
MINUTES

The Salisbury-Wicomico Planning and Zoning Commission met in regular session on February 18, 2010 in the Council Chambers of the Government Office Building, Room 301, with the following persons in attendance:

COMMISSION MEMBERS:

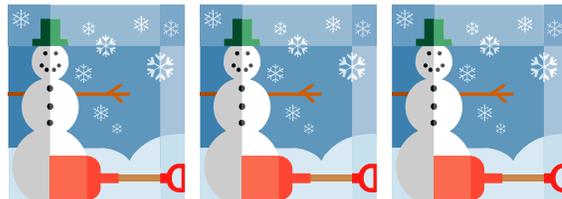
Charles "Chip" Dashiell, Chairman
Donald B. Bounds, Vice Chairman
Gail Bartkovich
James W. Magill
Glen Robinson
Scott Rogers
Gary Comegys

CITY/COUNTY OFFICIALS:

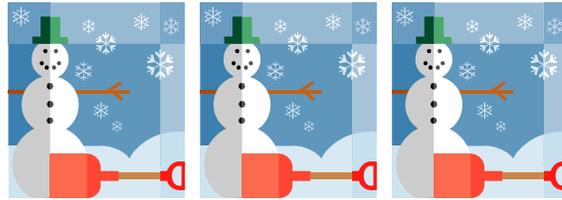
Ed Baker, County Attorney
Henry Eure, Department of Building, Permits, and Inspections
Mary Phillips, County Public Works Department
Gary Hales, City Public Works Department
Paul Wilber, City Solicitor

PLANNING STAFF:

Jack Lenox, Director
Gloria Smith, Planner
Frank McKenzie, GIS
David Church, Environmental Planner
Jimmy Sharp, Environmental Planner
Beverly Tull, Recording Secretary



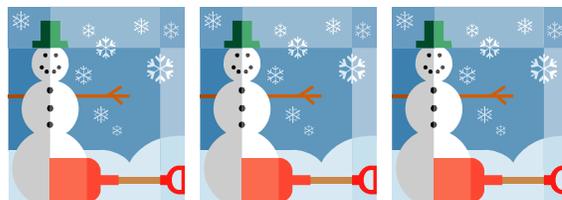
The meeting was called to order at 1:38 p.m. by Mr. Dashiell, Chairman.



Mr. Dashiell stated that Mayor Ireton and County Executive Pollitt wished to say a few words to start off the meeting. Mr. Pollitt welcomed everyone and explained that history was being made by welcoming the new Chairman to the Planning Commission. Mr. Pollitt thanked Mrs. Les Callette for her dedication over the years. There will be an appropriate expression of thanks made to Mrs. Les Callette at a later date. Mr. Pollitt welcomed Mr. Dashiell as the Chair of the Planning Commission. Mr. Dashiell will be a great person to keep the lines of communication open as well as focusing the attention needed to a quality of life for the citizens of Wicomico County.

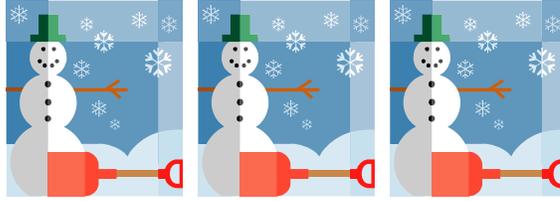
Mayor Ireton stated that Mr. Dashiell's appointment was historic and he appreciated his service. He wished Mr. Dashiell the best of luck, adding that he appreciated all the members of the community that were willing to help interpret the law.

Mr. Dashiell thanked Mayor Ireton and Mr. Pollitt, as well as both the City and County Councils, for the appointment. He stated that he was looking forward to service the Commission and serving with the other Commission members. Mr. Dashiell noted that he would be looking to the other Commission members for guidance and direction. He also thanked Mr. Lenox for the leadership of the Planning and Zoning Department and stated that he was looking forward to the Staff's help. Mr. Dashiell thanked Mrs. Les Callette for her many years of service to the County and the Commission adding that her legacy of service is exemplary.



Minutes:

Upon a motion by Mr. Bounds, seconded by Mr. Comegys, and duly carried, the Commission **APPROVED** the minutes of the January 21, 2010 meeting with a correction on Page 5 and Page 9.



#SP-1002

PUBLIC HEARING – TEXT AMENDMENT – SALISBURY MUNICIPAL CODE – Holy Temple Church of the Apostles Faith – To amend Section 17.76.020B to permit a Church by special exception in the Light Industrial District.

Mr. Jack Lenox read the ad and administered the oath. Mr. Dashiell explained the public hearing procedure.

Mr. James Brisco, Jr. and Mrs. Regina Brisco came forward. Mrs. Gloria Smith presented and entered the Staff Report and all accompanying documentation into the record. Mr. James Brisco, Jr. representing Holy Temple Church of the Apostles Faith has submitted a request to amend the text of the Salisbury Municipal Code. Specifically the applicants have requested an amendment to the text of the Light Industrial District to permit a Church by Special Exception in the district.

