



# City of Salisbury – Wicomico County

DEPARTMENT OF PLANNING, ZONING AND COMMUNITY DEVELOPMENT

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DIRECTOR OF ADMINISTRATION

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## MINUTES

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The Salisbury-Wicomico Planning and Zoning Commission met in regular session on March 22, 2012 in the Council Chambers of the Government Office Building, Room 301, with the following persons in attendance:

### COMMISSION MEMBERS:

Charles "Chip" Dashiell, Chairman (Absent)  
James W. Magill  
Gail Bartkovich  
Scott Rogers  
Tim Spies (Absent)  
Jacob Day  
Newell Quinton

### CITY/COUNTY OFFICIALS:

Henry Eure, City Building, Permits and Inspections Department  
Maureen Lanigan, Assistant County Attorney  
Gary Hales, Salisbury Public Works Department

### PLANNING STAFF:

Jack Lenox, Director  
Mary Phillips, Technical Review  
Keith Hall, Planner  
Beverly Tull, Recording Secretary



The meeting was called to order at 1:33 p.m. by Mr. Magill, Vice Chairman.



**Minutes:**

Upon a motion by Mrs. Bartkovich, seconded by Mr. Day, and duly carried, the Commission **APPROVED** the minutes of the February 16, 2012 meeting as submitted.



**#SP-9704-12V      SIGN PLAN AMENDMENT/BUILDING ELEVATION MODIFICATION  
– The Commons – Outparcel #3 – 115 E. N. Pointe Drive -  
General Commercial District – M-29; G-6; P-78.**

Mr. John Marquart came forward. Mr. Jack Lenox presented the Staff Report. Mr. Steve Hutchinson of DDR Corp. has submitted a request to amend the Sign Plan approved for The Commons, Outparcel #3 and to modify the building façade for the units now or formerly occupied by Dollar Express and AT&T.

Mr. Marquart stated that the existing AT&T and Dollar Express units will be consolidated into a single unit. He discussed the façade changes as well as the sign request. The new tenants, Ulta Beauty, would like to have an awning over the entrance. A linear sign with no swoop, similar to Mattress Giant, is now proposed for the side.

Mrs. Bartkovich questioned if the “swoop” would be eliminated on the front sign. Mr. Marquart responded in the negative.

Mr. Day questioned if the sign on the side would be red. Mr. Marquart responded in the negative, adding that the sign would be illuminated at night and appear white.

Mrs. Bartkovich questioned Mr. Eure if the sign is consistent with the Code requirements. Mr. Eure responded that the sign would be up to the Commission. There are no set standards for shopping centers so that really isn't part of his duty. Mr. Eure added that he does do is to go out and check that they comply with what the Commission approved.

Mrs. Bartkovich questioned that the Staff Report stated that the color orange was approved for Cingular Wireless only and if the Commission should add that color to the motion today. Mr. Eure responded in the affirmative.

Mrs. Bartkovich questioned if the Commission should approve all the colors. Mr. Eure responded in the affirmative and requested that they add the awning approval to the motion. Mr. Rogers questioned if the motion should include the color of the awning as well. Mr. Eure responded in the affirmative.

Mrs. Bartkovich noted that the colors look like they blend well.

Mr. Rogers stated that the colors and the awning break up the front elevation.

Mr. Rogers questioned if the awnings were back lit. Mr. Marquart responded in the negative.

Mr. Lenox questioned Mr. Eure if the awnings were considered under the exterior changes. Mr. Eure responded that they were an exterior change.

Mrs. Bartkovich questioned if the other signs were illuminated at night. Mr. Marquart responded in the affirmative.

Mr. Rogers questioned if this tenant would become the main tenant for the building. Mr. Marquart responded in the affirmative.

Upon a motion by Mr. Day, seconded by Mr. Rogers, and duly carried, the Commission **APPROVED** the Proposed Sign Plan Amendment, including the colors gray and orange, as submitted, due to the modification in the façade and the floor area to be occupied by this tenant and **APPROVED** the proposed modification to the building façade and the addition of the proposed awnings as submitted.



**#SP-9104-12C      COMPREHENSIVE DEVELOPMENT PLAN – Dunkin Donuts – Pecan Square Shopping Center – Nanticoke Road – Neighborhood Business District – M-37; G-18; P-415.**

Mr. Steve Engel and Mr. Nick Nistazos came forward. Mr. Jack Lenox presented the Staff Report. Vista Design, Inc. has submitted a Comprehensive Development Plan for a 2,106 sq. ft. restaurant to be constructed on a new outparcel to be created at Pecan Square shopping center. A Site Plan, Landscaping Plan, and Building Elevations were submitted.

