
MINUTES

The Salisbury-Wicomico Planning and Zoning Commission met in regular session on April 16, 2009 in the Council Chambers of the Government Office Building, Room 301, with the following persons in attendance:

COMMISSION MEMBERS:

Corinne Les Callette, Chairman
Donald B. Bounds, Vice Chairman (Absent)
Gail Bartkovich
James W. Magill
Glen Robinson
Scott Rogers
Gary Comegys

CITY/COUNTY OFFICIALS:

Mary Phillips, County Public Works Department
Ed Baker, County Attorney
Henry Eure, Building, Permits, and Inspections Department
Larry Dodd, Lt., Salisbury Fire Department

PLANNING STAFF:

Gloria Smith, Planner
Jack Lenox, Director
Clark Meadows, Zoning Administrator
Beverly Tull, Recording Secretary



The meeting was called to order at 1:30 p.m. by Mrs. Les Callette,
Chairman.

**Minutes:**

Upon a motion by Mr. Magill, seconded by Mr. Robinson, and duly carried, the Commission **APPROVED** the minutes of the March 19, 2009 minutes as submitted.

Mr. Comegys and Mrs. Bartkovich abstained from voting due to their absence from the March 19, 2009 meeting.

**COUNTY SUBDIVISION PLATS:****Berry Field – Final – 9 Lots – Stockyard Road.**

Mr. Phil Parker came forward. Mrs. Gloria Smith presented the Staff Report. The applicant's propose subdivision of 9 lots from this 19.82 acre tract. All lots will front and have access on a new interior street. The remnant of Parcel 120, currently land-locked, will have access on the new cul-de-sac.

Upon a motion by Mr. Magill, seconded by Mr. Robinson, and duly carried, the Commission **APPROVED** the Final Subdivision Plat for Berry Field, 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. All lots shall be denied direct vehicular access to U.S. Route 13.

5. This approval is subject to further review and approval by the County Department of Public Works.
6. The stormwater management must be on a separate parcel.



Fieldstone Manor – Dev. Plan – 6 Lots – Mt. Hermon Church Road.

Mr. Phil Parker came forward. Mrs. Gloria Smith presented the Staff Report. Parker & Associates has submitted a Development Plan for Fieldstone Manor subdivision for review by the Planning Commission. The submittal includes a Community Impact Statement, an Environmental Assessment, a Market Analysis, and a Traffic Assessment for the proposed subdivision. The Wicomico County Zoning Code requires Development Plan approval prior to approval of a Final Plat for an A-1 Cluster subdivision.

Mr. Parker questioned the NFPA 1142 Standard comment on the Fire Department Attachment. He stated that the standard shouldn't be required when it hasn't been adopted by the County.

Lt. Larry Dodd, Salisbury Fire Department, stated that NFPA 1142 is a standard that is being utilized nationwide. He stated that the Fire Department would like a water source on site whether it be a pond or a tank with a dry hydrant. He strongly encouraged NFPA 1142 be adopted and utilized. He added that this standard is being discussed by the County.

Discussion followed regarding water sources required for other approved subdivisions. Mr. Lenox stated that there was a meeting set up for next week with Mr. Tyler of the Parsonsburg Fire Department, representatives of the Public Works Department and Mr. Comegys regarding NFPA 1142. Mr. Lenox extended an invitation to the Salisbury Fire Department as well.

Mrs. Les Callette questioned if the Commission had the right to require this standard when the County hadn't adopted it. Mr. Lenox responded that it would be questionable for the Commission to require something that hadn't been adopted.

Mr. Parker stated that the Fire Department standards conflict with the State stormwater management conditions. Lt. Dodd stated that the standard would require that the water source be maintained. He added that it was a good standard for

people who wished to live in the rural areas and also helped with the homeowners insurance rates.

Mr. Parker stated that this was the first TDR request in the County and probably the last.

Mr. Comegys questioned if the Airport Overlay District would be denoted on the deeds or the plat due to the restrictions of the zone. Mrs. Phillips stated that a note would be on the plat about the Airport Overlay District. Discussion followed.

