

MINUTES

Baltimore County Planning Board Meeting

May 21, 2015

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Minutes
May 21, 2015

Call to order, introduction of Board members, Pledge of Allegiance to the Flag, and announcements

Vice Chairman Paul Miller called the meeting of the Baltimore County Planning Board to order at 4:46 p.m. The following members were:

Present

Mr. Paul Miller
Mr. Wayne McGinnis
Mr. Mark Schlossberg
Ms. Lori Graf
Ms. Michelle Lipkowitz
Mr. Scott Jenkins
Mr. Jon Herbst
Ms. Christina Berzins
Mr. Scott Holupka*

Absent

Mr. N. Scott Phillips
Mr. Jeffrey Gordon
Mr. Howard Perlow
Mr. Eric Lamb
Ms. Nancy Hafford

County staff present included: Andrea Van Arsdale, Jeff Mayhew, Lloyd Moxley, Joe Wiley, Kathy Schlabach, Jenifer Meacham and Janice Graves.

*Mr. Holupka arrived late

Review of today's agenda

Vice Chairman Miller asked if there were any changes to the tentative agenda. Staff stated that there were no changes to the agenda.

Minutes of the May 7, 2015 meeting

There were no corrections to the May 7, 2015 meeting minutes. The Vice Chairman called for a motion to accept the minutes from the May 7, 2015 meeting. Mr. Schlossberg made a motion to accept the minutes and Mr. McGinnis seconded the motion, which passed unanimously at 4:49 p.m. Absent were Messrs. Phillips, Gordon, Perlow, and Mr. Lamb as well as Ms. Hafford.

Other Business

2. Report from the May 14, 2015 meeting of the Landmarks Preservation Commission

Mr. Herbst gave a report on the May 14, 2015 meeting of the Landmarks Preservation Commission. The LPC voted to issue Certificates of Appropriateness for alterations of three properties, and one Notice to Proceed: The Certificates of Appropriateness were for: 1) The “The Scully Log Tenant House” a.k.a. the “MacGill-Milton Log House”, at 8 Timothy’s Green Court in Brooklandville, 2) The “Payne-Tolley House”, at 16205 Corbett Village Lane, and 3) The “Dundalk Company Building” at 4 Center Place in Dundalk. The “Payne-Tolley House” was also issued an ex post facto Notice to Proceed for the demolition of a shed.

In other business, there was a property condition update for Shaw’s Discovery (Shaw-Bauer House), at 2901 Bauer’s Farm Road. The LPC determined that the structure’s condition was consistent with previous recommendations and they would re-evaluate at the scheduled September, 2015 LPC meeting.

3. Recent County Council Legislation of interest to the Board:

a. Resolution 23-15 – Amending Boundaries - Arbutus Commercial Revitalization District.

Mr. Moxley gave a brief report on the recent County Council legislation of interest to the Board. Bill 28-15 repealed the Basic Services Maps for Sewerage, Water Supply and Transportation, and adopted new Basic Services Maps for Sewerage, Water Supply and Transportation. Resolution 32-15 ranked five Rural Legacy Area Plan applications that were submitted to the Maryland Department of Natural Resources for consideration and approval by the Maryland Rural Legacy Board for funding in fiscal year 2016.

Adjournment of Board Meeting

The Vice Chairman called for a motion to adjourn the Board meeting. Mr. Schlossberg made the motion and Ms. Graf seconded. The motion passed unanimously at 4:55 p.m. Absent were Messrs. Phillips, Gordon, Perlow, and Mr. Lamb as well as Ms. Hafford.

Items for Public Hearing

1. Osprey Pointe Development Plan

Mr. Lloyd Moxley, from the Department of Planning, made several announcements before the hearing began. Mr. Moxley noted that some additional items had been placed in the Board members’ binders, including the minutes and sign in sheet from the Osprey Pointe Development Plan Citizens Input

Meeting. He also clarified the procedures for the hearing, stating that Mr. John Gontrum, Attorney for the developer, Craftsman Developers, would speak first and state his client's position, followed by Mr. Peter Zimmerman of the Office of the People's Counsel and then the citizens who signed up to speak.

After outlining the basic details of the plan (16 single family detached homes on 6.78 acres on the Back River Neck Peninsula), Gontrum stated that his client agrees with the Department of Planning recommendation to the ALJ that the proposed development is consistent with Master Plan 2020 (MP 2020).