Mr. Engel stated that they saved the existing pecan trees. The site was designed with one-way circulation around the building. There is a double entrance which was needed for emergency access. The stormwater management requirements can be met.

Mrs. Bartkovich questioned if Fire Department comments had been received. Mr. Engel responded in the affirmative. Mrs. Bartkovich questioned the location of the Dairy Queen entrance. Mr. Hales responded that there were two (2) entrances to Dairy Queen. Mrs. Bartkovich questioned if the two (2) plans entrances would work. Mr. Lenox responded that the plans would be evaluated to make sure that the entrances integrated. Mr. Hales added that a plan would need to be done to show how the two (2) sites are integrated. Mr. Tom Ruark added that there would be no effect on traffic from these site layouts.

Mr. Rogers questioned if the excess seven (7) parking spaces were critical to the overall parking for the shopping center. Mr. Engel responded in the affirmative. Mr. Rogers suggested that if the excess spaces weren't needed to delete them and revert back so that there would be less paving.

Mr. Magill questioned if it was possible to move the centerline to the north perpendicular to the entrance. Mr. Engel responded in the negative, explaining that it would cause a problem with stacking due to the right-in/right-out

entrance. Mr. Engel stated that the primary hours would be from 6 a.m. to 9 a.m. so he didn't feel that the entrances would be an issue.

Mr. Nistazos stated that they had done a lot of visits to the site and 4 p.m. seems to be the busiest time of day at the shopping center.

Mrs. Bartkovich questioned if the right-out was the only entrance in question. Mr. Nistazos responded that it would be the primary entrance for 67 percent of the business.

Mr. Day questioned if waiving the Community Impact Statement and Statement of Intent to Proceed and Financial Capability needed to be a separate action. Mr. Magill responded in the negative, explaining that it could be part of the motion.

Mrs. Bartkovich questioned if the forest conservation had been done. Mr. Engel responded that they had held off on the forest conservation until after this meeting. Mrs. Bartkovich questioned if compliance with the forest conservation act should be a condition of approval. Mr. Lenox responded that the Commission could add it on as a condition of approval if they wished.

Mrs. Bartkovich stated that she didn't see a lot of traffic at this site. If it becomes an issue, will it be dealt with later. Mr. Lenox responded that it would be a business issue.

Upon a motion by Mr. Day, seconded by Mrs. Bartkovich, and duly carried, the Commission **APPROVED** the Comprehensive Development Plan for Dunkin Donuts at Pecan Square, subject to the following Conditions of Approval:

**CONDITIONS:**

1. The site shall be developed in accordance with the approved Comprehensive Development Plan. Minor plan adjustments may be approved jointly by the Directors of the Planning and Zoning and Building, Permits, and Inspections Departments.
2. A detailed Sign Plan shall be submitted for Staff review prior to installation of signage on this site.
3. Subject to further review and approval and any Conditions imposed by the Salisbury Public Works Department.
4. Subject to further review and approval of a Forest Conservation Plan.

**COUNTY SUBDIVISIONS/SKETCH PLATS:****Knolls at Barren Creek, Section 2 – Final Plat – 3 Lots – Mill Branch Road – M-17; P-186; G-5.**

Mr. Brock Parker and Mr. John McIntyre came forward. Mrs. Mary Phillips presented the Staff Report. The applicants propose subdivision of 3 lots from this 10.69 acre tract. The lots will average 3.56 acres each and all will front and have access on Mill Branch Road. In December 2011 the Commission reviewed a new sketch plat proposing three lots on Mill Branch Road. This was a significant reduction of a plat previously reviewed by the Planning Commission for a Chesapeake Bay Critical Area Growth Allocation request. The original sketch plat for the subdivision proposed 15 lots. Following a public hearing on January 15, 2009, that request received an unfavorable recommendation on February 19, 2009 and was denied by the Wicomico County Council on November 17, 2009. One minor lot was created for the existing residence on Athol Road. A subdivision plat creating Lots 2 and 3, Block A, was approved by the Commission in April 2010 and recorded in the Land Records in January 2012.

Mr. Parker stated that they didn't have any issues with the conditions listed in the Staff Report. The plat is identical to what the Commission saw at last month's meeting. He added that they were almost giddy that the plan was up for final approval as it had been a very long process with this development.

Mr. Magill questioned if the sand mounds could be lined up. Mr. Parker responded that the sand mounds were in the location designated by the Health Department. The Health Department will permit low pressure dose systems in place of the sand mound systems but they are more expensive. He added that there is room for three (3) systems on each lot.

Mr. Day questioned if the interested parties were notified of this request. Mrs. Phillips responded in the affirmative.

