
MINUTES

The Salisbury-Wicomico Planning and Zoning Commission met in regular session on January 21, 2010 in the Council Chambers of the Government Office Building, Room 301, with the following persons in attendance:

COMMISSION MEMBERS:

Donald B. Bounds, Vice Chairman
Gail Bartkovich
James W. Magill
Glen Robinson
Scott Rogers
Gary Comegys

CITY/COUNTY OFFICIALS:

Maureen Lanigan, Assistant County Attorney
Henry Eure, Department of Building, Permits, and Inspections
Joseph Arthur, County Public Works Department

PLANNING STAFF:

Jack Lenox, Director
Gloria Smith, Planner
Frank McKenzie, GIS
Beverly Tull, Recording Secretary



The meeting was called to order at 1:32 p.m. by Mr. Bounds, Vice Chairman.



Mr. Lenox stated that a letter had been received from Mrs. Les Callette resigning from the Commission. He stated that the Commission Chair was a very unique position as it is a jointly appointed position by the City and County through the Councils. A press release has been issued thanking Mrs. Les Callette for her 32 years of service. Mayor Ireton and Mr. Pollitt have nominated Mr. Chip Dashiell to be the Commission Chair and have forwarded their recommendations to both the City and Council Councils to be scheduled at the earliest available meeting. Both Mayor Ireton and Mr. Pollitt are pleased that Mr. Dashiell has agreed to serve as the Commission Chair. Mr. Dashiell has a lengthy distinguished service record to the community. Once Mr. Dashiell is affirmed by both Councils, he should be serving as the Chair at the February Commission meeting. Mr. Bounds added that Mrs. Les Callette had done a great job and been a great asset to Wicomico County.



Minutes:

Upon a motion by Mrs. Bartkovich, seconded by Mr. Magill, and duly carried, the Commission **APPROVED** the minutes of the December 17, 2009 meeting as submitted.



COUNTY SUBDIVISION PLATS:

Adventist Drive Subdivision – Prel./Final – 6 Lots – Adventist Drive – M-29; P-249.

Mr. Chuck Woodward came forward. Mrs. Gloria Smith presented the Staff Report. The applicants propose a subdivision of 6 lots from this 3.7 acre tract. The lots will average .61 acres each and all will have frontage and access to Adventist Drive.

Mrs. Bartkovich questioned if the Commission needed to set the setback for Lot 1. Mrs. Smith stated that East Road would be treated like a street even though it is a paper street so a front setback would have to be used.

Upon a motion by Mr. Magill, seconded by Mr. Robinson, and duly carried, the Commission **APPROVED** the Preliminary/Final Plat for Adventist Drive Subdivision, subject to the following Conditions of Approval:

CONDITIONS:

1. The Final Plat shall comply with all requirements of the County Subdivision Regulations.
2. Health Department approval is required prior to the recordation of the Final Plat.
3. The Final Plat shall comply with all requirements of the Forest Conservation Program.
4. Adequate drainage and maintenance easements shall be provided for the stormwater management system.
5. Stormwater Management for the individual lots may be required at the time building permits are issued due to impending changes to the County Stormwater ordinance.
6. An exemption from the MDE water appropriation permit will be required.
7. A building setback from the unimproved portion of East Road will be required on Lot 1.
8. This approval is subject to further review and approval and conditions imposed by the County Department of Public Works.

Mr. Rogers recused himself due to professional conflicts.



Fieldstone Manor – Preliminary Plat – 6 Lots – Mt. Hermon Church Road – M-49; P-59 & 116; G-2.

Mr. Brock Parker came forward. Mrs. Gloria Smith presented and entered the Staff Report into the record. The applicants propose a subdivision of 6 lots from this 12.89 acre tract. Lot #4 contains an existing residence and has frontage and access to Mt. Hermon Road. Lots #5-9 will have frontage and access on the new cul-de-sac.

Mr. Parker stated that this was basically the identical plat from 2008 but the approval had lapsed. The construction documents are being drafted.

Mr. Magill stated that he has a problem with the TDR transfer from A-1 to A-1.

