

MINUTES

Baltimore County Planning Board Meeting

June 1, 2017

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Note: A copy of the appendices is located in the official Planning Board file.

Minutes
June 1, 2017

Call to Order, Introduction of Board Members

Chairman Phillips called the meeting to order at 4:32 p.m. The following members were:

<u>Present</u>	<u>Absent</u>
1. Mr. N. Scott Phillips	1. Mr. Jeffrey Gordon
2. Ms. Christina Berzins	2. Ms. Michelle Lipkowitz
3. Mr. Jon Herbst	3. Mr. Wayne McGinnis
4. Mr. Scott Jenkins	4. Mr. Howard Perlow
5. Mr. Rick Yaffe	
6. Ms. Nancy Hafford	
7. Mr. Mark Schlossberg	
8. Mr. Todd Warren	
9. Ms. Lori Graf	
10. Ms. Cathy Wolfson	
11. Dr. Chris Haffer	

County staff present included Andrea Van Arsdale, Jeff Mayhew, Kathy Schlabach, Kui Zhao, Lloyd Moxley, and Jeff DelMonico from the Department of Planning. Mr. Herbst arrived at 5:03 p.m.

Review of Today's Agenda

Chairman Phillips asked staff if any changes were made to the agenda. Mr. DelMonico notified the Board that a new addition was made to include the Plan Implementation and Development Process (Five Year Report) for introduction, discussion and vote.

Minutes of the May 4, 2017 Meeting

Chairman Phillips asked the Planning Board members if they had any questions regarding the minutes from the May 4th, 2017 meeting. No questions were posed and the Chair entertained a motion to accept the draft minutes. Mr. Schlossberg made the motion and Ms. Wolfson seconded the motion, which passed unanimously at 4:36 p.m. Absent for the vote were Mr. Perlow, Mr. Herbst, Mr. Gordon, Ms. Lipkowitz, and Mr. McGinnis.

Item for Introduction, Discussion, and Vote

1. 2016 Baltimore County Annual Report on Growth and Plan Implementation and Development Process (Five-Year Report).

Ms. Kui Zhao from the Department of Planning presented a summary on the 2016 Baltimore County Annual Report on Growth along with the Plan Implementation and Development Process (Five Year Report). Ms. Zhao explained that these reports review the trends and patterns of new development, legislative amendments, public facilities improvements and land preservation within Baltimore County. The annual report covers 2016 while the five-year report is from 2011 to 2015. Ms. Zhao provided the

Planning Board with data derived from these reports and was available to answer questions following the presentation.

Dr. Haffer asked Ms. Zhao to revise a reference on page 19 concerning school facilities within the 2016 Annual Report on Growth. Dr. Haffer was concerned that the way in which County Executive Kevin Kamenetz was referenced within this section could be misconstrued as a political statement. Dr. Haffer suggested this reference be amended by either stating “Since 2011, Baltimore County has invested \$1.3 billion on school construction” or “County Executive Kamentez and the citizens of Baltimore County have invested \$1.3 billion on school construction”.

Dr. Haffer also expressed concerns with the Five-Year Report where it states “Identification of any State or Federal laws that have impeded local implementation of a comprehensive plan”. Dr. Haffer suggested that the section which talks about how impediments will affect the County moving forward is mainly based on conjecture and thus should be placed under the section which outlines future growth. Dr. Haffer then suggested some editorial comments be addressed such as an elaboration on abbreviations. Ms. Zhao and the Department agreed to address Dr. Haffer’s suggestions.

Ms. Wolfson asked if the acronym PFA (Priority Funding Area) can be interchangeably used with the URDL (Urban Rural Demarcation Line). Ms. Zhao confirmed that the PFA mirrors the boundaries of the URDL.

