

OFFICIAL MINUTES
Carroll County Planning and Zoning Commission

October 5, 2016

Location: Carroll County Office Building

Members Present: Matthew S. Helminiak, Chair
Richard J. Soisson, Vice Chair
Eugene A. Canale
Alec Yeo
Jeffrey A. Wothers
Daniel Hoff, Alternate
C. Richard Weaver, Ex-Officio

Members Absent: Cynthia L. Cheatwood

Present with the Commission were the following persons: Philip R. Hager, Darby Metcalf, Lynda Eisenberg, Scott Graf, and Andrea Gerhard, Department of Planning; Clay Black, Laura Matyas, Price Wagoner, John Breeding, Bureau of Development Review; Gail Kessler, County Attorney's Office; Ted Zaleski, Management and Budget; James Marks and William Caine, Board of Education.

CALL TO ORDER/WELCOME

Chair Helminiak called the meeting to order at approximately 6:00 P.M.

ESTABLISHMENT OF QUORUM

Secretary Hager took the attendance of the Commission, noting that six members were present, and there was a quorum.

PLEDGE OF ALLEGIANCE

OPENING REMARKS

Secretary Hager reminded everyone to silence their devices. He indicated there were no changes to the Agenda.

REVIEW AND APPROVAL OF AGENDA

The Commission, on motion of Mr. Yeo, seconded by Mr. Canale, and carried, approved the agenda as distributed.

PUBLIC COMMENTS

Wendy Berger, Eldersburg citizen, asked for an explanation for how and why the proposed land use changes are initiated.

Mr. Soisson said this would be addressed in Agenda Item #13.

ADMINISTRATIVE REPORT

A. Administrative Matters

Secretary Hager updated the Board Members on the progress of filling the Administrative position within the department.

Mr. Hager formally introduced Clare Williams as the new Planning Technician.

(Mr. Wothers joined the meeting)

B. BZA Cases

Secretary Hager presented the BZA report stating that Cases 5953, 5954, 5956, 5957, 5958 and 5962 were all approved.

C. Other

There was no further business under the Administrative Calendar

CONCEPT SUBDIVISION PLAN REVIEW

SUBJECT: P-16-0030, Charles Ray Acres, Section 2
LOCATION: South side of Liberty Road (MD Route 26), east of Woodbine Road, E.D. 9
OWNER: Barnes Family Limited Partnership, 301 Luther Drive, Westminster, MD 21158
DEVELOPER: Same as owner
ENGINEER: RTF Associates, 142 East Main Street, Westminster, MD 21157
ZONING: Neighborhood Retail Business (B-NR) / Agricultural
ACREAGE: 98.2 acres
WATERSHED: South Branch Patapsco
NO. OF LOTS: 1 lot
FIRE DISTRICT: Winfield
MASTER PLAN: Commercial – Medium / Agricultural
PRIORITY
FUNDING AREA: Outside
DESIGNATED
GROWTH AREA: Outside

❖ Action Required:

The plan is before the Planning and Zoning Commission per Chapter 155 of the Code of Public Local Laws and Ordinances of Carroll County for consideration of a Concept Major Subdivision Plan.

With consideration of the parameters of the plan and since it will not be reviewed for Concurrency Management, Chapter 156 of the Code, staff would support the full Commission empowering the Chairman with preliminary / final approval authority.

❖ Existing Conditions:

The subject property is located south of Liberty Road (MD Route 26) and east of Woodbine Road. This 98.2 acre lot is the Remaining Portion of the Charles Ray subdivision which created 3 lots in 2005, recorded in Plat Book 49, Page 108 (attached). A residence served by private well and septic system plus several outbuildings are located on the property in close proximity to Liberty Road. Existing access to the residence is from Liberty Road with an additional means of ingress and egress over an existing unpaved farm lane to Charles Ray Acres Drive, a private drive. Charles Ray Acres Drive is currently shared by four lots plus the Remaining Portion.

A stream exists on site as well as two large areas of forest.

Two zoning districts overlay the property; Agricultural and B-NR. The B-NR zoning extends along the length of the property at Liberty Road. All surrounding properties have an Agricultural zoning designation except the adjoining property at the northwest boundary at the B-NR-zoned portion. This property has a BG, General Business, zoning designation and currently hosts a bank. The rest of the adjoining properties are built with single-family residences on private well and septic systems.

