

WORCESTER COUNTY PLANNING COMMISSION AGENDA

Worcester County Government Center, Room 1102, One West Market Street, Snow Hill, Maryland 21863

May 2, 2019

Est. Time

- | | | |
|-----------|------|---|
| 1:00 P.M. | I. | Call to Order |
| 1:00 P.M. | II. | Administrative Matters |
| | A. | Review and approval of minutes – February 7, 2019 |
| | B. | Board of Zoning Appeals agenda – May 9, 2019 |
| | III. | §ZS 1-325 Site Plan Review |
| 1:00 P.M. | A. | Ocean Pines Medical Center Health Care Planned Unit Development – Proposed establishment of a Health Care PUD and proposed construction of one additional building consisting of 69,562 square feet of medical offices, Tax Map 16, Parcel 24, Lots 1 through 5, Tax District 3, C-1 Neighborhood Commercial District, located at the northeasterly intersection of Racetrack Road (MD Route 589) and Cathage Road, Coastal Venture Properties, LLC, owner/ R.D. Hand & Associates, Inc., land planner/ Becker Morgan Group, architect/ Mark Cropper, Esquire; |
| 1:15 P.M. | B. | Revised - Atlantic General Medical Center of Ocean Pines – Proposed construction of a 99,912 square foot medical office building, east side of MD Route 589 (Racetrack Road), north of Adkins Spur Road, Tax Map 21, Parcel 66A, Tax District 3, C-2 General Commercial District, Silver Fox, LLC, owner/ Ocean Pines Medical Owners I, LLC, applicant/developer/ J.W. Salm Engineering, Inc., engineer/ Frank G. Lynch, Jr. & Associates, Inc., surveyor/ Array Architects, architect/ Hugh Cropper, IV, Esquire; |
| 1:25 P.M. | C. | Sketch Plan – Thrive at Ocean Pines – Proposed construction of a mixed commercial development consisting of approximately 30,000 square feet of retail/ office use, and approximately 100,000 square feet of assisted living with 110 units, east side of MD Route 589 (Racetrack Road), north of Adkins Spur Road, Tax Map 21, Parcel 66B, Tax District 3, C-2 General Commercial District, Burbage/Melson, Inc., owner/ Sina Companies, LLC, applicant/ developer/ J.W. Salm Engineering, Inc., engineer/ Frank G. Lynch, Jr. & Associates, Inc., surveyor/ Reach Architects, architect/ Hugh Cropper, IV, Esquire; |

1:30 P.M. IV. Text Amendment

- A. §ZS 1-318 – Modification of the occupancy provisions for campground subdivisions only, Sally Connolly & Susan Naploachowski, applicants/ Hugh Cropper, IV, Esquire, legal counsel;

1:45 P.M. V. Map Amendment

- A. Rezoning Case No. 421 – Tax Map 16, Parcels 21 and 53, southerly side of MD Route 589 across from the Ocean Pines North Gate, requested change from A-1 Agricultural District to C-2 General Commercial District, William & Linda Ayres, owners/ Hugh Cropper, IV, Esquire, legal counsel;

2:00 P.M. VI. Miscellaneous

2:05 P.M. VII. Adjourn

****All site plans and plats are available for review during normal business hours, 8:00 A.M. to 4:30 P.M. in the Department of Development, Review and Permitting, One West Market Street, Room 1201, Snow Hill, MD 21863.****

Worcester County Planning Commission Meeting Minutes

Meeting Date: February 7, 2019

Time: 1:00 P.M.

Location: Worcester County Government Office Building, Room 1102

Attendance:

Planning Commission

Mike Diffendal, Chair
Jay Knerr, Vice Chair
Marlene Ott
Brooks Clayville
Rick Wells
Jerry Barbierri

Staff

Maureen Howarth, County Attorney
Ed Tudor, Director
Phyllis Wimbrow, Deputy Director
Jennifer Keener, Zoning Administrator
Cathy Zirkle, DRP Specialist II
Jessica Casey, Customer Service Representative
Bob Mitchell, Director, Dept. of Env. Programs
David Bradford, Deputy Director, EP
Jenelle Gerthoffer, Natural Resources Admin., EP

I. Call to Order

II. Administrative Matters

- A. Review and approval of minutes, January 3, 2019** — As the first item of business, the Planning Commission reviewed the minutes of the January 3, 2019 meeting. Following the discussion it was moved by Mr. Knerr, seconded by Ms. Ott and carried unanimously to approve the minutes as submitted. Mr. Wells abstained.
- B. Board of Zoning Appeals agenda, February 14, 2019** — As the next item of business, the Planning Commission reviewed the agenda for the Board of Zoning Appeals meeting scheduled for February 14, 2019. Mrs. Keener was present for the review to answer questions and address concerns of the Planning Commission. No comments were forwarded to the Board.

III. §ZS 1-325 Site Plan Review – Atlantic General Hospital Medical Center

As the next item of business, the Planning Commission reviewed a site plan for the proposed construction of a 99,912 square foot medical office building, located on the east side of MD Route 589 (Racetrack Road), north of Adkins Spur Road, Tax Map 21, Parcel 66A, Tax District 3, C-2 General Commercial District. Mr. Knerr recused himself from the review of this project. Present for the review were Hugh Cropper, IV, Esquire, John Salm, engineer, and Kent Doss, architect. Mr. Cropper explained that the developer of the property was Sina Companies, who primarily develop medical offices around the country. The current proposal is a design, build and lease agreement with Atlantic General Hospital (AGH). The goal for AGH is to consolidate their various doctors and services into one central location. AGH is moving in the direction of providing more outpatient services, such as the ambulatory surgery center that will be located in this building. Mr. Cropper stated that they have attempted to design the building to comply with

the *Design Guidelines and Standards for Commercial Uses* as much as possible, but due to their needs for certain uses and interior layouts, certain aspects of the building façade will need waivers. This includes features such as transparency and recesses/projections.