Mrs. Les Callette questioned if Lot 5 had access onto Mt. Hermon Church Road and Fieldstone Court. Mr. Parker responded that access would be restricted to Fieldstone Court.

Upon a motion by Mr. Magill, seconded by Mrs. Bartkovich, and duly carried, the Commission **APPROVED** the Development Plan for Fieldstone Manor as submitted.



Stone Bridge – Preliminary – 11 Lots – Rum Ridge Road.

Mr. Jack Plummer and Mr. Glynn Bridge came forward. Mrs. Gloria Smith presented the Staff Report. The applicant proposes to subdivide eleven lots from 36 acres. All lots within the subdivision will front on and have access to an interior street. A right-of-way 60 feet in width is indicated for the proposed road.

Mr. Plummer questioned if he needed a formal legal dedication of the open space. Mr. Lenox stated that the legislation pending was designed for Sketch Plats prior to January 29, 2009. In this case there was a Sketch and a Preliminary but the Preliminary expired due to the one (1) year issue so the language of the legislation will be done to protect this subdivision if approved. The dedication of the open space is not needed on this subdivision.

Mr. Plummer stated that they had changed the areas on the lots and established private clearing limits on the lots.

Mrs. Les Callette questioned how these private clearing areas would be enforced. Mr. Plummer responded that the Homeowners Association would

have to due the enforcement. Mrs. Les Callette stated that the Homeowners Association doing the enforcement would not be enough. Mrs. Bartkovich agreed stating that they aren't willing to hire an attorney to adhere to the enforcement and that the Homeowners Documents are regularly violated in subdivisions.

Mrs. Les Callette stated that the forest conservation should not be on the lots. Mrs. Smith added that the Homeowners Associations are reluctant to pursue enforcement of violations of the forest conservation areas or the Homeowners Association requirements.

Mr. Plummer stated that the private clearing areas are not included in the forest conservation area. Mr. Lenox questioned if all the forest conservation was off the lots. Mr. Plummer responded in the affirmative.

Mr. Comegys questioned the alleys of forest conservation between the property lines and the lots not being contiguous, stating that it would be hard to enforce the forest conservation between the lots. Mr. Plummer stated that they had had this discussion but in the cluster definition they request an area between lots to be left open to make a park-like atmosphere. He read the definition from page 24 of the Zoning Code. Mr. Lenox stated that this had all been discussed at length but there was a split vote and the majority voted for the plan to proceed.

Mr. Magill stated that he voted against the plat the last time so he would have to vote to deny it again today. He made a motion to deny this request, however, the motion failed due to lack of a second.

Mr. Comegys stated that he didn't vote against it for that reason but because it was an environmentally sensitive area between two (2) creeks and was not the right place for a subdivision. The definitions and the Code don't always agree. The open space won't be shared by the whole community because of the narrow alleys between the lots. Mr. Plummer stated that they have a lot of peripheral open space. Mr. Comegys stated that there are discrepancies on the clearing issues and that it is his belief that the forest conservation should all be on one (1) parcel where animals and wildlife could be maintained.

Mrs. Les Callette questioned the percentage of open space. Mr. Plummer responded that it was addressed in the Development Plan but that there was 15 acres of woods, 18 acres of ag set aside, two-thirds of an acre for stormwater management and 5.5 acres of water.

Mrs. Les Callette questioned the recreational area. Mr. Plummer responded that there would be docks and access to the pond as well as the wooded area for recreation.

Mr. Comegys questioned the peripheral open space and the internal open space. Mr. Lenox stated that 50 percent of the land has nothing on it and then the forest conservation is calculated so the forest conservation can meet the requirements but can't be on the lots according to the Planning Commission. He stated that he didn't believe that there was another cluster that was designed like this one. Mrs. Phillips stated that two (2) sections are in the Code regarding clusters and one addresses clusters in the ag district and one (1) addressed clusters in the residential districts and they shouldn't be confused.

Mrs. Bartkovich noted that Section 225.53 addresses residential clusters whereas as the ag cluster is Section 225.52.

