

**WASHINGTON COUNTY PLANNING COMMISSION
REGULAR MEETING
September 10, 2018**

The Washington County Planning Commission held a public rezoning information meeting and its regular monthly meeting on Monday, September 10, 2018 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, Jeremiah Weddle, Denny Reeder, David Kline and BOCC Ex-Officio Leroy Myers. Staff members present were: Washington County Department of Planning & Zoning: Stephen Goodrich, Director; Jill Baker, Deputy Director; and Debra Eckard, Administrative Assistant; Washington County Department of Plan Review & Permitting: Tim Lung, Director; Cody Shaw, Chief of Plan Review; and Lisa Kelly, Senior Planner.

PUBLIC REZONING INFORMATION MEETING

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

RZ-18-003 – P Overlook LLP

Staff Presentation

Ms. Baker presented a proposed rezoning application for P Overlook LLP for property located in the Sandy Hook area of Washington County. The northern boundary of the property is along Keep Tryst Road, the eastern boundary is along Sandy Hook Road, and to the west of the property is US 340. On the southern boundary there are 12 residential parcels along Sandy Hook Road. The subject parcel is 24.32 acres that is mostly wooded and currently vacant. The Sandy Hook election district is approximately 10,350 acres in size with a population of approximately 1,865 people. There is public water and public sewer within a reasonable distance from the site, which makes connection to public utilities possible. The Division of Environmental Management received a copy of this application; they have no objection to this request. Emergency services are provided by the Potomac Valley Volunteer Fire Company and Boonsboro Rescue Company. Both agencies received a copy of this application; no comments have been received from either agency. Schools serving this area include Pleasant Valley Elementary, Boonsboro Middle and Boonsboro High schools. Ms. Baker noted that the analysis of school adequacy shown in the Staff report was for illustrative purposes only. It is intended to give a current picture of school capacity; however, formal school adequacy tests are not performed until a development plan has been submitted to the County.

Ms. Baker stated that US 340 is a State owned and maintained road that is classified as an "Other Principle Arterial Highway". This property would most likely be denied access from US 340 due to the "off ramp" of Keep Tryst Road and topographic limitations. Sandy Hook Road and Keep Tryst Road are County owned and maintained roads that are classified as Major Collectors. Access to the property may be from one or both of these roads depending upon traffic studies and sight distance analyses that would be required as part of the submittal of a subdivision application. There is no public transportation available at the site; however, the property is located within 5 miles of the Harper's Ferry MARC commuter train station.

The property is currently surrounded by low density residential and agricultural uses as well as Federally owned open space. To the north there is a limited amount of commercial area that includes a gas station, a restaurant and a hotel. The property is located within 1,000 feet of the C & O Canal Towpath which doubles as a portion of the Appalachian Trail in this area. There are numerous historic resources located within ½ mile of this property, most of which are associated with the Sandy Hook Rural Village.

Ms. Baker explained that the "change or mistake rule" does not apply to this request. The applicant is requesting that a condition (9 lot density restriction) placed on the property by the Board of County Commissioners as part of a previous rezoning application (2003) be lifted. Washington County has no rules, policies, regulations or statutes that allow for the reconsideration of zoning decisions. Therefore, when no statute exists for the reconsideration of a quasi-judicial decision, common law rule is applicable. Under the common law rule, any petition requesting a rehearing or reconsideration must prove that the prior decision resulted from "fraud, mistake, surprise, or inadvertence".

In this case, the applicant is claiming that the County erred in its application of the Rural Village district with the 9 lot density restriction (which the applicant claims the County had no authority to apply), and the subsequent Comprehensive Rural Area Rezoning should have negated the density restriction. Ms.

Baker presented a timeline of events relative to this property and addressed the applicant's claims as follows:

1. **Claim:** The nine lot density restriction imposed as part of the 2003 piecemeal rezoning was not permissible.
Response: Previous court cases relative to this property have shown that the property owner, as well as the County Commissioners, were fully aware of the 9 lot density restriction and the property owners had numerous opportunities to appeal this decision and chose not to do so.
2. **Claim:** The Comprehensive Rural Area rezoning supplanted and replaced the 2003 piecemeal rezoning.
Response: Ms. Baker provided Exhibit #1 within the staff report, which shows as part of the discussion and deliberation of the Board of County Commissioners and the Planning Commission, that the property was specifically addressed and defined with the 9 lot density restriction. Therefore, it is staff's opinion that it was the County Commissioners' intent to hold the restriction in the Rural Area Rezoning.