Mr. Salm went through the Planning Commission Considerations individually, and noted where and why they needed particular waivers. Certain features were added to eliminate the need for waivers, such as human scale lighting along the front property line sidewalk; expanding foundation planting beds to the minimum required widths; adding a brick band at the base of the building to clearly define the base, as well as provide the human scale detailing required by the *Design Guidelines and Standards*; adding a three dimensional cornice feature to the main parapet; and modifying the dumpster enclosure to more closely reflect the architectural design of the building, rather than a chainlink fence with slats.

The Planning Commission then went through each of the considerations. The only change requested was to the large parapet that was designed to screen the rooftop mechanical equipment. They requested that it be designed so that it provides the appearance of wood siding, with modulations more in keeping with the Eastern Shore vernacular, not a tacked-on feature. They requested staff to review and approve the new design as part of the approval process. The applicants agreed to do so.

Following the discussion, a motion was made by Ms. Ott, seconded by Mr. Barbierri, and carried unanimously to approve the site plan subject to the following conditions/ waivers:

1. A waiver to Item 1;
2. A waiver to Item 2;
3. A waiver to Item 3 with respect to the landscaping along the front property line sidewalk and the provision for providing a sidewalk within Lots B, C and D to the rear of the development;
4. A waiver to Item 4 with respect to providing foundation beds along the easterly façade near the handicap parking area and on the southerly façade along the portion of the building not providing the covered entrance feature, as well as along the northerly (service) façade;
5. A waiver to Item 6 with respect to the location of the community space that was provided (not in the area of highest pedestrian traffic), and a waiver to the requirement for a second community space in the front near the Immedicare entrance;
6. A waiver to Item 7a;
7. A waiver to Item 7c, with the exception of the large mechanical screening parapet, and the applicants' proffer of a three dimensional cornice feature on the main parapet. This parapet shall be designed to look like wood siding, and be modulated. Approval of the parapet wall will be by the staff;
8. A waiver to Item 7d;
9. A waiver to Item 7e with respect to the location of the dumpster pad area to be separated from the building;

10. As a condition of approval, the applicant must all necessary approvals associated with the water and sewer service.

Mr. Knerr returned for the review of the next agenda item.

IV. Atlantic Coastal Bays Critical Area Growth Allocation Request

As the next item of business, the Planning Commission reviewed an application associated with an Atlantic Coastal Bays Critical Area Growth Allocation request for Moore Boats LLC. Tax Map 10, Parcels 4, 171, 304. Request to reclassify 4.71 acres of LDA to RCA. Jenelle Gerthoffer, Natural Resources Administrator and Katherine Munson, Planner V, prepared the staff report that was submitted to the Planning Commission. Hugh Cropper, attorney, presented on behalf of the applicant, Leighton Moore.

Mr. Cropper made the opening presentation to the Commission and submitted photos and detailed specifics on past boat operations at the property. Three photos were submitted as exhibits: the first, was a 1988 aerial picture of existing boat building and repair, the second was a 2005 aerial showing the same type of operations while the third was another 1988 aerial showing additional details on operations at the site. He explained his client would really like to continue the boat building and repair at the site.

Mr. Cropper reviewed and agreed with the staff report and requested those comments be incorporated into the Commission's findings along with comments from the state Critical Area Commission. He requested a 300 foot buffer be waived to 100 feet for this application by providing additional mitigation, SWM improvements, removal of existing portions of lot coverage, and removal of invasive plants. He introduced Mr. Chris McCabe, their consultant, who detailed the planned removal of phragmites and bamboo, proposed SWM upgrades, removal of existing lot coverage, additional mitigation plantings, and the upgrade of the septic to BAT for pre-treatment for nitrogen reduction. Mr. Cropper also introduced Mr. Bob Hand, their landscape architect, who described the site plan and specifically defined the extent of the work planned at the site.

Mr. Cropper concurred with staff's findings on this report and closed with the request for an approval of the Growth Allocation noting that there is ample Growth Allocation remaining for the Atlantic Coastal Bays Critical Area. He also requested approval of the waiver to reduce the 300 ft setback down to 100 ft. Mr. Cropper also mentioned a future request to an IDA designation would be forthcoming shortly after the conclusion of this growth allocation process.

Following the discussion, a motion was made by Mr. Barberri, seconded by Ms. Ott and carried unanimously to find this application consistent with the Comprehensive Plan, approved the waiver as well, and recommended that they forward a favorable recommendation for both to the County Commissioners provided they address comments from the Environmental Programs Department and the Critical Area Commission.

VI. Adjourn – The Planning Commission adjourned at 2:09 P.M.

Mike Diffendal, Secretary pro tem

Jennifer K. Keener, AICP

**NOTICE OF PUBLIC HEARING
WORCESTER COUNTY
BOARD OF ZONING APPEALS**

AGENDA

THURSDAY, MAY 9, 2019

Pursuant to the provisions of the Worcester County Zoning Ordinance, notice is hereby given that a public hearing will be held before the Board of Zoning Appeals for Worcester County, in the Board Room (Room 1102) on the first floor of the Worcester County Government Center, One West Market Street, Snow Hill, Maryland.

6:30 p.m.

Case No. 19-19, on the lands of Tammy Stigall, requesting a special exception to allow a kennel for the boarding of household pets, and variances to the Ordinance prescribed separation distance from 200 feet from all property lines for an outside pen to 20.5 feet from the rear property line (an encroachment of 179.5 feet), 17.6 feet from the right side property line (an encroachment of 182.4 feet) and 92.7 feet from the front property line (an encroachment of 102.5 feet) in the A-1 Agricultural District, pursuant to Zoning Code Sections ZS 1-116(c)(3), ZS 1-116(c)(4), ZS 1-201(c)(31), ZS 1-305 and ZS 1-325, located at 1813 St. Lukes Road, approximately 100 feet west of Pheasant Lane, Tax Map 36, Parcel 65, Lot 1, in the Seventh Tax District of Worcester County, Maryland.