Mr. Brisco explained that they were trying to start a church. He stated that they were trying to help the homeless people. Mr. Brisco explained that they had been in Salisbury for six (6) years trying to help the homeless and have worked with the Christian Shelter. Not only are they trying to feed the homeless spiritually but also naturally. The purpose of the Church is to help people.

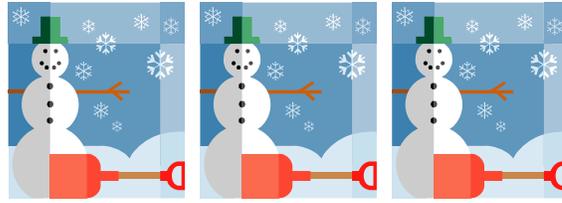
Mrs. Regina Brisco stated that they are a non-profit and have helped several women and children by working to get them in a home. She stated that they were providing outreach to people to make them productive members of the community.

There were no additional public comments.

Upon a motion by Mr. Bounds, seconded by Mrs. Bartkovich, and duly carried, the Commission forwarded a **FAVORABLE** recommendation to the Mayor and City Council for the following Text Amendment to the Salisbury Municipal Code:

ADD Item 5, Section 17.76.020, Uses permitted by Special Exception as follows:

5. CHURCH.

**#SP-1003****PUBLIC HEARING – TEXT AMENDMENT – SALISBURY MUNICIPAL CODE – R. S. Smethurst, Jr. – To amend Sections 17.04.120 and 17.156.030 – To add a definition and to permit a Veterans Training Center by Special Exception in the R-5 Residential District.**

Mr. Jack Lenox read the ad and administered the oath. Mr. Dashiell explained the public hearing procedure.

Mr. Steve Smethurst, Mr. Matt Mills, and Mr. Jerry Black came forward. Mrs. Gloria Smith presented and entered the Staff Report and all accompanying documentation into the record. Mr. R. S. Smethurst, Jr. has submitted a request to amend the text of the Salisbury Municipal Code. Specifically the requested amendments are to the text of the Definitions and the R-5 Residential District to permit a Veterans Education and Training Center in the district.

Mr. Lenox stated that the City spent a lot of time on this matter in 1999 and 2000. It is difficult to summarize all the concerns of the City at that time. The Code doesn't prohibit Group Homes, but directs them to specific districts. The City did not include a special exception in the residential areas. This is not a map change but a text change. The request is to provide for Group Homes in the R-5 Residential District. Any reservations are not about questioning the need, the home, the street, but the City's residential districts. Mr. Wilber is present and was involved in the 1999 and 2000 research. The Staff has concerns about opening up the residential areas to Group Homes.

Mr. Smethurst stated that he spent a lot of time talking with Mr. Lenox and Mrs. Smith about this matter and that he was aware of the Staff's concerns. He stated that if you read the Group Home and Domiciliary Care Facility definitions, it doesn't meet what is being proposed. The Group Homes is the closest definition to what is being proposed. This is a facility that will treat and help returning Veterans get back into society. It was designed primarily for Veterans who are returning from Iraq and Afghanistan. This County has a large number of Veterans. Allowing this facility in the R-5 Residential District does not open up the R-8 and R-10 Districts.

Mr. Magill questioned the reason for restricting the facility to Veterans. Mr. Smethurst responded that the Department of Veterans Affairs approved and sponsored this program so it has to be restricted. Mr. Mills added that the State

has made an outreach to Maryland Veterans. Mr. Smethurst presented a letter from the Deputy Secretary of the Maryland Department of Veterans Affairs in support of this facility.

Mr. Magill stated that he had a problem with the fact that they couldn't find a property where similar things are allowed. Mr. Smethurst responded that this facility is most similar to a Group Home which is only allowed in the Commercial districts where there are no residential homes. He added that he believed that there was a mistake on the City's part under the Fair Housing Act by now allowing Group Homes in residential areas.

Mr. Mills added that the point of this facility is to reintroduce Veterans into society.

Mr. Comegys stated that he would like to hear from Mr. Wilber because this is a narrowly defined exception with a narrowly defined group of individuals. He questioned if there was any chance of this being challenged by another specialized group or if the language was specific enough. Mr. Wilber responded that there was concern about the number of people because a Group Home is no more than 10 people. There was a concern that if the Veterans Group Home in the R-5 District than it opens it up to the other groups to argue for a Group Home in the R-5 District.

Mr. Comegys stated that he was in favor of the project but needed to protect the City. He questioned if there was any language that could go in the Code to make the Veterans Group Home a protected class in the City. It has been well documented that it is needed. Mr. Comegys stated that he agreed that there would be no interaction with neighbors if it was in an Industrial Park. The proposed property is within 100 yards of the Joseph House. Mr. Comegys questioned if a map change might be more appropriate than the text change. Mr. Wilber responded that the wording in the definitions allows the Veterans group but prohibits any other Group Homes in the R-5 District. He added that he could look into special language or a map change but wasn't sure that it could be done.