Mrs. Les Callette questioned the lot lines. Mr. Plummer responded that they had tried to establish a restrictive clearing area but that area was not counted towards the forest conservation area. Mrs. Les Callette questioned if the Commission had the right to bring the lot lines further in. Mr. Lenox responded that the Health Department required a certain acreage. Mr. Plummer added that he could remove the clearing limits.

Mr. Rogers questioned what purpose the area had if it wasn't part of the forest conservation area. He suggested removing the restricted clearing area. Mr. Rogers added that he didn't like the fragmented open space. Mr. Plummer stated that the areas between the lots was 35 ft. wide and that the State deems that a forest width.

Mr. Comegys questioned what the value of the area between the lots was. Mr. Plummer responded that the area between the lots creates a park-like atmosphere. Mr. Comegys stated that it would be more of a benefit if the open space was all on one (1) parcel. The lot lines could be contiguous then the property owners could maintain the open space between the lots. There is more of a benefit to the future property owners then to the environment and the forest conservation area.

Mr. John Groutt, WET, submitted written comments, *Protestant's Exhibit A*, into the record, which lists WET's reasoning for denial of this request. He encouraged the Commission to use their discretion and deny this proposal that is in an extremely sensitive area with streams on either side and woods that have already been cleared.

Mr. Lenox reminded the Commission that Findings of Fact would be needed if they were to deny this request.

Upon a motion by Mr. Magill, seconded by Mr. Rogers, and duly carried, the Commission **DENIED** the Preliminary Plat for Stone Bridge Subdivision, subject to the approval of Findings of Fact.

Mr. Plummer questioned which portion of the Code that this subdivision violated. Mr. Magill responded that this subdivision goes against Smart Growth. Mr. Rogers stated that the lots should be contiguous.

Mr. Baker stated that the Findings of Fact would outline the reasoning.



The Estates at White Creek Acres – Resubdivision – 6 Lots – Olde Mill Branch Road.

Mr. Kirk Kinnamon came forward. Mrs. Gloria Smith presented the Staff Report. The applicant proposes resubdivision of 3 lots. Lot #3A will increase from 6.75 acres to 42.10 acres in size. Lot #4A will increase from 4.22 acres to 19.7 acres in size. Lot #5A will increase from 7.02 acres to 8.23 acres in size. Parcel 1, Open Space, originally 48.95 acres, will be eliminated in order to create the larger lots.

Mr. Kinnamon stated that he didn't develop the subdivision but got it in a trade. He stated that he thought it was best to include this area in the lots that it touches. The area will still be open space but will be maintained by Lots 3 through 5.

Mrs. Les Callette questioned if all the lots were under contract. Mr. Kinnamon responded in the affirmative, adding that one (1) home would be built and all covenants would be abided by.

Upon a motion by Mr. Magill, seconded by Mrs. Bartkovich, and duly carried, the Commission **APPROVED** the Final Resubdivision for the Estates at White Creek Acres, subject to the following Conditions of Approval:

CONDITIONS:

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

4. A Homeowners Association shall be created to maintain the stormwater management facility, drainage and maintenance easements and forest conservation easements.
5. The extension of Olde Mill Branch Road shall be constructed as a rural local street per County road standards. Necessary road improvements to the existing road will be the responsibility of the owner.
6. This approval is subject to further review by the Wicomico County Department of Public Works.



Asherwood, Sec. 3 – Sketch – 23 Lots – Bent Pine Road.

Mr. Steve Fuller and Mr. Dean Richardson came forward. Mrs. Gloria Smith presented the Staff Report. The applicant proposes the subdivision of 23 lots averaging 1.08 acres from this property bounded to the west by Bent Pine Road. Access to the lots would be provided by a new cul-de-sac street. The land area within Wicomico County is zoned A-1 Agricultural Rural.

Staff also noted that Amendments to the Wicomico County Code regarding Cluster Subdivisions are under consideration by the Wicomico County Council following review and recommendations from the Planning Commission. A Public Hearing has been scheduled by the Council for April 27, 2009. One of the provisions of the proposed Legislation is to grandfather only those cluster subdivisions where the open space dedication has been completed or sketch plans were submitted prior to January 29, 2009.