Ms. Baker noted that several written public comments have been received prior to the public information meeting and have been distributed to Planning Commission members as part of its public record for review and deliberation.

Applicant's Presentation

Mr. Jason Divelbiss, legal counsel for the applicant, began his presentation by clarifying that this property is not the former location of the Hillside Motel as eluded to in the application materials. The reference to the motel was meant to be used as a reference point and the subject property is actually adjacent to the motel site.

Mr. Divelbiss presented Applicant's Exhibit #1, a flowchart of events relative to the rezoning of this property. He noted that the current property owner is different than the applicant of the 2003 rezoning application request. Mr. Divelbiss noted that in 2006, the current owner of the property asked the Director of Planning & Zoning at that time, Michael Thompson, for a letter confirming the zoning classification of the property. Mr. Thompson confirmed the zoning was RV and still subject to the 9 lot density restriction from the 2003 piecemeal rezoning. After receipt of the letter, the applicant began a series of appeals. The first was an appeal of the Planning Director's confirmation of the 9 lot density restriction to the Board of Appeals, which denied the appeal on the basis of the rules of "equitable estoppel", which means the property owners were seeking to change the rules of the zoning after being complicit in the initial application of the zoning and density restriction. This decision was upheld by both the Circuit Court of Washington County and the Court of Special Appeals of Maryland. Mr. Divelbiss contends that neither the Circuit Court nor the Court of Special Appeals ruled upon the validity of the 9 lot restriction or if it should have survived the comprehensive rezoning.

In the summer of 2016, the applicant submitted a concept plan for a 24 lot single-family dwelling development. The Rural Village zoning classification would allow a development of this size; however, the 9 lot density restriction was still in place. Following months of discussions with staff, the applicant sent a letter (Applicant's Exhibit #2), requesting staff and the County Commissioners to revisit the 9 lot density restriction from 2003 and take administrative action such that the 2005 comprehensive rezoning replaced and supplanted the 2003 rezoning. The applicant also requested that legislative action be considered to revisit the 2003 piecemeal zoning in the form of a public hearing with the Board of County Commissioners to discuss and determine if circumstances have changed that would justify revisiting the 2003 piecemeal action. In November of 2017, the County sent a letter to the applicant (Applicant's Exhibit #3) stating they would not take administrative nor legislative action as requested.

Mr. Divelbiss expressed his opinion that this is not a reconsideration request. The reconsideration request and cases cited by staff are relative to quasi-legislative administrative actions (Board of Zoning Appeals decisions). He briefly explained a legislative administrative action. He believes the subject of this case is the 2005 comprehensive rezoning, which is the last decision of record and is a legislative action of the County. Therefore, he expressed his opinion that this is a piecemeal rezoning using the "mistake" rule as the justification for this request.

Mr. Divelbiss explained the components of the case as follows:

1. "The nine lot density restriction was an impermissible condition constituting contract zoning. Conditions or restrictions may be applied by a legislative body but only to improve

- or protect the general character and design of the land being zoned. However, if those conditions go too far and extend beyond that limitation, they constitute illegal contract zoning. When a local government enters into an agreement whereby the government exacts a performance or promise in exchange for its agreement to rezone property, the government is engaged in illegal contract zoning.” Mr. Divelbiss expressed his opinion that all properties with the same zoning classification should be treated the same; and, in this case, this property has a “custom” Rural Village zoning. This property is not being treated the same as other properties within the RV zoning designation.
2. Mr. Divelbiss stated that the applicant is not requesting a change in the zoning classification. In accordance with the Zoning Ordinance, the purpose of the Rural Village is to preserve the historic or rural character of existing villages, designed to prevent large amounts or inappropriately scaled development or uses that would detract from the existing rural or historic character of the village. He believes that the Rural Village designation is appropriate for this property regardless of the 9 lot density restriction.
 3. Mr. Divelbiss addressed school capacity issues noting that two of the three affected schools have fewer students enrolled now than they did in 2005.

In summation, Mr. Divelbiss believes that the density should be determined by the Planning Commission based upon the specific circumstances of the property and the surrounding areas just like any other property.

