



City of Salisbury – Wicomico County

DEPARTMENT OF PLANNING, ZONING AND COMMUNITY DEVELOPMENT

P.O. BOX 870

125 NORTH DIVISION STREET, ROOMS 203 & 201

SALISBURY, MARYLAND 21803-4860

410-548-4860

FAX: 410-548-4955



JAMES IRETON, JR
MAYOR

JOHN R. PICK
CITY ADMINISTRATOR

RICHARD M. POLITT, JR
COUNTY EXECUTIVE

R. WAYNE STRAUSBURG
DIRECTOR OF ADMINISTRATION

MINUTES

The Salisbury-Wicomico Planning and Zoning Commission met in regular session on November 15, 2012 in the Council Chambers of the Government Office Building, Room 301, with the following persons in attendance:

COMMISSION MEMBERS:

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

CITY/COUNTY OFFICIALS:

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

PLANNING STAFF:

Gloria Smith, Planner
Mary Phillips, Technical Review
Jack Lenox, Director
Beverly Tull, Recording Secretary



The meeting was called to order at 1:30 p.m. by Mr. Dashiell, Chairman.

**Minutes:**

Upon a motion by Mr. Magill, seconded by Mr. Spies, and duly carried, the Commission **APPROVED** the minutes of the October 18, 2012 meeting as submitted.

**#WP-1203**

PUBLIC HEARING – TEXT AMENDMENT – WICOMICO COUNTY CODE – Choptank Electric Cooperative, Inc. – To amend Sections 225-25 and 225-67 to add a definition and to permit a Utility Operations Center by Special Exception in the A-1 Agricultural Rural District.

Mr. Lenox read the ad and administered the oath to anyone wishing to testify in this matter. Mr. Dashiell explained the public hearing procedure.

Mr. Mike Hickson and Mr. Robert Behlke came forward. Mrs. Gloria Smith presented and entered the Staff Report and all accompanying documentation into the record. She summarized the report explaining that Choptank Electric Cooperative, Inc. is attempting to consolidate its regional operations for the three lower shore counties into one facility. The proposed location is on Walston Switch Road in the A-1 Agricultural Rural and Airport Overlay District. In order to enable Choptank to locate the regional operations center here, text amendments to the Wicomico County Code are requested.

Ms. Lanigan stated that following review, the Law Department has a concern that by adding a reference to the operations center in the definition of public utility, it creates a conflict on the Table of Permitted Uses chart. Mr. Dashiell requested that Ms. Lanigan provide the language for the definition. Ms. Lanigan stated that the definition of public utility doesn't need to be changed. Mr. Dashiell questioned where Ms. Lanigan was making reference to. Mrs. Smith stated that Page 2 of the Staff Report had the definition in all italics and that would remain without the suggested additional language that was on Page 3. Mr. Dashiell restated that Ms. Lanigan's suggestion was that the definition of public utility would remain as it was stated on Page 2 of the Staff Report. Ms. Lanigan agreed.

Mr. Hickson stated that Choptank doesn't do heavy construction. The contractors get the supplies from the Choptank Operations Center and then go out to do the work.

Mr. Dashiell questioned Mrs. Smith if she believed that the language that was recommended from the Staff would handle Mr. Hickson's concerns. Mr. Lenox stated that they were trying to simplify things as much as possible. There is no objection about including the language that Mr. Hickson would like added to the staff's deletion. Mr. Hickson read the changes that he proposed. He explained that the reason for this request was that Choptank was proposing to consolidate its operations center from having one (1) in each of the three (3) counties on the Lower Eastern Shore to one (1). That is being made possible by the fact that Choptank has put a computer in each of the service trucks. Choptank is a cooperative which formed in the 1930's to serve the areas that the for-profit electric companies were not interested in serving because those areas were sparsely populated. Choptank is a non-profit organization that is customer owned. This is not profit motivated. This will provide their members with better service at a lower price. Choptank looked for a location where they could get quick access to all three (3) counties and they found spot on Walston Switch Road across from Wor Wic. It is important to have a location on the east side of Salisbury for quick access to Worcester County which is where the largest amount of customers are as well as having quick access to the Bypass. Mr. Hickson handed out a zoning map showing the location of the property that Choptank would like to put their Operations Center.

