

**WASHINGTON COUNTY PLANNING COMMISSION
PUBLIC REZONING INFORMATION MEETING
September 18, 2017**

The Washington County Planning Commission held a public rezoning information meeting on Monday, September 18, 2017 at 6:00 p.m. at the Washington County Court House, Court Room #1, 24 Summit Avenue, Hagerstown, Maryland.

Commission members present were: Chairman Clint Wiley, B. J. Goetz, Jeremiah Weddle, Denny Reeder, Drew Bowen and David Kline. Staff members present were: Washington County Department of Planning & Zoning - Stephen Goodrich, Director, Jill Baker, Chief Planner, Travis Allen, Comprehensive Planner, and Debra Eckard, Administrative Assistant.

CALL TO ORDER

The Chairman called the meeting to order at 6:05 p.m.

RZ-17-004 – Bluegrass Commercial, LLC and Michael and Kelli Scott

Staff Presentation

Mr. Goodrich presented a map amendment request for Bluegrass Commercial, LLC and Michael and Kelli Scott for property located at 21314 (Parcel 131) and 21338 (Parcel 174) Leitersburg Pike and 21385 (Parcel 173) Leiters Mill Road. The applicant is requesting the Rural Business floating zone over the current Rural Village zoning district. Mr. Goodrich explained that, if approved, the Rural Business zoning permissions and restrictions would apply and the Rural Village district would go dormant. At some time in the future, if the property owner desires, the Rural Business zoning could be removed through an administrative procedure and the Rural Village zoning would become active again. The Zoning Ordinance specifies specific information that should be provided and reviewed during the analysis of a rezoning application and includes the following: population analysis, availability of public facilities, emergency services, schools, public transportation, present and future transportation patterns, compatibility with current and proposed development and relationship to the Comprehensive Plan.

Mr. Goodrich noted that the acreage questioned in the Staff Report has been verified as follows: Parcel 131 is 1.94 acres, Parcel 174 is .92 acres and Parcel 173 is 4.29 acres for a total of 7.15 acres. He also noted that the Preliminary Site Plan submitted with the application has been revised and a new copy dated September 8, 2017 was distributed to members just prior to the meeting. The Rural Business zone specifies that the intended use for the property be shown on the site plan as well as the estimated number of employees, hours of operation and trip generation information. The plan indicates that Parcel 174 will be converted to offices to be used by New Direction Utilities. Parcel 173, according to the written application, will be converted to business and professional offices; however, the site plan indicates office or retail space on this parcel. Parcel 131 contains a historic log house which is proposed to be relocated to another site. The site plan for this parcel indicates that the remaining building will be for possible office and retail use; however, the justification statement indicates a mixed use of retail, warehouse and wholesale uses. Mr. Goodrich stated that analysis of the Rural Business district and its ultimate approval is based in part on the specific use proposed and the determination that it is compatible with adjacent properties.

Section 5E.4.b of the Zoning Ordinance recommends that the following criteria should be met before establishing the RB district at a particular location:

1. The proposed location is not within any designated growth area identified by the Washington County Comprehensive Plan.
2. The proposed location has safe and usable road access on a road that meets the standards under the "Policy for Determining Adequacy of Existing Roads". In addition, a traffic study may be required.
3. On site issues relating to sewage disposal, water supply and storm water management can be addressed.
4. The proposed location would not be incompatible with existing land uses, cultural or historic resources or agricultural preservation efforts.

At this time, there is not sufficient information to determine if all of these criteria have been met to establish the RB district at this location.

Mr. Goodrich submitted the rezoning file, in its entirety into the record. He noted that more than 150 notifications were mailed to adjacent property owners; no written comments have been received to date.

