
MINUTES

The Salisbury-Wicomico Planning and Zoning Commission met in regular session on May 14, 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
Gail Bartkovich
James W. Magill
Glen Robinson
Scott Rogers
Gary Comegys

CITY/COUNTY OFFICIALS:

Ed Baker, County Attorney
Maureen Lanigan, Assistant County Attorney
Henry Eure, Building, Permits, and Inspections Department
Gary Hales, Salisbury Public Works Department
Paul Wilber, City Solicitor
Larry Dodd, Lt., Salisbury Fire Department

PLANNING STAFF:

Gloria Smith, Planner
Clark Meadows, Zoning Administrator
David Church, Planner
Keith Hall, Planner
Jack Lenox, Director
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. Comegys, and duly carried, the Commission **APPROVED** the minutes of the April 16, 2009 minutes with a correction on Page 11.



Mr. Magill stated that he had attended the MCPA meeting earlier in the month. The annual conference will be held in either Baltimore or Cecil County in the Fall. Mr. Magill stated that the Priority Funding Areas shouldn't interfere with local ordinances. He explained that legislation had been passed regarding Terrapin Run in Alleghany County and that the Court negated the denial. The denial is now trying to be negated through legislation. Mr. Magill added that Planning Commission and Board of Zoning Appeals members will be required to have some kind of training by 2010.

Mr. Comegys stated that he'd heard that the educational requirement would be fulfilled through an internet based course since some small towns can't find the resources to send their members. Mr. Magill agreed that internet classes were being looked at as a possible way to have training by 2010.



#SP-0611-09A FINAL DEVELOPMENT PLAN, PHASE I – VILLAGE AT SALISBURY LAKE PRD #11 – EXTENSION OF TIME TO SUBMIT REVISIONS – Salisbury Mall Associates, LLC – M-109, P-2520, Lot – 1.

Mr. Lawrence Collins and Mr. Jon Natelson came forward. Mrs. Gloria Smith presented the Staff Report. On March 19, 2009, the Commission received a Final Comprehensive Development Plan for Phase I of the Village at Salisbury Lake PRD #11. Due to a number of inconsistencies in the Plan and an extensive list of Public Works comments, the Commission Tabled the request for 60 days until the May Commission meeting. The applicants are now requesting "that this matter be postponed for one year, or for such other period that the Commission deems reasonable."

Mr. Natelson stated that they had submitted the first phase of the Final Development Plan as required by the Code while they were in discussion with a potential user but due to economic conditions, no contract was generated. Negotiations are still under way to find a business deal for that corner of the development as well as the commercial frontage, however, Mr. Natelson didn't want to waste the Staff, Engineer's, or Commission's time with a definite plat when it will have to be altered depending on the clientele that lease or purchase the land.

Mrs. Les Callette questioned the time frame that Mr. Natelson was looking at for an extension of time to submit the Final Development Plan. Mr. Natelson responded that he was requesting a year's extension due to the level of economic uncertainty but added that it was in their best interest to get a purchaser or lease agreement as soon as possible.

Mr. Collins stated that he has found it difficult to find businesses that are willing to build and operate in new locations until the economy improves but that he did expect it to happen sooner rather than later.

Mr. Wilber stated that there couldn't be an indefinite extension and that if the Commission gave an extension that it would need to be for a set period of time.

Mr. Magill stated that these were unique times and that he could empathize but not sympathize with them.

Mr. Robinson suggested granting a one-year extension.

Mr. Rogers questioned if the Commission could grant the one-year extension but require periodic updates. Mr. Comegys suggested an update every six (6) months if the applicants hadn't been back before the Commission.

Mrs. Bartkovich questioned if the plan for the corner lot was still a convenience store. Mr. Natelson responded in the affirmative. Mrs. Bartkovich noted that she had concerns regarding another convenience store when there were a few a couple miles from this site. She questioned if they had another thought in mind for that corner other than the convenience store. Mr. Natelson responded that the PRD plan shows that corner as being used for a convenience store. Discussion followed regarding uses for the site, the plans for a grocery store farther up Beaglin Park Drive, and the difficulty national chains are having with construction financing.