Upon a motion by Mr. Day, seconded by Mr. Rogers, and duly carried, the Commission **APPROVED** the Final Plat for Knolls at Barren Creek, subject to the following Conditions of Approval and the following Findings:

#### **FINDINGS:**

- a. The site is located within the Town Transition zoning district adjoining the Town of Mardela Springs.
- b. The Town Transition zoning district encourages development compatible with the surrounding area and includes standards that ensure development complementing the surrounding area and resulting in efficient, orderly growth in areas adjacent to town centers. The development standards include minimum lot size, setbacks, and maximum lot coverage.
- c. The site is proposed for development with three (3) building lots, which is a reduction from the 15 lots proposed in 2005 when Chesapeake Bay Critical Area Growth Allocation was also proposed.
- d. The density of development is one (1) unit per 3.56 acres. The Town Transition zoning district permits development on 20,000 sq. ft. lots without community water and sewer as approved by the Health Department. Sewage disposal areas and building envelopes for each of the lots are shown outside of the Resource Conservation Area (RCA) of the Chesapeake Bay Critical Areas.

#### **CONDITIONS:**

1. Health Department approval is required prior to the recordation of the Final Plat.
2. Chesapeake Bay Critical Areas Certificates of Compliance shall be obtained for development of each lot, if applicable.
3. A MDE water appropriation permit exemption will be required.
4. This approval is subject to further review and approval and conditions imposed by the County Department of Public Works.



**Ruark Family Ltd. Partnership – Sketch Plat – 1 Lot – Gunby Rd. & Glen Ave. – M-39; G-19; P-177.**

Mr. Brock Parker came forward. Mrs. Mary Phillips presented the Staff Report. The applicant proposes the subdivision of one lot averaging 1.33 acres from this property on the northwesterly corner of Gunby Road and Glen Avenue. (Two minor lots are under review.) One lot will front on Glen Avenue and two lots will front on Gunby Road. The land area is in the R-15 Residential zoning district just east of Salisbury.

Mr. Parker stated that there isn't water or sewer available to this parcel. The project has approved perc tests from the Health Department. The water tables are about 10 ft. deep.

Mr. Magill questioned Mrs. Phillips if she could explain the three (3) inherent lot rights. Mrs. Phillips explained that she does a historical review going back to at least 1968 when the Subdivision Regulations were enacted to see how many times the parcel has been split. Inherently you are allowed three (3) minor lots with a 20 acre remnant parcel. If the parcel is less than 20 acres then the Sketch Plat process is needed.

Mr. Day questioned if the sewage area on Lot 4 falls between the setback and the road. Mr. Parker responded that the setback is established 10 ft. off the septic reserve area. Lot 3 has already been developed.

The Commission advised the applicant to proceed with a Preliminary Plat submission.



### **Commission Discussion – Draft County Comprehensive Plan.**

Mr. Keith Hall and Mr. Jack Lenox came before the Commissioners to present their monthly briefing about the Draft County Comprehensive Plan. Mr. Lenox stated that there is an on-going reference to the Comprehensive Plan on the Commission's agenda each month. The discussions of late have involved other things. He added that they would continue with the monthly updates.

Mr. Hall discussed PlanMaryland. He also dispersed copies of the Draft Planning Area Guidelines.

Senate Bill 236 is the Septic Bill. This Bill was in the Environmental Committee on the Senate side. It was approved with amendments. The Bill was then forwarded as amended down to the floor for the Senate to consider. There were 30 pages of amendments to a 30 page Bill. A lot of the amendments were formatting changes, however there were some very significant ones. One of the major things about this Bill was how it was going to impact the rural areas. The amendments will afford the counties the ability to change the minor subdivision definition to no more than seven (7) lots in the Tier IV.

Mr. Hall stated that it was his belief that the three (3) inherent lots would be counted towards achieving the maximum of seven lots in a minor subdivision. If this is the final version of the Senate Bill, the County would need to consider if the Code should be amended to revise the definition of a minor subdivision. Any changes to the definition will need to occur prior to December 31, 2012 to adhere to these changes. The proposed legislation as has a provision to revision the definition of a major subdivision to five (5) or more lots. Currently, the County has not defined a major subdivision in its Code. Mr. Hall demonstrated, on a County Zoning Map, how the Tier system may look for Wicomico County. The gray areas on the map are the municipal areas that have water and sewer services, with the exception of Mardela Springs. These incorporated areas served by public sewer would comprise the Tier I areas of the County. Within the Tier I areas, the current zoning would prevail and all lots would be served by public sewerage systems. He also noted the existence of small pockets in the unincorporated areas that can be Tier I such as Woodlawn Subdivision off of Riverside

