

WASHINGTON COUNTY PLANNING COMMISSION
September 14, 2015

The Washington County Planning Commission held its regular meeting on Monday, September 14, 2015 at 7:00 p.m. at the Washington County Administration Building, 100 West Washington Street, Room 255, 2nd Floor, Hagerstown, Maryland.

Commission members present were: Chairman Terry Reiber, Dennis Reeder, David Kline and Ex-officio Leroy E. Myers, Jr. Staff members present were: Washington County Department of Planning & Zoning - Stephen Goodrich, Director; Jill Baker, Chief Planner; and Debra Eckard, Administrative Assistant; Washington County Department of Plan Review - Tim Lung, Deputy Director; Lisa Kelly and Cody Shaw, Senior Planners.

CALL TO ORDER

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

The Chairman announced that the Initial Advice item will be moved to the third position under Other Business.

MINUTES

Motion and Vote: Mr. Reeder made a motion to approve the minutes of the July 6, 2015 meeting minutes as presented. The motion was seconded by Mr. Kline and unanimously approved.

NEW BUSINESS

MODIFICATIONS

Cody Reed (SV-15-008)

Mr. Shaw presented for review and approval a modification request from Sections 405.11.B and 405.11.B.1 of the Washington County Subdivision Ordinance for a proposed 3 acre lot located at 9912 National Pike (Tax Map 32, Parcel 43). The property is currently zoned EC (Environmental Conservation). The modification request is to allow the creation of a lot without public road frontage for an immediate family member. However, the existing lane to the proposed lot is not within the bounds of the original parcel and does not serve an existing house on the same property. The following justification statement was provided from the applicant to be considered with this request: 1) The land selected is wooded and does not take away from crop or pasture land and does not disrupt State and Federal programs currently used by the Reed family; 2) The land has an approved perc test; 3) The land selected is off of an existing lane; however, it does not cross other property. Both property owners are immediate family members of the applicant and have agreed to have a written and recorded ingress/egress easement as well as a joint use maintenance agreement placed on the lane for the protection of future owners; and 4) A driveway in another location would be very difficult and expensive to construct. All agency approvals have been received.

Discussion and Comments: Mr. Ed Schreiber of Frederick, Seibert & Associates, consultant for the applicant, was present at the meeting and reiterated that there will be a written and recorded ingress/egress easement as well as a joint use and maintenance agreement.

Motion and Vote: Mr. Reeder made a motion to approve the modification request contingent upon a written ingress/egress easement and joint use and maintenance agreement being recorded as well as the septic area being shown on the plat. The motion was seconded by Commissioner Myers and unanimously approved.

Faye Downey (SV-15-009)

Mr. Shaw presented for review and approval a modification request from Section 405.11.B.1 of the Washington County Subdivision Ordinance for property located at 4601 Mt. Briar Road (Tax Map 81, Parcel 4). The proposed lot is 3.98 acres in size and is currently zoned RV (Rural Village). The modification request is to allow the creation of a lot for an immediate family member without usable public road frontage. The following justification statement was submitted by the applicant: "The irregular configuration of the existing property with an existing panhandle that accesses the portion of the desired area to be developed lends itself to being the primary access to the proposed lot". All agency approvals have been received.

Discussion and Comments: Mr. Ed Schreiber of Frederick, Seibert & Associates, the applicant's consultant, explained that the applicant wishes to use the existing driveway that crosses over her sister's and brother's properties and that a written document for joint use and maintenance will be recorded. Mr. Reiber expressed his concern regarding the length and width of the panhandle for emergency service vehicles. Mr. Lung explained that staff believes it would be better from a safety standpoint if the applicant uses the existing road access because it meets sight distance requirements.

Motion and Vote: Mr. Reeder made a motion to approve the modification request contingent upon the right-of-way documents and joint use and maintenance documents being recorded. The motion was seconded by Mr. Kline and unanimously approved.