Mr. Fuller stated that the adjacent landowners were present. Mr. Harmon and Mr. Baker believe that there are overlapping boundary line issues but that they could be resolved. If the adjoining property owner's surveyor is correct, then Mr. Richardson may lose approximately 6.5 acres of his property which would result in the loss of a few lots. The adjoining property owners are not opposed to this subdivision. Mr. Fuller indicated the area in question on the plat. He added that the open space would not be affected if the 6.5 acres were lost. Mr. Fuller stated that he was fairly certain that the Health Department would eliminate more lots than the loss of 6.5 acres would. With the loss of the 6.5 acres, there would be 66 acres of land and approximately 21 to 22 lots. The Flood Plain line is shown on the Sketch and all the lots are located outside that area. The open space is contiguous on one (1) parcel. There is a 50 ft. vegetated buffer. Across the street on Bent Pine Road are residential lots. The lots will average one (1) acre to 1.1 acre in size. The lots are shown where

they believe that they can receive Health Department approval. The existing pond on the site was used as a borrow pit. The outfall will be to Burnt Mill Branch which is already installed and any upgrades necessary will be completed. There is 62.4 percent set aside space. The stormwater management is allowed in the open space. Mrs. Phillips added that the stormwater management is typically separated from the open space.

Mr. Richardson stated that this property adjoins the town limits of Willards. This subdivision is similar to Section 2 which has preliminary approval and Development Plan approval from the Commission.

Mrs. Les Callette questioned if this took into account the two (2) inherent lots that he was entitled to. Mr. Fuller responded in the negative, explaining that they felt that they would be more limited by the Health Department than by the cluster restrictions.

Mr. Comegys stated that he was concerned about Lots 8 and 9 having adequate buffers to the stream area. Mr. Fuller stated that the area around Lots 8 and 9 would be a problem area because the land is properly drained now but some of the ditches will have to be filled in and then the stormwater will have to be carried to the pond. Mr. Comegys stated that he would like to see these lots eliminated. He also questioned how it would legally work with a shared pond that gets stormwater sent to it. Mr. Fuller responded that the survey encumbers more of the pond than they thought. An agreement will be worked out with the adjoining property owners and if one (1) can't be worked out then there are other areas that can be used for a pond.

Mr. Shane Baker stated that he was one (1) of the adjoining property owners and that Mr. Fuller had relayed everything adequately. He added that he had his survey with him if the Commission needed to see it. Mr. Baker stated that he didn't have a problem with the subdivision.

Mrs. Les Callette questioned if this is where the Fire Department should comment. Mrs. Smith responded in the affirmative but added that no comments had been received. Mrs. Les Callette questioned if the pond was sufficient. Mr. Fuller responded that they could install a dry hydrant to work in this pond.

Mrs. Les Callette stated that once the boundary line issues are resolved that she would like them to talk with the Willards Fire Department and try to obtain comments from them.

Mr. John Groutt, WET, stated that they were concerned over extending sprawl into the ag zone. He added that this was a foolish area for dense development.

Mr. Magill stated that he had a problem using the cluster approach unless this was in the Town Transition District. Mr. Fuller stated that the property is not in the Town Transition District and was not included in the Willards or the County growth area but it is adjacent to the town limits of Willards.

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



Bank of Delmarva – Sketch – 7 Lots – Adventist Drive.

Mr. Chuck Woodward and Mr. Ed Thomas came forward. Mrs. Gloria Smith presented the Staff Report. The applicant proposes the subdivision of 7 lots averaging .528 acres each from this property on the northerly side of Adventist Drive. Access to the lots would be provided by Adventist Drive. The site is located in an R-15 Residential zoning district.

Mr. Woodward stated that he hadn't tried to address the forest conservation until he received something from the Health Department. He added that they were talking to the Health Department about an evaluation during the wet season.

Mrs. Les Callette questioned if they were not proceeding with the opposite side of Adventist Drive. Mr. Thomas responded that they would not proceed with the opposite side of Adventist Drive at this time. He added that the Bank of Delmarva didn't own the property at the time of the original Sketch.