Mr. Comegys questioned if the subdivision was in the flight elevation area and stated there should be a note on the plat regarding height restrictions. Mr. Bounds stated that there was a note on the plat regarding being in the flight zone. Mr. Parker stated that note #20 in the general notes on the plat addresses the flight zone. Mr. Comegys stated that the note on the plat doesn't identify the problem that is being discussed at the Airport Commission restricting the heights in the flight path. Discussion followed regarding elevations and notices to potential homeowners. Mr. Parker suggested including the height restrictions in the Covenants and Restrictions of the subdivision as well as on the final plat. Mr. Comegys requested that a condition of approval be added regarding setting the height restriction.

Mr. John Groutt, 4551 Cooper Road and on behalf of WET, stated that the new stormwater management requirements go into effect on May 4, 2010. He requested that the developer upgrade to these standards now so that this development would be in compliance with the new regulations.

Mrs. Bartkovich stated that the County Council would be reviewing the new County stormwater regulations at the next meeting.

Mrs. Smith noted that Staff tried to address the regulation changes in Condition #4.

Mr. Comegys questioned if the proposed regulations kicked in upon approval of the plat or at the time of permit. Mr. Arthur responded that there is no grandfathering of projects with the new regulations. There must be signed construction plans before May 4, 2010. Anything that was submitted after December 1, 2009 has to be constructed according to the new stormwater management regulations. Mr. Parker added that the approval is only good for two (2) years and if the project isn't complete that the new regulations would have to be adhered to.

Upon a motion by Mr. Magill, seconded by Mr. Robinson, and duly carried, the Commission **APPROVED** the Preliminary Plat for Fieldstone Manor Subdivision, subject to the following Conditions of Approval:

CONDITIONS:

1. The Final Plat shall comply with all requirements of the County Subdivision Regulations.
2. Health Department approval is required prior to the recordation of the Final Plat.
3. The Final Plat shall comply with all requirements of the Forest Conservation Program.

4. Adequate drainage and maintenance easements shall be provided for the stormwater management system in conformance with applicable State requirements.
5. Improvements Construction Plans shall be submitted to and approved by the Public Works Department prior to the submission of the Final Plat.
6. Transfer of Development Rights is required and all associated documents must be submitted for review and approval.
7. Lots 5 and 9 shall be denied direct vehicular access to Mt. Hermon Church Road
8. A Homeowners Association will be required to own and maintain all common areas and stormwater management facilities.
9. A Public Works Agreement will be required for the installation of the storm drain within Mt. Hermon Church Road.
10. This Property is within the Airport Overlay District and is subject to the of the Horizontal Surface Restrictions.
11. This property shall comply with all requirements of the federal aviation administration (FAA) and the Maryland Aviation Administration (MAA). This includes when applicable filing Federal Aviation Administration Form 7460-1, "Notice Of Proposed Construction Or Alteration."
12. This approval is subject to further review and approval and conditions imposed by the County Department of Public Works.



Kenneth Mills – Preliminary/Final – 5 Lots – American Legion Road – M-37; P-283 & 360; G-12.

Mr. Brock Parker and Mr. Steve Smethurst came forward. Mrs. Gloria Smith presented the Staff Report. The applicants propose a subdivision of 5 lots from this 4.61 acre tract. All lots will front and have access on American Legion Road.

Mr. Parker stated that the two (2) parcels have been perced and approved. Grading will be required along American Legion Road but no annexation is required. The City's water main is stubbed out to this property and with three (3) additional services installed from the main, this property can get City water without annexation. Mr. Parker added that they were trying to get approval for small sand mound systems from the Health Department.

Mrs. Bartkovich questioned if this would be in the Urban Service District. Mr. Parker responded in the negative. Mrs. Bartkovich questioned if the property owners would be billed for the water. Mr. Parker responded in the affirmative. Mr. Smethurst stated that the property owners would get the same rate as the others that already have City water such as Verizon Wireless.

Mr. John Groutt, 4551 Cooper Road, questioned if this property was over top of the Paleochannel. Mrs. Smith responded in the negative.