Drive, which is in an Urban Service District and has public sewer. Tier II requires areas would be comments. Tier III is going to be everything the County and municipal designated growth areas as represented in color on the map with the exception of the white or gray area that are not currently or planned to receive public sewerage service. Tier III areas would also include rural villages. In Tier III, both major and minor subdivisions are proposed to be permitted. Mr. Hall referenced Homestead Farm on Nanticoke Road as a Tier III area which would allow a major subdivision of five (5) or more units. This would fall on the base zoning density which is R-20. Subdivisions within Tier III would be permitted to use shared or community sewerage systems. Tier IV is everything shown on the map in white, which consists of the areas zoned A-1 in the County. Within that area you will only be permitted to have a minor subdivision. A minor subdivision would be seven (7) lots or less on individual septic systems. That concession will give this Bill a little more momentum. These areas are not to be served with public water or sewer. At this point, we have to see if the Bill that will go through the House will keep the sliding scale.

Some of the other major components that came out of the Bill are that the Tiers need to be adopted as part of the Comprehensive Plan prior to December 31, 2012. If this Bill goes through, a determination about the best approach to employ to achieve the State mandated deadline to amend the Comp Plan to incorporate the Tier map.

Mrs. Bartkovich questioned if the Zoning Code would need to be amended as well. Mr. Hall responded that the Zoning Code would need to be reviewed, but the Subdivision Regulations would need to be amended. He added that Staff would review both the Subdivision Regulations, as well as the Zoning Code to make sure that there wasn't anything being overlooked.

Mr. Hall stated that if this is not adopted within our Plan by the end of this calendar year, the State will not be able to approve any major subdivisions and the Planning Commission will only have the power to approve minor subdivisions in both Tiers III and IV. Looking at this from a Planning perspective, a lot of the difficulty is not the delineation of the Tiers but the mapping exercise. Once the growth tiers are certified, it is then submitted to MDP for a review. When the State reviews it, it will be through their glasses instead of the County's glasses.

Mr. Quinton questioned what the rationale was for the overlap. Mr. Hall responded that the major subdivision already allows more than your minimal for your minor, but he wasn't certain what the logic was. Mr. Lenox added that we need to evaluate, and if directed, modify some of our definitions. This Bill is trying to restrict septic systems.

Mr. Lenox stated that PFA is a State term. It is there attempt to provide focus for funding and all sorts of other State programs. In 1997, the State adopted the definition of a PFA. A lot of the things that the State passed down to us, initially is said to be handled locally and then they disagree and they oversee as an administrator. Previous Director, Kris Hughes, identified the PFA's. The State disagreed because they were too big. If a State funding project comes along and it is not in a PFA, they do not have to provide funding. MDP can disagree with what the County deems as a PFA. Since 1997 boundaries have changed. All changes that have occurred since then have not been accommodated. The Plan has not been updated since it was adopted in 2004. One of the tasks that we have to take on right away is to go back and sort through the PFA designations. One of the tasks that will have to be taken up with the Executive and perhaps the Council is the relationship between the cities and towns. They do not have the capacity right now to take this up.

Mr. Hall stated that Staff would have to look not only at this Bill, but also PlanMaryland because the two initiatives are directly related.

Mr. Lenox stated that once the PFA's were established that was where the State was supposed to spend money. We have PFA's but we have no State money. PFA's have a certain density and a certain relationship to the water and sewer plan. We do have an updated, adopted County Water and Sewer Plan, with the exception of Hebron.

Mr. Magill stated that many years ago the Commission saw the Adkins property on Levin Dashiell Road and Nanticoke Road. It was seen as a subdivision but not sure if it was just a sketch plat. Mr. Lenox stated that he wasn't sure how far the Adkins property went. The last time this property was dealt with was when they were approaching the City about annexation. The big thing was how they were going to get water and sewer out there. The issue that is on the table for the Adkins Company now is that it is zoned appropriately, but is not in the 10-year Water and Sewer Plan which is the reasoning for this property being designated as a Tier III area. It is designated for growth, but not planned for service.

Mr. Hall stated that Tier III will not prohibit those properties such as Homestead to have a community or shared system which therefore would not prohibit them to achieve the density as allowed by or permitted by zoning today. In the R-20, if you have a public system or community system you can go up to 12 units per acre. Mr. Lenox added that places like Nutters, who had discussed a treatment plant at one time, is no longer going to be able to afford to invest in a plant. The project like A Village Down River, who is in a Tier III, can have a package plant or a development at a

much lower density. You have to go in and adopt the tier system so that the people in Tier III are not impacted adversely. Mr. Hall reiterated that the Commission would not have the ability to approve a major subdivision proposal in Tier III if the County does not adopt this tier schedule by the end of the calendar year.