Public Comment

1. Norman Richardson, 19646 Yarrowburg Road, Knoxville – Mr. Richardson gave a history of the Sandy Hook area and cited many concerns including access to the property, water and sewer capacity issues, and disposal of sewer that needs to be trucked out on a weekly basis.
2. Chris Elkins, 19028 Sandy Hook Road, Knoxville – Mr. Elkins expressed concern with regard to traffic issues and disturbance of the scenic viewshed. He expressed his opinion that homes in the area should be constructed on nothing less than 3 acre lots.
3. John Rhodes, 20629 Bent Willow Road, Rohrsville – Mr. Rhodes expressed his concern with regard to the number of proposed lots, the density of the development and sewer capacity issues.
4. Eric Whittington, 556 Clark Road, Knoxville – Mr. Whittington is opposed to lifting the nine lot density restriction. He expressed concern with regard to roads and sewer capacity issues.
5. Steve Kidwell, 1500 Rohrsville Road, Knoxville – Mr. Kidwell expressed his concern with regard to traffic and sewer issues.
6. David Irwin, 19312 Keep Tryst Road, Knoxville – Mr. Irwin concurs with all comments previously made. He spoke on the historic significance of the area and he does not believe that a large density development would fit the character of the area.
7. Judy Lyons Wolf, 914 Valley Road, Knoxville – Ms. Lyons Wolf is opposed to lifting the nine lot density restriction. She expressed her opinion that it would be a mistake to have a large residential development in close proximity to a historic area that is near two national parks. She expressed concern with regard to sewer capacity issues and flooding. It was noted that development around the subject site is contained on larger lots. Also of concern is the scenic viewshed that contains parks, rivers and trails.
8. Patty Villarosa, 549 Prospect Hill Road, Knoxville – Ms. Villarosa expressed concern with regard to traffic and safety issues. She also expressed concern for the wildlife in the area and the scenic viewshed.
9. Mike Brown, 19112 Sandy Hook Road, Knoxville – Mr. Brown stated that he moved to the area about a year ago because of the beautiful view and the quiet nature of the area. He noted that they purchased their property with the understanding there would only be 9 homes on the subject site. He is opposed to lifting the nine lot density restriction.
10. Diane Younkins, 19514 Keep Tryst Road, Knoxville – Ms. Younkins expressed her opinion that no mistake was made in 2003 when the 9 lot density restriction was applied because the case has been through numerous hearings and court appeals. She expressed concern with regard to increased density, public services, traffic and congestion issues, the scenic viewshed, and the impact on historic resources.
11. Albert Villarosa, 549 Prospect Hill Road, Knoxville – Mr. Villarosa is opposed to lifting the nine lot density restriction. He expressed concern with regard to flooding and erosion if the subject parcel is cleared for development and overcrowding in the schools. Mr. Villarosa believes that higher density development will increase crime in the area.

Applicant's Rebuttal

- Mr. Divelbiss discussed public water and sewer concerns and reiterated that the Department of Water Quality reviewed this application and had no objection to the request. The Staff Report states that the subject site is in a W-3/S-3 Programmed Service Area which means that service of both public water and public sewer will be provided at some point in the future.
- Mr. Divelbiss stated that townhouses, apartments and duplexes are not permitted in the RV zone. The minimum size lot permitted in the RV district is 20,000 square feet which would yield a maximum of 52 dwelling units. It was noted that this applicant has never submitted plans for a development with more than 34 dwelling units; the most recent plan was 24 dwelling units.
- With regard to comments made that this property was previously zoned Conservation, Mr. Divelbiss stated that the property was not zoned Conservation, but from 1983 to 2003 it was zoned BG (Business General) which would have allowed commercial uses.
- He expressed his opinion that due to the property's close proximity to US 340 (a principle arterial highway) and Keep Tryst Road and Sandy Hook Road (both major collectors), this is where development should take place.
- With regard to flooding and erosion concerns, Mr. Divelbiss stated that storm water management regulations must be followed during development and are designed to prevent any additional quantity or velocity of water from the site from pre-development to post-development condition.

Mr. Divelbiss stated that all property owners have rights, not only those opposed to lifting the 9 lot density restriction, but also the owner of the subject property. He believes the 9 lot restriction makes the use of this property unviable which is unfair to the property owner.

