consisting of Area A - kindergarten wing, Area B - a central area containing the administration and faculty offices, etc., Area C - a common area gym and cafeteria, Areas D and E will house the first and second grade classrooms. The site plan also includes alternates for an activity room and community gym located to the rear of the building as well as an extension to the canopy at the bus and student drop-off area. The total area of the building is 79,263 square feet with an additional 3,516 square feet of alternate space. Provisions for deliveries and the collection and storage of waste and recyclables are provided to the rear of the center section of the building. Public water and sewer from the City of Hagerstown would serve the site. Access to the site would be via Yale Drive. Two entrances will serve the dedicated bus loop as well as the maintenance and delivery loop. There will be a separate entrance for staff and visitor parking in the student drop-off loop. Based on the County Public Works Department's review, improvements will be required on Yale Drive. The Zoning Ordinance requires that parking for schools be based on 1 space per employee and ample student and visitor parking. According to the site data shown on the site plan, 75 employees and 695 students are proposed. Proposed are 110 parking spaces including 6 handicapped spaces. An additional 32 spaces would be provided with the community gym alternative. Approximately 19.7% of the ultimate parking area will be green space; 5% is the minimum required by the Zoning Ordinance. No bicycle parking is provided and none is required at this time. Several fenced play areas are proposed near the building. A large multi-purpose athletic field is proposed, which will be unfenced and will be located approximately 150-feet away from any public road. A lighting plan was provided which shows high efficiency lighting and a photometric plan showing zero trespass onto any nearby residential development. Sidewalks are proposed along Yale Drive and Mt. Aetna Road and will tie in with existing sidewalks. Several pedestrian

crosswalks will also be provided. Storm water management quantity control will be via the existing pond on the northwest corner of the site. A new water quality structure will be built adjacent to the quantity structure and no fencing is proposed. Landscaping will be provided around the building, in parking islands and along Yale Drive. Forest Conservation Ordinance requirements will be met on-site by retention of 8.08 acres of existing forest and 2.4 acres of forest will be planted. An easement plat will be required. All agencies have reviewed the site plan and are in the second revision cycle. At this point, no significant design changes are anticipated. All of the comments from the Planning Staff have been addressed.

Discussion and Comments: Mr. Reiber made an inquiry regarding the road improvements that will be required along Yale Drive. Mr. Lung stated there will be alignment of some of the entrances between this school and the existing Eastern Elementary school. The proposed bus loop entrance has been laid out to provide for the best method of ingress and egress for buses on both sites. Mr. Mark Felton of Triad Engineering, the applicant's consultant, explained that the significant change in Yale Drive will be the revision from two 11-foot lanes to four lanes. This improvement will be made from Mt. Aetna Road to Stanford Road. Mr. Felton briefly explained the County Engineering Department's requirements. Mr. Reiber expressed concern regarding the safety of buses crossing the road from one school to another. Mr. Felton briefly explained the proposed traffic pattern between the two schools. Mr. Reiber expressed concern regarding the traffic for residents and the new hospital on Yale Drive. Mr. Felton stated that an intense traffic study was performed and submitted to the County Engineering Department. No negative comments have been received regarding traffic issues.

Ms. Parrish asked if the existing barn would be used and if so, for what purpose. Mr. Lung stated the barn will be used for the storage of maintenance equipment by the school.

Mr. Bowen also expressed concern regarding traffic issues. Mr. Kercheval stated that Staff has been working with the Board of Education on traffic related issues. Mr. Bowen expressed concern regarding the stacking of buses on Yale Drive. Mr. Chad Criswell, a representative of the Washington County Board of Education, stated that the proposed school is a "third-tier school", which means there would only be two or three buses coming in to the schools at a time. He also noted that the traffic study performed was extensive and included the new hospital and other future development. All of this information was reviewed extensively with the County Staff and incorporated into the design of road improvements needed.