Mr. Gontrum stated that the property is located on the north side of Turkey Point Road and has housing developments to the west, north and south with larger tracts to the east. He confirmed that the subject site is within the urban area of the URDL and that numerous tracts of land zoned DR 3.5 over 5 acres exist along Back River Neck, Cape May and Turkey Point Roads. Mr. Gontrum stressed that the location of the site within the URDL and Priority Funding Area (PFA) area was very important when considering if the Development plan is consistent with MP 2020 and further stated the DR 3.5 zoning would allow for up to 23 units although the development proposes only 16. Mr. Gontrum indicated the site falls outside of the Chesapeake Bay Critical Area (CBCA) and has a T-3 transect designation pursuant to MP 2020, which is consistent with the DR 3.5 zoning and the PFA. Mr. Gontrum stressed that projects located in the PFA having the necessary infrastructure already in place makes more efficient use of tax payer dollars and most importantly reduces development pressures on farming and natural resource areas such as those more rural tracts on the peninsula. Mr. Gontrum also stated that the Master Plan is adopted through the zoning and development regulations and that those regulations are thoroughly consistent with MP 2020 and that the proposed development meets all zoning and development regulations, there being no zoning variances sought for this project.

Mr. Gontrum argued that Master Plan 2010, adopted in 2000, contains summaries of community plans then in effect, and stated that the community plans served as amendments, supplements and additions to the Master Plan. Mr. Gontrum went on to say MP 2020, however, took a different approach, making the adopted community plans subordinate to the Master Plan. Quoting MP 2020, Mr. Gontrum said "future community plans will be based on policies and approaches in MP 2020 and future regulation and ordinances are to be consistent with the Master Plan" further quoting, "To the effect that there are no conflicts with this Master Plan, existing community plans will be carried forward" clearly making the community plan subordinate to the Master Plan statements. Mr. Gontrum went on to confirm the Growth Tier I status of the property and indicated the existence of public water and sewer now available to the site thereby encouraging development.

Mr. Gontrum continued by indicating that the Lower Back River Neck Community Action Plan (LBRNCAP) was adopted 5/3/2010, six months prior to the adoption of MP 2020. Mr. Gontrum pointed out that language in the adopting resolution made the community plan a part of MP 2010 and subjected it to modification by the County Council as deemed advisable by said Council. Mr. Gontrum pointed out that, importantly, there have been no changes to the zoning and development regulations by the Council modifying the requirements to be taken into account according to the particular LBRNCAP. Further, there were no changes of zoning sought or implemented in the 2011-2012 Comprehensive Zoning Map Process and MP 2020 cites no special area criteria for the site. Mr. Gontrum argues that the emphasis of the LBRNCAP is on the Chesapeake Bay Critical Area (CBCA).

Mr. Gontrum identified the following issues within the LBRNCAP for the Boards consideration,

One, whether the specific recommendations in the LBRNCAP are in conflict with the provisions of the later adopted MP 2020 particularly, considering the location of the site is within the PFA, the URDL and the Growth Tier system adopted in 2012.

Whether the particular LBRNCAP recommendations are sufficiently clear as to their scope and meaning as to assume regulatory status.

Finally whether the development plan even meets the nebulous criteria of “unbuildable area”, whatever that means.

Mr. Gontrum surmised that even removing the acreage of recognizable unbuildable areas such as wetland and buffer areas from the subject property still permits 18 units. Mr. Gontrum questioned the plans application to lands not in the CBCA stating the plan is not clear on its intent. He continued, stating that the wording in the LBRNCAP is so vague such that we don’t really know what unbuildable square footage means. Mr. Gontrum noted that three separate definitions of unbuildable area were offered by the protestants at the development plan public hearing, not agreeing among themselves. Therefore, no developer really knows what it means as so it doesn’t rise to the significance of a regulation. Mr. Gontrum asserted that if he has DR 3.5 zoning he should know how many units he can build, agreeing with Department of Planning testimony that the closest reasonable definition would be wetlands and buffers as indicated in the LBRNCAP. Mr. Gontrum cited that Baltimore County has made no effort to purchase the land or put it into conservancy and no effort to rezone the land and questioned if these lapses are contrary to the Master Plan.

Mr. Gontrum finished by suggesting that the LBRNCAP regulations basically were superseded by MP 2020 and that MP 2020 is the controlling plan. Mr. Gontrum reiterated the development plan meets every one of the MP 2020 criteria, and development regulation that the plan meets the embodiment of the comprehensive plan and should be approved as consistent with the comprehensive plan.