Applicant's Presentation

Mr. Jason Divebliss of Divebliss & Wilkinson, 13424 Pennsylvania Avenue, Hagerstown, MD, was present at the meeting and represented the applicants, Bluegrass Commercial LLC and Michael and Kelli Scott. Mr. and Mrs. Scott are the owners of Bluegrass Commercial LLC and New Direction Utilities. Mr. Divebliss noted that New Direction Utilities has been operating at its current location, which is between the parcels that are part of this rezoning application, since 2002. He provided a brief history of the Scott's business and the acquisition of additional parcels of land that are part of this rezoning request.

Mr. Divebiss addressed several of the outstanding issues as noted in the Staff Report and during Mr. Goodrich's presentation. He noted that the existing structures are intended to be re-used and support New Direction's existing business. If the RB district is approved, the Scotts intend to enlarge or replace the existing 4,000 square foot shop building. A site plan will be required before development of the properties. Mr. Divebiss explained that the entrances onto the site were not shown on the preliminary site plan because the State Highway Administration would make the final decision regarding the location of entrances onto the site during the site plan process. He also explained that the particular uses are labeled on a revised site plan as follows: Parcel 174 - an office is proposed using the existing structure; Parcel 173 - an office is proposed using the existing structure and the additional grounds would be used for expansion of the existing contractor's storage yard on adjacent 21332 Leitersburg Pike (both uses are permitted in the RB district); and Parcel 131 - the proposed uses are questionable at this time due to setback issues and there is no separate water source. All three parcels have their own septic systems; Parcels 174 and 173 have their own water sources (wells); Parcel 131 uses a cistern for its water source. If a well cannot be obtained on Parcel 131, it is unlikely that an office would be located on this parcel. A revised drawing showing the updated well and septic locations (Applicant's Exhibit #1) was presented to Commission members. To address other data required for this application, Mr. Divebiss presented the following information:

1. Number of employees: Parcel 174 - 3 to 4 employees; Parcel 173 - 3 to 4 employees; Parcel 131 - 2 to 3 employees; Existing shop - 3 to 5 employees
2. Hours of operation: Weekdays, 7:00 a.m. to 3:00 p.m., may vary depending on business cycle or season; there will not be a 24/7 operation
3. Antietam Creek will provide ways for the applicant to meet the quantity and quality components required for storm water management regulations.

Mr. Divebiss noted that Leitersburg Pike is classified as an Arterial roadway. The latest traffic volume information shown on the Maryland State Highway Administration website from 2015, shows the Annual Average Daily Traffic count is 10,000 trips per day. (Applicant's Exhibit #2)

The applicant contends that the RB zoning district is appropriate for this area, that it meets the purpose of the RB zoning district to support the existing business, and given the character of the Leitersburg Pike corridor with the Liberty Station and the shop property, the proposed uses would be compatible.

Discussion and Comments: Mr. Wiley asked for clarification of the retail uses proposed. Mr. Fred Frederick of Frederick, Seibert & Associates, 128 South Potomac Street, Hagerstown, MD was present at the meeting and offered the following explanation. During previous conversations, the Scotts were considering the retail sale of mulch, gravel, stone, etc.; however, they have changed their minds and do not wish to pursue retail sales at this time.

Mr. Weddle expressed his concern that investors will begin looking outside the Urban Growth Area to purchase several small tracts of land, apply the Rural Business zoning, and establish many small, niche businesses in the rural area, which is not the intent of the Rural Business zoning. Mr. Divebiss noted that the proposed uses of this request create a low demand on infrastructure and a level of intensity that is compatible with its location unlike many businesses that would need public water, public sewer, create more traffic, etc. Mr. Weddle made an inquiry with regard to how the uses will be tracked in the future (i.e. number of employees, hours of operation, etc.). Mr. Divebiss stated that the approved use or the intensity of the use cannot be changed without the approval of the Planning Commission or the Board of County Commissioners. Also, a site plan will be required with parameters set on the site plan that will be enforceable by the Zoning Code Officials.