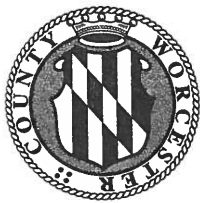
6:35 p.m.

Case No. 19-23, on the application of Hugh Cropper, IV, on the lands of Richard & Susan Carmine, requesting the removal of a condition associated with BZA Case No. 97010 in order to allow ground floor and first floor enclosed rear decks in the rear yard setback in the R-2 Suburban Residential District, pursuant to Zoning Code Section ZS 1-116(c)(4), ZS 1-206(b)(2) and ZS 1-305, located at 12355 Snug Harbor Road, approximately 4,228 feet east of Stephen Decatur Highway (MD Route 611), Tax Map 33, Parcel 346, Section A, Lot 76 of the Snug Harbor Subdivision, in the Tenth Tax District of Worcester County, Maryland.

6:40 p.m.

Re-Advertisement of Case No. 19-20, on the application of Hugh Cropper, IV, Esquire, on the lands of Ocean Tower Investment LLC, requesting a special exception to allow for contractor shops in the A-2 Agricultural District, pursuant to Zoning Code Sections ZS 1-116(c)(3), ZS 1-202(c)(14), ZS 1-305, ZS 1-322 and ZS 1-325, located at 11912 St. Martins Neck Road, on the southerly side of the intersection with Industrial Park Road, Tax Map 10, Parcel 27, Lot 1, in the Fifth Tax District of Worcester County, Maryland.

ADMINISTRATIVE MATTERS



DEPARTMENT OF
DEVELOPMENT REVIEW AND PERMITTING

Worcester County

GOVERNMENT CENTER
ONE WEST MARKET STREET, ROOM 1201
SNOW HILL, MARYLAND 21863

TEL: 410-632-1200 / FAX: 410-632-3008
www.co.worcester.md.us/drp/drpindex.htm

ZONING DIVISION
BUILDING DIVISION
DATA RESEARCH DIVISION

ADMINISTRATIVE DIVISION
CUSTOMER SERVICE DIVISION
TECHNICAL SERVICE DIVISION

MEMO

TO: Worcester County Technical Review Committee
FROM: Department of Development Review and Permitting
DATE: April 26, 2019

Please be reminded that the next regular Technical Review Committee meeting will be held on **Wednesday, May 8, 2019 at 1:00 P.M.** in the **1st Floor Board Room**, of the **Government Office Building, Room 1102**. The attached agenda outlines those projects which are to be reviewed and commented upon at that meeting. **Please provide all clearly legible, prepared comments no later than 12:00 P.M. on Friday, May 3, 2019.** Please bring all sets of plans to the TRC meeting as well as any additional written comments beyond those which you have already provided. It is important to be on time and have thorough written comments, as time for oral comments will be limited.

CC:

Development, Review and Permitting
Fire Marshal's Office
Department of Emergency Services
Department of Environmental Programs
Department of Public Works
County Roads Division, DPW
Department of Economic Development
Worcester County Planning Commission
Maureen Howarth, County Attorney
Maryland Department of Planning
Terri Smith, Assessments and Taxation
Bill Neville, Town of Ocean City
Hal Adkins, Town of Ocean City
Carol Sullivan, City of Pocomoke
Kelly Pruitt, Town of Snow Hill
David Engelhart, Town of Berlin
Ocean Pines Association, Inc.
Dan Wilson, SHA
Ace Adkins, MDE
Joe Kincaid, MDE
Paul Ferreri, MDE
Edward Watson, MDE
David Dorr/Verizon-MD Inc
Jim Smith/ Delmarva Power

Patrick Dubinski/ Delmarva Power
Edwin Cade, Delmarva Power
Thomas Brady, Delmarva Power
John Willey, II/ Peninsula Propane
Steve Ashcraft/Eastern Shore Gas
Jerod Shelton/ Chesapeake Utilites
Woody Francis/US ACOE
Joe Price /Board of Education
Ocean City Volunteer Fire Company
Ocean Pines Volunteer Fire Dept, Inc.
Pat Hynes/ Comcast Cablevision
Greg Denston /Chesapeake Utilities
John Shermer/Choptank Electric
Joe Sise/Choptank Electric
Greg Fentress/ Sharp Energy
Assateague Coastkeeper
Ayres, Jenkins, Gordy & Almand, PA
Bayside Gazette
Becker Morgan Group
Betty Tustin, The Traffic Group
Booth, Booth, Cropper & Marriner, PC
Burbage Properties
Coastal Compliance Solutions, LLC
Coastal Realtors

Coates, Coates & Coates, PA
Davis, Bowen & Friedel, Inc.
Delmarva Veteran Builders
Fox Theatres
Gregory P. Wilkins Surveyor, Inc.
Hampshire, Hampshire & Andrews, Inc.
J.W. Salm Engineering, Inc.
Lower Shore Land Trust
Monogram Building and Design
Ocean City Today
R.D. Hand & Associates, Inc.
Vista Design Inc.
Whispering Woods HOA
Worcester County Times
Carol Ann Beres
Charles Nichols
Darl Kolar
Duverese Scarlett
Jim Keitt
Mark Wagner
Mitch Parker
Rota Knott
Tom Stauss
Troy Purnell

Copies to applicants - It is required that the applicant(s) and/or their representative be in attendance at this meeting.

cc: Peggy Anne and Howard G. Wiles for life/ Groundstar Energy, c/o Finn McCabe
Arden Center, LLC/ J.W. Salm Engineering, Inc.
Evergreen, LLC, owner/ R.D. Hand & Associates, Inc.