Mr. Kercheval made an inquiry regarding the sidewalks on the south side of Yale Drive. There was a brief discussion regarding this issue and Mr. Felton stated the plan would be revised to include sidewalks in the area in question. Mr. Kercheval questioned the amount of proposed parking. Mr. Felton noted that there is an advantage to having both schools so close together to share parking. He also noted that the bus loop could be used for after school activities. He believes there is adequate parking for day to day activities. Mr. Kercheval expressed his opinion that parking must be adequate to insure that cars are not parking along Yale Drive or Mt. Aetna Road. Mr. Bowen asked if crossing guards have been considered in order to keep parents from crossing the road to pick up students at each school. Mr. Felton stated that parents will need to cross the street to pick up and drop off students at each school. Cross walks are proposed for students walking to school from nearby residential developments.

Motion and Vote: Mr. Kercheval made a motion to approve the site plan as presented contingent upon adjustments to the sidewalks as discussed and all agency approvals. Seconded by Mr. Wiley.

Clarification: Mr. Bowen verified with the consultant that there will be 80-feet of right-of-way for future road expansions.

Vote: Unanimously approved.

Motion and Vote: Mr. Kercheval made a motion to approve the Forest Conservation Plan as submitted. Seconded by Mr. Wiley. Unanimously approved.

- FOREST CONSERVATION

Larry and Vicky Rollins

Mr. Weibley of the Washington County Soil Conservation District presented for review and recommendation for approval a proposed Forest Conservation easement purchase and tree planting for property located in Hancock. Mr. and Mrs. Rollins are requesting that 12.2-acres of existing forest be placed in a forest conservation easement and are proposing to plant 17.7 acres of forest. Two priority areas will benefit from the existing forest and the additional plantings including a steep slope of 24% and a tributary to Little Tonoloway Creek. The total cost for the easement and tree plantings would be approximately \$96,000, which would include maintenance of the plantings for two years.

Motion and Vote: Mr. Bowen made a motion to recommend approval of the proposed project to the Board of County Commissioners. Seconded by Ms. Parrish. The motion passed on a 4-0 vote with Mr. Kercheval abstaining.

Brookmeade Apartments

Mr. Stachoviak began by giving the Commission a brief background of this project. He stated that during site development of Brookmeade Apartments located along I-81 near Williamsport, 8.3-acres of forest

was cleared and .27 acres of forest was retained. A portion of the clearing occurred prior to site plan approval within an area intended for Forest Conservation. Based on the Forest Conservation Plan Worksheet, 5.01 acres of afforestation was required for the site. Approximately .81 acres of forest was planted on-site and the remaining Forest Conservation requirement was met by planting 4.2 acres of forest along Whitetail Road east of Smithsburg. The property along Whitetail Road was owned by a development company that is now in foreclosure by its lender. Because the bank did not consent to the easement, the easement will terminate when the foreclosure is finalized. Therefore, Shaool Brookmeade Development, LLC (the owner of Brookmeade Apartments) is requesting the use of the payment-in-lieu method to now meet the Forest Conservation requirements.

Discussion and Comment: Mr. Kercheval also gave a brief history of this project. When Brookmeade Apartments were first constructed, the developer claimed that the contractor made a mistake in clearing some of the trees and requested approval of the payment-in-lieu method to meet Forest Conservation requirements. The Planning Commission denied the request and approved the off-site retention of forest on property located on Whitetail Road. First United Bank and Trust (the "Lender"), the beneficiary under a deed of trust secured by the property servient to the afforestation easement, claims it did not authorize or consent to the granting of the afforestation easement. Consequently, if the foreclosure proceeds, it would extinguish the easement. Mr. Kercheval stated he would not support the approval of a payment-in-lieu at this time. He recommends that the developer find another off-site retention area or is in violation of the Forest Conservation Ordinance, which carries a fine of \$1000 until the issue is resolved.

Mr. Thompson stated that Mr. Shaool would like to find another property for forest retention or the planting of trees. However, this resolution would take more time. Mr. Anikis expressed his opinion to Mr. Thompson that a new off-site retention area should be located.