Vice Chairman Miller asked Mr. Gontrum about the issue and process when the Hearing Officer had been unable to conclude with a ruling. Mr. Gontrum replied that if something comes to the Hearing Officer that is in potential conflict with the Master Plan, then the Hearing Officer is duty bound to send it to the Planning Board for the Boards order and findings, and that the order and findings are binding upon the Hearing Officer.

Mr. Peter Zimmerman was next to speak. Here is a summary of his remarks, prepared by Mr. Zimmerman.

Summary of People’s Counsel’s Argument before Planning Board May 21, 2015 relating to the Osprey Pointe Development Plan Master Conflict Issue, Case XV-757

1. GIS Map -- As shown on the GIS map of the Back River Neck peninsula,
 - a. Cape May Road is the northern boundary of the Lower Back River Neck Plan (LBRN) District.
 - b. The subject property is part of a large undeveloped forested area inside the URDL zoned D.R. 3.5.
 - c. This is the area most vulnerable to potential development in the LBRN District.
 - d. The area outside the URDL is already protected by Resource Conservation Zones.

- e. So, if the LBRN Plan is to have any meaningful impact, it's going to be in this D.R. 3.5 Zone section inside the URDL.
2. Administrative Law Judge John Beverungen -- Referred the case to the Planning Board under County Code Sec. 32-3-231(a) to determine whether "the development plan conflicts with the master plan." He found there is a serious question. If not serious, there would be no need or reason to take up the Planning Board's time.
 3. The LBRN Plan: Incorporated in Master Plan 2020 and supplements it as the plan specific to this defined district. There is no conflict between the LBRN Plan and Master Plan 2020.
 4. Overview -- language, function, perspective, and public interest.
 5. Language -- the philosopher Confucius said that the most important thing in government is to call things by their right name. The most important names/words here are conflict, density, transitional buffer, district, buildable area, and should (the latter four referred to on page 7, paragraphs 2 and 3 of the LBRN).
 6. "Conflict" -- defined by Webster's 3d New Int. Dictionary: "to show variance, incompatibility, irreconcilability, or opposition. Evidence variance or disharmony calling for adjustment, harmonizing, bringing into accord." The "conflict" issue here focuses on density.
 7. Maryland Court of Appeals --The last major Master Plan conflict issue involved the Langenfelder Mansion in Kingsville. To conclude litigation, the Court issued HNS Development vs. Baltimore County 425 Maryland 436 (available on google). The holding: even though development may comply with zoning and other things, if there's a conflict with the Master Plan, this takes precedence. It's not enough to comply with zoning, it's not enough to comply with zoning and other things.
 8. Metaphor: the Green and the Red -- You can pass many green lights, but you still cannot run a red light. You may have green lights as to zoning, URDL, priority funding, and the master plan 2020 land use map, but if the LBRN generates any red lights, there is a conflict.
 9. LBRN Plan Red Lights --The developer and Planning Department have looked at green lights, but either missed or disregarded the LBRN red lights. They now say the red lights are too vague. But the red lights are not vague at all.
 10. Planning Board function -- Judicial (quasi-judicial). Application of law to facts. Not what you think is good policy or what you personally think is good or right. Different from and opposite to role in recommendations on legislation or comprehensive zoning.
 11. Public interest --The LBRN plan purposes: controlling development, suburban or rural. The density issues presented here allow for some sort of suburban development. It is a question of how much? The LBRN plan goals include protecting the environment, the watershed, the forest.
 12. Planning Board Minutes, Introduction of the LBRN, October 15, 2009. -- Planner Laurie Hay presented -- emphasis on "maintaining the rural character of the community, developing standards for internal development, enhancing water quality and protecting the environment."