Mrs. Bartkovich questioned if they would need water and sewer. Mr. Hickson responded that they would like to be able to get water and sewer. Mrs. Bartkovich stated that an amendment to the water and sewer plan would need to be done. She questioned how close to the residential homes this location was. Mr. Hickson responded that he wasn't sure how close the residential homes were. Mrs. Bartkovich questioned if the Airport had been contacted since the location was in the Airport Overlay District. Mr. Hickson responded that they had not contacted the Airport because there are no towers proposed on this site.

Mr. Magill questioned if there were any aquifers in the area. Mr. Hickson responded in the negative. Mr. Lenox added that this is not in the Paleochannel, and it is in the growth area for the City of Salisbury in the Salisbury Comprehensive Plan. This is a text amendment and is not site specific.

Mr. Hickson stated that they had looked at rezoning the property but there is a short lease on the contract. Settlement is supposed to be by December 31, 2012. It may be possible to get a short extension of a month but there isn't enough time to have a rezoning done.

Mr. Lenox stated that the closest residential property is the Moore property.

Mr. Spies questioned if this was close to Beaver Dam Creek. Mr. Lenox responded that Beaver Dam Creek separates this from the Moore property.

Mr. Magill questioned if this could be the connector from John Deere Drive to Walston Switch Road. Mr. Lenox responded in the negative, explaining that there is a possibility for a connector on the remaining property further south from Route 50.

Upon a motion by Mr. Magill, seconded by Mr. Spies, and duly carried, the Commission forwarded a **FAVORABLE** recommendation to the Wicomico County Council for approval of the following amendments to Sections 225-25, Definitions and 225-67, Table of Permitted Uses as follows:

- A. Add a definition for a Utility Operations Center.
- B. Amend Section 225-67, Table of Permitted Uses to add a Utility Operations Center as a use permitted by Special Exception.



COUNTY SUBDIVISION/SKETCH PLATS:

Rivermere – Change of Condition– 1 Lot – Cooper Road – M-55; G-12; P-163.

Mr. Steve Smethurst came forward. Mrs. Gloria Smith presented the Staff Report. The applicant has requested a Change of Condition regarding Lot C of Rivermere subdivision.

Mr. Smethurst stated that he was not asking for a change of condition. He was asking for a clarification. The subdivision plat has a legend that denies vehicular access to Cooper Road but Lot C has no restriction. He stated that he wasn't sure how the Staff imposes a condition that wasn't part of the approval. Lot C was not part of the subdivision. Lot C was created because the County asked for a change of the curve in the road on Cooper Road. Mr. Smethurst stated that he agreed to donate 1 acre of land to relocate and improve the curve. Lot C was created at the request of the County. The Sketch Plat was heard in 1991 and at that time there wasn't a Lot C. The Sketch Plat was for eight (8) lots with a circular access. They were large lots with Lots 4 and 5 being on the water. The idea was for no access to Cooper Road was done by the planners of the project from Davis, Bowen & Friedel and Mr. Smethurst. The restriction of access to Cooper Road has been there.

DNR/MDE didn't want Lots 7 and 8 to have driveways to the circle because it would cross nontidal wetlands. He stated that he didn't like that and the

County didn't like that. DNR was adamant about no crossing of non-tidal wetlands. Lot C was developed in 1993 or 1994 in a preliminary plat. In 1993 or 1994, the Commission denied the request to allow access to Cooper Road. Mr. Smethurst appealed MDE's denial of the driveways to the circular access. The subdivision came back in 1995 for final plat approval.

In April of 1995 the subdivision received preliminary/final approval for eight (8) lots with access to Rivermere Drive. When the plat was prepared and reviewed by the Planning Department and Public Works Department there was no such legend there for Lot C. It was a year or so ago that this issue with Lot C came up when a perc was done for a single family residence. The County asked for land to improve the curve and Mr. Smethurst gave the County the land to fix the curve. The Staff's take is that it was intended to get a landlocked parcel. Mr. Smethurst concluded that he was here to get a clarification so that he could move forward.

Mr. Magill stated that there was to be a conveyance to Mr. Dick Hazel so there is a restriction. Mr. Smethurst responded that there was no requirement to convey the land to Mr. Hazel. That was the original intention but it didn't work out. Each parcel stands on its own. Mr. Hazel wouldn't have been required to hold onto the land. There isn't anything in the file that restricts access to Lot C. Mr. Smethurst stated that he never would have given the land to the County and restricted access to Lot C. The County had no funds to pay for the land. The plat has no restrictions.

Mr. Dashiell stated that the confusion started over a long period of time. He stated that he didn't believe that this parcel was intended for a single family lot.