SITE PLANS

Tony Summers (SP-15-012)

Ms. Kelly presented for review and approval a site plan for Tony Summers for property located along the southwest side of National Pike in Beaver Creek. The property is currently zoned HI (Highway Interchange). The owner/developer is proposing to construct a 5,000 square foot building at a height of 25 feet to be used for lawn mower retail sales on a 3.4 acre parcel. Twenty-five parking spaces are required and will be provided in front of the proposed building. The site will be served by individual well and septic. The hours of operation will be 8:30 a.m. to 5:30 p.m., five days per week. There will be two employees. Building mounted lights will be installed and signage will be building mounted. There will be an inside trash receptacle; no dumpster is proposed. Landscaping will be provided in the bio-retention ponds that are adjacent to the parking lot and on the left side of entrance to the site. This site meets the requirements for the express procedure as specified in the Forest Conservation Ordinance; therefore, the developer will be paying the payment-in-lieu fee in the amount of \$3,879.57. All agency approvals have been received.

Motion and Vote: Commissioner Myers made a motion to approve the site plan as presented. The motion was seconded by Mr. Kline and unanimously approved.

Community Rescue Service (SP-15-027)

Mr. Shaw presented for review and approval a site plan for Community Rescue Service for property located along the east side of Oliver Drive (Tax Map 24, Parcel 1165). The site is currently zoned HI (Highway Interchange). The owner is proposing to construct an ambulance rescue station on 1.42 acres. The number of employees will be two per shift and the hours of operation will be 24 hours/day, 7 days/week. Ten parking spaces are required and ten parking spaces will be provided. The site is served by public water and sewer. All landscaping and lighting requirements meet County standards. Forest Conservation requirements were addressed by paying a payment-in-lieu fee per recorded plat #5563. All agency approvals have been received.

Mr. Shaw explained that the Planning Commission previously approved a site plan (SP-13-029), which was appealed to the Board of Zoning Appeals who upheld the Planning Commission's approval of the subdivision plat. Another appeal was then filed in the Circuit Court where Judge Dwyer overturned the Board of Zoning Appeals' decision. Judge Dwyer made a ruling that an additional 75 foot buffer was required. The current plan shows the buffer as required by Judge Dwyer.

Discussion and Comments: Mr. Raj Patel, representing Diamond Development Corporation who owns the Microtel hotel located next to the CRS site, was present at the meeting and was given the opportunity by the Planning Commission to make the following comments. He stated that the I-81 off-ramps and Maugans Avenue are backed-up with or without the opticoms in place. He noted that the State Highway Administration has identified the site in question for storm water management; therefore, he believes the buffer requirements are inadequate and the building and parking lot are inadequate for this site. Mr. Patel expressed his opinion that the proposed landscaping trees will block the view of the hotel from I-81. He believes that the sirens, air horns, and other related noise will be disturbing to him and his family as residents of the hotel as well as guests staying at the hotel. The glare and flashing lights will be a distraction to motorists on I-81. Mr. Patel stated that he has had a traffic study prepared for this area that shows traffic issues and he believes that the site plan should be disapproved.

Mr. Reiber noted that the courts did not make any ruling on the traffic issues, only on the buffering of the property. It was noted that both the State Highway Administration and the County's Engineering Department have approved the site plan without any concerns relative to traffic issues. Commissioner Myers expressed his concern with regard to the site being a designated storm water management area. Mr. Lung stated that the State Highway Administration, as part of its plans for widening and improvements to I-81, identified areas that may be needed to address storm water management. Mr. Shaw noted that SHA made that comment when the initial plan was submitted; however, they did not make that comment on the current plan. Commissioner Myers stated he would like this verified. Mr. Gordon Poffenberger of Fox & Associates, Inc., the consultant, stated that a long-term study identified this property as a potential storm water management site; however, no funds have been set aside to purchase these identified sites and SHA has given their approval on this site plan. Commissioner Myers expressed his concern that Mr. Patel's traffic study identifies a problem in this area that is not being acknowledged. He is also concerned that the screening ordered by the Court and its placement is not acceptable to Mr. Patel and would not be in the best interest of Mr. Patel's business.