Mr. Kline asked if there are currently traffic related issues for the contractor when entering and exiting the property. Mr. Michael Scott, 21616 Kelso Drive, Hagerstown, MD, owner of the property and co-applicant of this request, stated they do not currently have issues leaving the property. Several of the entrances/exits on the site have been closed off. Mr. Scott has been working with SHA to clear some of the trees on the property to address sight distance issues. Mr. Kline expressed his opinion that this is the type of area suitable for a utility storage yard due to the hauling of large pieces of equipment and its effects on traffic.

Mr. Frederick briefly discussed the number of entrances onto Leitersburg Pike; he anticipates that this number will be reduced by the State Highway Administration during the site plan process. He expressed his opinion that rezoning these properties to RB would keep this business in its current location and thereby leave land within the UGA available for larger, more intense uses.

Public Comment

- Herman Niedzielski, 21512 Leitersburg/Smithsburg Road, Hagerstown - Mr. Niedzielski stated he does not have an objection to the rezoning request; however, he is concerned with runoff into the Antietam Creek from the site. He expressed his concern with regard to the volume of increased traffic in the area and safety issues. As a member of the Leitersburg Fire Company, he has seen numerous accidents in this area and believes consideration needs to be given to safety. Mr. Niedzielski has contacted the SHA regarding several concerns and has received a reply (a copy of which he submitted for the record).
- Robert Vale, Jr., Leitersburg/Smithsburg Road, Hagerstown - Mr. Vale expressed his concern with regard to the appearance of the historic village of Leitersburg due to the lack of ownership, maintenance and care. He also expressed his concern with regard to traffic and safety. Mr. Vale expressed his opinion that public water and sewer is needed in Leitersburg. He recommended

that, if approved, the Commission ensures that the visual appearance will not have a negative impact on the historic village.

Applicant's Rebuttal

Mr. Divebiss stated that measures will be put in place to protect the Antietam Creek from runoff. He stated that all concerns with regard to traffic issues have been noted and believes these issues will be addressed during the site plan process.

Discussion and Comments

Mr. Weddle asked what measures will be taken to protect the appearance of the neighborhood and the current residents in the Rural Village. Mr. Divebiss believes there will be a request for significant buffering of the perimeter of this property. He noted that SHA recently trimmed and cleared trees within its right-of-way that served as a buffer. Mr. Goetz noted that the village of Leistersburg sits higher than the subject site and he recommends that consideration be given to this fact when determining adequate buffering.

RZ-17-006 – 17119 Virginia Avenue LLC

Staff Presentation

Mr. Allen presented a map amendment request for 17119 Virginia Avenue, LLC for property located at 17109 Virginia Avenue. The applicant is requesting a change in zoning from RS (Residential Suburban) to BG (Business General) on a 0.528 acre parcel. This request is considered a piecemeal rezoning and as such, the Planning Commission must consider the following criteria as listed in Article 27.3 of the Washington County Zoning Ordinance: population change, availability of public facilities, present and future transportation patterns, compatibility with existing and proposed development, relationship to the Comprehensive Plan and evidence of "change in the character of the neighborhood" or "mistake in the original zoning" of the property.

Mr. Allen gave a brief overview of the criteria outlined above. He noted that this property is located in the Halfway Election District which has grown more slowly than the County as a whole between 1980 and 2010. The site is served by existing public water (City of Hagerstown) and public sewer (Washington County – Conococheague WWTP). Fire and emergency services are provided by the Volunteer Fire Company of Halfway, which is located approximately 1 mile from the site. If the BG zoning district is approved, the site will be used for commercial development; therefore, there will be no impact on the school system and no APFO mitigation will be required.

Mr. Allen noted that during the past 30 years, the overall trend of traffic volumes in this area have decreased. No new major roadway projects are proposed in the immediate vicinity. Public transit service is provided by the Washington County Commuter (Route 441). Current access to the site is a driveway spur off of the access road that serves the Valley Car Wash that is located next door and to the east of this site. There is an existing right hand turn lane that runs for approximately 500 feet both before and after the site. There is no middle turn lane allowing cars to turn left. Comments were received from the Department of Plan Review & Permitting suggesting that a traffic study might be required as a part of the site plan process and that the State Highway Administration will determine access and entrance requirements.