**WORCESTER COUNTY TECHNICAL REVIEW COMMITTEE
AGENDA**

Worcester County Government Center, Room 1102, One West Market Street, Snow Hill, Maryland 21863

May 8, 2019

Est. Time

- | | | |
|-----------|------|---|
| 1:00 P.M. | I. | Call to Order |
| | II. | §ZS 1-325 Site plan review |
| 1:00 P.M. | A. | Ebenezer Solar - Proposed construction of a 1.35 MW (DC) solar photovoltaic facility, located on the easterly side of Whaleyville Road (MD Route 610), south of Ebenezer Road, Tax Map 8, Parcels 41 & 162, Lot 2, Tax District 5, A-1 Agricultural District, Peggy Anne and Howard G. Wiles for life, owner/ Groundstar Energy, c/o Finn McCabe, developer; |
| 1:10 P.M. | B. | Main Street Storage – Proposed construction of four self-storage buildings consisting of 9,484 square feet and 53 units, located on the easterly side of MD Route 818 (Main Street), south of US Route 50 (Ocean Gateway), Tax Map 25, Parcel 54, Tax District 3, C-2 General Commercial District, Arden Center, LLC, owner/ J.W. Salm Engineering, Inc., engineer; |
| | III. | §ZS 1-315 Residential planned communities |
| 1:20 P.M. | A. | Evergreen Village – Request for Establishment of the RPC Floating Zone – Proposed 90 single-family lot subdivision, northwest side of Beauchamp Road, north of Racetrack Road (MD Route 589), Tax Map 15, Parcels 127 and 259, Tax District 3, R-1 Rural residential and RP Resource Protection Districts, Evergreen, LLC, owner/ R.D. Hand & Associates, Inc., land planner; |
| 1:30 P.M. | IV. | Adjourn |

WORCESTER COUNTY PLANNING COMMISSION

MEETING DATE: May 2, 2019

PURPOSE: Site Plan Review

DEVELOPMENT: Ocean Pines Medical Center Health Care Planned Unit Development

PROJECT: Proposed establishment of a Health Care PUD and proposed construction of one additional building consisting of 69,562 square feet of medical offices

LOCATION: Northerly side of Cathage Road, west of MD Route 589 (Racetrack Road), Tax Map 16, Parcel 24, Lots 1 through 5, Tax District 3, C-1 Neighborhood Commercial District

HEALTH CARE PLANNED UNIT DEVELOPMENT: The regulations pertaining to a Health Care Planned Unit Development (HCPUD) were developed in 2017, and this project is the first application that has been submitted. As you will find when reviewing the purpose and intent statement of this section (§ZS 1-348), the goal is to encourage comprehensively planned health care facilities and associated uses under a unified plan of development which will allow for flexibility, unified design, and compatibility with the surrounding area. Such development requires the following features:

- Enhanced setbacks (50' standard setback, 75' for this development where it adjoins a residential district), with internal setbacks to be determined by the Planning Commission.
- Open space is required to be provided, comprising 10% of the total lot area (2.082 acres required, 7.01 acres provided).
- Submission of a Community Impact Statement, covering topics such as: highway capacity, traffic congestion and traffic safety, the capacity and availability of public services, including water and sewer service, air and water pollution, the effect on County revenues and expenditures, jobs created, and such additional information as may be requested by the Planning Commission to adequately understand and review the application.
- An outline of the protective covenants, lease and management and maintenance agreements by which the applicant proposed to operate the development. The original submission for the covenants and agreements was via email, and simply a very basic outline. While that information was sufficient for TRC review, additional information should be supplied to the Planning Commission for their review and consideration of the findings that they must make.

By developing under these regulations, the developer is permitted a density bonus, which in this particular case allows a total build out of 125,000 square feet of gross floor area. Between all existing/ approved buildings, and the newly proposed building, the total gross floor area will be 120,562 square feet. Therefore, there is 4,438 square feet remaining that may be applied to the balance of the project in the future, either as an addition to an existing building, or as a stand-alone building. Any future expansions will require review and approval by the Planning Commission as part of the HCPUD.

Beyond the standard findings for the site plan approval and waivers to the *Design Guidelines and Standards for Commercial Uses*, the Planning Commission is required to make several findings relative to the HCPUD, which are found within the Planning Commission considerations section below.

SIGNS: As a unified development, the project has an existing freestanding sign located at the existing entrance to the development closest to MD Route 589 (Racetrack Road). Therefore, no additional freestanding signage for the individual lots will be permitted, excepting internal directional signage as approved by the department. On-building signage is calculated based upon the linear width of the building located at the primary customer entrance. Given that this is most likely a multi-tenant building and shell only plans were provided for review, the Department will have to review the more detailed floor plans provided at permitting stage in order to determine the accurate amount of copy area allowed for this proposed building.

PARKING: In accordance with §ZS 1-320, a minimum of 482 parking spaces are required, and a maximum of 804 spaces are allowed. The total number of parking spaces provided is 532. Any parking provided over the minimum requirement shall be of a pervious design; in this case, 50 parking spaces. A total of 79 spaces are proposed to be of a pervious design, all located within the two existing developments and the improvements under construction on Lot 3. A total of 86 parking spaces are proposed to be 9' wide by 20' in length, well under the 40% allowed by code. Handicap accessible parking spaces and signage have been provided as required under the Maryland Accessibility Code.

The proposed surface treatment for the parking areas and travelways is asphalt and for the pervious parking spaces, porous asphalt is proposed. Parking spaces shall be demarcated with painted stripes and concrete wheel stops.