Mr. Schlossberg asked about the trends for single family dwellings within the URDL. Mr. Schlossberg referenced data from the annual report stating that “834 single family homes were approved for occupancy permits in 2016”. Ms. Zhao indicated that a chart showing the trend is available as a by-product of semi-annual population estimates for the Liquor Board. Ms. Zhao explained that for every year, a chart is updated and could be sent after the meeting for review by Mr. Schlossberg.

Mr. Warren inquired about how much capacity is left within the URDL to support single family dwellings. Ms. Van Arsdale, Director for the Department of Planning, explained that the applied zoning is not a perfect indicator of what can be built. Much of the undeveloped land within the URDL is generally considered to be constrained thus lowering the prospect for new development. Redevelopment of properties represents a substantial amount of development potential which has an impact on growth trends and outlooks. Mr. Warren is mainly interested in single family detached dwellings. Ms. Van Arsdale indicated that Ms. Zhao can find the reference available in the report.

Mr. Warren asked if this report takes into account the number of units that the County is committed to provide in the HUD (U.S. Housing and Urban Development) agreement which the County began to implement last year. Ms. Van Arsdale explained that this conciliation agreement is not accounted for within the capacity calculations.

Mr. Yaffe asked if the 834 figure was a net number which included redevelopment or only new homes. The Department confirmed that the number is a gross calculation as it does not differentiate redevelopment from new construction.

The Chairman called for a motion to adopt the reports with Dr. Haffer’s recommendations. Ms. Berzins made the motion to adopt both the 2016 Baltimore County Annual Report on Growth and the Plan Implementation and Development Process (Five-Year Report) as revised by the comments of Dr. Haffer. Ms. Hafford seconded the motion which was passed unanimously at 5:00 p.m.

Other Business

1. Report from the May 11th, 2017 meeting of the Landmarks Preservation Commission

Mr. Yaffe reported that on May 11th, 2017 the LPC voted to issue 10 Certificates of Appropriateness and 1 notice to proceed. The LPC also voted to postpone Bachelor’s Hall for 90 days after the public hearing.

2. Recent County Council Legislation of Interest to the Board

- a. Bill 15-17 – 2017 Basic Services Maps
- b. Resolution 47-17 – Amending the Perry Hall Commercial Revitalization District
- c. Resolution 48-17 – Amending the Overlea Commercial Revitalization District

Mr. DelMonico gave a report on the recent County Council legislation. Chairman Phillips asked if the County Council made any changes to the Basic Services Maps since the Planning Board voted on them in February of 2017. Mr. Mayhew, Deputy Director for the Department of Planning, indicated that the Council modified the boundary at Ebenezer road and Pulaski Highway. Mr. Mayhew also shared that the intersection at Rossville Boulevard and Belair Road was changed from “D” to “F” on the Transportation map.

Adjournment of the Board Meeting

Chairman Phillips called for a motion to adjourn the Board meeting. Ms. Berzins made the motion and Ms. Wolfson seconded the motion, which passed unanimously at 5:02 p.m. Absent for the vote were Mr. Perlow, Mr. Herbst, Mr. Gordon, Ms. Lipkowitz, and Mr. McGinnis.

Public Hearing
by the
Baltimore County Planning Board**

Call to Order, Introduction of Board Members, and Remarks on Procedure by Chairman

Items for Public Hearing

1. Baltimore County Open Space Manual Revision

Chairman Phillips asked the Board Members if there were any questions for Ms. Kathy Schlabach, Division Chief within the Planning Department, concerning the Baltimore County Open Space Manual revision. Mr. Yaffe provided his assessment that the Bill will always override the Manual. Ms. Schlabach explained that changes were based specifically on the Bill. Technical updates were also made based upon current practices. Formerly, the Director, as defined in the manual, was from the Department of Recreation and Parks. The Director of Permits, Approvals and Inspections is responsible for the implementation of the manual. How the fees are utilized is still determined by the Director of the Department of Recreation and Parks in current practice. Mr. Mayhew added that in the Bill, the Directors of both Recreation and Parks and Permits, Approvals and Inspections make decisions on whether the Open Space can be used in an environmental area. Ms. Van Arsdale stated that there is a separation

between the development review and approval process and the acquisition and usage of open space, each falling under their respective directors. Ms. Schlabach stated that if the Bill deleted anything from the code, it was then removed from the Manual. If the Bill added language to the Code, then it was added to the Manual. If the Bill was silent on a topic, the Manual was unaffected, except for technical updates.