Mr. Allen briefly reviewed existing development in close proximity to the subject site. There is a mixture of commercial and residential uses in the immediate vicinity. The site has existing forest on the western and southern edges of the property; none of which is under easement. There is a large storm water management facility in front of the car wash. A residential structure is currently located on the subject site, which is or will soon be vacant. There is one existing historic site within ½ mile of the subject property.

Mr. Allen stated that this property is located within the commercial land use policy area as shown on the County's 2002 adopted Comprehensive Plan's Land Use Map. He noted that Virginia Avenue is one of the major policy areas targeted for commercial development in the Land Use Plan.

Mr. Allen explained the "Change or Mistake Rule" which applies to a piecemeal rezoning; the burden of proof lies with the applicant. He discussed the criteria to be considered to prove a "change" in the character of the neighborhood as follows: define the boundaries of the neighborhood; demonstrate that substantial changes have occurred since the last Comprehensive Zoning Plan; and, show that those changes resulted in the altered character of the neighborhood. Evidence to prove a "mistake" in the original zoning is as follows: the local legislative body failed to take into account projects or trends probable of fruition; the legislative body made decisions based on erroneous information; the legislative body used facts that were later proven to be incorrect; the legislative body could not have foreseen events that have occurred; or the legislative body ignored facts in evidence at the time of the zoning application.

The applicant is claiming a "mistake" in the current zoning of the property and contends that the local legislative body failed to consider the following: the parcel was designated as Commercial in the 2002 adopted Washington County Comprehensive Plan; the property is surrounded by other BL (Business Local) and BG (Business General) zoning; and the property has frontage along the heavily travelled Virginia Avenue.

Mr. Allen noted that during the 2012 Comprehensive Rezoning of the Urban Growth Area, the input of property owners, local officials, staff and the general public was considered in the assignment of a zoning designation for each parcel affected by the comprehensive rezoning. Property owners were notified of the rezoning process and given an opportunity to appeal the proposed rezoning of their property.

Mr. Allen addressed the applicant's justification statements supporting the rezoning of the subject parcel. He stated that the commercial character of the area surrounding this site has been established for many years. He also noted that the property has approximately 135 feet of road frontage on Virginia Avenue. The applicant also suggested within the narrative of the Justification Statement there has been a substantial change in the character of the neighborhood since the adoption of the Zoning Ordinance and since the zoning of the property to RS. This is evidenced by the increase of commercial uses and development along the Virginia Avenue corridor from I-81 to Massey Boulevard.

In summary, staff does not believe there has been a significant change in the character of the neighborhood. However, there appears to be evidence that a mistake may have been made in the current zoning based on the Comprehensive Plan's Land Use designation, the zoning of surrounding properties, and the fact that this property has frontage on Virginia Avenue. The recent change in ownership of the property and current commercial character of the area along the south side of Virginia Avenue also provides evidence that this property would be better suited for a commercial use than it might have been in 2012.

Applicant's Presentation

Andrew Wilkinson of Divelbiss & Wilkinson, 13424 Pennsylvania Avenue, Suite 302, Hagerstown, MD was present at the meeting to represent the applicant. Mr. Wilkinson clarified that the applicant is not claiming a change in the character of the neighborhood as part of the request to rezone the property. The applicant is claiming there was a mistake in the zoning of this property during the 2012 comprehensive rezoning of the Urban Growth Area.