Mr. Kline stated that he would not object to moving the location of the landscaping trees if Mr. Patel is dissatisfied. Mr. Reeder asked a representative of the Community Rescue Service, who was in attendance at the meeting, if there is a set protocol for the use of sirens and lights as the ambulance leaves the station. The representative stated that the station averages 4 calls per day, and of those 4 calls, 1/3 of them are dispatched as non-emergency calls which do not allow the acclamation of lights or audible devices on the vehicle. He noted that the State of Maryland will not allow CRS to issue an order to the operators that they can turn the lights on but cannot use the siren. However, Maryland law does not prohibit CRS from instructing their operators to use no audible devices or lights until they approach the intersection of Maugans Avenue and Oliver Drive. The representative also noted that every call that would be run from this location would use the same intersections that are currently used from their current location in Maugansville. Therefore, there would be net zero change in traffic flow if CRS moves to this location. The representative from CRS stated that they also have a completed traffic study in case an attempt was made to use traffic safety concerns to stop the site plan. He explained that in the original letter

written by Sheriff Mullendore citing traffic and safety concerns, the Sheriff was unaware that opticoms were already in place and being utilized.

Mr. Reiber expressed his opinion that as long as the sirens and lights are used within the parameters of the State regulations this should not be an issue. Because traffic issues are not a concern of the State Highway Administration and County staff, he has no objections to this plan moving forward.

Commissioner Myers asked if the Planning Commission could waive the buffer requirement ordered by the Court. Mr. Lung stated that based on Section 19.8 of the Zoning Ordinance, the Planning Commission does not have the authority to waive the buffer requirement. The applicant would need to take that request to the Board of Zoning Appeals. Mr. Lung noted that in lieu of plantings, the Planning Commission could require a fence at a maximum height of 10 feet to be installed.

Motion and Vote: Mr. Kline made a motion to approve the site plan with the requirement that a vinyl fence be constructed 74 feet from the property line bordering the hotel with plantings on the outside of the fence that will not grow higher than 10 feet. The motion was seconded by Mr. Reeder and unanimously approved. Commissioner Myers requested that the record indicate that he voted "yes" in favor of the site plan approval; but, he still has concerns with regard to the traffic study and storm water management issues discussed during this meeting.

(Correction: Following the meeting, staff verified that the site plan had been routed to the State Highway Administration (SHA) for "Observation and Comment", not "Approval". SHA did not initially comment on the submittal; however, in response to an e-mail from staff following the Planning Commission meeting, SHA verified that they had no objection to the approval of the site plan.)

OTHER BUSINESS

Kent and Wendy Thomas Subdivision

Mr. Lung presented a request for Kent and Wendy Thomas to remove a condition from the original subdivision plat for Lot 2. He explained that on December 7, 1998, the Planning Commission approved a variance for Kenneth Thomas to create a new lot (Lot 2) with a panhandle exceeding 400 feet with a condition that there would be no further subdivision of this lot. After the lot was created, two dwellings were constructed on the lot, which was permitted at that time. Since then regulations have changed that allow only one dwelling to be permitted on a single lot, thus creating a non-conforming condition. The owner of Lot 2 now wishes to have each of the dwellings located on its own lot which would require a subdivision. One of the lots will not have public road frontage; however, there is a policy that allows the staff to approve a subdivision around an existing dwelling without public road frontage. A subdivision plat to create a new lot around the existing dwelling cannot be approved unless the Planning Commission removes the prior condition of approval.

Discussion and Comments: Mr. Reiber asked if the access to the lot is in compliance with County regulations. Mr. Lung stated that it is in compliance and the access was approved with the subdivision that was approved in 1998.

Mr. Lung explained that even if the note was not on the plat, the County would need to grant approval of a lot without road frontage, which the Planning Commission has granted staff the authority to do in cases of an existing dwelling such as this.