Mrs. Bartkovich questioned if they could come back to the Commission with a totally different use. Mr. Lenox responded that if the Commission deems that the use is totally different then the applicant would have to go back before the City Council.

Mrs. Les Callette stated that at the last meeting there was considerable discussion about the use of the land and it was tabled due to the lack of information. Mrs. Bartkovich questioned if the extension was granted, if the corner lot would have to come back to the Commission for approval. Mr. Comegys added that the use must fit the PRD requirements.

Mrs. Les Callette stated that she had major problems with the request. The information that was requested has not been provided. The mylars have not been submitted. In the list of conditions of approval was a condition regarding having the lake built. Mrs. Smith read the condition of approval from the December 2006 decision letter which was sent to the City Council in January 2007. Mr. Natelson stated that he didn't understand that the lake had to be bonded. Mrs. Les Callette stated that the developers had let the Commission down consistently and that she couldn't vote in favor of this extension. Mr. Natelson discussed his understanding of the conditions of approval and continued that the housing part of the development fell apart and the commercial properties haven't come through, but not for lack of trying.

Mrs. Les Callette read the condition of approval again, adding that the proper materials weren't produced in March, the plan wasn't drawn to scale, and that she didn't believe that the Commission could be led down this path anymore.

Mr. Bounds questioned what happens if the Commission denies the extension. Mr. Wilber stated that he would need time to research that question and prepare a memo for the Commission because the Code doesn't give an answer on that. He added that this wasn't the only Planned Development and that this issue could come up again.

Mr. Comegys stated that since there is a condition regarding the lake that when they come back before the Commission that there should be a plan for the lake to be approved by the Commission since it has to be done before the first phase of construction. He suggested designing the lake to the most dense use of the property.

Mrs. Bartkovich stated that additional infrastructure would be required to get to the lake. Mr. Natelson stated that the lake would be used for stormwater management. Mr. Comegys added that the developer should be put on notice that the lake must be done prior to approval of the final development plan.

Mr. Natelson stated that they didn't have any objections to fulfilling the conditions but that they were coping with the economic conditions. He stated that they were trying to avoid designing the bridge to nowhere. Although the lake may not change, all the structures feeding the lake may change.

Ms. Les Callette stated that she found it difficult to think that they didn't recognize that this was coming. Mr. Natelson responded that they were optimistic that the extension would be granted.

Mrs. Bartkovich stated that she had walked in the room with the intention of denying the extension request. She added that she was getting the feeling that this property would never be developed. Mr. Natelson stated that her concerns were legitimate but that they had been tangled in litigation and that it had slowed down the process. He discussed the timeline of the litigation and how it had changed the residential developer's intentions to participate in the development. Mr. Natelson stated that they were not going to let the development die as they had put in a lot of time and money into this project already and hadn't seen any return on their investment.

Mr. Magill stated that he would like an answer to what alternatives were available.

Mrs. Bartkovich questioned if the Commission should table this request for another month to allow Mr. Wilber to give a legal opinion on what the options were if it were denied.

Mrs. Les Callette questioned Mr. Wilber if the Commission were to deny the extension would it come back to the Commission as a preliminary development plan. Mr. Wilber responded that it was a possibility but that he would need to do some research before he gave a final opinion.

Mr. Magill questioned what the results of a denial would be and if there were any alternatives for other approaches. Mr. Wilber responded that if a denial was given by the Commission that he would have to research what procedurally would need to happen to get the project started again.

Mr. Comegys questioned if the applicants would still have to come back with a plan if they were denied, then wouldn't the extension be more prudent because it would put the pressure on the developer to make something happen. He further questioned what the down-side was of moving forward with an extension.

Mrs. Les Callette stated that the developers have asked for multiple extensions and that the Commission can only go so far with granting them.

Mr. Collins stated that they were just requesting a little more time to fine tune the plan without delaying the process several more years.