Mr. Schubel of Schubel & Hadigian, attorney for Shaool Brookmeade Development LLC, stated that there is no pending foreclosure on the property at this time. He further explained that there was a tax sale on adjoining property in 2008 and foreclosure has been started on that property. However, the case has been dismissed. Mr. Schubel stated that until there is a foreclosure, the easement is not in danger. He recommended that no action should be taken at this time. Mr. Kercheval expressed his opinion that the County does not have a secure easement because the Lender has not signed an easement agreement. Therefore, the developer should be responsible for getting the agreement signed or obtaining a new easement on another piece of property.

Mr. Weibley stated that if there is a lien on the property, an easement cannot be obtained without a subordination agreement. He noted that without a subordination agreement, the easement is not secure. Mr. Reiber suggested that Mr. Schubel contact his client and discuss alternatives to resolve this issue and to bring the recommendations back at the next Planning Commission meeting. Mr. Thompson suggested that Mr. Schubel contact Andrew Wilkinson in the County Attorney's office to discuss alternatives.

Motion and Vote: Mr. Kercheval made a motion to deny the request for payment-in-lieu to meet Forest Conservation Ordinance requirements and to table the issue for 30 days in order to give the applicant time to work with the County Attorney's office to determine alternatives to resolve this issue. Seconded by Ms. Parrish. Unanimously approved.

Mr. Kercheval left the meeting at 9:00 p.m.

OTHER BUSINESS

2008 Annual Report

Mr. Thompson began the presentation by informing the Commission there is new information required in Annual Reports submitted to the State each year and noted that the State must also file Annual Reports each year. Mr. Nugent explained the process and forms Staff used in preparing the Report. He noted that zoning map amendments and text amendments as well as changes to the Comprehensive Plan are included in the Report. A large section was included regarding Transportation. The Annual Report for 2009 will be due on July 1, 2010 using the new format adopted by the State.

Discussion and Comments: Mr. Reiber asked if the data incorporated in the UGA Report is included in the Annual Report. Mr. Goodrich clarified that development activity is not identified in the UGA Report; however, the boundary of the UGA is the same in both Reports. He noted that, "in the much, much bigger picture the proposal is designed to implement the overall State policy of concentrating growth in the existing urban areas and the Report is a way to document that the growth is happening". Mr. Nugent noted that next years report will include many of the text amendments proposed in the UGA Report. Mr. Thompson noted that the affects of the Adequate Public Facilities Ordinance is not required in the Annual Report for 2009; however, it will be required in the 2010 Annual Report. He stated there are specific goals that need to be set as part of the APFO and the County will be rated on meeting those goals. Staff is asking the Commission members for comments on the Annual Report. After a brief discussion, it was decided that the Commission members will make their comments at the Workshop scheduled on October 19th.

UGA Report Update

Mr. Goodrich began by stating that in the State of Maryland the Planning Commission is vested with the responsibility to develop and present a land use plan and regulations to implement the plan for adoption by the elected officials (Board of County Commissioners). He cited the Comprehensive Plan (adopted in 2002) and the Rural Area Rezoning (adopted in 2005) as examples. Staff is now ready to present a

proposal for Zoning Ordinance text and map amendments for the Planning Commission to accept as its document or for modification to be presented during the public hearing process. Mr. Goodrich suggested that the Planning Commission members review Staff's proposed changes to the zoning text prior to the Workshop meeting on the 19th.

Mr. Goodrich explained that the UGA Committee was appointed by the BOCC in 2007 and was assigned 6 tasks relative to the Urban Growth Area. In September 2008, the Committee made its first report to the BOCC relative to the first 5 tasks assigned. The final task, which was the Zoning Ordinance text and map amendments, have been reviewed by the Committee during the past year. The Committee's final Report was presented to the BOCC on September 15, 2009. Staff anticipates conducting workshops with the BOCC to review the recommended changes. Mr. Goodrich briefly reviewed the UGA Committee's report and its contents. There was a brief discussion regarding individual requests for zoning of properties, which Staff recommends be considered during the public hearing process. Mr. Goodrich asked the Commission members to focus on Staff's recommendations on the proposed text and maps for further discussion during the Workshops.

UPCOMING MEETINGS

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

ADJOURNMENT

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

Respectfully submitted,

Terry Reiber, Vice-Chairman