Mr. Smethurst stated that it was never part of Rivermere. He stated that he thought he could swap this lot with Mr. Hazel but it didn't happen. The County created the lot based on how the curve of the road was designed but that had nothing to do with access.

Mr. Magill questioned the sight safety distance for this lot. Mr. Smethurst responded that sight safety was secondary to this issue.

Mrs. Bartkovich questioned if the land given to the County to fix the road was deeded to the County. Mr. Smethurst responded that the County owns the land and it is on the plat. Mrs. Bartkovich stated that if the County never builds the road, then the lot will always be landlocked. Mr. Smethurst responded in the affirmative.

Ms. Lanigan stated that the Law Department agrees with the Staff that the lot should be denied access to Cooper Road after reviewing all the documents. It was never thought to be an issue because it was intended to be deeded to someone else. The condition states no access to Cooper Road.

Mr. John Groutt, 4551 Cooper Road, stated that he was there on behalf of WET and as a neighbor to this property. The advantage of buying in Rivermere was that the adjacent land was in an easement. Mr. Hazel put the land in an easement for wildlife. This is a skinny lot next to a large easement on a very sharp turn. Mr. Groutt stated that it would be absurd to think of putting a lot on that turn. If a change is made to the road for safety, it will make it even more difficult to get out onto the road. He requested denial of the request as per the Staff Report.

Mr. Smethurst stated that everything that Mr. Groutt stated was irrelevant to the issue. Everything is about the eight (8) lots. A denial will force the issue to go to Circuit Court.

Mr. Dashiell stated that the Commission made the assumption that the land would be conveyed to Mr. Hazel.

Mr. Smethurst stated that you can't get over an acre of land and then deny access to the piece of land that is left.

Ms. Lanigan stated that the question was really if the Commission thought the lot should be a buildable lot and if it should have access to Cooper Road.

Mr. Smethurst stated that he disagreed with Ms. Lanigan's statement about whether this should be a buildable lot because the only issue is the denied access which there is no basis for.

Mrs. Bartkovich stated that she doesn't agree with Mr. Smethurst about the buildable lot but the County cannot legally landlock a parcel.

Mr. Lenox stated that it sounded like it needed to be clarified if the lot was buildable. It was never considered to be a buildable lot so access wasn't an issue.

Mr. Dashiell questioned Ms. Lanigan if the Commission needed to determine if the lot was buildable and if it should have access to Cooper Road. Ms. Lanigan responded in the affirmative.

Mr. Smethurst stated that the buildable lot issue is determined by other agencies. The question is whether it has access before a development plan can be done.

Mr. Lenox stated that this wouldn't come back to the Commission; it would only be reviewed by Staff in the Planning Department. The question is whether this is a buildable lot.

Mrs. Bartkovich stated that her concern was whether the parcel is landlocked.

Mr. Lenox stated that Mr. Smethurst agreed to give the land to the County to improve the road. The Commission will not see this again if they agree that this lot has access.

Upon a motion by Mr. Magill, with no second, the motion failed to deny the change of condition, including the findings in the Staff Report.

Mrs. Bartkovich questioned if the Commission could send this back to Staff to see if the lot was buildable. Mrs. Phillips stated that the way the setbacks would be from both right-of-ways would determine if the lot is buildable, until the roadway is abandoned.

Mr. Smethurst stated that if the Commission grants access to Cooper Road, then it will allow him to proceed to see if this is a buildable lot.

Mr. Dashiell stated that the Commission needed to make a decision. He added that he agreed with Mr. Magill and that there was a real safety issue.

Mr. Magill stated that when the funds become available the County should acquire the property because it is a landlocked parcel. Mrs. Bartkovich stated that the Commission couldn't put the County in that position.

Mr. Spies questioned what the lot would be contiguous to once the road changes are made. Mr. Smethurst responded that the Hazel property would be contiguous to the lot and that the property on both sides would split the right-of-way.

Ms. Lanigan stated that clarification is needed so that Mr. Smethurst can move forward. Mr. Lenox agreed, stating that the Commission needed to make a decision.

Upon a motion by Mr. Magill, seconded by Mr. Quinton, and duly carried, the Commission **DENIED** of the requested Change of Condition regarding access to Cooper Road from Lot C, based on the Findings contained in the Staff report.

Mrs. Bartkovich opposed the motion.



#SP-8713-12II REVISED SITE PLAN – Modification to entrance – Famous Dave’s - Centre at Salisbury – 2318 N. Salisbury Blvd. – General Commercial District - M-119; P-237; G-15.