Mr. Comegys questioned since the property was near the Joseph House if it would be more appropriate to get the lines changed. Mr. Lenox responded that Staff could review the lines and see if there were any alternatives and report back to the Commission.

Mr. Smethurst stated that they were looking at the R-5 District and that it shouldn't open the door to just anyone wanting a Group Home. The granting of the text amendment for the R-5 District would not make the R-8 and R-10 vulnerable. The City would be on firm ground. If the Veterans Facility was not allowed in the residential areas then it would violate the Fair Housing Standards. This text amendment deals with a preferred class of citizens. The only Veterans clinic is in

Cambridge and there is a satellite office in Pocomoke. Mr. Smethurst added that he didn't see how the language could be changed and still meet the criteria.

Mr. Mill added that you should not perceive that you are opening a door, because could be an issue in Federal Court if someone wanted to file suit with the way that the Code is currently written.

Ms. Shanie Shields, City Councilwoman, stated that she remembered when this subject came up before the City Council. She stated that she supports this project which would be located on Collins Street. There is a church across the street from the proposed location. The Village of Hope is close by. On Boundary Street is a similar place for men. There is a need for this type of facility. She stated that she was a member of the VFW Post 10159 and attends their convention in Ocean City every year. Ms. Shields stated that she had seen the Veterans at the convention every year and it makes you appreciate what they do. The community should support the troops when they come back. Ms. Shields stated that she envisioned a small facility but could see it growing. She stated that she hadn't heard anything from the neighbors in opposition to this facility. Ms. Shields agreed that if this issue was ever challenged that there would be a Fair Housing issue. She requested that the Commission support this request.

Mr. Michael Bargiband, Regional Coordinator for the Eastern Shore Maryland's Commitment to Veterans, stated that his organization was helping the Veterans transition back into life. Since October 2008, the organization has been in contact with more than 400 Veterans on the Eastern Shore. There are probably more than 200 Veterans that do not have transportation to the existing facilities. Wicomico County is the most critical area on the Eastern Shore. There are no services for Veterans on the Eastern Shore. This proposed location would create a place in Maryland to help get people back into the community that they came from. Mr. Bargiband added that this is a needed service.

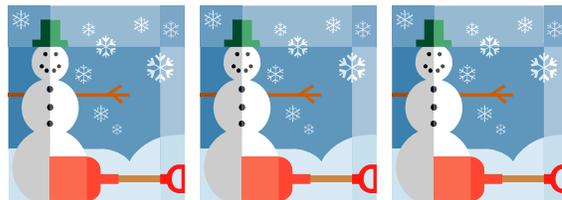
Mr. Alfonso Herman, representing the homeless Veterans, stated that he lost everything after a fire and lost his job. He requested approval of the text amendment and reminded everyone that they are only a few steps away from being homeless.

Mr. Hebrew St. Fleur, 1418 Bell Island Trail, stated that he came from Haiti. Mr. St. Fleur built the proposed location on Collins Street for the Veterans two (2) years ago. He stated that Salisbury had been good to him. The U.S. Veterans have been good to him. He requested approval of the text amendment to help the Veterans. He explained how he provided for the Veterans the best he could from his own pocket and would continue to provide for them the best that he could. He noted that he owns more than 48 properties in Salisbury and that he had taken his own

money to create this place for the Veterans. He requested approval of the text amendment.

Mr. Bounds questioned Mr. Wilber if he could find appropriate language to allow the Veterans Group Home in the R-5 District that would protect the residential area but handle the need.

Upon a motion by Mr. Bounds, seconded by Mrs. Bartkovich, and duly carried, the Commission **CONTINUED** this public hearing until the March 18, 2010 meeting. This action will allow the proponents to work with Mr. Wilber to find suitable language to permit this requested use and protect the City's residential districts.



#SP-1005

PUBLIC HEARING – TEXT AMENDMENT – SALISBURY MUNICIPAL CODE – Subdivision Regulations – Required Improvements – To amend Section 16.48.030 regarding bonding and plat recordation.

Mr. Jack Lenox read the ad and administered the oath. Mr. Dashiell explained the public hearing procedure.

Mr. Dale Pusey came forward. Mrs. Gloria Smith presented and entered the Staff Report and all accompanying documentation into the record. The Salisbury Public Works Department has submitted a request to amend the text of the Subdivision Regulations, Title 16, of the Salisbury Municipal Code. Specifically, amendments are proposed in the wording with respect to bonding of improvements and recordation of final plats.

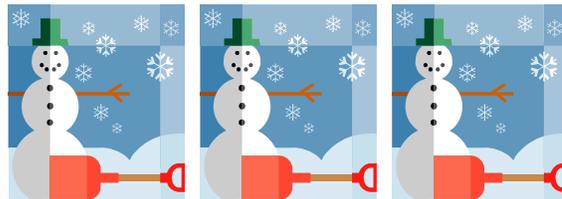
Mr. Pusey stated that the changes were self-explanatory. The State of Maryland is requiring the City to institute new stormwater management requirements by May 4, 2010. There are currently problems for the developers to get bond money. The change will allow the bond to be recorded after the construction plans have been approved. These changes will allow the City to accommodate the developers by getting plans approved and holding them until bond money can be secured.