❖ **Subdivision Plan Review:**

A concept plan for the resubdivision of the Remaining Portion of Charles Ray Acres was submitted on June 1, 2016 to the Bureau of Development Review. The developer plans to divide the existing 98.2-acre lot into two lots, separating the B-NR-zoned area from the Agricultural-zoned area. Lot 4 will retain the existing structures and be 15.019 acres. The Remaining Portion will be reduced to 83.18 acres. This subdivision does not affect the lot yield of the Agricultural-zoned Remaining Portion. There are 2 potential future lots of subdivision from the Remaining Portion.

Access from Liberty Road will continue to be used for the existing residence and the farm lane access will not be used by Lot 4. Lot 4 will not be added to the ingress and egress easement for Charles Ray Drive.

The concept site plan was subject to citizen involvement at the July 25, 2016 Technical Review Committee meeting. One citizen was in attendance, but did not speak.

While the subdivision plan is currently in the review process, no site plan has been submitted for development on the B-NR-zoned Lot 4. In accordance with § 155.059 SITE PLAN REQUIREMENTS of the Code, a site plan will be required for any non-residential development. The site plan will require Planning and Zoning Commission approval. A note stating that requirement will occur on the final plat and be included as a condition of final approval.

On June 30, 2016 State Highway Administration (SHA) gave approval to the plan; however, upon submittal of a site plan for any development on Lot 4, SHA will review the plan. Additionally, any future development proposal for Lot 4 may be subject to a traffic study and roadway improvements.

The plan is exempt from Forest Conservation, Landscaping, and Stormwater Management requirements. It is outside the Bureau of Utilities' jurisdiction. There were no comments from Grading, Fire & Emergency Services, Zoning, or Engineering. The Health Department has requested a note, "For Ag use only" be placed on the Remaining Portion on the plan. Floodplain review has requested additional information. A Water Resource Protection Easement will be recorded with the plat.

The plan will not be subject to Concurrency Management, Chapter 156 of the Code.

Clay Black presented the Staff Report to the Commission.

Discussion:

Mr. Black stated this is not subject to Concurrency Management.

John Lemmerman, RTF Associates, spoke on behalf of the owner stating that they wish to separate two lots on their property.

Decision:

Via a motion by Mr. Yeo, seconded by Mr. Wothers and carried, the Commission voted to authorize the Chair to approve the Preliminary and Final Plans when they become available.

SPECIAL REPORT

P-12-006 – Hudson Forest Estates, 4

SUBJECT: P-12-006 – Hudson Forest Estates 4
LOCATION: South side of MD Route 850H (West Old Liberty Road); 1,000 feet east of Freter Road, E.D. 14
OWNER: James R. Mudgett, Jr. & Mary K. Mudgett; Thomas R. Mudgett & Regina M. Mudgett; and James Mudgett, 5007 Bushey Road, Sykesville, MD 21784
DEVELOPER: James R. Mudgett, Jr. & Mary K. Mudgett; Thomas R. Mudgett & Regina M. Mudgett, 5007 Bushey Road, Sykesville, MD 21784
SURVEYOR: D.R.S. & Associates, 52 Winters Street, Westminster, MD 21157
ZONING: Agricultural
ACREAGE: 24.8 acres
WATERSHED: South Branch Patapsco
NO. OF LOTS: 13 lots
FIRE DISTRICT: Winfield
MASTERPLAN: Agriculture
PRIORITY FUNDING AREA: N/A
DESIGNATED GROWTH AREA: N/A

❖ **Purpose of staff presentation:**

The developer recently submitted a revised preliminary subdivision plan for technical agency review. This plan is before the Planning and Zoning Commission for staff to update and inform the Commission of the differences between the concept and preliminary subdivision plan. Since the preliminary plan has changed from the concept plan, staff is requesting direction and comments on the preliminary plan submittal.

❖ **Existing Conditions:**

The subject property is zoned Agricultural and contains an existing house. The property is a mix of cropland and woods and bisected by a 20 foot wide AT&T right-of-way. Adjacent to the eastern edge of the property, a private driveway serves several adjoining neighbors. An area on the southern portion of the property contains a springhead. All adjoining properties are served by private well and septic systems

❖ **Background:**

The concept plan was previously presented to the Commission at the September 18, 2012, June 17, 2014, and the July 15, 2014 regularly scheduled meetings. At the July 15, 2014 meeting, the Commission, on motion of Mr. Wothers, seconded by Ms. Cheatwood, and carried (Commissioner Rothschild abstained), determined that the proposed development met the transfer requirements of Section 155.091. Subsequently, Mr. Wothers made a motion that the Commission agree that the agricultural land devoted to residential use is minimized and the amount of land retained for agricultural use is maximized with this transfer. The motion was seconded by Mr. Canale, but did not pass (Mr. Canale, Mr. Wothers, and Ms. Cheatwood voted "Aye"; Mr. Helminiak, Mr. Soisson, and Chairman Yeo voted "No"; Commissioner Rothschild abstained).