Mrs. Gloria Smith presented the Staff Report. The applicants have submitted a Revised Site Plan to widen the entrance from Centre Drive and install a left-turn lane for exiting patrons.

Mr. Magill stated that there was no need to revise the interior parking area.

Mr. Rogers questioned if they would be installing a one-way sign and painting arrows on the pavement. Mrs. Smith responded that she wasn't sure if they would be installing signs and painting arrows.

Mrs. Bartkovich questioned if this was the section where there were still two (2) lanes coming in. Mr. Magill responded that it was further south past the stop sign.

Upon a motion by Mr. Magill, seconded by Mr. Spies, and duly carried, the Commission **APPROVED** the Revised Site Plan for Famous Dave's Restaurant at the Centre at Salisbury, subject to the following Conditions of Approval:

CONDITIONS:

1. This site shall be developed in accordance with the approved revised Site Plan. The Directors of the Planning Department and Building Department may jointly review and approve minor adjustments to the plan that are consistent with the Commission's original intent.
2. Subject to further review and approval by the Salisbury Department of Public Works, if necessary.



**#SP-8713-12JJ REVISED BUILDING COLORS, ENTRANCE STRUCTURE AND SIGN PLAN –
The Olive Garden – Centre at Salisbury – 2316 N. Salisbury Blvd. –
General Commercial District – M-119; P-237; G-15.**

Mr. Bob Fields and Mr. Tyler Dean came forward. Mrs. Gloria Smith presented the Staff Report. Mr. Felipe Guerrero of hmd Group Architects, on behalf of The Olive Garden, has submitted a request for new colors, a new entrance tower, and a larger wall sign to be installed for the restaurant located at the Centre at Salisbury Mall. Building elevations depicting the modified colors and entrance design were submitted as well as a Revised Sign Plan.

Mr. Fields stated that this was part of a nationwide remodel. The company tries to update the buildings every seven (7) to eight (8) years. This restaurant hasn't been remodeled for the last 10 years. The tower goes over the roof line which is the reason for the sign increase. The dumpsters will be painted as well as the dumpster screening. The awnings and the trellis will be replaced.

Mrs. Bartkovich stated that she liked the improvements and that the building would be more visible.

Mr. Spies questioned if there was any consideration for greenery going up the trellis. Mr. Fields responded in the negative, explaining that it is a maintenance nightmare.

Upon a motion by Mr. Magill, seconded by Mrs. Bartkovich, and duly carried, the Commission **APPROVED** the Revised Building colors, the Revised Color Entrance Structure, and the Revised Sign Plan as submitted.



#SP-0601-12B REVISED FINAL COMPREHENSIVE DEVELOPMENT PLAN – THE ORCHARD – Modification of Condition & Sign Approval – Division Street Associates, LLC, represented by Davis, Bowen & Friedel – South Division Street – LBI and R-8A Residential District – M-48; G-8; P-211, 214, 215, 425.

Mr. Jerry Friedel and Mr. John DeRiggi came forward. Mrs. Gloria Smith presented the Staff Report. Davis, Bowen & Friedel, on behalf of the applicants, has submitted a Revised Final Comprehensive Development Plan for 11,000 sq. ft. of office/retail space and 415 apartment units on this property on South Division Street. The applicants are providing an informational update and will further discuss modification of Condition #8 regarding installation of an 8 ft. tall masonry wall along the northerly and easterly property lines. The plan now proposes installation of a 6 ft. tall vinyl fence. In addition, the applicants will provide information regarding the proposed monument signage for the development.

Mr. Friedel stated that they were before the Commission to discuss the monument signs and the vinyl fence. Mr. Friedel handed out sample location maps of the proposed signs.

Mr. Dashiell questioned if the Staff had any concerns about the monument signs. Mrs. Smith responded in the negative.

Mr. Magill questioned if they had considered putting the Dykes Road sign in the median. Mr. Friedel responded that it would be a safety concern to move the sign to the median.

Mr. Friedel stated that there had been neighborhood outreach. There have been two (2) meetings and two (2) mailings were done. A letter was mailed with a description of what was being proposed and inviting them to a meeting at the sales office. Mr. Friedel handed out a copy of the letter that was sent to the neighborhood. Mr. DeRiggi explained what was sent out. A meeting was held on October 26, 2012 and September 15, 2012. Between the two (2) meetings and the mailing, 14 responses were gotten. Ten (10) responses preferred the vinyl fence. Mr. DeRiggi handed out a summary of the responses. Two (2) responses preferred the block wall. The vinyl fence can be engineered so that it can't be knocked down. Mr. Friedel stated that there were 6 ft. intervals for the posts. Some grading will be required for the fence installation. Keeping the fence elevated a few inches will help with drainage issues.