Mrs. Bartkovich stated that there is some talk in Annapolis about changing the date or using grandfathering but nothing has been finalized. She added that the County would be doing the same type of amendment.

Upon a motion by Mr. Bounds, seconded by Mrs. Bartkovich, and duly carried, the Commission forwarded a **FAVORABLE** recommendation to the Mayor and City Council for amendment of Section 16.48.030 as follows:

16.48.030 Guarantees in lieu of completed improvements.

No ~~Improvements Construction Plan~~ **SUBDIVISION** shall be ~~approved~~ **RECORDED** or building permit issued for ~~construction~~ **NON-PUBLIC IMPROVEMENTS** therein until ~~the public improvements required under the provision of this title have been installed, and approved by the Director of Public Works,~~ the Director **OF PUBLIC WORKS ACCEPTS** ~~may accept cash,~~ **A CASH BOND**, a security bond, or an irrevocable letter of credit in an amount equal to one hundred (100) percent of the estimated cost of installation of the required **PUBLIC** improvements, whereby **PUBLIC** improvements may be made and utilities installed without cost to the City in the event of a default by the subdivider. However, even with such guarantee, no occupancy permit shall be issued until all **PUBLIC** improvements have been completed satisfactorily and approved by the City Director of Public Works. (Ord. 1661 (part), 1997)



#SP-0403-10B & #SP-0416-10C REVISED FINAL COMPREHENSIVE DEVELOPMENT PLAN – Woodbrooke Medical – Phillip Morris & Woodbrooke Drives – Light Bus. & Institutional District – M-110, G-21, P-2432 & 2447.

Mr. Brock Parker and Mr. Palmer Gillis came forward. Mrs. Gloria Smith presented the Staff Report. Parker & Associates, on behalf of the applicant, has submitted a Revised Comprehensive Development Plan for construction of Buildings E & F in place of the Wellness Center at Woodbrooke Medical and one building in the place of four smaller buildings at Phillip Morris Business Park. In addition, Building H is also shown on part of the Phillip Morris Business Park and is proposed with 14,635 sq. ft. of building area. A combined Site Plan (for both properties) and a combined Landscaping Plan was submitted for Commission review.

Mr. Parker stated that there was a good layout already in place and that they were following the game plan that was existing. There have been some tweaks to the plan. Building A will be the IT building and a pharmacy. Buildings E and

F will be dental and pediatrics offices. The doctors are combining practices to make larger offices. Building H is a new building. The construction drawings have been submitted for Buildings E and F. Building H will be under the new stormwater regulations. The lighting and landscaping will be mimicked with the new buildings.

Mr. Gillis stated that Building A was acquired after 2005 and is proposed as a pharmacy. This will provide connectivity. Building H wasn't contemplated at the time that Mr. Kirk Kinnamon proposed Phillip Morris Business Center.

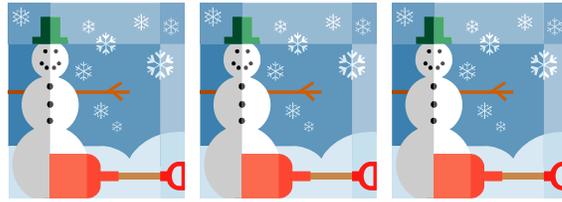
Mr. Bounds stated that Woodbrooke was a very busy complex.

Upon a motion by Mrs. Bartkovich, seconded by Mr. Robinson, and duly carried, the Commission **APPROVED** the Revised Final Comprehensive Development Plan for Gillis-Gilkerson/Woodbrooke Medical, 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. In the event the buildings are converted to Condominium ownership, the Condominium Documents must be reviewed and approved by the Salisbury Planning Commission in accordance with Code requirements.
3. Individual Development Plans shall be submitted for Salisbury Planning Commission review and approval for each future phase of the development (phases following Building H and the bank site).
4. Subject to further review and approval by the Salisbury Public Works Department.

Mr. Rogers recused himself due to a professional conflict.



#SP-1004

**PRELIMINARY COMPREHENSIVE DEVELOPMENT PLAN –
Salisbury Aquatic Center – Indoor Recreational Facility in
Westwood Commerce Park in Westwood PDD #2 –
Westwood Drive – M-28, G-18, P-264, L-2A, 3A & 4A.**

Ms. Amanda Pollack, Mr. Michael McCarther, Mr. Don Dashiell, and Ms. Diana Whitney came forward. Mrs. Gloria Smith presented the Staff Report. George, Miles & Buhr, on behalf of the applicant, has submitted a Preliminary Comprehensive Development Plan for construction of a 115,630 sq. ft. Indoor Recreational Center. Plans submitted for Commission review include a Site Plan, Building Elevations and Floor Plans.