LOADING SPACES: Based on the size of the proposed building, a total of two loading spaces are required. While not formally labeled, a loading area is available under the front covered porte cochere on the westerly façade. The building elevations indicate that the porte cochere meets the minimum 14' height clearance. It is also wide enough underneath to permit the parking of a delivery vehicle, as well as provide space for the loading/unloading of the general public, or two delivery vehicles side by side, without access by the public. Is it the applicant's intent to have this area considered as a loading space, and request a waiver to the requirement for a second space? If a loading space is to be provided, it needs to be demarcated on the site plan (and the site when constructed).

TRAFFIC CIRCULATION: The site will be accessed via the 25' wide common access drive that currently serves Lots 1, 2 and 3. The main access of Cathage Road at MD Route 589 (Racetrack Road) has been realigned. A second entrance will be provided further east on Cathage Road. Both entrances are within the State Highway Administration's jurisdiction. A letter from the State Highway Administration dated March 1, 2019 (included with the Technical Review Committee comments) states that the road improvements will be sufficient for the additional improvements, and that access permits have been obtained.

PEDESTRIAN AND BICYCLE CONNECTIVITY: One bike rack has been provided per the requirements of §ZS 1-320. As required by Section 16 of the *Design Guidelines and Standards*, the applicants have provided the required sidewalks along the building, interconnecting all parking areas and building entrances together. Sidewalks will also connect to the existing sidewalk system on the adjoining lots, and pavers are proposed as the surface treatment for any proposed crosswalks as illustrated on the site plan. Per Section 16(b)(8), seating areas for pedestrians shall be provided near any customer entrance and shall be provided at least every 100' along façades having such entrances, and they have been provided.

LIGHTING: A lighting plan has been provided with this submittal (see sheet LI-1). The lighting plan illustrates 25' tall pole lights within the parking lot, downlights around the entrance/exits, wall mount metal halide lights on the building and bollards located along the sidewalk on all sides of the building. The lighting types are the same as what was presented for Lots 1, 2 and 3. Any potential lighting placement conflicts will need to be resolved on the revised plans.

REFUSE REMOVAL: One 10' by 10' dumpster pad is proposed and will be enclosed with 6' tall stockade fence panels on three sides. The placement of the dumpster pad is within what appears to be a potential stormwater management swale. Does the Department of Environmental Programs have any issues with its placement?

LANDSCAPING: A landscape plan has been provided in accordance with §ZS 1-322 and Section 17 of the *Design Guidelines and Standards for Commercial Uses*. The landscape buffer along the majority of Cathage Road is already in place as a result of the plantings from the original Lot 1 development. Those plantings will be continued along the remainder of the Cathage Road right-of-way. Additional screening-type plantings in the form of Eastern Red Cedar trees will be provided along the easterly and northerly property lines to screen the residential uses within the Ocean Pines development.

Planting islands have been provided at the end of each parking row as required by the Zoning Code. In addition, perimeter foundation plantings have been provided that exceed the 50% minimum required by the *Design Guidelines and Standards*. Section 17(b)(7) requires enhanced landscaping at the customer entrance. The landscaping provided at the easterly and westerly entrances is a continuation of what has been provided along the entire building perimeter, and is not enhanced.

The plantings will be maintained by an automatic irrigation system with rain sensor. In accordance with §ZS 1-322(g), a maintenance and replacement bond for required landscaping is mandatory for a period not to exceed two years in an amount not to exceed one hundred and twenty-five percent of the installation cost. A landscape estimate from a nursery will be required to be provided at permit stage to accurately determine the bond amount.

COMMUNITY SPACE: A community space has been provided at each of the public entrances, one on the easterly façade and another on the westerly façade. Each space is 800 square feet in area, with benches and a proposed kiosk to serve as the additional feature.

FOREST CONSERVATION LAW: This property is subject to the Forest Conservation Law and Forest Conservation Plan No. 15-12. There are no additional requirements.

STORMWATER MANAGEMENT/ SEDIMENT EROSION CONTROL: The TRC comments provided by the Department of Environmental Programs indicate that final approval has been obtained and a grading permit issued (NR 18-205).

WATER SUPPLY AND WASTEWATER SERVICES: According to the comments provided by the Department of Environmental Programs at the TRC meeting, approximately 23 EDU's are required for this proposed building, though that may change since the square footage of the building has been slightly enlarged. An EDU chart has been added to the master plan which indicates that 49 EDU's are required for the HCPUD overall (Sheet M-1). Clarification on the types of services to be offered within the building may also affect the total required EDU's. The Department of Environmental Programs will require that the EDU's be purchased prior to signature approval of the site plan.

The Department of Public Works has been reviewing an engineering report relative to the options available to provide water and sewer service to this additional building, as the infrastructure constructed for the existing development will not suffice. They will review and approve any water and wastewater facilities prior to the department granting signature approval.

ARCHITECTURAL JUSTIFICATION: The building elevations have been designed and reviewed under the *Design Guidelines and Standards for Commercial Uses*. This project is located within the area designated as the Town Center tradition within Ocean Pines based on the Staff Policy.

The building as designed carries forth several of the prominent characteristics that define the town center tradition as outlined in Section 5, such as gable roof lines, gables fronting the road, and tapered pilasters. It is also similar to the buildings approved on Lots 1, 2 and 3, though the proposed building is two stories, with some slightly different features.

The items requiring a waiver from the Planning Commission have been itemized below under “Planning Commission Considerations”. The applicant is required to justify their waiver request based upon the criteria outlined in Section 2(b) of the *Design Guidelines and Standards*.