Mr. Wilkinson distributed a zoning map (Applicant's Exhibit #1) showing the zoning of several properties in this area, which are predominantly zoned for commercial uses. There is currently a two story brick dwelling on the property owned by Mr. and Mrs. Todd Snook. The Snooks also own the car wash located on the adjoining property to the east. Mr. Wilkinson also provided photographs of the immediate area (Applicant's Exhibits 2 and 3). He noted there is a Dollar General store, Carmine's Restaurant, a commercial plaza to the east, to the west there is a parcel owned by an advertising company who uses it for billboards, a dwelling used by a construction company and two auto repair facilities. Mr. Wilkinson also noted the property has 135 feet of road frontage onto Virginia Avenue. He reiterated that the Land Use Plan designates this area as a commercial area and that for these reasons the County erred in the application of the RS district rather than BL.

Public Comment

- Teresa Kesecker, 17108 Virginia Avenue, Williamsport, MD, (representing Donna and Richard Souders) – Ms. Kesecker expressed her opinion that a mistake was not made in the zoning of this property because it has been a residence since 1932. She stated that the house is not currently vacant. Ms. Kesecker briefly described the area and its history of uses, which is a mix of residential and commercial uses. She stated that the addition of the car wash has impacted the area with noise and traffic accidents. She expressed her opinion that there is not enough area on the shoulder for people to pass. She believes another business would add to the on-going traffic congestion and other related traffic issues.

Applicant's Rebuttal

Mr. Wilkinson stated that the existing house will be vacated by the end of September. He explained that traffic issues will be addressed during the site plan process. Mr. Wilkinson reiterated that Virginia Avenue was designated as a commercial area by the County's adopted Comprehensive Plan's Land Use Map and he believes that a mistake was made during the 2012 comprehensive rezoning of the UGA.

Discussion and Comments

There was a brief discussion regarding the properties located along the south side of Virginia Avenue, which are currently residences. However, these properties are currently zoned BL (Business Local). Mr. Weddle questioned why this one property continued to be zoned for a residential use when all surrounding properties were zoned for commercial uses. Mr. Goodrich believes that the RS zoning was maintained on this property in 2012 because the property was still being actively used as a residence. He explained that zoning does not always follow the recommendations set forth in the Comprehensive Plan's Land Use Plan. He stated that staff would research this issue further.

RZ-17-009 – A & W Plus, Inc.

Staff Presentation

Mr. Goodrich presented a map amendment request for A & W Plus, Inc. for property located at 12408 Learning Lane (the former Conococheague Elementary School). The school was recently closed and the Washington County Public Schools and the Board of County Commissioners determined it would no

longer be useful for County purposes. The property was advertised for bids and A & W Plus, Inc. was the successful bidder. The applicant (contract purchaser of the property) is requesting the Rural Business floating zone over the current Rural Village zoning district. The parcel is 11.74 acres in size and has frontage on a dead-end County road. The applicant is proposing to rehabilitate and re-use the existing former school building as an assisted living facility. Also being proposed for construction is a new adult day care facility and medical offices. The proposed uses are all permitted in the RB zoning district, but not permitted in the RV (Rural Village) zoning district. Mr. Goodrich reminded Commission members that the Zoning Ordinance specifies specific information that should be provided and reviewed during the analysis of a rezoning application and includes the following: population analysis, availability of public facilities, emergency services, schools, public transportation, present and future transportation patterns, compatibility with current and proposed development and relationship to the Comprehensive Plan. He also reminded members that, if approved, the Rural Business zoning permissions and restrictions would apply and the Rural Village district would go dormant. At some time in the future, if the property owner desires, the Rural Business zoning could be removed through an administrative procedure and the Rural Village zoning would become active again. Mr. Goodrich stated that the subject parcel has frontage on National Pike; however, the plans do not indicate that there will be access onto National Pike.

Mr. Goodrich stated that there are aspects of the re-development that are unknown at this time, such as traffic related issues. These issues will be addressed during the site plan process if the RB zoning district is approved and applied to this property. The property is served by a private well and septic system; however, it is not known if they will be adequate for the proposed uses. No public water or sewer services are available at this location.