Upon a motion by Mr. Magill, seconded by Mrs. Bartkovich, and duly carried, the Commission **APPROVED** the Preliminary/Final Plat for Kenneth Mills Subdivision, subject to the following Conditions of Approval:

CONDITIONS:

1. The Final Plat shall comply with all requirements of the County Subdivision Regulations.
2. Health Department approval is required prior to the recordation of the Final Plat.
3. The Final Plat shall comply with all requirements of the Forest Conservation Program.
4. Owens Branch should be located. A 50' flood protection setback is required along this stream.
5. A MDE water appropriation permit exemption will be required.
6. This subdivision is a resubdivision of lot 2 and other lands of Kenneth Mills. Lot numbering should be reversed starting with Lot 2A then 3 thru 6.
7. Developer shall provide improvements to American Legion Road for drainage as well as driveway culverts as needed. A drainage plan shall be submitted to DPW for review and approval prior to recordation of the final plat.
8. Stormwater management for the individual lots may be required at the time a building permit is issued due to the pending changes to the Wicomico County Stormwater ordinance.
9. This approval is subject to further review and approval and conditions imposed by the County Department of Public Works.



Knolls at Barren Creek, Sec. 2 – Revised Preliminary – 8 Lots – Mill Branch Road – M-17; P-3; G-5.

Mr. Brock Parker and Mr. Steve Smethurst came forward. Mrs. Gloria Smith presented the Staff Report. The applicants propose subdivision of 8 lots from this 14.03 acre tract. Lots 4 through 9 front and have access on a new cul-de-sac street, Knoll Creek Lane. Lots 2 and 3 front and have access on Athol Road.

Mr. Lenox noted that there were some technical issues that the Critical Area Commission was requesting be addressed. There have been plans in the past where this has been done but the Commission and Staff should adhere to the

Critical Area Commission. The County Attorney received the letter from the Critical Area Commission this morning. Mr. Lenox suggested that the Critical Area issues be discussed first and allow the public to comment since there are interested parties in this case.

Mrs. Smith stated that the plat in the Staff Report and being displayed on the projector was the plat that was received for review. As of the morning of this meeting, a revised plat was received that has removed the wells from the Critical Area but that plat has not been included in the Staff Report or on the projector.

Mr. Smethurst questioned if they should address the Critical Area letter first and then go into the rest of the details. He stated that he didn't believe that the Commission had been given time to read the Critical Area Commission letter but it is completely off base. There is nothing in the County law that talks about their issues. The wells have been moved from the Critical Area portion of the lots, even though they are allowed to be there. There is nothing proposed in the Critical Area. The notes on the plat that the Critical Area Commission has issues with can be taken off the plat. There are no impervious surfaces in the proposed Critical Area at all. Mr. Smethurst stated that he would like to see an approval and the applicants be allowed to work out the issues with the Critical Area Commission.

Mr. Parker stated that he felt that the letter from the Critical Area was very suspect in how it applies with the Code. The wells have been moved. He added that the rest of the Critical Area Commission concerns are malarkey.

Mr. Smethurst stated that the Commission couldn't approve a subdivision subject to Critical Area approval. The Critical Area Commission can't appeal the decision. Mr. Lenox stated that the Commission dropped their last appeal before it went to the Board of Appeals.

Mr. Comegys stated that he didn't want to take a position until receiving a clarification of the letter from the County Attorney and the Critical Area Commission. Mr. Smethurst stated that he was not asking the Commission to make a decision adverse to the Critical Area Commission because the Critical Area Commission has the final say. Mr. Comegys stated that the Critical Area Commission was asking for the Planning Commission to not approve this subdivision request and that until all the facts were reviewed that he couldn't make a decision for approval or denial.

Mr. Bounds stated that it would be appropriate to hear the public's comments since there were interested parties present for the meeting.

Mr. Bob Van Meter, 9438 Athol Road, read a letter in opposition to this case. He stated that there had been no interaction between the developers and the community. There has been no interaction with the Board of Education and how it

will affect the schools. There isn't anyone in the community that supports this development. This subdivision is contradictory to everything going on in the State of Maryland. The property is contiguous to the town. The Town of Mardela Springs hasn't been approached about annexation and houses will be built in this area. There have been several septic tanks that have failed in the area. The Town of Mardela Springs is trying to get water and sewer. The plan calls for cutting a road through a berm onto Athol Road and someone will get hurt by this. Mr. Van Meter explained that he had tried to get a gazebo on his property approximately four (4) years ago and wasn't allowed due to the setback that was being required. He stated that the density should be 1:20. Mr. Van Meter requested denial of the subdivision.