Mr. Natelson explained that from the Spring of 2007 the initial phase final plan was for the residential portion of the project but late in 2007 was when the builder walked away from the project. At this time, a one-year extension of time was requested and granted. In 2008, the developers began working on the commercial aspect and thought that they had a shopping center and a grocery store, including a letter of intent but by February that had fallen through. He stated that they are trying to move forward and that it was very uncomfortable for them to ask for the extensions. He stated that he understood the Commission's concerns but didn't know what else to do at this point.

Mr. Wilber stated that there were several PRD's and PDD's on the books and that this situation will not be unique to just this issue.

Mrs. Les Callette questioned Mr. Wilber if the Commission tabled the request, would his opinion spell out what the options were if the Commission was to deny the request. Mr. Wilber responded in the affirmative, explaining that his opinion would lay out all the options. Mrs. Les Callette questioned how long Mr. Wilber would need to provide the Commission with an opinion. Mr. Wilber responded that he could have the opinion ready for the June Commission meeting.

Mr. Bounds questioned if the Commission was being asked to grant a second extension. Mr. Wilber responded that the first extension request was for an extension of time for filing.

Upon a motion by Mrs. Bartkovich, seconded by Mr. Bounds, and duly carried, the Commission **TABLED** the discussion regarding an extension of time to submit revisions to the Final Development Plan for Village at Salisbury Lake PRD #11, Phase I. This action was taken in order to obtain a legal opinion from City Solicitor, Paul Wilber, on options for approving or denying the extension request. This discussion will be continued on the June 18, 2009 Planning Commission agenda.



PUBLIC HEARING – ZONING TEXT AMENDMENT – To add Small Wind Energy Systems as accessory uses.

Mr. Lenox read the ad and administered the oath. Mrs. Les Callette explained the public hearing procedure.

Mrs. Gloria Smith presented and entered the Staff Report and all accompanying documentation into the record. The County Legal Department and the County Planning Staff have reviewed the Ordinances of several jurisdictions relative to regulations regarding Small Wind Energy Systems. Specifically, the Staff proposes the addition of a new section in Article XX, Uses and Standards as well as an amendment to Section 225-43.B(1) – Airport Overlay District to govern these uses. In accordance with the provisions of Section 225-20-A, Amendments of the Wicomico County Code, the Planning Commission must hold a Public Hearing on proposed Text Amendments to the Code. The Commission must forward a recommendation to the County Executive for presentation to the County Council. The Council may hold a separate public hearing or hold a public hearing as a part of their Legislative Session before granting final approval to Code text amendments.

Mr. Johnnie Miller, owner of Electrical Solutions, stated that Wicomico County was in a unique position. The Code gives broad discretion. The new restrictions will be anti-wind energy. The Airport is expanding so the 8000 ft. zone will be expanding. Mr. Miller stated that he had some proposed text amendments to handout, ***Opponent's Exhibit A***. He added that he had met with Dr. Capelli at Wor-Wic and that they were looking at a new program for the school. He explained that he had installed a 10 ft. 6 inch in diameter windmill at 35 ft. high and under Chapter 225, he didn't need any Planning and Zoning approval for it. There are lots of different windmills available and some of them are attached to the structure. The setbacks will put wind generators in the front yard so he suggested amending that section of the legislation. He also requested that the windmills not be prohibited in the Airport

District. The average height of a windmill is between 42 ft. and 50 ft. and that won't encroach in the turning radius. The Federal and State incentives are based on the tower height and the higher you go the more power you generate. Mr. Miller requested that the Commission look carefully at the amended legislation that he handed out before adopting anything.

Mr. Lenox noted that there were a couple of examples that were used to draft this legislation which included windmills that were greater in height than 35 ft. The height issue was what brought this legislation into effect. Staff and the County Attorney need time to reconsider the other examples that Mr. Miller discussed. Mr. Lenox noted that the Airport 8000 ft. turning radius is set by the Zoning Code and that telecommunications towers are not allowed in the Airport Overlay District. Mr. Lenox added that the Airport Commission also needed to be consulted regarding these amendments.

Mr. Miller requested that the Staff also consider the smaller windmills that are attached to structures when they review his materials.

Mr. Lenox stated that the Staff needed time to meet with Mr. Miller for further discussion because originally all requests had been higher than 35 feet.