Discussion and Comments: Mr. Weddle asked if the owners were aware of the 9 lot density restriction when the property was purchased. Mr. Divelbiss stated they were aware of the restriction. Mr. Weddle asked what the "positives" would be in lifting the 9 lot restriction. Mr. Divelbiss expressed his opinion that "positives and negatives" are subjective. However, he believes that the development would occur in an area where both the Comprehensive Plan and the Water & Sewerage Plan expect growth and development to occur. There was a brief discussion regarding the previous zoning of the property, what the effects may have been if the 9 lot density restriction had not been placed on the property in 2003, and if a mistake was made during the comprehensive Rural Area rezoning in 2005 not that the property was zoned RV with the density restriction, but that it should have been zoned Environmental Conservation (EC).

The public rezoning information meeting was closed at 8:33 p.m.

NEW BUSINESS**MINUTES**

Mr. Reeder stated that Mr. Divelbiss has requested clarification and a change to the minutes of an approval given last month for the Vista Business Park. After reviewing the minutes, members did not believe that any changes were needed to the minutes as presented.

Motion and Vote: Mr. Reeder made a motion to approve the minutes of the August 6, 2018 meeting as presented. The motion was seconded by Mr. Kline and unanimously approved.

MODIFICATIONS**Hays Investments LLC [OM-18-005]**

Mr. Shaw presented for review and approval a modification request to Subdivision Ordinance Section 405.11.B and 307.2.E to allow the creation of a lot without public road frontage and to allow the 10,000 sq. ft. septic reserve area for Lot 1 to be placed on the proposed adjacent Lot 2. The property is located at 20504 Jefferson Boulevard and is currently zoned RT (Residential, Transition). There are two existing dwellings on the property. All reviewing agency approvals have been received.

Discussion and Comment: Mr. Schreiber of Frederick, Seibert & Associates, the consultant, gave a brief history of the property and explanation of the request.

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

Anne Roth & Joey Thorn [OM-18-006]

Mr. Shaw presented for review and approval a modification request from Section 16A.5 of the Washington County Zoning Ordinance. The applicant is requesting a reduction in the rear yard setback from 40 feet to 12 feet to accommodate the addition of a mother-in-law suite to the back of the house. The property is located at 11507 Woodview Court and is currently zoned RS/PUD (Residential Suburban, Planned Unit Development). The Planning Commission is empowered to modify setbacks in a PUD in its authority to modify and approve PUD Development Plans. The applicant provided letters from the two neighboring property owners that would be most affected by this change; they have no objections.

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

SITE PLANS

Cascade Auto Wholesalers Inc. [SP-18-029]

Mr. Shaw presented for review and approval a site plan for Cascade Auto Wholesalers located along the north side of Beaver Creek Road. The property is currently zoned HI (Highway Interchange). The applicant is proposing a used car dealership on a 5.57 acre parcel. The hours of operation are 9:00 a.m. to 5:00 p.m., Monday thru Saturday. Total required parking is two spaces; 43 spaces will be provided. The site will be served by private well and private septic. Storm water management for this site is exempt because there is less than 5,000 square feet of disturbance. The site is also exempt from Forest Conservation requirements because there will be under 20,000 square feet of disturbance. Approvals are pending from Land Use Planning, Addressing, City of Hagerstown Sewer Department, and the Health Department.

Motion and Vote: Mr. Reeder made a motion to grant staff the authority to approve the site plan once all agency approvals have been received. The motion was seconded by Commissioner Myers and unanimously approved.

Elmwood Farm Bed & Breakfast Reception Facility [SP-18-019]

