

**WASHINGTON COUNTY PLANNING COMMISSION  
PUBLIC REZONING INFORMATION MEETING  
AND REGULAR MEETING  
December 2, 2019**

The Washington County Planning Commission held a public rezoning information meeting and its regular monthly meeting on Monday, December 2, 2019 at 7:00 p.m. at the Washington County Administration Building, 100 W. Washington Street, Room 2000, Hagerstown, MD.

Commission members present at the meeting were: Clint Wiley, Denny Reeder, David Kline, Jeremiah Weddle, and Ex-officio County Commissioner Randall Wagner. Staff members present were: Washington County Department of Planning & Zoning: Jill Baker, Director; Travis Allen, Comprehensive Planner; and Debra Eckard, Administrative Assistant; Washington County Department of Plan Review & Permitting: Rebecca Calimer, Chief of Plan Review.

**CALL TO ORDER**

The Chairman called the public rezoning information meeting to order at 7:00 p.m.

**RZ-19-007 – Heritage Huyett LLC**

**Staff Presentation**

Ms. Baker presented a map amendment application submitted by Heritage Huyett LLC for property located along the west side of MD Route 63 (Greencastle-Williamsport Pike) approximately 0.1 mile north of US Route 40 (National Pike). The property consists of two parcels approximately 90.34 acres in size. Parcel 393 is 82.05 acres and Parcel 561 is 8.29 acres. The property is currently zoned P1 (Planned Industrial; 60.77 acres) and B1 (Business Local; 29.57 acres). The current zoning on the property was established in 2015 at the request of the applicant. Applicants for new P1 zoning districts are required to first hold a preliminary consultation with the Planning Commission. A preliminary consultation was held on June 20, 2019 with the Department of Plan Review & Permitting; however, a summary of that meeting has not been presented to the Planning Commission.

Both subject parcels are located within the Urban Growth Area that surrounds the City of Hagerstown, the Town of Williamsport and the Town of Funkstown. The population analysis for the last 30 year period shows an increase in this election district of 83% per year while the overall county population has increased only 30% per year. Public water and public sewer are available within a reasonable distance from the subject site. The City of Hagerstown has a pre-annexation agreement with the property owners for water service.

Emergency Services would be provided by the Williamsport Volunteer Fire Company and Maugansville Goodwill Fire Company. Rescue services would be provided by the Williamsport Volunteer Ambulance Service. Kevin Lewis, Director of Emergency Services, commented that during the review of a proposed residential subdivision on this property several years ago, a request was made that the developer set aside land within the development for the establishment of a new sub-station for fire and/or emergency services. This provision is still being requested.

There would be no impact on schools because the requested zoning (P1) would not permit any residential development.

There has been a significant increase in traffic since the 1980s in this area. There is no public transportation provided to the site.

The area surrounding the subject parcels contains a mixture of residential, institutional and commercial uses. The majority of the property is bordered by large lot residential uses as well as a scattering of institutional uses within a one mile radius of the site. Commercial uses dominate the intersection of MD 63 and US 40. There are several historic structures within a ½ mile radius of the site.

The County's adopted Comprehensive Plan shows this area as being in the Industrial Flex sub-policy area which reflects a hybrid policy area comprised of different types of economic development associated land uses.

Ms. Baker explained that in a piecemeal rezoning, Maryland law requires the applicant to meet the test of the change or mistake rule. The applicant must provide substantial facts showing a change in the

character of the neighborhood or a mistake by the local legislative body during the last rezoning of the property. In this particular case, the current zoning was established in 2015 at the request of the applicant. Ms. Baker stated that the applicant has not provided justification to either a claim that there has been a change in the character of the neighborhood or that a mistake in the 2015 zoning was made.

**Discussion and Comments:** Commissioner Wagner asked what the property was zoned prior to the 2015 rezoning. Ms. Baker stated that the property was zoned RT (Residential Transition) during the Comprehensive rezoning in 2002, at the request of the property owner at the time. The developer had plans for a residential development of 100+ lots. In 2015, the applicant (Heritage Huyett LLC) requested a change in the zoning from RT to BL (Business Local) and PI (Planned Industrial).

#### **Applicant's Presentation**

Mr. Brian Kurtyka, 201 Prospect Avenue, Hagerstown (21742), legal counsel for the applicant, stated that a justification for the rezoning has not been established yet. The applicant would like to rezone the portion of property currently zoned BL to PI for several reasons, as follows: 1) to have contiguous PI zoning across the entire property which would make it easier to market; 2) the PI designation would conform to the County's adopted Comprehensive Plan; 3) the current market is more conducive to the PI zoning designation; 4) the proposed zoning would be less traffic intensive; 5) there is public water and sewer available to the site; and 6) traffic studies have been verbally approved and the applicant has agreed to traffic signalization and roadway improvements as necessary.

Mr. Kurtyka expressed his opinion that the current zoning, which was requested in 2015, was not a mistake; however, he believes that the proposed zoning would be a better fit for the County's original intent of the area. He also stated that he doesn't believe the applicant could provide substantial proof for a change in the character of the neighborhood. At this time, the applicant needs more time to meet the requirements for the change or mistake rule.