Ms. Pollack stated that they are dealing with two (2) different occupancy classifications. The gym, pool and basketball area will take up approximately 60,000 sq. ft. of the facility. The offices and arenas will need approximately 284 parking spaces. The parking accommodates the day to day use. There will be three (3) to four (4) times a year that there would be a need for additional parking. Ms. Pollack requested the ability to use a grass mesh or grass pavers for the overflow parking area. The handicapped spaces will be on the front of the building. This project will comply with the new stormwater management regulations. Ms. Pollack requested a waiver from the Community Impact Statement and Statement of Intent to Proceed and Financial Capability.

Mr. Bounds stated that he was all for the grass pavers or grass mesh for the overflow parking.

Mr. Rogers questioned if they had considered using porous concrete in the aisle ways. Ms. Pollack responded in the affirmative. Ms. Whitney added that they would like to use the grass for the extra parking and have stabilization there. There will be parking attendants for the events at the facility. Mr. Dashiell discussed a product that had been used on a different project that was woven net and can handle large trucks if needed. Ms. Pollack added that she was familiar with the product and it was very stable.

Mr. Rogers questioned if they had considered pursuing LEED. Mr. Dashiell responded that they were looking at mechanical systems especially for the

pool. They are also looking at making this as green as possible. Mr. McCarther added that they were looking at using glass for day lighting.

Mr. Dashiell stated that they would be using a steel framing system for the building.

Ms. Whitney stated that they would be using passive solar energy. She added that they were trying to make all four (4) sides of the building look like the front so they've not chosen a dumpster location yet.

Mr. Rogers questioned if they'd considered using the recycled rain water from the roof. Mr. McCarther responded that at this point the options are open.

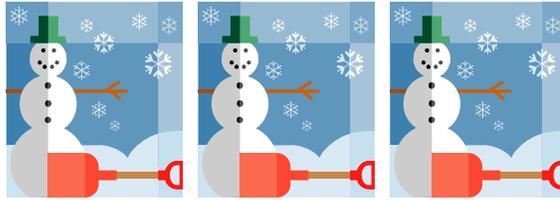
Mrs. Bartkovich questioned if they would anticipate that people might bring in a camper for competitions. Ms. Whitney responded that they hadn't planned for it but were considering having a hotel in the area as well as a restaurant and it could be something that they could look at.

Mr. John Groutt, WET, complimented the applicants on what has been put into this by bringing it into the City and the Metro Core. He suggested rain gardens be considered for the islands. He added that he wished that this project was more centrally located.

Upon a motion by Mr. Bounds, seconded by Mr. Magill, and duly carried, the Commission **APPROVED** the Preliminary Comprehensive Development Plan for the Salisbury Aquatic Center, including a **WAIVER** of the Community Impact Statement and Statement of Intent to Proceed and Financial Capability and subject to the following Conditions of Approval:

CONDITIONS:

1. The site shall be developed in accordance with an approved Final Comprehensive Development Plan.
2. A Landscaping and Lighting Plan shall be included with the Final Plan submission.
3. Subject to further review and approval by the Salisbury Public Works Department.
4. Pervious parking shall be explored in cooperation with the Salisbury Public Works Department.



#SP-1006

SIGN PLAN – Schneider, Richardson & Davis, rep. by Selby Sign Co. – 200 E. Church Street – Central Business District – M-107, G-9, P-826.

Mr. John Selby and Ms. Brandy White-Van Sant came forward. Mrs. Gloria Smith presented the Staff Report. John Selby of Selby Sign Company has submitted a Sign Plan for the Schneider, Richardson & Davis real estate office on East Church Street. The Plan depicts the proposed ground sign for the office. A Site Plan with the sign location was also submitted.

Mr. Selby stated that this would be the only sign on the property and it was modest in size. He stated that there had been a slight adjustment in the setback but that it wasn't an issue.

Mr. Rogers stated that he would prefer to see the sign that relates to the building's architecture. He added that he didn't believe that the sign should be so tall.

Mr. Selby stated that they had picked up the arch in the building and integrated it into the sign.

Mr. Rogers stated that he could see this sign in front of any building.

Mr. Magill stated that he didn't think that they had picked up any architectural features. There needs to be some brick in the sign. Mr. Selby reiterated that they had used the arch from the building in the sign.

Mrs. Bartkovich questioned if there was a need or requirement to have the address on the sign. Mr. Selby responded that the address was on the building.

Mr. Selby stated that there was a lot of discussion at the Historic District Commission about the sign and they've approved what the Commission is reviewing.

Mrs. Bartkovich suggested allowing Mr. Selby to work with Mr. Rogers, as has been done in the past, to get an acceptable sign that adheres to the architectural aspects of the building. The Commission agreed to this suggestion.

Mrs. Smith noted that if there were changes to the sign that Mr. Selby would probably have to go back before the Historic District Commission for approval.

Upon a motion by Mr. Rogers, seconded by Mrs. Bartkovich, and duly carried, the Commission required the applicants to submit a Revised Sign Plan that complements the architectural features of the building. The Revised Sign Plan will be reviewed by the Planning Staff and Mr. Rogers on behalf of the Commission.



