

BOARD OF APPEALS

July 25, 2018

County Administration Building, 100 W. Washington St., Meeting Room 2000, Hagerstown, at 7:00 p.m.

AGENDA

DOCKET NO. AP2017-044: An appeal made by Diamond Development Corporation, Raj and Ranjan Patel for an appeal of the Planning Commission’s approval of the revised site plan for Community Rescue Service SP-17-011 on property owned by Community Rescue Service, Inc. and located at 13725 Oliver Drive, Hagerstown, zoned Highway Interchange – **GRANTED TO APPROVE SITE PLAN**

Pursuant to the Maryland Open Meetings Law, notice is hereby given that the deliberations of the Board of Zoning Appeals are open to the public. Furthermore, the Board, at its discretion, may render a decision as to some or all of the cases at the hearing described above or at a subsequent hearing, the date and time of which will be announced prior to the conclusion of the public hearing. Individuals requiring special accommodations are requested to contact Kathy Kroboth at 240-313-2469 Voice, 240-313-2130 Voice/TDD to make arrangements no later than July 16, 2018. Any person desiring a stenographic transcript shall be responsible for supplying a competent stenographer.

The Board of Appeals reserves the right to vary the order in which the cases are called. Please take note of the Amended Rules of Procedure (Adopted July 5, 2006), Public Hearing, Section 4(d) which states:

Applicants shall have ten (10) minutes in which to present their request and may, upon request to and permission of the Board, receive an additional twenty (20) minutes for their presentation. Following the Applicant’s case in chief, other individuals may receive three (3) minutes to testify, except in the circumstance where an individual is representing a group, in which case said individual shall be given eight (8) minutes to testify.

Those Applicants requesting the additional twenty (20) minutes shall have their case automatically moved to the end of the docket.

For extraordinary cause, the Board may extend any time period set forth herein, or otherwise modify or suspend these Rules, to uphold the spirit of the Ordinance and to do substantial justice.

Paul Fulk, Chairman
Board of Zoning Appeals

**BEFORE THE BOARD OF APPEALS
FOR WASHINGTON COUNTY, MARYLAND**

**DIAMOND DEVELOPMENT
CORPORATION, RAJ AND
RANJAN PATEL**

Appeal No. AP2017-044

Appellant

OPINION

This action is an appeal of the Planning Commission's approval of site plan SP-17-011, Community Rescue Service, Inc. The subject property is located at 13725 Oliver Drive, Hagerstown, Maryland 21740 and is owned by Community Rescue Service, Inc.; it is zoned Highway Interchange. The Board held a public hearing on the matter on July 25, 2018.

FINDINGS OF FACT

Based on the testimony given, all information and evidence presented, and upon a study of the specific property involved and the neighborhood in which it is located, the Board makes the following findings of fact:

1. Community Rescue Service, Inc. (CRS), the Applicant for site plan approval, submitted a proposed site plan (SP-17-011) for a freestanding building to house ambulance, rescue, and emergency medical service (EMS) vehicles to serve the Maugansville/Hagerstown area.
2. CRS vehicles serving this area are currently housed at the Maugansville Volunteer Fire Department.

3. The subject property is zoned Highway Interchange and the proposed use is principally permitted within the district.

4. The property has been subdivided from a larger tract and is approximately 0.78 acres in size. It is located at the end of the cul-de-sac of Oliver Drive with Interstate 81 located to the northeast and undeveloped land located to the southeast.

5. The Planning Commission approved the proposed site plan and the Final Site Plan approval was given on October 4, 2017.

6. The Appellant, Diamond Development Corporation, owns and operates a Microtel hotel on property contiguous to the subject property. Mr. and Mrs. Patel are the owners and proprietors of the hotel; they also reside in a manager's suite located within the hotel.

7. CRS responds to calls east of the Interstate 81 interchange with Maugans Avenue and therefore uses the traffic lights for both the northbound and southbound ramps when responding to those calls from its current location. CRS presented FY 2017 data that they responded to 1,848 calls with 973 of those calls originating from east of the Interstate 81 interchange. CRS was dispatched to an average of five (5) calls per day that year.

8. Location of the proposed facility at the subject property will not result in vehicle route changes, changes to emergency vehicle operations or the use of the interchange intersections at Maugans Avenue and Interstate 81.

9. The State Highway Administration did not object to the proposed site plan.

10. The Planning Commission approved the site plan for a proposed medical building on Crayton Boulevard which is opposite the subject property on the east side of Interstate 81. A traffic study of the roads and interstate interchange was submitted for that project. The project will include road improvements to Maugans Avenue and the interchange intersections.

RATIONALE

A site plan is required for all uses in the Highway Interchange zoning district. Zoning Ordinance § 19.5. The Planning Commission approved the site plan in this case, and Appellants appealed. This Board has jurisdiction to “hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in regard to the enforcement of this Ordinance, the Washington County Forest Conservation Ordinance, or any ordinance adopted thereto.” Zoning Ordinance § 25.2(a). We review this matter *de novo*.

Appellants have limited their challenge of the site plan approval to the narrow issue of traffic concerns related to the proposed site plan. However, Applicant has challenged Appellants’ standing to make this appeal, asserting that they are not an aggrieved party. We shall consider this issue first, as its resolution will directly affect the necessity of considering Appellant’s claims.

Aggrieved Party Status

Applicant concedes that Appellants are contiguous property owners and neighbors of the subject property. However, it contends that raising general concerns is insufficient to render Appellants aggrieved parties for purposes of bringing this appeal. Applicant argues that Appellants’ concerns are not related to the Microtel hotel property and too general in nature to form the basis for an appeal of the site plan approval.