Mr. Yaffe indicated that the Bill contradicts the Manual especially with respect to the definition of the Director. Ms. Schlabach stated that the Manual cannot contradict the Bill but it will have additional information that the Bill does not address. Mr. Yaffe expressed his concerns with the ambiguity of the Bill over which Directors are assigned to what roles.

Mr. Yaffe asked if the Bill describes how the fees in lieu of Open Space would be used. Ms. Schlabach explained that when the fees are collected, they are put into the Capital Improvement Program of the Department of Recreation and Parks and must be used within the Council District from which the fees are generated. Twenty percent goes to NeighborSpace, of which thirty percent can be used for operating expenses. Mr. Yaffe asked if there is a time limit for the money to be spent after a developer pays the fee for open space. Ms. Schlabach indicated that there is no time limit. Mr. Yaffe then asked who determines how the fees are spent. Ms. Schlabach stated that since the fee is part of the Capital Improvement Program, there is an annual review of the budget which allows the Planning Board to make suggestions, along with the County Executive and County Council.

Mr. Yaffe asked about where are the NeighborSpace maintained projects located within the County. Ms. Schlabach stated that there are many ongoing projects but would need to investigate how the money is being spent. Mr. Yaffe shared that he is curious about how the Department of Recreation and Parks is utilizing the money under the Capital Improvement Program.

Mr. Phillips summed the questions from Mr. Yaffe. The first was what capital was expended using the open space fees by the Department of Recreation and Park. The second question was on how the twenty percent of money for NeighborSpace is being spent.

The Chairman then called for public speakers on this topic. Mr. Vince Gardina, Director of Baltimore County Department of Environmental Protection and Sustainability (EPS), was the first public speaker. Mr. Gardina explained to the Planning Board that EPS is responsible for reviewing forest buffers, forest conservation easements, storm water management facilities and Chesapeake Bay critical area. EPS reviews them in two ways, as developments come in for approval, EPS makes sure those developments take into consideration all environmental restraints. Secondly, EPS also enforces actions after a development occurs. In the current Open Space Manual, environmentally constrained areas are excluded from open space. The new law includes these areas for open space allowing trails, gazebos and other active usages to be permitted.

Mr. Gardina felt the Planning Board should know the purpose of these environmental constraints. Since 2010, Baltimore County is under court order to comply with the Clean Water Act. Mr. Gardina explains that one of the biggest causes of pollution is storm runoff from urbanized areas. The Departments policy is to not permit active uses within these buffer areas with some exceptions. Storm water management facilities take the runoff and removes pollutants from the water which flow into the rivers. Mr. Gardina does not support the Council on including these areas for recreational usage. Mr. Gardina stated that many of these areas are dangerous to be in. Baltimore County Code Article 33-3-112 establishes EPS guidelines for reviewing a development. One of the requirements is for a developer to provide an alternatives analysis. This analysis assesses alternatives in order to avoid impacts on environmental buffers and easements. Mr. Gardina explained that there are limited instances where trails could be permitted within a buffer area such as perpendicular crossing for the purpose of accessing other areas outside of the buffer.

As Director of EPS, Mr. Gardina strongly recommended that recreational uses be adjacent to the environmentally protected areas rather than allowed within them. The County is under very strict oversight by the Maryland Department of the Environment (MDE) and the United States Environmental Protection Agency (EPA) because of the Clean Water Act. EPS must meet its total maximum daily loads or the County could be subject to a consent decree. The County spends \$28 million a year to comply with the Clean Water Act. Mr. Gardina expresses his belief that allowing these uses within the buffers and protections areas would be contrary to the environmental protection goals of Baltimore County.