13. Syllabus: My Neighborhood Aerial and Zoning Maps – Illustrate distinctive large undeveloped area zoned D.R. 3.5 inside URDL but within LBRN boundaries. Below Cape May Road and centered on Turkey Point Road.
14. Syllabus: Master Plan 2020: Incorporates LBRN as one of most recent community plans adopted by County Council May 3, 2010. Pages 195-96.
15. Syllabus: LBRN Plan history – 2005 County Council resolution directing updated plan; 2006-09 work program; dedication to Jackie Nickel, work by committee, neighborhood groups, business associations, affiliated businesses, planning department, Planning Board (including members Miller and McGinnis), and County Council (including members Bartenfelder and Kamenetz). Broad and diverse input.
16. Syllabus: LBRN Plan background, goals, and map –
- a. Page 1, 1993 Plan not carried out; need for stronger plan.
 - b. Page 2, Protect and preserve as much of sensitive and strategic area in view of importance to bay; more legal standing.
 - c. Page 3, map, showing Cape May Road as northern boundary on east side of Back River Neck Road (coincides with Back River Neck Growth Management District legislation).
 - d. Page 4, Purpose of plan to control future development, based on work, studies, research, field trips.
 - e. Page 6, Goals: To remain rural atmosphere, improve water quality, minimize density increases to ensure that future construction goes well.
 - f. Page 6, Introduction to recommendations: both for Chesapeake Bay Critical Area and for entire LBRN land plan geography.
17. Syllabus: LBRN Plan specific provisions for development of tracts over 5 acres in size – Page 7, paragraph 3, Density normally calculated based on entire acreage of property, even area not buildable; but here, density in district should be calculated based on the buildable area only, not including wetlands, buffers and other areas not normally buildable. The paragraph concludes. “All density calculations in the district should have this unbuildable square footage removed from the density calculation.”
18. Syllabus: Analysis of density control under LBRN Plan Page 7, paragraph 3:
- a. The “district” means the entire LBRN boundaries, as shown by reference to LBRN District on Page 8, paragraph 3, and by Bill 60-03 text and map showing Back River Neck District. (Chesapeake Bay Critical Area never referred to as “district.”)
 - b. “Buildable” means, per Webster’s Dictionary, “suitable for building especially, capable of being built or built from without excessive outlay of money, time, or materials.” Clearly, there cannot be building on forest buffer, forest conservation, and road frontage areas, and probably not on the public road area either. This is not vague or difficult.
 - c. “Should” means, per Webster’s dictionary, “used in auxiliary function to express duty, obligation, necessity, propriety, or expediency (example,” for ‘tis commanded I should do so” – Shakespeare; another example, “the law was then passed that every senator should take an oath.”).
19. Syllabus: Density calculations, per LBRN Plan Page 7, paragraph 3: Based on forest buffer, forest conservation, stormwater management, and road frontage areas square footage shown on development plan, deduction of these unbuildable areas results in calculation of a maximum 13 lots. If public road area is subtracted, the calculation shows 11 lots maximum.

20. Syllabus: The “transitional buffer,” per LBRN Plan Page 7, paragraph 2: “Any property above the URDL that is not purchased should remain at very low density (RC 5 or higher) to serve as a transitional buffer for the URDL.” RC-5 is a kind of rural residential/suburban zone. Whether or not the “transitional buffer” compels reduction to the equivalent of R.C. 5, it is definitely the intent of the plan to have development at much lower than D.R. 3.5.

21. Taking the LBRN Plan seriously. If the conflicts with these LBRN provisions are sidestepped, downplayed, avoided, or spun out of existence in this case, it amounts to the destruction of the LBRN plan. The LBRN Plan targets this part of the County and adds to Master Plan 2020, in which it is incorporated based on its adoption by the County Council. If there is to be a policy decision to open up this area to more development than envisioned by the LBRN, then it is up to the County Council to make the change. Till then, the Planning Board is obligated to implement the LBRN Plan as written.

22. Thank you for your patience. The area citizens brought this case to my attention. It is the first master plan conflict case to come to the Planning Board in a long time. We do not bring this matter to your attention lightly. Judge Beverungen considered it serious enough to refer it. I hope you will consider the input of all of the parties.

There were 10 citizens who signed up to speak. Mr. Carl Maynard, from the Back River Neck Peninsula Community Association, was first to speak. Mr. Maynard lives approximately 1.5 miles from the subject site. Mr. Maynard stated that the Lower Back River Neck Community Action Plan was prepared by an advisory committee made up of surrounding residents and business owners. He stated that the purpose of the plan was to guide county agencies that interact with the community and make the county legislation aware of the “will of the community”. He continued by stating that the Lower Back River Neck area is continually impacted by development pressure. Mr. Maynard reiterated that the advisory committee responsible for preparing the plan would like to think that their work meant something. He also stated that, while the site has never been the subject of a zoning change, the Back River Neck Peninsula Community Association has raised over 300 issues from Brown’s road south along the peninsula to down zone many properties. The community also felt that they were protected by the growth management law 64-99 which allows no major subdivisions in the area. However, the law was changed to permit larger projects in the area with greater density (bill 67-08). Mr. Maynard also expressed concern over the lack of infrastructure in the area (sidewalks, curbs etc.).