Mrs. Les Callette questioned if the Commission should leave the public hearing open and get additional information at the next meeting. Mr. Lenox responded in the affirmative.

Mr. Joe Holloway stated that as a County Council member on the Airport Commission that the Planning Commission and Staff should be aware that the Airport Commission had cancelled their meeting this month and suggested having the wind turbine public hearing continued in 60 days rather than 30 days.

Mr. Magill suggested that Mr. Bob Bryant get some feedback from the FAA regarding wind turbines.

Mrs. Bartkovich noted that she had provided to Staff an email from Mr. Bob Bryant, Airport Manager. Mr. Bryant's email included several links to information regarding wind turbine systems that helped to answer Mrs. Bartkovich's questions.

Mr. Bounds suggested leaving this public hearing open for additional Staff review.

Upon a motion by Mr. Bounds, seconded by Mr. Magill, and duly carried, the Commission **CONTINUED** the proposed Text Amendments to Chapter 225, Zoning, of the Wicomico County Code regarding Small Wind Energy Systems. The

Continuation will allow for further staff review of the materials submitted by Mr. Johnnie Miller regarding alternative language for setbacks, rooftop systems, etc. The public hearing is continued to the July 16, 2009 agenda.



COUNTY SUBDIVISION PLATS:

Stone Bridge – Findings of Fact – Rum Ridge Road.

Mrs. Gloria Smith presented the Findings of Fact for this subdivision plan, which had a preliminary denial at the previous meeting.

Mrs. Bartkovich questioned if Mr. Baker had reviewed the Findings of Fact. Mrs. Smith responded in the affirmative.

Upon a motion by Mr. Magill, seconded by Mr. Rogers, and duly carried, the Commission **ACCEPTED** the Findings of Fact as submitted for Stone Bridge Subdivision.



#SP-0210-03A SITE PLAN AMENDMENT – The Fountains – To add a Deck along the Stormwater Pond – Sweetbay Drive – Regional Commercial District – M-110, P-4487, G-6, L-1.

Mr. John Davis, Mr. Chris Davis, and Mr. Al Jordan came forward. Mrs. Gloria Smith presented the Staff Report. The applicants have submitted a request to amend the approved Site Plan for The Fountains Conference Center to construct a deck on the southerly side of the building.

Mr. Chris Davis showed detailed renderings of the deck addition. The signage will be changed and the atmosphere will become more fun and casual as a bar and grill.

Mr. Comegys questioned what type of roof would be over the structure. Mr. Chris Davis responded that it would be a standing seam roof over the deck.

Mrs. Les Callette stated that she would like to see the same color scheme kept throughout the project.

Mrs. Bartkovich questioned if the deck would be the same level. Mr. Chris Davis responded in the affirmative. Mrs. Bartkovich questioned if they had considered using artificial decking. Mr. Chris Davis responded that they were allowing the contractor to pick out the decking.

Mr. John Davis stated that a letter from the Fountains Business Center Owners Association had been submitted for the case file. He noted that Mr. Eure had questioned the parking and that PKS will be submitting a letter that allows parking in their lot after 6 p.m. Mr. John Davis explained that they had met with Mr. Torbert who had some concerns about a congestion point so that area has been shortened and the deck has been brought back just a bit to alleviate Mr. Torbert's concerns.

Mr. Comegys questioned if there would be live entertainment. Mr. Chris Davis responded in the affirmative.

Mrs. Les Callette questioned if there wasn't already some live entertainment at the restaurant. Mr. Chris Davis responded in the affirmative.

Mrs. Les Callette questioned if they had said something about changing the signage. Mr. Chris Davis responded in the affirmative, explaining that they would be changing the name to the Lagoon Bar and Grill. The new signage plans will be brought to Mrs. Smith and if there is a need to come back to the Commission then it won't be an issue. He added that the signage would be the same size with only the name change.

Mr. John Davis added that Mr. Chris Davis and Mr. Jordan would like to begin construction as soon as possible.

Mrs. Bartkovich noted that this would be a nice addition to the restaurant.