DEVLEOPER: Coastal Venture Properties, LLC, Post Office Box 4322, Salisbury, MD 21803

LAND PLANNER: R.D. Hand & Associates, Inc., 12302 Collins Road, Bishopville, MD 21813

ARCHITECT: Becker Morgan Group, 312 West Main Street, Suite 300, Salisbury, MD 21801

LEGAL COUNSEL: Mark S. Cropper, Esquire, 6200 Coastal Highway, Suite 200, Ocean City, MD 21842

PREPARED BY: Jennifer K. Keener, AICP, Zoning Administrator

PLANNING COMMISSION CONSIDERATIONS:

In reviewing the proposed application, it is recommended that the Planning Commission first give consideration to the establishment of the HCPUD as a whole, based on the criteria found within §ZS 1-348 (listed below). Once that has been established, then the Planning Commission should review the particular considerations and waivers for the proposed development activity that will occur within it, and grant site plan approval if it is so inclined to do so.

§ZS 1-348(k): The Planning Commission shall not approve a HCPUD until it shall find that each of the following criteria have been met:

- (1) The proposed development is sufficient in size to provide adequate health care facilities and services and other associated or incidental facilities and services to the community which may be expected to use the development.
- (2) The proposed development is at a location where traffic congestion does not exist on the roads to be used for access to the development or where such congestion can be obviated by committed public road improvement projects or by projects to be undertaken by the applicant at his expense.
- (3) The proposed development will consist of structures of an integrated and harmonious design, provided with adequate vehicular, pedestrian and bicycle circulation, parking, service, utility services, and landscaping.

NOTE: In reviewing these items, please also refer to the Community Impact Statement and outline of the proposed protective covenants, lease and management and maintenance agreements provided by the applicant.

Considerations under the Zoning Code and *Design Guidelines and Standards for Commercial Uses*:

4. Any setbacks internal to the HCPUD shall be reviewed and approved by the Planning Commission. As dimensioned, the setback from the Lots 3 & 5 property line (in the middle of the roadway) to the porte cochere is 21 feet. Staff has no issue with this setback, as it exceeds any typical zoning setback that would be required if Lots 4 and 5 were to stand on their own;
5. Based on the size of the proposed building, it would require a total of two loading spaces. While not formally labeled, a loading area is available under the front covered porte cochere on the westerly façade. Is it the applicant's intent to have this area considered as a loading space, and request a waiver to the requirement for a second space? If a loading space is to be provided, it needs to be demarcated on the site plan (and the site when constructed);

6. Section 17(b)(7) requires enhanced landscaping at the customer entrance. The landscaping provided at the easterly and westerly entrances is a continuation of what has been provided along the entire building perimeter, and is not enhanced;
7. Per Section 9, the textured masonry/ stone veneer is not a recommended material, however it was reviewed and waived by the Planning Commission for the three previously approved buildings within this development. In addition Section 9(b)(3) states that brick veneer is not an allowed use, unless it is less than 25% of the façade. I approximate that it is about 33%, which would require a waiver. Section 13 requires that the repeating material change pattern occur at least every 30 feet. The proposed repetition of this feature is 19'/23.5'/39.5' on the east and west façades, and 20.5'/95' on the north and south façades. In addition, the architectural/ structural bay change in plane has a maximum extent of 40'/60';
8. Section 10(b)(1)E. requires two continuous details of 12" or less in height provided within the first 10' of the building wall. The cap at the water table counts as one detail, and the applicants are requesting that the required trim band separating the building floors, located at 14' in height, constitute the second detail;
9. Sections 10(b)(1)B, 10(b)(1)C and 10(b)(1)D require that a building over 200' in length (260' proposed) have visually separated modules with a depth of at least 10' and then each module shall have the recesses/projections required individually. No modules have been proposed. For the building overall without providing modules, the following recesses/projections are required per façade, with the items requiring modification or a waiver identified in bold:

| Façade | Length | 3% depth req'd | Depth proposed | 20% length required | Length proposed |
|--------------|----------|----------------|--|---------------------|--|
| East/ West | 260 feet | 7.8 feet | 2 feet | 52 feet | 60 feet |
| North/ South | 139 feet | 4.17 feet | 2.5 feet (1st Floor) 2 feet (2nd Floor) | 27.8 feet | 3 feet (1st Floor) 22 feet 7 inches (2nd Floor) |

10. Section 10(b)(1)H. addresses the transparency requirements, which requires a minimum of 25% and a maximum of 40%. The specific transparency provided is outlined in the chart below, with the items requiring modification or a waiver identified in bold. Given the nature of the potential uses, and the size of the building, the applicants are providing a significant amount of transparency on all façades.

| | |
|-------|------------|
| North | 22% |
| South | 22% |
| East | 26% |
| West | 40.6% |

11. Section 11(b)(1) requires certain features to be provided over/within the vicinity of customer entrances. The main entrance on the west side provides several features, but it is not clear how the secondary entrance on the easterly façade complies as required by Section 11(b)(3) and (b)(4). The secondary entrance shall also be provided with weather protection features per Section 16(b)(9) unless a waiver is granted;
12. Where parking has been provided, a customer entrance meeting the requirements of Section 11 is required. A waiver is needed to the northerly and southerly façades, where no entrance has been proposed. In addition, a waiver is needed to Section 15(b)(13) due to the alignment of the building. The handicap parking cannot be located in what would be considered the front of the development, as that would be along the southerly façade that does not result in the most accessible route;



DEPARTMENT OF
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Worcester County

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ZONING DIVISION
BUILDING DIVISION
DATA RESEARCH DIVISION

ADMINISTRATIVE DIVISION
CUSTOMER SERVICE DIVISION
TECHNICAL SERVICE DIVISION

April 26, 2019

R.D. Hand & Associates, Inc.
12302 Collins Road
Bishopville, MD 21813

Re: Ocean Pines Medical Center Health Care Planned Unit Development – Proposed establishment of a Health Care PUD and proposed construction of one additional building consisting of 69,562 square feet of medical offices, Tax Map 16, Parcel 24, Lots 1 through 5, Tax District 3, C-1 Neighborhood Commercial District

Dear Mr. Hand:

This is to advise you that the Department has completed a review of the site plan, submitted on April 17, 2019, associated with the above referenced project. The plan has been reviewed in accordance with the pertinent sections of the Worcester County *Zoning and Subdivision Control Article* and the *Design Guidelines and Standards for Commercial Uses*. The following code requirements have yet to be addressed:

1. The original submission for the covenants and management and maintenance agreements was via email, and simply a very basic outline. While that information was sufficient for TRC review, additional information should be supplied to the Planning Commission for their review and consideration of the findings that they must make. I would recommend forwarding a copy of the expanded outline as soon as possible so that the Planning Commission can review it in advance of the meeting;
2. On the cover sheet (EC), please add two lines under the approval statement for both property owners to sign prior to signature approval;
3. Relative to the parking chart on sheet M-1, I have the following comments:
 - a. The total number of handicap parking spaces provided on Lot 1 is 8 spaces (not 6), therefore there is a total of 98 parking spaces provided overall;
 - b. The total number of parking spaces on Lot 3 did not include the handicap spaces that were properly reflected in the chart, so this number should be revised to 95 spaces;
 - c. Therefore, the total overall parking provided is 532 spaces;
4. If the three (3) additional parking spaces to be constructed on Lot 2 (Building 4) are to be done with the site work for that project under construction (and all five spaces made pervious), I will need a revised cut sheet to approve for that particular site plan approval, should they wish to get that work underway before this master plan is granted signature

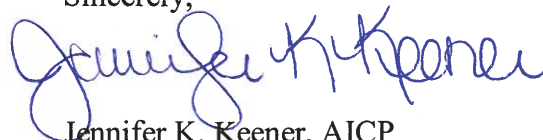
- approval;
5. Where ADA accessible sidewalks are noted, please add a detail on the plans illustrating the slope requirements;
 6. Any potential lighting placement conflicts will need to be resolved on the revised plans submitted for signature approval;
 7. Please provide written confirmation from the Department of Environmental Programs that there is adequate water and sewer to serve the proposed uses, and that the EDU chart is up-to-date. They will require that the EDU's be purchased prior to signature approval of the site plan;
 8. Please provide written confirmation from the Department of Public Works that the water and wastewater plans are sufficient to grant signature approval;
 9. Once the project is ready to receive signature approval, please submit the plans in an electronic format;

Items to be addressed at the time of permitting include:

10. Since the building is proposed to cross the property line, a Temporary Declaration of Consolidation will be required for Lots 4 and 5 at the time of permitting;
11. In accordance with §ZS 1-322(g), a maintenance and replacement bond for required landscaping is mandatory for a period not to exceed two years in an amount not to exceed one hundred and twenty-five percent of the installation cost. A landscape estimate from a nursery will be required to be provided to accurately determine the bond amount;
12. Any signage shall meet the requirements of §ZS 1-324 and Section 14 of the *Design Guidelines and Standards for Commercial Uses* and shall be reviewed at permitting stage for compliance;
13. As an FYI, under the Americans with Disabilities Act, any facility that provides rehabilitation or outpatient physical therapy shall provide additional handicap accessible parking up to 20% of the parking provided for that use. Please keep this in mind when determining tenant occupancy;
14. The building height is very close to the maximum allowed of 45'. A height as-built may be required as part of the permitting process to ensure this is not exceeded;

A copy of the Staff Report associated with this project is attached for your reference. Please do not hesitate to contact me at 410-632-1200 ext. 1123 with any questions or comments you may have concerning this matter.

Sincerely,



Jennifer K. Keener, AICP
Zoning Administrator

Enclosure

cc: Coastal Venture Properties, LLC, owner
Mark Cropper, Esquire
file

WORCESTER COUNTY PLANNING COMMISSION

MEETING DATE: May 2, 2019

PURPOSE: Site Plan Review - Revision

DEVELOPMENT: Atlantic General Medical Center of Ocean Pines

PROJECT: Proposed construction of a 99,912 square foot medical office building

LOCATION: Easterly side of MD Route 589 (Racetrack Road), north of Adkins Spur Road, Tax Map 21, Parcel 66A, Tax District 3, C-2 General Commercial District

SITE PLAN REVISIONS: This project is considered a revision to the plan that was originally reviewed and approved on February 7, 2019. The applicants are proposing to “flip” the development in order to provide better access management between Parcel 66A (the subject property) and Parcel 66B to the north. Also being reviewed at this time is a sketch plan of Parcel 66B, that will provide the Planning Commission with a sense of how the access will function. Please note, there are no approvals granted for sketch plans.

Due to the changes, there were minor revisions to the plan that were made. Therefore I have only listed the items that have been significantly revised from the original layout that the Planning Commission had approved. If a waiver or modification is necessary, the item is also listed in the Planning Commission considerations section below. A copy of the February 7, 2019 staff report is also attached for your reference to the individual sections.

- **TRAFFIC CIRCULATION:** The site will be accessed via one commercial entrance off of MD Route 589 (Racetrack Road) as part of a full movement signalized intersection. The changes include the relocation of the access point to the northerly parcel line, so that a shared access can be designed between Parcel 66A (the subject property), and Parcel 66B to the north. A commercial entrance permit will be required to be obtained from the State Highway Administration. Written confirmation that the entrance as shown on the plan meets the requirements of SHA shall be provided prior to signature approval being granted.
- **LANDSCAPING:** Originally within the front yard setback there was sparse landscaping. There is now no landscaping provided at all within the front yard setback between the front property line and the front of the building and the parking lot.

ARCHITECTURAL REVIEW: The applicants have stated that the building elevations are the same that were previously reviewed and approved (with conditions) in accordance with the *Design Guidelines and Standards for Commercial Uses*. The building will simply be a mirror image on the site. Therefore no additional building plans were submitted with this review.