Mr. Magill questioned the minimum lot size being 20,000 sq. ft. in the R-15 Zoning District. Mrs. Phillips responded that the minimum lot size would be 20,000 sq. ft. due to the need for a well and septic as well as the Health Department requirements.

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

Mr. Rogers recused himself due to professional conflicts.



Bradley & Tingle – Sketch – 9 Lots – Nanticoke Road.

Mrs. Catherine Tingle Whitehead came forward. Mrs. Gloria Smith presented the Staff Report. The applicant proposes the subdivision of 9 lots averaging 0.87 acres from this property bounded to the north by Nanticoke Road. Access to the lots would be provided by an interior street that would connect from Nanticoke Road to Oxbridge Drive. The land area within Wicomico County is zoned R-20 Residential.

Mrs. Whitehead stated that this was land that they had inherited from her father. She added that the lots had gotten a lot bigger than they were 20 years ago.

Mr. Comegys stated that he knew that the paper street was platted but questioned if there was any place that Oxbridge Drive could connect to Crooked Oak Lane. Mrs. Whitehead stated that the road was already platted. Mr. Comegys stated that SHA has to approve the entrance onto Nanticoke Road so the cost of the upgrades may dictate a different plan being used.

Mrs. Les Callette questioned if Mrs. Whitehead had read the Fire Department comments carefully. Mrs. Whitehead responded that she had read the Fire Department comments and that they had put her house out in 1996 and done a wonderful job.

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



Townsend Sketch – Sketch – 3 Lots – Dagsboro Road.

Mr. Ronald Townsend and Mrs. Jacquelyn Townsend came forward. Mrs. Gloria Smith presented the Staff Report. The applicant proposes the subdivision of 3 lots from this property located on the northwesterly side of Dagsboro Road, near Bob Smith Road. Lot #2 is proposed to be 14.42 acres, Lot #3 is proposed to be 2.08 acres

and contains an existing residence and other structures, and Lot #4 is proposed to be 2.76 acres. Access to the lots would be provided by a small cul-de-sac. The land area within Wicomico County is zoned A-1 Agricultural Rural.

Staff also noted that Amendments to the Wicomico County Code regarding Cluster Subdivisions are under consideration by the Wicomico County Council following review and recommendations from the Planning Commission. A Public Hearing has been scheduled by the Council for April 27, 2009. One of the provisions of the proposed Legislation is to grandfather only those cluster subdivisions where the open space dedication has been completed or sketch plans were submitted prior to January 29, 2009.

Mr. Townsend explained that they had owned the land since 1976 and lived there since 1978. There is a desire to downsize the size of their home and give their two (2) sons land to build homes on as well as hoping that one (1) of them will buy the existing home. Mr. Townsend stated that they had planted over 500 trees on the property. The small field behind the property hasn't been farmed in over 30 years. He added that they would have been in with the Sketch Plat sooner but didn't meet the Sketch submission deadlines.

Mr. Magill noted that this subdivision matches the surrounding area.

Mr. Townsend stated that the proposed subdivision does match the area and he discussed the homes that had been built across the street. He questioned the 50 ft. vegetative buffer and if where the cul-de-sac is if he'd have to put in the buffer. Mrs. Phillips responded that if this was adjacent to another residential area that they wouldn't require the buffer.

Mrs. Les Callette questioned how Lot 2 would be accessed. Mrs. Smith showed on the plat where the frontage for Lot 2 was on the cul-de-sac. Mrs. Smith noted that if Lot 4 was not approved for a perc than it must be three (3) acres in size.

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



#SP-9704-09T SIGN PLAN AMENDMENT – Plaza Tapatia, represented by Selby Sign Co. – 2715 North Salisbury Blvd. – General Commercial District – M-29, G-6, P-78.

Mr. Jamie Covington came forward. Mrs. Gloria Smith presented the Staff Report. Jamie Covington of Selby Sign Co. has submitted a request to amend the Sign Plan approved for Fuddruckers to accommodate the new tenant, Plaza Tapatia. A plan proposing a total of 89.32 sq. ft. of signage for the building was submitted for Commission review and approval.

