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MINUTES

Baltimore County Planning Board Meeting

June 4, 2015

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Minutes

June 4, 2015

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

Chairman Phillips called the meeting of the Baltimore County Planning Board to order at 4:01 p.m. The following members were:

Present

Mr. Scott Phillips
 Mr. Paul Miller
 Mr. Mark Schlossberg
 Ms. Lori Graf
 Ms. Nancy Hafford
 Mr. Scott Jenkins
 Mr. Jon Herbst
 Ms. Christina Berzins
 Ms. Michelle Lipkowitz
 Mr. Howard Perlow
 Mr. Wayne McGinnis

Absent

Mr. Jeffrey Gordon
 Mr. Scott Holupka
 Mr. Eric Lamb

County staff present included: Andrea Van Arsdale, Jeff Mayhew, Lloyd Moxley, Jenifer Nugent, Kathy Schlabach, Jessie Bialek, Wally Lippincott, Dennis Wertz and Matt Diana.

Review of today's agenda

Chairman Phillips 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 two corrections to the May 21, 2015 meeting minutes. The Chairman called for a motion to accept the corrected minutes from the May 21, 2015 meeting. Mr. Miller made a motion to accept the minutes and Mr. Herbst seconded the motion, which passed unanimously at 4:05 p.m. Absent were Messrs. Gordon, Lamb and Holupka.

Items for Deliberation and Vote

1. Osprey Pointe Development Plan

Mr. Lloyd Moxley from the Department of Planning gave a presentation before the deliberation and vote began. Mr. Moxley stated that the Board must deliberate and vote on the potential Master Plan conflict regarding the Osprey Pointe Development Plan, and their vote must be supported by specific reasoning as to how they arrived at their collective decision. Mr. Moxley stated that during the Public Hearing opposing points of view were presented to the Board from the developer's attorney, who argued that a conflict exists between the Lower Back River Neck Community Action Plan (LBRNCAP) and Master Plan 2020, and secondly from People's Counsel who identified a conflict between the Master Plan 2020 and the subject development plan, and gave a brief synopsis of both counselors' positions. Members of the Community also expressed their viewpoints. Of note was the declaration of Mr. Kevin McDonough that the proposal threatens the rural atmosphere on the peninsula and is in conflict with the Eastern Baltimore County Revitalization Strategy.

Mr. Moxley stated the facts about the location of the site that were identified by the Department of Planning in order to make their finding of conformity with Master Plan 2020. The site is located within the inner community conservation area established by the Eastern Baltimore County Revitalization Strategy, which promotes this kind of infill development; is located within the urban portion of the Urban/Rural Demarcation Line; is located within Baltimore County Growth Tier 1; has been zoned Density Residential 3.5 since at least 2000 and has not been made an issue for rezoning through the last four quadrennial CZMP processes; is located within the T3 Transect (Sub-Urban) pursuant to the MP 2020 Proposed Land Use, Baltimore County Smart Code Map; is located within the LBRNCAP, and the Community Conservation Plan for Essex-Middle River; is located within a Priority Funding Area (PFA); is not located within the Chesapeake Bay Critical Area; is not located within a Rural Legacy Area; and is not located within a traffic deficient area nor any area identified as deficient based upon the 2014 Basic Services Maps. Mr. Moxley also noted that the development plan indicates that no endangered species habitats, archeological or historical sites are present.

Mr. Moxley analyzed the LBRNCAP recommendations found on page 7 of the plan, which were the crux of the issue. He concluded that recommendations 1 and 3 only applied to properties located within the Chesapeake Bay Critical Area, and therefore didn't apply to the subject property, and that number 2 was met because the T-3 sub-urban proposal would be an effective transitional buffer. Mr. Moxley then expressed the Department of Planning's recommendation that there exists no conflict between the

LBRNCAP and Master Plan 2020, in that both plans share the protection of the Chesapeake Bay and the fabric of the community as primary goals. Further, there exists no conflict between the Master Plan 2020 and the Osprey Pointe Development Plan, but instead, the development plan is a good example of the Master Plan 2020 directing development to a proper location.