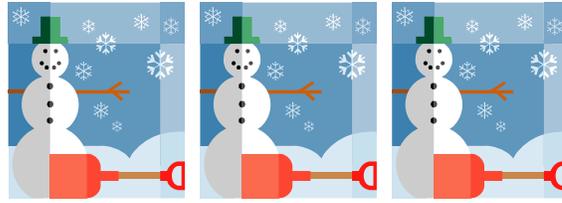
COUNTY SUBDIVISION PLATS:

Essex Ridge, Section 5 – Extension to record Final – 32 Lots – Northumberland Drive.

Mr. Brock Parker and Mr. Bill Turner came forward. Mrs. Gloria Smith presented the Staff Report. The applicants are requesting an additional one year extension of time for recordation of the Final Plat for Essex Ridge, Section 5. The engineers have indicated that they are in the process of receiving final approvals from affected agencies.

Mr. Turner explained that the plan is about to be subject to the third round of stormwater management regulations. This property has been reperced twice so it has been perced three times. Bonds have not been available for the last year for the construction plans to be done. This should be the last time this section is before the Commission.

Upon a motion by Mr. Bounds, seconded by Mr. Robinson, and duly carried, the Commission **APPROVED** the one-year extension of time for recordation of the Final Plat. **This extension will expire on February 19, 2011.**



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

Mr. Brock Parker and Mr. Steve Smethurst came forward. Mrs. Gloria Smith presented the Staff Report, *Planning Office Exhibit A*. The applicants propose subdivision of 8 lots from this 14.03 acre tract. Lots 4 through 9 front and have access on a new cul-de-sac street, Knoll Creek Lane. Lots 2 and 3 front and have access on Athol Road. This is a revision of a plat previously reviewed by the Planning Commission for a Chesapeake Bay Critical Area Growth Allocation request. 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. The original sketch plat for the subdivision proposed 15 lots. The revised plat proposes 8 lots in Section 2. One minor lot was created in Section 1 for the existing residence on Athol Road.

Mr. Smethurst stated that at the conclusion of the January meeting there were issues with the Critical Area concerns. The current staff report acknowledges that the meeting with the Critical Area Commission took place and that there is nothing being proposed that goes against State law. There isn't anything wrong with having RCA and LDA on the same lot. A house can not be put in the RCA area of a lot.

Mr. Smethurst questioned Mr. Parker if there were any environmental features on the site. Mr. Parker responded that Mill Branch Creek was on the site and there were wetlands adjacent to the stream being preserved in its entirety. All mentionable environmental characteristics are being preserved. Mr. Smethurst questioned if there was any habitat protection areas on the site. Mr. Parker responded that all the habitat protection areas are being protected by forest conservation.

Mr. Smethurst questioned if there was any existing wildlife and plant areas that need to be protected. Mr. Parker responded that all the wooded ground cover is protected. Mr. Smethurst questioned if any trees were being removed in the Critical Area. Mr. Parker responded in the negative. Mr. Smethurst questioned if there were any wildlife corridors. Mr. Parker responded that the wooded area along the creek is protected and the remainder is farmland. Mr. Smethurst questioned if this subdivision would comply with the stormwater management regulations. Mr. Parker responded that this subdivision must comply with the new stormwater management

regulations. Mr. Smethurst questioned if there would be compliance with the regulations to protect Mill Branch Creek. Mr. Parker responded in the affirmative. Mr. Smethurst questioned if there was any non-residential development that might go in the RCA that would be subject to the 15 percent impervious surface requirement. Mr. Parker responded in the affirmative. Mr. Smethurst questioned if there was any Green Infrastructure on the property. Mr. Parker responded that the Green Infrastructure area comprises the western portion of Wicomico County. This subdivision is on the fringes of the Green Infrastructure area. **Applicant's Exhibit B** was entered into the record as a Green Infrastructure Map. Mr. Smethurst stated that the Green Infrastructure study is not regulatory and was done by DNR. Mr. Parker stated that the Green Infrastructure or woods would be preserved. Mr. Smethurst stated that at the last meeting the sewage reserve areas were not adequate according to testimony that was given. **Applicant's Exhibit B** was submitted as a letter from the Health Department dated August 22, 2008. The Health Department has submitted a letter dated January 20, 2010, **Applicant's Exhibit C**, stating that the sewage reserve areas are adequate. Mr. Smethurst stated that the Abstract that was submitted isn't relevant to this body.

Mr. Parker stated that there were two (2) land evaluation numbers due to the redesign of the subdivision.

Mr. Bounds questioned if this were not in the Town Transition zoning district, how many lots could there be. Mr. Parker responded that if a cluster design was used that there could be six (6) lots and if it was done by A-1 standards then there would be two (2) lots and the residual.

Mr. Magill stated that he found it hard to believe that the septic system discharge wouldn't make its way to the Creek and that he couldn't support this subdivision. Mr. Smethurst responded that the septic system discharge would be treated per the regulations. Mr. Parker added that the Health Department letter states that the septic systems are in compliance.