Mr. Rogers questioned if the projecting sign would still have neon on it. Mr. Covington responded in the affirmative. Mr. Rogers questioned if it would still be red. Mr. Covington responded in the affirmative.

Mr. Comegys stated that he was glad to see somebody making use of existing space.

Mrs. Bartkovich questioned if this would be a second location for the establishment. Mr. Covington responded in the affirmative.

Upon a motion by Mr. Magill, seconded by Mr. Comegys, and duly carried, the Commission **APPROVED** the Sign Plan Amendment, including modification of the building color, as submitted.



INFORMAL DISCUSSION – County Zoning Text Amendment proposal – To add Wind Turbine regulations.

Mrs. Smith stated that there had been several requests for wind turbine facilities. Included in the Commission's packet was draft legislation for the Commission to review. If the Commission is agreeable to the draft legislation, then a public hearing will be scheduled for the May meeting. In writing this legislation, other counties with similar legislations were consulted. The Airport Overlay District will also have to be amended to show that wind turbines won't be allowed.

Mr. Meadows stated that the Zoning Code doesn't address wind turbines specifically. The requirement up to this point has been that the wind turbines were seen as an ag related use. The other wind turbines have been considered with height variances.

Mrs. Les Callette questioned if the Council approved this legislation if it could be added to the Comp Plan. Mr. Lenox responded that wind turbines could be put in the Comp Plan anyway.

Mrs. Bartkovich stated that Page 4 referenced the Comp Plan; however the areas are in the Zoning Code and not the Comp Plan. Mr. Baker stated that the language referenced by Mrs. Bartkovich on Page 4 should be left out and it shouldn't be designated in the Comp Plan. He added that the wind turbines would be allowed in all Zoning Districts.

Mrs. Bartkovich questioned several items in the draft Legislation. Mr. Rogers noted that the definition was listed as number 1 in the legislation.

Mrs. Bartkovich questioned Page 5 Letter H Public Service Commission Page 2 under Letter A and stated that she found a conflict. Mr. Meadows questioned Mr. Baker if the owner would get credit from the power company for generating energy. Mr. Comegys stated that the owner would not be selling energy to a neighbor. Mr. Lenox noted that Page 2 could be changed to say "primarily".

Mrs. Bartkovich questioned if a fee would be charged for these facilities. Mr. Meadows responded that the applicant would need to obtain an electrical permit and a building permit.

Mr. Magill stated that on Page 3 Letter D (b) addressed driveways. Mr. Meadows stated that it would be read as an easement. Mr. Baker added that this language would need to be cleaned up.

Mr. Meadows stated that there is already one (1) wind turbine up in the County on Jones Hastings Road and two (2) others have permits but have not yet gotten their turbines installed.

Mr. Baker noted that he would make the revisions to the legislation for the May public hearing.



Mr. Lenox noted that there was a scheduling issue for the May meeting as he and Mrs. Les Callette wouldn't be available on May 21, 2009 for the regularly scheduled meeting. Mr. Lenox gave the Commission the option of keeping

the meeting on the regularly scheduled day or moving the meeting up a week to May 14, 2009. The consensus of the Commission was to move the meeting to May 14, 2009.



Mrs. Les Callette informed the Commission that the Critical Area Commission had appealed the Preliminary approval of Mill Creek subdivision. This meeting will be held before the Wicomico County Board of Appeals on Thursday, April 23, 2009 at 6 p.m.

Mr. Lenox noted that there was a scheduled meeting with the Critical Area Staff on April 21, 2009 to try and settle the differences and if an agreement couldn't be reached that the appeal would go as scheduled.



Mrs. Les Callette noted that the County Council will be holding a public hearing on the cluster legislation on Monday, April 27, 2009 at 7 p.m. at the Civic Center.



There being no further business, the Commission meeting was adjourned at 3:49 p.m. by Mrs. Les Callette.



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.

Corinne Les Callette, Chairman

John F. Lenox, Director

Beverly Tull, Recording Secretary