Mr. Reiber asked if these two dwellings each have their own wells and septic systems. Mr. Ed Schreiber of Frederick, Seibert & Associates, the consultant, stated that the dwellings share a well but each have their own septic systems. A new well will be proposed if the subdivision is granted.

Motion and Vote: Mr. Reeder made a motion to grant removal of the condition stating there would be no further subdivision as requested. The motion was seconded by Commissioner Myers.

Comments before the vote: Mr. Reeder asked if the Planning Commission needs to include a condition in the approval for a separate well. Mr. Lung stated that a well location is required to be shown on the plat for each lot. Mr. Reiber asked if the Planning Commission should assume that each lot will have a recorded plat showing its own well, septic and utilities. Mr. Lung stated that the Subdivision Ordinance requires these items and proposed locations be shown on the subdivision plat before approval can be granted. Mr. Schreiber stated that the Health Department may allow the two dwellings to share a well until such time there is a problem with the well. Mr. Reiber and Commissioner Myers expressed concern that the proposed well location would only be shown on the plat and would not actually exist at the time the subdivision plat is approved. They both believe that a well should be installed and working on the secondary home's lot prior to approval of the subdivision.

Amended Motion and Vote: Commissioner Myers made a motion to grant removal of the condition stating there would be no further subdivision contingent upon a working well and septic system being installed on the subdivided lot prior to approval of the subdivision plat. The motion was seconded by Mr. Kline and unanimously approved.

Emerald Pointe Planned Unit Development

Mr. Goodrich reminded Commission members that as a result of an earlier proposal to amend the concept in a development plan for Emerald Pointe, the Circuit Court made a decision on an appeal of that amendment request. The Court overturned the County Commissioner's approval of the amendment to the development plan. In the Court's decision, the Court cited a defect in the Zoning Ordinance that the County has since corrected with a text

amendment (RZ-15-003) to the Zoning Ordinance that addressed the PUD issue. The County Commissioners approved that amendment (a copy of which was distributed to Commission members). The Court determined that the County Commissioners did not have the authority to approve a major amendment to a PUD. The new text now gives the County Commissioners that authority and the process to be used.

Ms. Kelly presented a request to determine if a proposed change to the final development plan for the Emerald Pointe PUD is a major or minor change. The original final development plan that was approved in 2003 showed an assisted living facility. The proposed plan shows a two-story commercial complex replacing this facility and removing the commercial area from the interior of the development.

Discussion and Comments: Mr. Kline expressed his opinion that in deciding if a change is a minor change or a major change, it should be quantifiable with specific criteria dictating, not subjective. It is his subjective opinion that based on what the developer is proposing, this would be a minor change.

Mr. Jason Divelbiss, attorney for the developer, explained that in 2013 when the developer proposed a change to the final development plan it was determined that the change was a major change; and, therefore, required public hearings with the Planning Commission and County Commissioners. The change was approved; however, the decision was appealed and the Circuit Court reversed the County Commissioners' decision. The Circuit Court reversed the decision because they determined there was no procedure whereby the County Commissioners could make a major change. The text amendment now provides a clear process for a major change and a minor change. The proposed final development plan will show the previously proposed convenience store site being removed and replaced with another mixed use building.

Mr. Reiber expressed his opinion that the proposed change will be a major change, which should be subject to public review and comment.

Motion and vote: Mr. Kline made a motion that the Planning Commission determine that the proposed changes to the Emerald Pointe PUD be considered major changes. The motion was seconded by Commissioner Myers and unanimously approved.

INITIAL ADVICE

Adkins Automotive (SP-15-024)

Ms. Kelly reminded Commission members that a rezoning (RZ-14-005) was previously approved by both the Planning Commission and the Board of County Commissioners for this site, which is currently zoned RB-E (Rural Business Existing). Following the rezoning approval, the applicant met with the Development Advisory Committee, and subsequently a site plan was submitted for the property located at 9920 Crystal Falls Drive. The Zoning Ordinance requires, when the RB-E district is adjacent to residential uses, a perimeter screening 8 feet high to buffer a commercial use from residential uses.