Mr. Bounds stated that the ag land would have a density of 1:15. This land is zoned Town Transition. Mr. Lenox stated that the challenge is to balance the County distinctions with the Critical Area categories.

Mr. Magill questioned what the big picture looked like and if the property was parallel to water. Mr. Parker responded that the designations change near the water.

Mr. Jerrold Marshall, 9393 Athol Road and President of the Mardela Springs Commissioners, stated that according to Section 200 Subsection 6 that the municipalities are to be notified and the Town of Mardela has never been notified. Mr. Marshall stated that he had spoken at the last few petition requests and that no one wants this development. He stated that his home would abut one (1) of the designated lots. He stated that he was told when he built his home five (5) years ago that he couldn't go back from the road more than 1000 ft. due to the Critical Area. This area is not in Mardela's Comprehensive Plan for Town Transition. Mardela does not want to extend the Town Transition to even Riggan Road. He stated that he had concern over stormwater mitigation. The water currently runs into Mill Branch and with every rain storm the road is covered with 3 to 5 inches of water. The widening of Athol Road to the bridge is very dangerous. The Town of Mardela Springs is working on getting water and sewer. This development will pollute the creek and compound what the Town of Mardela Springs is trying to do. Mr. Marshall stated that the town government of Mardela Springs is against this development.

Mr. Wayne Burton, 9234 Mill Branch Road, stated that he opposed the subdivision due to safety reasons. Mill Branch Road is a narrow road and the infrastructure isn't there. He added that there would have to be mound systems used on these lots.

Mr. Woody Maloney, Athol Road, stated that no one in the Town of Mardela Springs wants Town Transition zoning. He stated that the sewage areas are not where the sewage is going to go. Lots 7 and 8 sewage area will get to Mill Branch

Creek in a weeks time. He added that a map with the neighbors' signatures in opposition to this development was turned in at the meeting in February.

Mr. Randy Beers, 9272 Athol Road, questioned where the wells were moved to. Mr. Parker displayed the new location of the wells on the plat. Mr. Beers questioned if the septic area on Lot 4 was on the Critical Area line. Mr. Parker responded that everything was in conformance with the Stormwater Management regulations of 2007 and added that the Public Works Department will have to approve the construction plans. Mr. Beers stated that he was confused as to why the drainage pond was located on the high end of the property. He added that the pond should have a fence around it. Mr. Parker responded that the pond was constructed relative to the road and that a fence was only required if the pond was more than 4:1 sideslope. Mr. Beers questioned the definition of tidal and nontidal. Mr. Smethurst stated that the State dictates what areas are tidal and nontidal. Mr. Beers stated that he was opposed to the subdivision. The White Tail Subdivision, The Plantations, and the subdivision next to Howard Sand and Gravel have not sold any lots. Mr. Beers stated that Wicomico County's Transfer Station next to Barren Creek should be shut down. He concluded that this is a bad place for development.

Mr. David Parsons, 9235 Mill Branch Road, stated that Lot 8 would have a well 309 ft. from the proposed septic area. He questioned how deep the stormwater management pond would be. Mr. Parsons stated that he was opposed to the subdivision. Mr. Bounds stated that the well would be a Health Department issue.

Mr. John Groutt, 4551 Cooper Road, thanked the Commission for turning down the growth allocation. He stated that there should be a reading as to whether this land is tidal water. Mr. Groutt questioned if there would be garages in the RCA. Mr. Parker responded in the negative. Mr. Smethurst stated that a garage is usually associated with a residence structure so it can't be put in the RCA.

Mr. McKenzie stated that the issue regarding Mr. Van Meter's gazebo dealt with a tidal wetlands creek being near the property. The 100 ft. buffer is protected and a variance will not be issued. He discussed the tidal waters. Mr. McKenzie explained that the White Tail Subdivision was similar to this and that structures in the RCA portion of the property were not allowed.

Mrs. Bartkovich questioned Ms. Lanigan about the letter from the Critical Area Commission and Mr. Smethurst's request that the subdivision be approved and the applicant's work out the details with the Critical Area Commission. Ms. Lanigan responded that she wouldn't recommend adding a condition that said subject to Critical Area approval. She suggested tabling the case until the issues can be worked out with the Critical Area Commission.