The owner/developer appealed the Planning Commission denial to the Board of Zoning Appeals (case #5771). On September 24, 2014, the Board of Zoning Appeals (Board) found that the Planning Commission erred by denying the request of the applicant. The Board found that the proposed lots are located and sized so that the agricultural land devoted to residential use is minimized, and the amount of land retained for agricultural use is maximized. The Board found that tracts located on either side of a public road are to be considered adjoining. For all of the foregoing reasons, the Board granted the applicant's request (copy attached).

The concept plan (copy attached) reviewed by both the Commission and Board of Zoning Appeals proposed the transfer of 17 lots onto the 24 acre parcel. Access to the lots was through construction of a new County Road (Mudgett Court) that would have two use-in-common driveways accessing Mudgett Court. The concept plan proposed the transfer of all residential lot yield from the north side of Bushey Road onto the 24 acre tract.

The submitted preliminary plan proposed the transfer of 13 lots onto the 24 acre tract with the remaining lot yield to stay on the north side of Bushey Road. The developer's surveyor stated that percolation test results limited the 24 acres to accepting only 13 lots. The property had not completed percolation tests when the concept plan was reviewed by the Commission or the Board. The preliminary plan shows a length reduction of Mudgett Court by now proposing the construction of two side-by-side use-in-common driveways. In addition, access to some of the lots is shown utilizing a branching use-in-common driveway. Although Chapter 155 of the Carroll County Code of Public Local Laws and Ordinances does not prohibit branching use-in-common driveways, the Code does state they are to be avoided whenever possible (the concept plan did not have branching use-in-common driveways). The revised preliminary plan also shows the StormWater Management facility not in the location as previously shown on the concept plan. Based on those changes from the concept plan to the preliminary plan, the Bureau of Development Review did not accept the plan for review and distribution as it did not conform to the concept plan that was reviewed by the Commission or the Board of Zoning Appeals.

Upon receipt of the staff denial to accept the preliminary plan for review, the developer subsequently submitted a letter (attached) indicating an agreement to extinguish any

remaining residential lot yield on the north side of Bushey Road, exclusive of a desire to keep two large (100+ acres) farms on the north side. Based on the developer's proposal to extinguish remaining residential lot yield, the Bureau decided to process the plan for technical review; however, the preliminary plan would be presented to the Commission as a special report for the Commission to decide on whether these changes were acceptable, prior to the plan being presented for preliminary plan approval.

Since the preliminary plan was recently submitted, a number of technical review agency comments still need to be addressed. The surveyor is addressing the StormWater Management concept plan requirements. The project is subject to the provisions of Adequate Public Facilities and Concurrency Management, Chapter 156 of the Code, and will be tested prior to presentation of the plan to the Commission for approval of the Preliminary Plan. To meet the grandfathering requirements of Senate Bill 236, the developer is looking to have the preliminary plan approved prior to October 1, 2016.

Clay Black presented the Staff Report to the Commission.

Discussion:

Clark Shaffer, Attorney; Dan Staley, DRS; and Tom and Jim Mudgett, applicants were present.

Mr. Staley stated that perc tests and a code change by MDE were two factors that drove the design for the current plan.

Mr. Staley addressed the two branching use-in-common driveways. The purpose was to help orient the houses.

Mr. Hoff asked about the topo map.

Mr. Staley stated the plans in front of the Commission don't include that map.

Mr. Hoff asked about branching the driveways and the extraordinary hardships.

Mr. Shaffer stated the grading and the septic system are the hardships.

Mr. Hoff asked to see the topo.

Mr. Canale asked how many lots there were and how many were on common roads.

Mr. Staley replied there are thirteen lots and twelve are accessed by the-use-in common driveway.

Mr. Canale likes the design but he has problems with the use-in-common roads. He feels they aren't constructed to the same standards of county roads.

Mr. Staley stated that according to current code they are constructed to County road standards.

Mr. Hoff asked if a cost analysis was done comparing the two designs.

Mr. Staley stated that he had not.

Mr. Staley stated that ten lots are sand mound only and three are conventional.

Mr. DeBressi, citizen, stated he felt there wasn't an equal amount of money and time spent on all properties in the county.

Mr. Andrews, citizen, has concerns about the site distance of the downhill slope of the subdivision and the costs of maintaining the common roadway.

Lisa Lamb, citizen, (her farm adjoins this property) she is concerned about the water supply to her home which is from a spring house and drainage washing out her crops and driveway. She also has concerns about headlights and trespassers.