Mr. Ed Schreiber of Frederick, Seibert & Associates, the consultant, stated that the applicant must go before the Board of Zoning Appeals to request a reduction in the side yard setback from 100 feet to 10 feet. Although the adjacent property, which is currently heavily wooded does not contain a dwelling, it is zoned for a residential use. In accordance with the Zoning Ordinance, landscape screening must be provided that is at least 8 feet high at onset. Mr. Schreiber noted that Mr. Adkins has already planted 4 to 6 foot arborvitae around his property. The applicant is requesting that he be allowed to continue planting landscape screening not utilizing 8 foot stock, but smaller stock.

Discussion and Comments: Mr. Kline expressed his opinion that when the adjoining property owner [of the heavily wooded lot] decides to build on that property, he should be responsible for screening his property since the existing business is already there. He also believes that the existing woodlands should be able to regenerate itself without the use of expensive or exotic materials being planted. Ms. Kelly stated that the Zoning Ordinance requires the buffering of the vacant property.

Consensus: It is the consensus of Planning Commission members that the applicant plant landscaping screening that will grow to the minimum 8 foot height in the future and that native species can be used as well as foreign species.

OTHER BUSINESS – CONTINUED

Plan Review Staff Approvals Update

Mr. Lung explained organizational changes that have recently taken place in the County's Division of Engineering and Construction Management. He believes that the Planning Commission should be informed of notable projects that have been granted approvals by the staff. Mr. Lung stated that an expansion to the Holiday Inn Express near the Valley Mall is currently being reviewed by staff. Other projects include a site plan for GTI (a proposed medical cannabis growing and processing facility) located along Hopewell Road and a site plan for a proposed stand-alone retail store at Crosspoint Shopping Center. This report will be part of each regular Planning Commission agenda.

Comprehensive Plan Update

Ms. Baker informed Commission members that there have been 7 stakeholder meetings conducted and one last stakeholder meeting scheduled for later in September. Total attendance for the stakeholder meetings has been approximately 30 people. Six general public meetings have also been held in Smithsburg, Boonsboro, Clear Spring, Hancock and two in Hagerstown. Approximately 45 people have attended those meetings. Meetings

have also been held with the nine municipalities' Planning Commissions/Mayor and Council members. Following each of the stakeholder meetings, surveys have been developed and distributed to the stakeholder groups. Meeting summaries, when completed, and comments received will be forwarded to the Planning Commission. The next step will be Planning Commission workshops to review and discuss all information and comments received to date. Staff has been discussing plans to continue to educate the public and disseminate information. Staff will be making presentations to the local high schools and the Hagerstown Community College. More postcards are being printed to distribute to local businesses and the Chamber of Commerce. Mr. Reiber expressed his opinion that the Chamber of Commerce reaches large numbers of people and we should utilize their resources when trying to distribute information. He also believes we should try to make presentations to more civic groups such as the Rotary Club. There was a brief discussion regarding the update of the City of Hagerstown's Comprehensive Plan and a workshop with the City's planning staff.

Zoning Amendments Update

Mr. Goodrich announced that the zoning amendments (RZ-14-002) for the Rural Business zoning district have been approved by the Board of County Commissioners. The map amendment application (RZ-15-001) for the Dollar General along Jefferson Boulevard was disapproved by the County Commissioners.

Mr. Goodrich informed members that the October 12th date for the upcoming Planning Commission public rezoning meeting is incorrect. The correct date is October 19th.

ADJOURNMENT

Mr. Reeder made a motion to adjourn the meeting at 9:25 p.m. The motion was seconded by Commissioner Myers and so ordered by the Chairman.

UPCOMING MEETINGS

1. Monday, October 5, 2015, 7:00 p.m., Washington County Planning Commission regular meeting, Washington County Administration Building, 100 West Washington Street, Room 255, Hagerstown, Maryland
2. Monday, October 19, 2015, 7:00 p.m., Washington County Planning Commission public rezoning meeting; Location to be announced

Respectfully submitted,



Terry Reiber, Chairman