Mr. Groutt stated that he believed that the changes were unfair. This area is in Hub 505 which is the highest rated Hub in the State. Approximately two-thirds of the property is in the Critical Area. There are no building envelopes or drainfields allowed in the RCA. Mr. Groutt questioned who would oversee the building process. He stated that the drainfields will drain to Mill Branch Creek and then into the Nanticoke River. This subdivision doesn't meet the requirements of Section 225-3 and doesn't protect the sensitive areas. He quoted from Judge Jackson's determination handed to the Commission last month that states that they do not have to approve this subdivision. Mr. Groutt requested that Findings of Fact be done regardless of whether this subdivision is approved or denied.

Mr. Jerrold Marshall requested that the Town of Mardela Springs be notified and included in all future submissions for this development.

Upon a motion by Mrs. Bartkovich, seconded by Mr. Comegys, and duly carried, the Commission **TABLED** the Revised Preliminary Plat for the Knolls at Barren Creek, Section 2 Subdivision, to allow the applicant and the Planning Staff to work with the Critical Area Commission on their concerns.



Meadows at Barren Creek – Extension – 33 Lots – US Rt. 50 West – M-9; P-31; G-22.

Mr. Don Baumgartner came forward. Mrs. Gloria Smith presented the Staff Report. The applicant has requested an extension of time to record the Final Plat. In addition to the economic downturn, the closure of AES created the need for a new firm to take over the project and work with Public Works on the final construction plans. A one year extension of time is requested.

Mr. Bounds questioned the reason for coming in for an extension so early. Mr. Baumgartner responded that they were coming in early to be cautious.

Mr. Comegys questioned if this would fall under the new stormwater management guidelines. Mr. Baumgartner responded in the negative, explaining that he hoped to have a signed plat soon. Mr. Arthur added that this development would fall under the old regulations.

Upon a motion by Mrs. Bartkovich, seconded by Mr. Magill, and duly carried, the Commission **APPROVED** the requested one-year extension of time to record the Final Plat for the Meadows at Barren Creek. **This extension of time will expire on April 30, 2011.**



Layfield Woods Subdivision – Prel. Plat Extension – 16 Lots – Melson Road – M21; P-63; G-5.

Mrs. Gloria Smith presented the Staff Report. The applicants have requested a one year extension of time for submission of the Final Plat. The engineers are working on the submission of the Construction Improvement Plans. The Preliminary plat approval was granted on February 24, 2009.

Upon a motion by Mr. Magill, seconded by Mrs. Bartkovich, and duly carried, the Commission **APPROVED** the requested one-year extension of time to record the Final Plat for the Layfield Woods Subdivision. **This extension of time will expire on February 24, 2011.**



CAPTIAL IMPROVEMENTS PROJECT REVIEW – FY2011-2015 – Recreation, Parks & Tourism – Expanded Civic Center Parking.

Mrs. Gloria Smith presented the Staff Report. Capital Projects proposed by the Department of Recreation, Parks and Tourism primarily involved rehabilitation of existing facilities in the County. Past budgets included extensive information on the needs at Wicomico Youth and Civic Center, including acquisition of 5 acres for parking from the former Salisbury Mall property. In the FY 2011-2015 budget, acquisition of a 15-acre tract of the Salisbury Mall property for parking (an additional 10 acres) was requested. The request explains that this parking is needed to accommodate the various events being held at the Center, including event participants and equipment, Civic Center staff, and event attendees.

Mr. Bounds questioned if the increased parking would change the stormwater management plan. Mrs. Bartkovich stated that the Council would be asking that question. She added that this would be a part of matching monies.

Mr. Comegys stated that he had watched the County Council meeting on PAC 14 and heard the stormwater questions being asked and that the Parks and Recreation had someone working on it. He stated that this was also in the TIF District so it will have to be worked out.

Mr. Magill questioned what this would do to the subdivision. Mr. Lenox responded that there was no definite plan on the layout. If a final plan is brought in that is consistent with the preliminary plan (for the Villages at Salisbury Lake) that the Commission could approve it but if it is significantly different, then the plan must be sent back to the City Council. Mr. Comegys added that any changes would be in the residential area.