Upon a motion by Mr. Bounds, seconded by Mr. Magill, and duly carried, the Commission **APPROVED** the proposed deck area, including the proposed roof section utilizing colors consistent with the existing roof, along the stormwater management pond at The Fountains, subject to the following Condition of Approval:

CONDITION:

1. The Revised Site Plan approval is subject to further review and approval by the Salisbury Public Works Department and the Fire Inspection Office, if necessary.

Mr. Rogers recused himself due to professional conflicts.

**#SP-9013-05B SIGN PLAN – Eastfields, LLC – Aydelotte Farm PRD #7.**

Mr. Brian Lloyd came forward. Mrs. Gloria Smith presented the Staff Report. The applicants have submitted two requests for signage for Aydelotte Farm PRD #7 (The Villages at Aydelotte Farm).

Mr. Lloyd explained that the entry monument signs would be similar to what is there now. This is the largest community in the City of Salisbury. The large sign would match what is at the main entrance as it will be all brick and have the same font. The banners are an effort to try and take advantage of some of the traffic on the road. This development tries to create a lifestyle and they want people to know that while they are marketing it. Mr. Lloyd stated that they also want people to remember the amenities. There will be no benefit of monument signage until the end of the year when the sign is complete. Mr. Lloyd stated that he believed it was a nice looking sign and that it would be well maintained. He continued that the banners wouldn't be there forever. This is probably a seven (7) year community build-out and the banners will come down when the community is completed. He stated that they had requested to put the banners on the light poles but the City had not allowed that as an option. Banners have proven to be successful in other communities. So far, the development has been successful and 25 homes were sold last year. Currently, there are no homes above \$199,000 in the development.

Mr. Bounds questioned if Mr. Lloyd had stated that the banners would come down at the end of the projected seven (7) year build-out. Mr. Lloyd responded in the affirmative.

Mr. Magill stated that he liked the brick signs but didn't like the banners. He explained that he felt that the banners would take away from the nice looking street and landscaping.

Mr. Lloyd stated that he thought that the banners were tasteful. He added that the banners had worked well on other projects in Owings Mills and Sussex County. Currently, a lot of construction traffic is visible on the roadway.

Mrs. Bartkovich questioned if there were alternative colors that could be used. Mr. Lloyd responded that he could check into the colors that were available but that he would like the banners to be visible. He added that he would be happy to bring in a more formal banner plan for review.

Mr. Comegys stated that he would like to see a compromise reached regarding the banners so that there weren't a lot of gaudy real estate signs down Beaglin Park Drive. He added that the Commission shouldn't consider anything over a year and then have the applicant come back for a review.

Mr. Lloyd stated that the strip center is sold but the other lot hasn't been sold. He stated that there wouldn't be any real estate signs on the road. It was put in the Homeowners Documents that the real estate signs must be in the front windows and not in the yards. He added that he would appreciate the opportunity to have the banners for a year.

Mr. Rogers questioned if he was opposed to using a smaller ground sign versus a banner. Mr. Lloyd responded that he would rather have the banners which are at eye level and have been known to work better for marketing projects.

Mrs. Les Callette questioned what the spacing would be between the banners. Mr. Peterson responded that the spacing between the banners would be between 50 ft. and 100 ft. Mr. Lloyd added that he would be willing to come back before the Commission at the June meeting with a more formal and detailed plan for the banners that would include the spacing between each banner.

Mr. Comegys questioned if the Commission could approve the ground signs and have Mr. Lloyd come back with more information on the banners. He added that if the banners were 50 ft. to 100 ft. apart that he felt that it was too many signs in a mile of roadway.

Upon a motion by Mr. Comegys, seconded by Mrs. Bartkovich, and duly carried, the Commission **APPROVED** the proposed Entrance Signs/Neighborhood Monuments as submitted. The Commission **CONTINUED** the discussion on the banners to the June 18, 2009 meeting so that more finalized plans for the number and design/color of the banners can be submitted.



Mr. Lenox gave an update on the Elliott annexation due to questions that had been raised. The annexation was scheduled before the City Council but due to a number of comments that were raised it was taken off the agenda. There was a revised annexation request in January where the applicant added a small connector road to an existing neighborhood to the annexation request. There were questions involving the notice that was provided by the City. There was a meeting that took place on May 14, 2009 which resulted in the need to look at the access situation and having the sole access to the development off of Beaglin Park Drive. There will also be a neighborhood meeting once the traffic issue has been reviewed. Mr. Lenox added that the annexation process may have to start from the beginning if this goes on too long.