Chairman Phillips asked Board members if they had any questions for Director Gardina. Dr. Haffer asked who the arbiter is when determining whether or not a developer is taking on an undue burden. Mr. Gardina explained that those determinations are objective, not subjective and come from within the law and must meet six criteria objectives. Dr. Haffer requested Mr. Gardina to provide the law with those citations following the meeting. Mr. Gardina concurred with this request.

Chairman Phillips asked if the developer complied based on the law, would there be opportunity for the County to restrict open space usage within the environmentally constrained areas. Mr. Gardina stated that EPS can still restrict activities within the protected areas and storm water management facilities, but it would be much more problematic with possible legal challenges. Mr. Gardina indicated that EPS was not against counting these sensitive areas for open space credit, just opposed to locating activities within them.

Ms. Hafford asked Mr. Gardina if he had spoken with the County Council about this Bill and are they aware of this issue. Mr. Gardina explained that they have not communicated but did speak about this topic prior to the Bill being passed in October of 2016. Mr. Schlossberg asked if it is typical for the County Council to ask for input from the Department Heads before submitting a Bill. Mr. Gardina indicated no.

Mr. Phillips asked staff how far the Board can go with accommodating Mr. Gardina's comments. Ms. Van Arsdale explained that the Bill instructs the Planning Board and the Department of Planning to amend the Manual so that it conforms to the the Bill. Mr. Gardina has pointed to aspects of the Bill that contradict or can run counter to what EPS is required to do by Code elsewhere. Ms. Van Arsdale stated that it is the Planning Boards purview to follow the Bill strictly or the Board can make an amendment to the Manual so long as it does not contradict what the Council has already passed. In essence, Mr. Gardina is asking for a "buyer beware" disclosure within the Manual saying that other codes may run in conflict with what the Manual says.

Ms. Van Arsdale suggested that if the Board would like to show support for Mr. Gardina's comments, it could send a letter expressing Director Gardina's concerns and request the County Council address them. Mr. Gardina read off Baltimore County Code 33-3-113 which addresses conflicts with other laws and regulations. Mr. Phillips requested language for a letter to be sent to the Council acknowledging the comments provided by EPS.

Mr. Linwood Jackson, a county resident from Turner Station, asked about the five year plan for his community. Ms. Van Arsdale explained that one year ago, the Turner Station community asked for a way of analyzing the residential properties in their community especially in light of vacancies and foreclosures. The Department of Planning requested proposals for a housing survey. There are two members of the community on the evaluation committee. There were two final respondents to the request of the proposal, the evaluation committee unanimously chose Lipman Frizzell & Mitchell LLC. The company is coming only as a consultant to the County and the community to identify the problems within the houses that exist there now. Lipman Frizzell & Mitchell LLC is not interested in purchasing land, they

are evaluating the condition of the houses and recommending strategies for homeownership and rehabilitation.

Ms. Van Arsdale wanted to address a question raised by Mr. Yaffe earlier concerning Neighborspace and their properties. NeighborSpace has provided information on their website, stating that Neighborspace has protected 18 properties totaling 85.7 acres including 24 acres in fees and 65.3 acres in easements at a value of \$1.5 million. The website contains a map that shows the locations of these properties as well. Mr. Phillips asked if it mentions how much NeighborSpace has invested in improvements. Ms. Van Arsdale indicated that NeighborSpace was required to submit a budget report to County Council. The Department will follow up on obtaining this report.

Adjournment of Public Hearing

Chairman Phillips called for a motion to adjourn the Public Hearing. Ms. Hafford made the motion and Ms. Wolfson seconded the motion, which passed unanimously at 5:53 p.m. Absent for the vote were Mr. Perlow, Mr. Gordon, Ms. Lipkowitz, and Mr. McGinnis.