Mr. Henry Miller was next to speak. He stressed that the Lower Back River Neck plan is really meant to save the bay and protect the water. Further development will only exacerbate the situation. He also expressed concern regarding the intersection at Back River Neck Road and Turkey Point Road. He urged the Board to take the recommendations of the Lower Back River Neck plan seriously.

Mr. Kevin McDonough spoke next. Mr. McDonough is the Vice President of the Rockaway Beach Improvement Association. His major concern is that the Baltimore County Code states that all development shall conform to the Master Plan and adopted community plans. He stated that the Osprey Pointe Plan does not meet this criteria, especially regarding buildable area, transitional buffer and the preservation of property greater than 5 acres, and the Eastern Baltimore County Revitalization Strategy

states that the rural atmosphere on the Back River Peninsula is a strength of the community and its preservation is essential to a sustainable future. Mr. McDonough expressed disappointment that the Master Plan and the community plan are being 'thrown out the window' for the sake of allowing smooth development. Mr. McDonough urged the Board members to help the community stand up against the Osprey Pointe Development.

Ms. Kim Goodwin Maigetter spoke next. She is the president of the Rockaway Beach/Turkey Point Improvement Association. Ms. Goodwin Maigetter stressed that the Osprey Pointe plan does not conform to the Master Plan or the Lower Back River Neck Action Plan. She noted that the community plan is not merely an advisory plan, but an incorporated plan that should guide development in the Back River Neck area. She continued, stating that the area in question is an environmentally sensitive area. She also expressed concern that the density was not calculated properly and that the open space calculations and lot sizes are in direct conflict with the community plan. Ms. Goodwin Maigetter also noted that there are other, very dense projects completed in the area that have put added pressure on the infrastructure and environment. She also stated that a proper site visit was not done by the Department of Planning.

Ms. Michelle Darling spoke next. Ms. Darling expressed concern that the community plan, which many people worked very hard on, was being disregarded. She also stated that the development does not meet the criteria set forth in the plan. She implored the Board members to take this matter seriously.

Mr. Conor Gilligan spoke next. Mr. Gilligan is a principle at Craftsmen Developers, the developer for the site. Mr. Gilligan stated that prior to filing the plan, he met with the Department of Planning and was told that the development met all of the criteria for the area. He also stated that he and his team spent months corresponding with the community and detailing areas where they could change and modify the development to the community's liking. Mr. Gilligan stated further that not once during that time was there ever a mention of a master plan conflict, and that the People's Counsel's position was a shock to them, especially since it came just three days before the scheduled hearing. He continued by stating that the Department of Planning, and every other County agency, endorsed this project and recommended approval. A \$50,000 fee in lieu was also paid for the open space, and there will be 2 acres of wooded space left on the property as well. Mr. Gilligan stated that as far as he knows the development meets all of the necessary criteria. If this development is found to be in conflict with the master plan it will do nothing but discourage redevelopment and economic investment in Baltimore County.

Ms. Debra Hoehn spoke next. She stated that she is concerned that this is the beginning of a domino effect. She also expressed concern over the safety of the residents in the area and what the environmental impact would be on the area.

Mr. Frederick Pohl spoke next. Mr. Pohl stated that he is concerned for the safety of the residents in the area should more development come in. The area already feels awfully crowded.

Ms. Allison Collins spoke next. She has lived in the area for over 27 years. Ms. Collins is concerned that the added development will be a setback for the community environmentally and with regards to traffic and congestion. She would like to see the area preserved as much as possible.

Mr. Tony Schumacher spoke next. He stated that the environment is his greatest concern, and how much additional debris and garbage there will be. He added that additional development will only add to the

decline of the local environment, particularly the water ways. He concluded that he believes in development, but only when it is done in the right way in the proper location.

Adjournment of the Public Hearing

Vice Chairman Miller thanked everyone for coming out. He called for a motion to adjourn the Public Hearing. Mr. Schlossberg made the motion and Mr. McGinnis seconded. The motion passed unanimously at 6:08 p.m. Absent were Messrs. Phillips, Gordon, Perlow, and Mr. Lamb as well as Ms. Hafford.