Mr. Moxley concluded by stating that the Department of Planning recommends the Osprey Pointe Development Plan conforms to Master Plan 2020, the community plans and Title 4 of the Baltimore County Code pursuant to Section 32-4-102 of the Baltimore County Code. The Department recommends that the Master Plan 2020 “Visions” are met through:

- The location of the project within the Growth Areas defined by the URDL and Growth Tier 1 mapping area confirming the project will be served by available infrastructure including water and sewer thereby minimizing impacts on and ensuring the health of the Chesapeake Bay.
- Location within the PFA allowing the development proposal to make the most efficient use of tax monies spent in terms of infrastructure.
- The project requiring no major expansion of road networks or other basic services nor will the proposal overburden existing services.
- By providing housing opportunities outside of the Coastal Rural Legacy Area thereby protecting and maintaining the rural character of the county and reducing development pressures on the rural areas.
- Being located entirely out of the Chesapeake Bay Critical Area ensuring environmental protections as envisioned in the MP 2020 are met.
- Location within the T-3 Sub-Urban transect confirming that low density detached single family homes on landscaped lots as proposed is an appropriate form and element at this location.

After Mr. Moxley finished, Chairman Phillips stated that the Board’s final determination will be binding on the Hearing Officer and that any issues or concerns they might have should be clearly stated and incorporated into the motion should there be a need. Ms. Hafford then recited the proposed motion for the Board to hear.

Ms. Berzins asked about the adjacent parcel to the east of the development site, its zoning and whether or not it is developable. Mr. Mayhew noted that he thinks there is a stream on that parcel, thus limiting its development potential.

Mr. Miller asked about the lot sizes on the proposed development site and whether or not they are larger or smaller than those in the surrounding area. Mr. Moxley stated that he ran a query searching all lots located in the rural area south of the URDL on the Neck of equal size or smaller than the smallest proposed lot and found that there were 623 existing. Mr. Miller further stated that he was more concerned with the lots immediately adjacent to the site, for compatibility reasons. Ms. Berzins, directing attention to a site plan being displayed, stated that it appears that the adjacent lots are similar in size, although some might be a little larger.

Mr. Miller asked why the minutes from the community input meeting state that the plan at one point called for 14 lots, when the development plan currently notes that 16 lots are proposed. Mr. Miller wondered whether the community was informed of the change or not. Mr. John Gontrum, attorney for the developer, stated that the plan had always been for 16 lots. Mr. Gontrum continued, stating that the plan had changed due to community input, but the number of lots had never changed.

Mr. McGinnis asked if any open space had been set aside for this project. Mr. Moxley noted that a fee in lieu is to be paid. Mr. Moxley continued, saying that typically for projects of this size a fee in lieu is paid, as the space required is too small to be functional. Chairman Phillips asked whether a fee amount had been fixed. Mr. Gontrum noted that number is fixed based on square footage and the zoning classification, in this case it ended up being just over \$50,000. Mr. McGinnis continued, stating that he objected to how easy it is for developers to buy themselves out of the open space provision. Mr. McGinnis also stated that he is concerned for the people who live in the community because they are the ones who have to live in the impacted area both before and after the development.

Mr. Herbst stated that he hoped to refocus the discussion. He noted that the true issue is whether or not there is a conflict with the Master Plan, and if the community action plan carries the force of a regulation. Mr. Herbst noted that there are 50 community action plans, and if every recommendation in them carries the weight of a binding regulation then many more development projects could be impacted. Mr. Herbst went on to say that he understands how hard the communities work to put these action plans together, but to consider specific plan recommendations as binding could become problematic. In order for the recommendations in them to become regulations they would have to be adopted by the County Council as regulations. There are certain recommendations that have been adopted by the County Council, and some that have not. He noted specifically the recommendation of the plan to not allow for planned unit developments below the URDL, which was adopted and carries the force of a regulation. However, another recommendation, stating that there should be no density greater than RC 5 on the Lower Back River Neck peninsula, was not adopted and therefore is not a regulatory device. Mr. Herbst continued, stating that the language regarding the density calculations would have to specifically be adopted by the County Council in order to carry the force of a regulation, and it has not been. Mr. Herbst finished by saying that he appreciates all of the hard work by the community and knows how much time and effort is put in to these matters, but he is going to vote for the motion and encourages his colleagues to do the same.

Mr. Perlow stated that he views the proposed development not as good planning, but as great planning. He stated that the development plan seems to fit into the context of the surrounding community of residential single family detached homes of the same lot size, and house size, and it complies with the principles of smart growth and infill development. The priorities laid out by the state are being accomplished through developments like this and economic growth is occurring as well. The old housing stock is being replenished and all of this is being done inside the URDL. Mr. Perlow noted another development plan that the Board turned down due to its position outside of the URDL, stating that the Board is looking to protect the URDL and protect the green spaces. Mr. Perlow stated that they are protecting the bay and protecting the environment, but that development must also occur. He finished by saying that he too would support the motion.