Mr. Bounds questioned if there would be mound systems. Mr. Parker responded that some of the lots would require mound systems.

Mr. King Burnett, Riggins Road, stated that he owned land near Mill Branch Road and was also representing the Friends of the Nanticoke. He outlined the law that applied to this case. The Town Transition zoning in the Zoning Code says that it must be compatible to the area. The Subdivision Regulations must be complied with. There is nothing in the staff report that discusses the compatibility. The Staff and the applicant haven't addressed the legal issues. The Town has failing septic areas and there is no water and sewer available. The Subdivision law has an intent provision in Section 200-2 which discusses the health and public safety. It also states that the principles of the Comprehensive Plan must be applied. Section 200-19 states that the

applicant must meet all the terms of the Zoning Ordinance. There needs to be Findings of Fact about all the provisions of the Code. He stated that there are procedures to determine the public purposes of standards and then the impact of those standards. This subdivision is partly in the Green Infrastructure Hub and this is a County adopted Green Infrastructure area. The Town of Mardela Springs doesn't understand how this area got into the Town Transition District and the Town was never notified.

Mr. John Groutt, 4551 Cooper Road and also of WET, stated that the number of hearings show poor planning. The Town of Mardela Springs is separated by Barren Creek. This is not part of the Town of Mardela's Town Transition area. The aerial photos presented before show Mill Branch Road is rural. This is inappropriate and should not be approved. He questioned why Mr. Smethurst was pushing to get this subdivision approved so that he could deal with the Critical Area Commission. The map of the subdivision shown at this meeting depicts lines having been moved. The tides go under Athol Road and up Mill Branch Creek per the neighbor's testimony and contrary to what Mr. Smethurst states. The line dividing the RCA has been changed. All the building lots would be in the Critical Area if it had not been moved. The entire area has a long history of failing septic systems. The Zoning Code must be considered. The development should be done in the appropriate location. The Critical Area Commission stated that the 15 percent impervious surface has been exceeded. This will be an administrative nightmare. The developers were aware of the restrictions when they purchased the property.

Mr. Bob Van Meter, Athol Road, stated that they were trying to force a square peg into a round hole. He requested denial of the subdivision and added that there is a creek and it is tidal.

Mr. Jerrold Marshall, 9393 Athol Road and President of the Mardela Town Commissioners, read a letter from the Town Commissioners of Mardela Springs, ***Protestant's Exhibit E***, in opposition to the Knolls at Barren Creek. He stated that he had difficulty trying to interpret what is going on when two (2) different plans are being used. The corporate limits of Mardela are in error. Health Department approval is required. He stated that there was no knowledge of well or septic movement. There are two (2) proposed septic areas contiguous to Athol Road. Water doesn't flow uphill. The idea of widening Athol Road is dangerous as there is already too much traffic for the road to handle. Mr. Marshall stated that he had received information that the Critical Area Commission didn't approve of this subdivision. The Commission should listen to the Critical Area Commission. The Town Commissioners of Mardela strongly oppose this subdivision. He added that there are already septic issues in Mardela.

Mr. Woody Maloney, Mardela, stated that he had done research for 20 years. The contour of the dip to Mill Branch Creek is unbelievable. The ground water flows north. There is a lot of wildlife that lives on the property. There are two (2) developments within one half mile radius that can not sell lots so why add another

development. The RCA line has been recessed. ***Protestant's Exhibit F1*** was submitted as Barren Creek Estates, Section 1 recorded plat. ***Protestant's Exhibit F2*** was submitted as an aerial photo dated April 2006. ***Protestant's Exhibit F3*** was submitted as the Knolls at Barren Creek, Section 2 Revised Preliminary Plat (size 11x17).

Mr. Smethurst requested Mr. Parker to clarify the lines being relocated. Mr. Parker stated that when they started working on the project in 2002 that the State Critical Area lines were on the plat. ***Applicant's Exhibit G*** was submitted as an excerpt from the Critical Area map. The maps are the law. He stated that he was shown a copy of the original Critical Area map and that was what was used to draw the Critical Area lines. Lot 1 Block A didn't require accuracy from the Critical Area maps. When the Growth Allocation process was done, the RCA area would have been made LDA. The Growth Allocation was denied so the process was started again. Mr. Parker stated that he sent Mr. Sharp an email in 2009 and requested something to show the lines because Mr. Parker believed that they were incorrect. ***Applicant's Exhibit H*** was submitted as the emails to and from Mr. Parker to and from the Planning Staff regarding the Critical Area line location. He stated that he changed the Critical Area line to show what was given by the Critical Area Staff. The lines are shown correctly by the Planning and Zoning Staff. This was also put in writing and made part of the file. The line along Athol Road did move back. ***Applicant's Exhibit I*** was submitted as the Soils maps.

Mr. Smethurst questioned if the plat before the Commission in respect to the RCA and LDA lines are in accordance with the Critical Area maps. Mr. Parker responded in the affirmative, adding that the maps are the law.