Mr. John Groutt, 4551 Cooper Road, questioned if it was possible to make the parking area a pervious surface. Mr. Comegys stated that swales were supposed to be used in the parking area. Mrs. Bartkovich added that the pervious issue should be discussed with Public Works.

Upon a motion by Mr. Magill, seconded by Mr. Comegys, and duly carried, the Commission forwarded a **Favorable** recommendation for inclusion of the Civic Center projects in the Capital Budget as being in accord with the recommended Goals, Objectives, and Policies of the 1998 Wicomico County Comprehensive Plan as well as the 2005 Land Preservation, Parks, and Recreation Plan.



#SP-1001 CONDOMINIUM SITE PLAN AND DOCUMENTS – River View Condominiums – 540 Riverside Drive – River’s Edge Development, LLC – Central Business District – M-111; P-1494; G-3.

Mr. Steve Fuller came forward. Mrs. Gloria Smith presented the Staff Report. The applicants have submitted a Condominium Site Plan and Documents for conversion of two buildings on this site to condominiums. Materials submitted included a Condominium Site plan, Building floor plans and Building elevations for the structures as well as the Bylaws/Condominium Declaration.

Mr. Fuller stated that the name change was done due to the other River’s Edge project. There are no other construction activities planned to take place on the property. The site is in the IDA area of the Critical Area so forest conservation shouldn’t be considered. The existing rentals are being converted to condos so the owners can sell the units.

Mrs. Smith suggested dropping Condition #2 since forest conservation isn’t applicable.

Upon a motion by Mr. Magill, seconded by Mr. Robinson, and duly carried, the Commission **APPROVED** the Condominium Site Plan and Documents for River View Condominiums, subject to the following Conditions of Approval:

CONDITIONS:

1. The site shall be developed/redeveloped in accordance the approved Condominium Site Plan.
2. Subject to further review and approval by the Salisbury Public Works Department, if required.



Mr. Lenox stated that a complete draft of the Salisbury Comprehensive Plan had been distributed. Mr. Hall has been the lead author. The Mayor has been consulted and there have been multiple work sessions with the City Council. The entire Salisbury Comprehensive Plan is on the City's website. The plan will be back out to the public in the next several months. A meeting needs to take place with Mr. Pollitt and the County Council on the Municipal Growth Element. There are still regulatory discussions to take place. Mr. Lenox requested that the Commission read through the document. Mr. Hall added that any comments or suggestions be submitted to the office as they are found. Mr. Lenox requested that all previous drafts of the plan be recycled. In an effort to keep the cost down, CD's will be made available at no cost; however, if a hard copy is requested there will probably have to be a fee assessed.

Mr. John Groutt, 4551 Cooper Road, congratulated the Commission and Staff on the Comp Plan.

Mr. Comegys questioned if once the City Comprehensive Plan was adopted if the Zoning Code would be updated to match. Mr. Lenox responded that the Comprehensive Plan would need to match the Zoning Code. The Growth Area is unincorporated. He stated that there is an effort to coordinate densities and development standards between the City and the County.



Mr. Bounds stated that he had received a letter from Mr. John Holston of the Hebron Planning Commission requesting a meeting of only certain

members of the Commission. Mr. Bounds stated that he didn't feel that this was appropriate due to the open meetings laws. Mr. Comegys stated that an informal work session would be more appropriate. Mr. Lenox explained that the Hebron Planning Commission voted at their last meeting to have a letter sent but said that it wouldn't be a meeting because there wouldn't be a quorum of either group and that no Staff or Attorneys were to be present. Mrs. Bartkovich stated that something should be put in writing to the Hebron Planning Commission that the meeting would not take place unless it was an informal work session between the two Commissions with Staff and Attorneys present. Mr. Comegys agreed that the letter should state that the Commission decided that the meeting not take place unless it was done in a work session.



There being no further business, the Commission meeting was adjourned at 4:16 p.m. by Mr. Bounds.



This is a summary of the proceedings of this meeting. Detailed information is in the permanent files of each case as presented and filed in the Salisbury-Wicomico County Department of Planning, Zoning, and Community Development Office.

Donald Bounds, Vice Chairman

John F. Lenox, Director

Beverly Tull, Recording Secretary