Mr. Comegys noted that he had received phone calls from citizens in the existing neighborhood concerned about the connector road. He stated that he didn't remember the connector road on the original plan. Mr. Lenox responded that the connector road wasn't shown on the original plan but it was becoming costly so Mr. Elliott went back and had the design include the connector road. Mr. Comegys stated that Mr. Elliott was going to make improvements to Beaglin Park Drive. Mr. Lenox stated that as the development gets closer to the railroad that the accesses need to match up to the Farlow Farm access. Mr. Comegys stated that the existing neighborhood needed to be appeased.

Mrs. Bartkovich stated that existing Leyland cypress trees would need to be cut down as well as exposing an existing active railroad.

Mrs. Smith noted that the connector road was on the map but was shown under the hatch marks so it wasn't picked up by Staff, and the parcel had not been included in the request.



UPDATE COMPREHENSIVE PLAN:

Mr. Lenox explained that we are about to start the 60 day Clearinghouse Review at the State level of the Water Resources Element (WRE). He stated that we intend to move ahead with the WRE and are working on the Priority Preservation Area element to try and secure the renewal with the State of the County certified agriculture program. There will be a need to request an extension on the Priority Preservation Area element of the plan.

Mr. Lenox explained that a meeting had taken place with Mayor Ireton and the City Council and the time schedule had been explained with respect to the City of Salisbury Comprehensive Plan effort. The elements are being reviewed in-house for grammar and spelling. The City Council has requested drafts be put on their website and that is being worked on. The public participation was done early on but the response was limited and should not be perceived as buy in of the Plan, so additional meeting/s will have to be scheduled. Currently, a six-month extension is anticipated on the City plan. The Hebron Comp Plan may come to attention soon.

Mr. Magill questioned Mr. Lenox if there was a thumb nail sketch of the State certification. Mr. Lenox discussed the ag tax and how 25 percent of the ag tax can be retained for the County's to spend but if there is a certified Priority Preservation Area the County's can get up to 75 percent of the ag tax. House Bill 2 requires a Priority Preservation Area be included into the Comprehensive Plan in order to get recertified, but the County must show that the proper land use management measures are in place to support the recommendations of the Priority Preservation Area.

Mrs. Bartkovich commented on the State wanting the Counties to preserve 80 percent. Mr. Hall responded that the 80 percent to be preserved should be of the undeveloped agricultural area contained in the County delineated Priority Preservation Area contained in the Comprehensive Plan.

Mr. Hall discussed the short PowerPoint presentation that demonstrated where Staff and KCI were in the Comp Plan process as it relates to the WRE. House Bill 1141 required a WRE as part of the Comp Plan by October 1, 2009. It has been difficult to get people out to meetings but several workshops and meetings have been held for the public. The County received grants which funded 95 percent of this element. He further discussed the drinking water assessment, wastewater assessment, and non-point assessment.

Mr. Comegys questioned why there wasn't a mention of the age of existing septic and their condition. He stated that any data available that showed how old the septic were and what quality was being provided should be made available. Mr. Hall responded that this data was not included, but was part of the Water and Sewer Plan. Mr. Comegys noted that there were areas near the Metro Core that needed adjustments because of failing septic. Mr. Hall noted that more information

would be in the City's WRE. He added that the number of septic systems in each watershed was identified in the County version of the WRE.

Mr. Lenox noted that the schedule was to forward a draft of the WRE, Water and Sewer, and Ground Water Protection plans to the County Council once the budget was done.

Mr. Hall noted that the drinking water element went to 2030. Due to the close proximity of the Atlantic Ocean and Chesapeake Bay, there has to be some concern about salt water intrusion.

Mr. Lenox requested that the Commission members read through the Draft WRE and submit any comments to the Planning and Zoning Staff.



There being no further business, the Commission meeting was adjourned at 4:25 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