Mr. Miller asked if there had been any conclusion made as to the size of the surrounding lots. Mr. Perlow noted that the surrounding lots look to be similar in size. Mr. Perlow asked Mr. Gontrum what the average sales prices would be for these homes. Mr. Gontrum replied that he thinks they will be marketed at the low \$400,000 range. Mr. Perlow stated that this type of development is also important because it will provide workforce housing. Mr. Miller stated that he does not disagree with Mr. Perlow and that he does not think it's a bad plan, but he cannot come to terms with placing property that is in an easement into the density calculation and that he will vote against the motion.

Chairman Phillips asked the Planning staff about the practice regarding unbuildable land. Mr. Moxley replied that the only zone that exists outside of a PUD that uses a net density calculation is the RC 6 zone. For that zone, the Department of Environmental Protection and Sustainability does a site inspection and establishes a primary conservancy area, followed by a Planning Department site inspection where a secondary conservancy area is established. Once those two areas are established a density calculation area is established. One half of the density calculation area must be located in the secondary conservancy area, which can exhibit forests, trees, buffers and sensitive areas, none of which are deleted from the density calculation area. Only RC 6 zoned properties are subject to this net density calculation. Chairman Phillips further clarified that RC 5 and DR 3.5 zones are not subject to the net density calculations. Mr. Moxley confirmed that.

Mr. Jenkins stated that he has struggled with this decision. He noted that he applauds the community for everything they've done. Specifically, he struggled with community plan versus the Master Plan, noting that the community plan was passed and voted on by the County Council and then 6 months later the Master Plan was passed which specifically stated that community plans would not carry any force if they are in conflict with the Master Plan. Mr. Jenkins stated that he struggled with this because the community plans were passed by the County Council. Mr. Jenkins continued, saying that he would vote with the motion because he does not believe that the development conflicts with the community plan. He further stated that he will always fight for the community plans and that he thinks they should carry more weight, especially when it comes to local development.

Mr. Herbst stated that he did not want to give the impression that community plans don't carry any weight. He clarified his point by saying that a community plan is a framework. There are other steps that need to be taken, such as speaking with your Council person to achieve the desired changes, whether they be zoning or otherwise. Mr. Jenkins replied that his concern is with the County Council passing community plans that the community thinks will protect them in cases like this, while also passing a Master Plan that limits their effectiveness. Mr. Herbst stated that he thinks it is critical to have straightforward rules that everyone is clear on that don't get changed mid-stream, both for the community and the developers.

Ms. Berzins stated that the adjacent property to the east appears to be unbuildable, therefore the domino effect of development that the community is concerned about does not appear likely to happen. She also noted that the property owner is being impacted here too. The value of their property would be greatly impacted as well as the other DR 3.5 zoned developments. She stated that she will vote for the motion, but urged the community to investigate the adjacent property to the east.

Chairman Phillips stated that the deliberation amongst the Board has been very healthy, and that in certain cases, like this one, the Board's decision is binding.

Ms. Hafford made the motion, which read as follows:

Be it moved, that the Baltimore County Planning Board forwards its findings and decision to the Hearing Officer and further recommends to the Baltimore County Council that the Osprey Pointe Development Plan conforms to the Master Plan 2020 and the adopted community plans for the following reasons:

- 1) The location of the project within the Growth Areas defined by the URDL and Growth Tier 1 mapping area confirming the project will be served by available infrastructure including water and sewer thereby minimizing impacts on and ensuring the health of the Chesapeake Bay.
- 2) Location within the PFA allowing the development proposal to make the most efficient use of tax monies spent in terms of infrastructure.
- 3) The project requiring no major expansion of road networks or other basic services nor will the proposal overburden existing services.
- 4) By providing housing opportunities outside of the Coastal Rural Legacy Area thereby protecting and maintaining the rural character of the county and reducing development pressures on the rural areas.
- 5) Being located entirely out of the Chesapeake Bay Critical Area ensuring environmental protections as envisioned in the MP 2020 are met.
- 6) Location within the T-3 Sub-Urban transect confirming that low density detached single family homes on landscaped lots as proposed is an appropriate form and element at this location.

Mr. Perlow seconded the motion, which passed at 4:51 p.m. Mr. McGinnis and Mr. Miller opposed the motion. Absent were Messrs. Gordon, Lamb and Holupka.