Mr. Spies stated that at some point the fence will settle and there will be stress fractures.

Mrs. Bartkovich stated that there are a lot of open areas behind the houses on Francis Drive. Some houses on Francis Drive have fences in the rear yard already. She questioned how the already installed fences would impact this fence. Mr. Friedel responded that the fence for The Orchard would have to come in off the property line. Mr. DeRiggi stated that at least one (1) of the residences that already have a fence stated that they would feel more comfortable with two (2) fences for security. Mrs. Bartkovich questioned who would maintain the distance between the two (2) fences. Mr. DeRiggi responded that the residences were satisfied with having to maintain the distance between the fences. Mr. Friedel added that they would be installing shrubbery to break up the fence.

Mrs. Bartkovich questioned if they were only installing the fence up to the end of Phase I. Mr. DeRiggi responded that the fence would be installed up to the Telewire building.

Mrs. Bartkovich questioned what would keep the students from going into the back section and playing. Mr. DeRiggi responded that there wouldn't be anything to prevent the students from utilizing the back section.

Mrs. Bartkovich questioned if the plantings would be done prior to occupancy. Mr. DeRiggi responded that the fence would be installed prior to the Fall 2013 semester.

Mr. Dashiell questioned if Mr. DeRiggi had reviewed the concerns that were submitted to the Commission by Mrs. Schultes. Mr. DeRiggi responded that what is being proposed addressed the concerns of Mrs. Schultes.

Mr. Spies questioned if there were plans for the sidewalks. Mr. Friedel responded that GMH hired an ADA consultant as part of their Comprehensive Development Plan process. There will be a trail that goes around the stormwater pond fence. Mr. DeRiggi added that there will mostly be a landscaped system. Mr. Friedel added that the frontage will have sidewalks.

Mr. Magill stated that Heritage on Pemberton Drive has a vinyl fence and every significant storm takes out panels. He suggested that they find out who that distributor was and avoid using them.

Mr. Spies questioned if the maintenance of the fence would include algae and mold on both sides. Mr. DeRiggi responded that he would send a letter to the residents and address the concerns but maintain the side of the fence facing The Orchard.

Upon a motion by Mr. Magill, seconded by Mr. Spies, and duly carried, the Commission **APPROVED** the Revised Final Comprehensive Development Plan, including modification of Condition #8 and the location of two monument signs for The Orchard, subject to the following Conditions of Approval:

CONDITIONS:

1. The site shall be developed in accordance with the approved Revised Final Comprehensive Development Plan. Minor plan adjustments may be approved jointly by the Directors of the Building, Housing and Zoning and Planning and Zoning Departments.
2. The developers shall be required to front the cost of any improvements required to those intersections, including signalization and road widening, that the traffic study indicates may be required.
3. The easement providing access to the Telewire site shall be maintained/protected through the necessary recorded agreements/documents.
4. Storm water management is subject to further review and approval by the Salisbury and Wicomico County Public Works Departments. Controls are to be based upon the additional design standards noted in the Staff Report.
5. An updated Traffic Study to reflect the impacts of the student housing use and revised road improvements, if any, shall be submitted for review by the Salisbury and Wicomico County Public Works Departments and their consultants.
6. The Revised Plan is subject to further review and conditions by the Salisbury Fire Department.
7. Re-evaluation of the proposed water and sewer consumption for university housing shall be completed by the City of Salisbury Public Works Department to insure that demand per unit will not exceed the standard 250 gallons per day EDU. If in fact data confirms that more than 250 gallons per day per unit can be expected to be used, that the appropriate Capacity Fee shall be assessed by the City and payment of such shall be a condition of development.
8. An 8 ft. tall vinyl fence shall be provided, with landscaping, along the northerly and easterly property lines.
9. The Revised Plan is subject to further review and approval by the Salisbury Public Works Department.



Mr. Magill discussed the mandate from 2009 that requires Planning Commission members to complete a class within six (6) months of their appointment. The roll is to train and inform Commission members. This can be done online as well as at conferences.



There being no further business, the Commission meeting was adjourned at 3:40 p.m. by Mr. Dashiell.



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.

Charles "Chip" Dashiell, Chairman

John F. Lenox, Director

Beverly R. Tull, Recording Secretary