Mr. Magill questioned if this would affect the bonus or cluster provision. Mr. Lenox responded that they would have to comply with both the tiers and the cluster. This would be the more stringent of the two. This would not make it more permissive. Mr. Hall stated that in the A-1 zoned areas, you only have the ability to have seven (7) lots. The State will not be allowed to permit a density greater than what the County zoning permits. Mr. Lenox added that in those areas, the cluster would still be an issue. The 1:3 cluster except on smaller pieces of property would be irrelevant.

Mr. Day questioned if there was any utility left in the idea of an A-1 and an A-2 district. Mr. Hall responded that they would still both be perceived unless there was a drastic change in the intent and use, as agricultural resource zones. They would be deemed a Tier IV area. Mr. Day questioned if it would be useful to have a development capacity analysis done. Mr. Hall responded that there is a current one as of 2007 with a few minor modifications as of 2009. Since there hasn't been a whole lot of development, MDP as well as this Department would still see that as current. If this were to go through, we can request for the MDP to look at how it impacts our overall yield. In the Tier IV area they will evaluate the overall yield, however, they are waiting for this to be enacted. Mr. Hall added that a development capacity analysis will be incorporated within the update to the Comprehensive Plan.

Mrs. Bartkovich noted that by the next Planning Commission meeting, the legislative session will be over so we will know what the outcome will be.

Mr. Day questioned the Tier I and Tier II differentiation and if the municipal growth elements fell into to the Tier I category. Mr. Hall responded that they are eligible and may be adopted as Tier II providing that it can be demonstrated that there is not enough capacity in the existing corporate boundary to accommodate that growth that is projected out to 2030.

Mr. Day questioned the integration of the growth tier map and the zoning map and would it be referenced in any regulatory document. Mr. Lenox responded that the maps would be consistent but they would be two (2) different things. There would be a Comp Plan change adopted by resolution. There will be Code changes because of the contradictory language in the major and minor subdivisions and the numbers. There will at least be a change to the Subdivision

Regulations. There may be some changes in the zoning. Long term changes in zoning are anticipated.

Mr. Quinton stated that the fallout doesn't start from the most restrictive criteria. Mr. Lenox stated that there are different jurisdictions that come in to play.

Mr. Hall discussed PlanMaryland. MDP hosted a regional planners meeting on March 16, 2012. This meeting was very well attended. PlanMaryland has some progress, especially with these places designations that were discussed at the last meeting. There are five (5) different places designations. Mr. Boyd walked through a mapping tool that the MDP has prepared to assist the jurisdictions in going through this endeavor as well. The septic bills, PFA's and PlanMaryland will all come into alignment. There will be a one-stop shop as to where program funding is going to be spent. They are on the same schedule. They are looking to see that the County has designated the places, including the assistance of our local incorporated areas by the end of this calendar year. We are still trying to figure out what PlanMaryland is. Executive summaries of PlanMaryland were provided for the Commission at their seats today. Planning Area Draft Guidelines were also handed out. This is a voluntary program, however, no reasons have been identified as to why Wicomico County would not comply.

Mr. Hall explained that Mr. Boyd has offered to meet with any jurisdiction upon request. The Commission requested that Mr. Boyd come to a future meeting to discuss these issues. Mrs. Bartkovich questioned if this should be an evening meeting so that other jurisdictions in the County could attend. Mr. Lenox suggested looking at the April meeting for the septic information and a later date for Mr. Boyd to come to a meeting. Mr. Day stated that he liked the idea of a night meeting.

Ms. Joan Strang mentioned that the Septic Bill is now in the House Committee and there are several amendments that are being proposed. They are trying to remove MDE from approving the septic subdivisions and trying to remove MDP from approving the tier setups. They are also trying to remove the language that was added in the Senate Committee that made the Tier III definition even worse. They are also trying to add a grandfathering provision for projects that are in the pipeline or projects that are initiated by July 1 or October 1. The local areas would be allowed to use their definitions for major and minor subdivisions. There will be additional amendments proposed on the floor.

Mr. Hall stated that it was his understanding that MDE already has a level of approval of subdivisions that are going in with septic systems. They have designated regulatory authority to our local Health Department. This is still stating the standard practice that is in place today.



There being no further business, the Commission meeting was adjourned at 3:27 p.m. by Mr. Magill.



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.

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James Magill, Vice Chairman

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John F. Lenox, Director

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Beverly R. Tull, Recording Secretary