Items for Introduction

2. 2223 York Road – Development in an MR Zone

Mr. Wally Lippincott from the Department of Planning introduced the 2223 York Road, Development Plan in an MR Zone. The MR zone requires the recommendation of the Planning Board before it goes to the Administrative Law Judge (ALJ). The submittal requirements for the MR zone dictate that topography, proposed streets, materials, proposed use, proposed parking, screening and planting be reviewed. Mr. Lippincott noted that the MR zone's purpose was to make sure that uses of neighboring residential zones are protected from adjacent industrial uses. Mr. Lippincott outlined the area requirements, which include no parking within 25' of a residential use, and a 125' setback from the nearest residential zone. Mr. Lippincott noted the current site conditions, stating that there is an existing building on the site that will be razed. He detailed the proposed project, noting the following: Gross Site Area: 77,202 sq. feet; Proposed Building: 8,308 sq. feet; Use: AAA Travel and Car Care Center; 27 employees (10 new); Rear Setback: 308 feet (50' required); Side Setback: 50 feet (50' required); Front Setback: 28 feet (75' required); Residential Setback: 303 feet (125' required); Coverage: 11% coverage (25% limitation for one story); Parking setback: 200 feet (25' required). Mr. Lippincott stated that the Planning Department concluded that the plan meets the overall purpose of the MR zone requirements. Some issues that still need to be addressed include building materials, retaining wall material, landscaping, and architecture that is in keeping with the surrounding area.

Ms. Hafford asked if the AAA store in the Towson area would be relocating to this site. Mr. Lippincott said that he was not sure but that Mr. Adam Rosenblatt, an attorney with Venable LLP, could answer that question.

Mr. Adam Rosenblatt, attorney on behalf of the developer, spoke next. Mr. Rosenblatt noted that there are very few MR zones in the county, therefore this process does not happen frequently. Mr. Rosenblatt noted that within 30 days after receipt of the plan, the Board must make written recommendations to the Office of Administrative Hearings, after which the Administrative Law Judge will hold a zoning hearing to approve the plan. The Planning Board's recommendations in this case are not binding on the ALJ. Mr. Rosenblatt stated that this is a relocation, referring to Ms. Hafford's question, but it will not be the Towson branch that is relocating, and that ten new jobs are being created due to the relocation. Mr. Rosenblatt stated that they are attempting to landscape the site as best as possible, due to the presence of a large retaining wall. Mr. Rosenblatt further indicated that he will be back with the full design team for the Public Hearing.

Mr. Miller asked what the exact issues were that the Planning Department was looking at. Mr. Rosenblatt stated that the issues relate to building materials and the retaining wall on the south side of the property.

Chairman Phillips asked what the approximate investment is going to be. Mr. Rosenblatt stated that he did not know but will have an answer at the Public Hearing.

Ms. Hafford made a motion to set a Public Hearing for June 18, 2015 at 5:00 p.m. for a development in an MR zone. Mr. Miller seconded the motion, which passed unanimously at 5:06 p.m. Absent were Messrs. Gordon, Lamb and Holupka.

3. Towson Row – Development involving a historic structure

Ms. Jenifer Nugent introduced the Towson Row development plan. The plan comes before the Board due to the involvement of a historic structure on the site, and a letter of referral from the ALJ. Ms. Nugent outlined the project, including the site details and the location of the historic structure, the MA and PA railroad abutments, which is at the northwest corner of York Road and Towsontown Boulevard. Ms. Nugent noted that the Board has 45 days to file a written decision with the ALJ. The written decision is binding on the ALJ. Ms. Nugent stated further that the Landmarks Preservation Commission (LPC) received and reviewed the plan and then offered their comments to the Planning Board. The LPC ascertained that the development plan did not adversely impact the structure.

Mr. Chris Mudd of Venable LLP, attorney on behalf of the developer, gave a brief overview of the project, noting that it will include residential and office uses, student housing, structured parking, a hotel, restaurants, and retail, with Whole Foods as the anchor tenant. Mr. Mudd described the process, stating that a concept plan conference was held, wherein county agencies reviewed the plan. Included in the concept plan conference was the stipulation that the plan must come before the Planning Board for the involvement of a historic structure. A community input meeting was held at the beginning of 2015. The project was also required to go before the design review panel. The development plan was filed last month. Mr. Mudd noted that the development plan was sent to each Planning Board member for review prior to the meeting. Mr. Mudd gave a power point presentation where he displayed the location of the historic structure, and noted that the development plan calls for no alteration to the abutment and that

nothing will be structurally dependent on the abutment. Mr. Mudd went into some detail regarding the design concepts for the area around the abutment, noting that they hope to open up that corner and showcase the historic structure. He did say, however, that the wing walls, which are not historic, might come down. Mr. Mudd continued, stating that it was discovered that there were some buried utilities under the abutment, and this discovery might drive some of the design concepts because the utilities could impact what they can or cannot build at the location. Mr. Mudd concluded by asking that the Board finds, for the purposes of the ALJ, that the plan can proceed and that there is no issue with the involvement of a historic structure, which would be in line with what the LPC recommended as well.