Mr. Smethurst stated that the State had determined that the creek was non-tidal.

Mr. Parker stated that the Critical Area map provided the limits of the tidal waters. The tidal charts were never changed. The non-tidal wetlands of special state concern maps ended at Athol Road. There is no justification to extend to this property. The project has been in evolution since 2002 and the maps are 100 percent accurate.

Mr. Smethurst stated that so much had been said that was totally unverifiable. The Health Department stands by their approval. Pollution of the creek is not an issue that can be justified. The Critical Area Commission has admitted to the Staff that they have no legal basis for what they are advocating. Mr. Burnett stated that the septic reserve areas in the RCA and there are no septic reserve areas in the RCA. The Green Infrastructure program hasn't been adopted by the County and doesn't say what you can or can't do but it is not a regulatory tool. The subdivision plans aren't approved or disapproved based on the climate of the neighborhood. The

Staff has recommended approval. Mr. Smethurst requested preliminary subdivision approval and that the RCA portions of the property should not be restricted for any accessory structure.

Mr. Maloney stated that this subdivision will cause major pollution.

Mrs. Bartkovich questioned Mrs. Smith if the Town Transition area is supposed to be compatible with the surrounding area. Mrs. Smith responded that if you look at the Tax Maps then the proposed subdivision is compatible with the surrounding area.

Mr. Bounds questioned if the surrounding lots are larger than what is being proposed. Mr. Parker responded in the negative.

Mr. Dashiell questioned Mr. Baker if everything was part of the record. Mr. Baker responded that everything is part of the record from all the meetings.

Mr. Magill made a motion to Deny the preliminary plat for the Knolls at Barren Creek subject to Findings of Fact. The motion died for lack of a second.

Mr. Bounds stated that he didn't think that the Commission could legally deny the project because it complies with all the criteria. Mrs. Bartkovich voiced her agreement.

Upon a motion by Mrs. Bartkovich, seconded by Mr. Bounds, and duly carried, the Commission **APPROVED** the Revised Preliminary Subdivision plat for the Knolls at Barren Creek, subject to the following Conditions of Approval:

CONDITIONS:

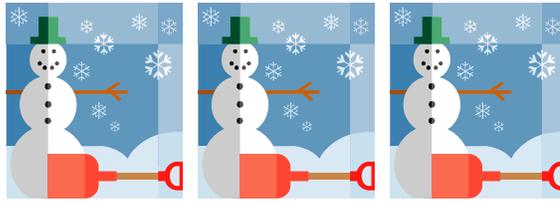
1. The Final Plat shall comply with all requirements of the County Subdivision Regulations.
2. Health Department approval is required prior to the recordation of the Final Plat.
3. The Final Plat shall comply with all applicable requirements of the Forest Conservation Program.
4. The Final Plat shall comply with all requirements of the Chesapeake Bay Critical Areas Program. Certificates of Compliance shall be obtained for development of each lot, if applicable.
5. Adequate drainage and maintenance easements shall be provided for the stormwater management system.

6. Improvements Construction Plans shall be submitted to and approved by the Public Works Department in accordance with the new State guidelines prior to the submission of the Final Plat.
7. A Homeowners Association will be required to own and maintain all common areas and stormwater management facilities.
8. The 100 year floodplain line shall be shown along the contour line of Elev. 5.0 per the new Dfirm (Floodplain) maps. This elevation change reflects an adjustment from 1929 datum to 1988 Datum. Elevations along the contours must be shown.
9. An MDE water appropriation permit exemption will be required.
10. Developer shall provide widening and improvements to Mill Branch Road. There appears to a utility pole which will be within the proposed deceleration lane. Relocation of utilities are the responsibility of the developer.
11. Lots 4 and 9 are Corner lots and are required to have 120' of frontage. (100' plus 20' chord distance) These lots shall be denied direct vehicular access to Mill Branch Road.
12. This approval is subject to further review and approval and conditions imposed by the County Department of Public Works.

The Commission's decision was based on the following Findings included in the Staff Report:

- 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 eight (8) 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 1.66 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.

Mr. Magill opposed the motion.

**SALISBURY COMPREHENSIVE PLAN:**

Mr. Lenox discussed the schedule of the 60 day review period for the City of Salisbury Comprehensive Plan. A date for a public hearing needs to be selected and it should be held at night. The end result will be a recommendation to the City Council. The date for the night public hearing was scheduled for Thursday, April 8, 2010 at 6 p.m. in the Council Chambers.

Mr. Hall noted that Pittsville doesn't have the money to do a Comprehensive Plan. The Town of Mardela Springs has also requested another six (6) month extension to complete their Plan.

Mrs. Bartkovich requested that a schedule be provided to the County Council office for Ms. Holland to distribute to the County Council members. Mr. Hall added that the schedule would also be provided to Mr. Creamer, Mr. Pollitt and posted on the City of Salisbury website.



There being no further business, the Commission meeting was adjourned at 5:30 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 Tull, Recording Secretary