Mr. Staley stated that the site distance is accurate.

He stated the drainage is being addressed by a storm drain system.

Mr. Soisson stated that landscaping will be looked at during the Preliminary Plan.

Ms. Climova, citizen, is concerned about the slope of the road down to her home and the headlights shining into her home.

Melvin Bale, BZA member, stated a use in common driveway shouldn't spur off of another-use-in common driveway. He also stated that the Ag remainder on this property has become an R-20 lot because of "lot hopping".

Mr. Andrews, citizen, would like to verify the site distance.

Mr. Black stated that Public Works supports Barefoot Drive as a use-in-common drive.

Decision:

After much discussion, Mr. Shaffer stated they would work on their comments and bring the Plan back to the Commission

RECESS

FOLLOW ON DISCUSSION – CARROLL COUNTY ENVIRONMENTAL ADVISORY COUNCIL RECOMMENDATIONS RE: SOLAR SURFACE AREA REQUIREMENTS IN RESIDENTIAL DISTRICTS

Secretary Hager introduced Karen Leatherwood, Chair of the EAC. Ms. Leatherwood introduced Amy Krebs, a member of the EAC. Commissioner Rothschild would like to establish setbacks for solar panels in a residential area. Ms. Leatherwood stated that increasing the setbacks might not be beneficial due to other constraints placed on the property.

Dan Andrews, citizen, stated the owner of the lot needs to have flexibility in regard to panel placement.

Mr. Soisson stated the Commission will go with the recommendations of the EAC.

FREEDOM COMMUNITY COMPREHENSIVE PLAN DISCUSSION

General Discussion

Lynda Eisenberg, Bureau Chief, distributed answers prepared by staff to the questions submitted by Delegate Susan Krebs at the July 13 Community Outreach meeting at Liberty High School. It was agreed by the Planning Commission members that they would review this material, and discuss their response to Delegate Krebs at the August 31 work session.

Future Land Use Map – Endorsement

Ms. Eisenberg then addressed questions regarding the proposed Future Land Use (FLU) designation of the property in the northwest part of the Community Planning Area (CPA), east of

MD 97, from Agricultural to Commercial-Low (C-L). This property had been a topic of discussion at the July 13 Community Outreach meeting and the July 19 Planning Commission meeting. This change was not requested by a property owner. She addressed the concerns expressed that the property is too large for a C-L designation, which is intended to primarily serve the local population, and answered questions regarding the likelihood that the State Highway Administration (SHA) would grant access to it. Ms. Eisenberg summarized an email from SHA stating that there has been no access management study performed on this segment of MD 97, and there is no access control for this location at this time. There was consensus by the Planning Commission members that this property should not be designated C-L, and there was discussion regarding the most appropriate designation. The members expressed their desire to keep the current FLU as Agricultural, based on their determination that there are no affirmative forces at work at this time to change the designation, and access to the property is problematic. Ms. Eisenberg reminded the members of the principles they had followed throughout the Master Plan discussions regarding designating property Agricultural in the Designated Growth Area. This practice has been discouraged, with the exception of ag remainders and agricultural preservation properties, which does not apply to this property. Ms. Eisenberg proposed that the property be considered for a designation of Resource Conservation to be consistent with the ideology that has been practiced.

A number of residents of the Freedom area wished to comment on this topic. The following citizens provided comment: Kimberly Madeja, Wayne Schuster, and Beth Gray. Several comments were specifically addressed by staff. Regarding the ongoing question regarding the presence of rare trout in Snowden Run, Ms. Eisenberg reported that she contacted the Maryland Department of the Environment (MDE), and was assured that there are no rare trout in this area. However, Chapter 154 of the Carroll County Code will regulate future development of the property in question. Mr. Hager responded to a comment regarding the level of detail at the development review process compared to the more general analysis conducted during the development of a Comprehensive Plan. He explained that the land use designation discussion is more conceptual, and additional review of specific issues and properties is more appropriate during the site plan review process, when details regarding specific uses, ingress and egress, density, and site layout are known. Staff added that many of the questions asked are similar to those asked previously by others, and the written questions and answers will be posted on the Freedom Plan website for the benefit of all interested parties.

Endorsement of the FLU map was deferred until a future meeting. Staff was directed to proceed with the public facility and infrastructure analysis based on the concurred upon FLU map, taking into account the change to the property discussed above.

PUBLIC COMMENTS

There being no further business, the Commission, on motion of Mr. Wothers seconded by Ms. Cheatwood, and carried, adjourned at approximately 8:05 PM.

Secretary

Approved