No members of the community spoke.

Chairman Phillips noted that the vote and deliberation will be held at the June 18, 2015 meeting.

4. Non Commercial Small Livestock, Fowl and Poultry

Ms. Jessie Bialek from the Department of Planning introduced the staff report regarding small livestock, fowl and poultry. Ms. Bialek noted that the staff report is in response to County Council Resolution 73-13, which requests that the Planning Board review surrounding jurisdictions and county laws and regulations relating to the accessory use of non-commercial raising and keeping of small livestock, fowl or poultry, to determine what, if any, changes are needed to Baltimore County laws, regulations or zoning classifications regarding such uses and to report their findings to the County Council. Ms. Bialek described the County's current zoning regulations that restrict the keeping of non-commercial livestock to a minimum of one acre. Those who wish to keep non-commercial livestock on smaller lots have had to file for zoning variances, some of which have been approved. There is also no numerical limit on the amount of non-commercial livestock a person can have if their property is over one acre.

Ms. Bialek described the process used to develop the staff's recommendations. To begin the process, the Department of Planning held a public information meeting on March 20, 2014 to get public input. According to Ms. Bialek, the majority were in favor of relaxing the regulations for the keeping chickens or hens. No one spoke in favor of keeping any other small livestock, fowl or poultry. The Department of Planning then met with various county agencies, including the Department of Health and Human Services (DHHS), Environmental Protection and Sustainability (EPS), Code Enforcement (CE) and Zoning Review (ZR). The DHHS's main concern was disease, EPS's main concern was water quality, CE was opposed due to rodent control issues.

Extensive research was done regarding jurisdictions around the country that had recently changed their regulations. Ms. Bialek said that three out of the five adjacent counties to Baltimore County, Anne Arundel County, Baltimore City and Howard County, passed new regulations regarding this matter in 2013. Ms. Bialek noted that none of the three jurisdictions reported any violations since the new regulations were enacted, but there were some animal control complaints regarding loose chickens in each of the three adjacent jurisdictions.

Ms. Bialek stated that the Planning staff's recommendations include allowing chickens on smaller lots and noted that licensing and regulations will address potential negative impacts on public health and the environment. Some of the other specific recommendations include: permitting up to 4 hens on single family detached lots only, with a minimum square footage of 5,000 s.f., no roosters allowed, coops to be

25' from neighboring residences, allowing a maximum of 25 hens on lots larger than one acre, and specific design and maintenance requirements for coops. Ms. Bialek requested that the Planning Board set a Public Hearing for June 18, 2015 at 5:00 p.m.

Mr. Miller made a motion to set a Public Hearing for Thursday, June 18th at 5:00 p.m. Mr. McGinnis seconded the motion, which passed unanimously at 5:30 p.m. Absent were Messrs. Gordon, Lamb and Holupka.

Mr. McGinnis asked why ducks were not considered. Ms. Bialek responded that the public had only asked about chickens.

Mr. Miller asked if any other livestock was considered other than chickens. Ms. Bialek stated that no other livestock was requested and that the staff report considers chickens only.

Other Business

5. No Landmark Preservation Commission meeting to report on.
6. Recent County Council Legislation of Interest to the Board

Mr. Diana gave a report on the recent County Council legislation of interest to the Board. There were two items listed, Bill 29-15 and Resolution 37-15. Bill 29-15 adds new landmarks to the Final Historic Landmarks list. The two items added were Item 391, the "Onion-Rawl House", in Bradshaw and Item 392, the "Allmond Confectionary Store", in Turner Station. Resolution 37-15 amends the Towson Business Core Design Principles, specifically related to building elements, building placement, building height, and streetscaping.

Mr. Perlow asked about the meeting time for the next meeting. Mr. Mayhew stated that the Public Hearing is scheduled for 5:00 p.m. but that the regular meeting may occur at 4:30, depending on the Board's meeting agenda, so that the meetings will run more closely together.

Adjournment of Board Meeting

Chairman Phillips called for a motion to adjourn the Board meeting. Mr. Miller made the motion and Mr. McGinnis seconded the motion, which passed unanimously at 5:35 p.m. Absent were Messrs. Gordon, Lamb and Holupka.