**Discussion and Comments:** Mr. Kline asked what the applicant's intent was for the BL zoning in 2015. Mr. Kurtyka stated that the applicant was proposing some office and retail uses; however, those plans did not come to fruition.

Mr. Terry Randall, 13101 Fountainhead Road, Hagerstown, President of Heritage Capital (owner of Heritage Huyett LLC), stated that when the property was purchased, the biggest drawback for development was the lack of public sewer services to the property; however, the portion of the property currently zoned BL could be developed without public sewer. Mr. Randall stated that within the last two years, sewer services have been extended to the property. He contends that the extension of the sewer constitutes a change in the neighborhood and has expanded the possibilities for the property. Mr. Randall stated that a 730,000 square foot building is being proposed on the site and the developer has prepared a site plan, a grading plan, etc. to ensure that the proposed use could be accomplished on this site.

#### **Public Comment**

- Kyle Walters, 16400 National Pike – Mr. Walters had no public comment either in opposition or in favor of the request. However, he had several questions and was asked to speak to the applicant directly.

Mr. James Snyder of Snyder, Secary and Associates, 2000 Littlestown Road, Harrisburg, PA, briefly discussed the proposed retaining wall which would prevent the fill slope from encroaching on the adjacent property.

Ms. Baker recommended that when the applicant has provided staff with more information, a second public meeting should be held to obtain public comment and Commission members can make an informed decision to send forward to the County Commissioners.

The public rezoning information meeting concluded at 7:30 p.m.

#### **MINUTES**

**Motion and Vote:** Mr. Kline made a motion to approve the minutes of the November 4, 2019 meeting as presented. The motion was seconded by Mr. Weddle and unanimously approved.

**-NEW BUSINESS**

**FOREST CONSERVATION**

**Ridenhour Family Lot 3**

Mr. Allen presented for review and approval a request to utilize the payment in lieu fee to meet forest mitigation for the Ridenhour Family Lot 3. The property is located at 22740 Stevenson Road within the Town of Smithsburg. The total acreage of the current parcel is 7.12 acres; the applicant is proposing to subdivide and create a 1.26 acre lot. Approximately 0.12 acres of planting is required for this subdivision to meet Forest Conservation Ordinance requirements. Generally, with a planting requirement of this size, the express procedure could be used without approval from the Planning Commission. However, because there is a floodplain area on this site, which is a priority area targeted for retention or new forest per the Ordinance, the Planning Commission must review and approve the forest mitigation being proposed. Mr. Allen noted that planting 0.12 acre of forest would offer limited benefits to water quality, it would not qualify as forest, and the trees in such a small cluster may not survive long-term because there is very limited forest cover along the stream as it stands currently.

**Motion and Vote:** Mr. Weddle made a motion to approve the request to utilize the payment in lieu of fee as presented. The motion was seconded by Mr. Kline and unanimously approved.

**OTHER BUSINESS**

**Thomas J. Gilbert III**

Ms. Calimer introduced a request from Thomas J. Gilbert III to remove an intra-family restriction on property located at 4738 Horizon Lane, Keedysville. In 2006, approval was given to build a second dwelling on the property. In July 2016, a plat was recorded with the 10 year immediate family restriction.

Mr. William C. Wantz, 123 W. Washington Street, Hagerstown, MD, legal counsel for the applicant, gave a brief summation of the history of this property. In 2015, Dr. Gilbert sought approval from the Planning Commission to convey Lot 1 without the immediate family restriction. The request was treated as a petition for modification, which was denied by the Planning Commission. The applicant then filed an administrative appeal [AP-2015-021] with the Board of Appeals which in turn applied a more onerous "extraordinary hardship" standard. Mr. Wantz briefly explained that circumstances since the 2015 decision have changed due to the death of Dr. Gilbert's father; and, therefore, the request to remove the restriction.

**Motion and Vote:** Mr. Kline made a motion to approve the applicant's request to remove the ten year immediate family restriction as presented. The motion was seconded by Mr. Weddle and unanimously approved with Mr. Wiley abstaining from the vote.

**Update of Staff Approvals**

Mr. Holloway was not present at the meeting; however, a written report was distributed to Commission members prior to the meeting

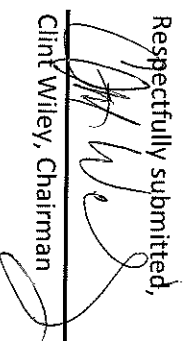
**-ADJOURNMENT**

Mr. Kline made a motion to adjourn the meeting at 7:50 p.m. The motion was seconded by Mr. Weddle and so ordered by the Chairman.

**-UPCOMING MEETINGS**

1. Monday, January 6, 2020, 7:00 p.m., Washington County Planning Commission regular meeting, Washington County Administration Building, 100 W. Washington Street, Room 2000, Hagerstown, MD 21740

Respectfully submitted,

  
Clint Wiley, Chairman