Ms. Kelly presented for review and approval a site plan for the Elmwood Farm Bed & Breakfast Reception Facility located at 16413 Kendle Road. The property is currently zoned RS (Residential, Suburban). The proposed banquet and reception facility would be located in the downstairs (3,140 sq. ft.) of an existing barn with an 8,528 sq. ft. patio in front of the barn for outdoor entertaining. Access to the site will be off of Kendle Road. The hours of operation will be Friday thru Sunday, May thru October from 3:00 p.m. to 10:30 p.m. A condition of the Board of Appeals' approval of the Banquet/Reception Facility is that all events must end by 10:30 p.m. There will be two employees. There will be 110 parking spaces; five of these spaces will be paved for handicap accessibility. A variance from parking requirements was also granted by the Board of Appeals. Event capacity will be a maximum of 220 persons [also a condition of the Board of Appeals' approval]. Offsite caterers will provide the food; there will be no on-site food preparation. Deliveries will be one UPS truck per week. The site is served by public water from the City of Hagerstown and private septic. Solid waste will be stored inside. There will be no new signage and no new lighting. Temporary lighting will be used when needed. Forest Conservation requirements will be met by retaining existing forest on the site. The Board of Appeals also granted a reduction in the right side yard setback from 100 feet to 88 feet, parking on grass surfaces, and all speakers must face towards the barn and not exceed a measured peak volume of 103dBa at a distance of six feet from the source. Approvals are pending from the City of Hagerstown Water Department and the Health Department; all other reviewing agency approvals have been received.

Motion and Vote: Mr. Reeder made a motion to grant staff the authority to approve the site plan upon receipt of all agency approvals. The motion was seconded by Mr. Kline and unanimously approved.

Emerald Pointe PUD, Phase 3, Section 2 [PSP-18-001]

Ms. Kelly presented for review and approval a preliminary plat/site plan for Emerald Pointe PUD, Phase 3, Section 2 located along the south side of Longmeadow Road. The property is currently zoned RT/PUD (Residential, Transition/Planned Unit Development overlay). The developer is proposing to create 14 semi-detached lots and 3 townhouse lots on 5.62 acres. There will be 1.27 acres of open space. All lots will be served by public water and public sewer. Parking required is two spaces per unit; two garage spaces plus two driveway spaces will be provided. Access to these lots will be off of a newly constructed public street. Two of the lots will have a shared access/driveway onto Longmeadow Road. There will be an additional access from the PUD onto Longmeadow Road and will be right in and right out only.

Sidewalks will be located along Marquise Drive and Longmeadow Road. Street lights will be installed along the interior streets. RV parking will be provided in future sections of the development.

Discussion and Comments: There was a brief discussion regarding the entrance onto Longmeadow Road and safety concerns. Mr. Wiley expressed his opinion that access to busier roads should be limited in the future.

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

OTHER BUSINESS

Update of Staff Approvals

Mr. Lung reported the following for the month of July: Land Development/Permit reviews: 7 entrance permits; 1 floodplain permit; 11 grading permits; 1 non-residential construction permit; and 3 utility permits. New submittals for Subdivision/Land Development: 4 storm water concept plans; 2 Forest Stand Delineations; 2 standard storm water plans; 1 ordinance modification; 1 subdivision replat; 1 Preliminary/Final subdivision plats; 2 Simplified plats; 1 Preliminary Subdivision plat; 3 Site Plans; 4 site specific grading plans; and 5 standard grading plans. Approvals for Land Development: 4 site plans; 8 site plan red-line revisions; 4 site specific grading plans; 1 Grading Plan; 1 Simplified plats; 1 Replat; 2 Preliminary/Final subdivision plats; and 1 Final residential subdivision plat for Freedom Hills, Section C-1.

Mr. Lung reported the following for the month of August: Land Development/Permit reviews: 22 entrance permits; 28 grading permits; 2 non-residential construction permits; and 8 utility permits. New submittals for Subdivision/Land Development: 1 storm water concept plan; 4 standard storm water plans; 1 ordinance modification; 1 subdivision replat; 6 Final plats; 4 Preliminary/Final subdivision plats; 2 Site Plans; 1 site specific grading plan; and 7 standard grading plans. Approvals for Land Development: 3 site plans; 6 site plan red-line revisions; 2 site specific grading plans; 3 Forest Stand Delineations; 4 Simplified plats; 2 Replat; 1 Preliminary plat; and 1 Preliminary Plat/Site Plan.

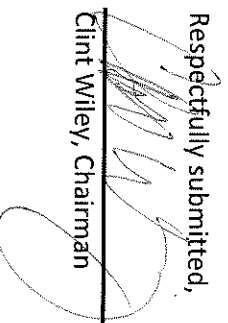
ADJOURNMENT

The Chairman adjourned the meeting at 9:20 p.m.

UPCOMING MEETINGS

1. Monday, October 1, 2018, 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