We are not persuaded by this argument. Appellants own and operate the Microtel hotel and reside on the property neighboring the subject property. Any development of the subject property must consider the effects on adjoining properties and those adjoining landowners have a right to assert their concerns and objections during the process. The site plan process covers a broader spectrum of land use elements including the effect on neighboring properties. Unlike the specific criteria of a special exception or variance, site plans must be considered broadly in terms of the effect on the neighborhood. Accordingly, Appellants had an interest in, and a right to, be heard concerning the site plan. Appellants chose to exercise their right to challenge the site plan before the Planning Commission and their status as contiguous property owners is sufficient to give them standing for this appeal.

Site Plan

Appellants contend that the proposed project will have a detrimental effect on an already negatively impacted traffic area, namely the intersections of Maugans Avenue and Interstate 81. Appellants point to Section 19.5(a) of the Zoning Ordinance, which in pertinent part states:

Section 19.5 Site Plan Review

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The Planning Commission shall apply the following general standards when approving site plans for development in the HI District:

- (a) **Interchange access:** First priority shall be given to insuring the safe and uncongested access to and from the interstate highways from all connecting roads. Future as well as present traffic volumes shall be considered.

.....

Appellants assert that the Planning Commission failed to or overlooked this element in their review of the site plan, and when properly considered, should warrant denial of the site plan. Appellants' engineer, Douglas Kennedy, testified regarding his study of the intersection at the southbound ramp from Interstate 81 and Maugans Avenue. Based on that study, Appellants contend that the southbound ramp already exceeds capacity when traffic stacks up at the traffic signal for Maugans Avenue. There is 675 feet of stacking room on the ramp which fills quickly during peak traffic hours while waiting for the traffic signal to cycle. Appellants further contend that when factoring in the use of Opticom by ambulances and emergency vehicles, this stacking will increase creating more issues on the ramp and at the intersection. Even if it were only a few times per day, it would have a detrimental impact on the safety and functionality of the interchange.

Applicant's engineer, Neil Parrott, testified that the relocation of ambulance services to the subject property will have a *de minimus* effect on traffic trips, noting there would be approximately ten (10) per day. The project will not increase the volume of traffic utilizing the interchange ramp traffic signals as the same traffic is already passing through those intersections. Mr. Parrott also noted that much of Appellants' concerns stem from hypothetical issues from a computer-generated model, rather than real-life experience and observation.

The Board also heard testimony from representatives of CRS who reported 1,848 dispatches from their current location in FY 2017, or an average of five (5) calls per day. Of the total dispatches in that year, 973 or approximately 53% of those calls were to the east side of Interstate 81, thus requiring emergency vehicles to travel through both interchange traffic signals. It is important to note that not all of the calls originate from Maugansville Fire Department, as some calls are run while the emergency vehicle is already on the roadways.¹ The new station would serve the same area and must travel the same roadways to respond to calls, but for those to the west that require brief travel on Maugans Avenue.

¹ CRS did not have specific data on how many calls were run directly from the current location versus from out in the field.

Even assuming that all dispatch calls originate from the station, it would still only result in average of 2.65 calls per day travelling through both intersections at the interchange. This is more than the actual number, given that dispatches from the field are not included. Moreover, the data reflects the current activity at the subject intersections, which emergency vehicles already utilize coming from CRS' current location. Appellants' argument also fails to take this into account in asserting that the use of Opticom at the interchange will further the negative impact on stacking on the southbound ramp. Based on the real data and not computer-generated hypotheticals, emergency vehicles would only pass through the intersection approximately 2.65 times per day. In order to create the issue that Appellants assert, the vehicle would have to (1) be running a dispatch call east of Interstate 81, (2) approaching a red light on Maugans Avenue thus requiring use of the Opticom, and (3) running during the peak hours window. While this may happen from time to time, it is not likely to be a daily or frequent occurrence.

If anything, the proposed relocation may create some minimal additional traffic westbound on Maugans Avenue. However, we give considerable weight to the State Highway Administration and the County which approved Applicant's proposal. Both entities have considerable expertise and judgment and were certainly familiar with the operation and function of the Interstate 81 interchange at Maugans Avenue. Furthermore, SHA, the County and the Planning Commission all had knowledge of the proposed project at Crayton Boulevard and the traffic study associated with that proposal's effect on the interchange. Appellants' contention that the proposed project will have a detrimental impact on traffic, particularly at the Interstate 81 interchange, falls flat.

The proposed project is a principally permitted use at the subject property and already occurring in the neighborhood. It will not have an impact on the number of people residing or working in the area and will have minimal effect on the peaceful enjoyment of property or property values, as it already exists in the area. The neighborhood already experiences the noise from emergency vehicle sirens and this would not change because of the relocation. The use would not produce any other detrimental effects such as odors, dust, gas, smoke, fumes, vibrations, or glare. The effect on traffic, as discussed herein, will be minimal given that emergency vehicles will be traveling the same roads and intersections that they do currently. As a result, the proposed use is an appropriate use of land and structure.

For all of the reasons set forth above, this appeal of the Planning Commission's approval of the site plan is hereby DENIED and the site plan is hereby APPROVED as finalized on October 4, 2017, by a vote of 4-0.

BOARD OF APPEALS

By: Jay Miller, Acting Chair

Date Issued: August 20, 2018