Section 5E.4.b of the Zoning Ordinance recommends that the following criteria should be met before establishing the RB district at a particular location:

1. The proposed location is not within any designated growth area identified by the Washington County Comprehensive Plan.
2. The proposed location has safe and usable road access on a road that meets the standards under the "Policy for Determining Adequacy of Existing Roads". In addition, a traffic impact study may be required.
3. On site issues relating to sewage disposal, water supply and storm water management can be addressed.
4. The proposed location would not be incompatible with existing land uses, cultural or historic resources or agricultural preservation efforts.

At this time, there is not sufficient information to determine if all of these criteria have been met to establish the RB district at this location.

When the Planning Commission makes its recommendation to the Board of County Commissioners, it should determine if the application meets the following criteria from Section 5E.6.c of the Zoning Ordinance:

1. The proposed district will accomplish the purpose of the RB district
2. The proposed site development meets criteria identified in Section 5E.4 of the RB Article.
3. Roads providing access are appropriate for serving the business traffic generated by the proposed RB land use
4. Adequate sight distance along roads can be provided at proposed points of access to the site.
5. The proposed landscape areas can provide adequate buffering of the proposed uses from existing land uses in the area.
6. The proposed use is not of a scale, intensity or character that would be incompatible with adjacent land uses or structures.

Mr. Goodrich submitted the rezoning file, in its entirety into the record. He noted that more than 150 notifications were mailed to adjacent property owners; no written comments have been received to date.

Discussion and Comments:

Mr. Kline expressed his opinion that rehabilitation and re-use of the property is a good idea.

Applicant's Presentation

Mr. Javed Aizaz, 6120 Baltimore National Pike, Catonsville, MD, representing the contract purchaser of the property, stated it is the intent of A & W Plus, Inc. to convert the existing building into an assisted living facility, working very closely with the County. The number of units (50 to 75 are proposed) will be based on the capacity of the existing water and sewer facilities. After the assisted living facility is operational, an adult day care center is proposed for the residents. In the future, medical facilities may be constructed on the site for geriatric care.

Public Comment

- Karen Frisby, 12425 Learning Lane, Hagerstown – Ms. Frisby does not have any objection to the proposed uses; however, she does not want public water and sewer. She expressed concern with regard to traffic related issues on Route 40.

- Randy Dick, 21912 Beaverbrook Drive, Smithsburg, on behalf of Marcella Clinger owner of the Deer Lodge Mobile Home Park – Ms. Clinger recently installed an expensive septic system for the mobile home park and wishes to express her concern and desire that runoff from any development on this site not negatively affect that new septic system.
- Susan Small, Real Property Administrator for the Washington County Engineering Department – Ms. Small explained that three schools were given to the Board of County Commissioners in 2015. She has been working very closely with the applicant (contract purchaser) and expressed her opinion that re-using the property will benefit Washington County. The proposed use will also need to be approved by the Board of Public Works; an application has been submitted.

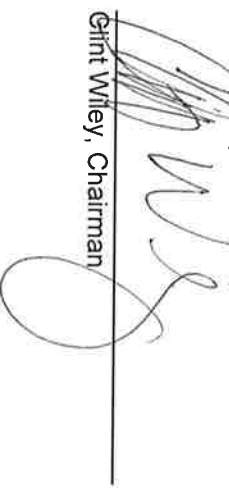
ADJOURNMENT

Chairman Wiley adjourned the meeting at 8:10 p.m.

UPCOMING MEETING

1. Monday, September 25, 2017, 6:00 p.m., Washington County Planning Commission Public Rezoning Meeting, Washington County Court House, Court Room #1, 24 Summit Avenue, Hagerstown, Maryland
2. Monday, October 2, 2017, 7:00 p.m., Washington County Planning Commission regular meeting, Washington County Administration Building, 100 W. Washington Street, Room 2000, Hagerstown, Maryland

Respectfully submitted,



Clint Wiley, Chairman