OWNER: Silver Fox, LLC, 9919 Stephen Decatur Highway, Berlin, MD 21811

DEVELOPER: Ocean Pines Medical Owners I, LLC, 5220 Hood Road, Suite 110, Palm Beach Gardens, FL 33418

ENGINEER: J.W. Salm Engineering, Inc., Post Office Box 397, Berlin, MD 21811

SURVEYOR: Frank G. Lynch, Jr. & Associates, Inc., 10535 Racetrack Road, Berlin, MD 21811

ARCHITECT: Array Architects, 1 West Elm Street, Suite 400, Conshohocken, PA 19428

PREPARED BY: Jennifer K. Keener, AICP, Zoning Administrator

PLANNING COMMISSION CONSIDERATION:

1. As noted in the last staff report, landscape screening is required where a commercial development adjoins an A-2 or R Zoning District. The property on the opposite side of MD Route 589 is zoned A-2, therefore a 15' wide landscape screen is required by the Zoning Code. In addition, this landscaped area shall be a total of 35' wide, with the remaining 20' consisting of buffer type plantings under the *Design Guidelines and Standards for Commercial Uses*. Originally within the front yard setback there was sparse landscaping. The Planning Commission granted a waiver to the requirement for the screening and the depth of the landscaping provided, allowing the sparse landscaping to remain. There is now no landscaping provided at all within the front yard setback between the front property line and the front of the building and the parking lot. The Planning Commission may modify or waive this criteria "where it is deemed that strict compliance would cause undue hardship on the applicant" per §ZS 1-322(e)(8). I would recommend that the Planning Commission exercise caution with respect to this matter, especially since this would set a major precedent for other projects.

WORCESTER COUNTY PLANNING COMMISSION

MEETING DATE: February 7, 2019

PURPOSE: Site Plan Review

DEVELOPMENT: Atlantic General Medical Center of Ocean Pines

PROJECT: Proposed construction of a 99,912 square foot medical office building

LOCATION: Easterly side of MD Route 589 (Racetrack Road), north of Adkins Spur Road, Tax Map 21, Parcel 66A, Tax District 3, C-2 General Commercial District

SIGNS: With respect to on-building signage, the Zoning Code bases the allowance of copy area on the building frontage where the principal entrance is located. With respect to freestanding signage, this development is allowed to have a single monument sign. All signage will be reviewed and approved at the time of permitting.

PARKING: In accordance with §ZS 1-320, a minimum of 397 parking spaces are required and a maximum of 661 spaces are allowed. The site plan illustrates 450 spaces have been provided. Any parking over the minimum (53 spaces) shall be constructed of a pervious design. This requirement has been exceeded. The proposed surface treatment for the main parking areas and travelways is bituminous asphalt and parking spaces shall be demarcated with striping.

Handicap accessible parking has been shown well in excess of the minimum required, even should the facility have an outpatient physical therapy tenant. Signage indicating "Reserved", "Van Accessible" and "No Parking in Access Aisle" with arrow have been noted on the site plan. Depressed curbing shall be provided along the sidewalks at the discharge aisle meeting the minimum ADA slope requirements. Section 15(b)(13) requires that all handicap parking be located within the front parking lot. Due to the design of the project with the main entrance on the easterly façade, a waiver will be needed to this standard.

LOADING SPACES: Two loading spaces are required and have been provided in accordance with §ZS 1-321 along the northerly side of the building.

TRAFFIC CIRCULATION: The site will be accessed via one commercial entrance off of MD Route 589 (Racetrack Road) as part of a full movement signalized intersection. A commercial entrance permit will be required to be obtained from the State Highway Administration. Written confirmation that the entrance as shown on the plan meets the requirements of SHA shall be provided prior to signature approval being granted.

For the pharmacy drive-thru, a minimum of three stacking spaces are required and have been provided as measured from the order/ pick-up window.

Interparcel connectors have been provided to the commercially zoned properties to the north and south of the subject property. The northerly connection point illustrates bollards to be installed at the property line. A note has been added to the site plan that states that at the time of redevelopment of the northerly parcel (66B), the bollards shall be removed by the developer of Parcel 66B. The note needs to specify that the owner/ developer of Parcel 66A is responsible for their removal, unless some formal agreement has been prepared that the cost of such connection shall be borne by the owner/ developer of Parcel 66B. If so, a copy of that formal agreement shall be provided to the Department, otherwise, please revise the note.

PEDESTRIAN AND BICYCLE CONNECTIVITY: Per Section 16(b)(2) and (b)(3), a 5' wide sidewalk is required to be provided along Racetrack Road (MD Route 589), with landscaping and human scale lighting. The sidewalk has been provided, however the landscaping is sparse and there is no lighting proposed. The front parking lot and travelway will be lit with pole mounted light fixtures located just outside of the curbing. In addition, there is a lack of connectivity shown between the front sidewalk and the crosswalk/ depressed curbing provided across from the immediate entrance. Sidewalks are also required where the parking areas are located more than 100 feet from the building (parking lots identified as Lots B, C and D). Section 15(b)(5) discusses recommended (not required) wayfinding provisions within the parking lot. The site plan identifies Lot "A" and Lot "B" as well as numbering of the rows, but it is not clear how that will be translated on site within the project.

Bike racks have been provided adjacent to the main building entrance on the easterly façade. In addition, Section 16(b)(8) requires benches for seating every 100' along any façade having a customer entrance. Several benches have been added along the southerly and easterly façades near the main entrance, however additional benches would be required along the easterly façade near the handicap parking spaces, as well as along the westerly façade where the immediate entrance is located.

Section 19 addresses the requirements for community spaces. For a development of this size, with more than one customer entrance, an additional community space would be required. The main community space is located at the end of the easterly side of the building, and consists of 1,908 square feet of paver patio area with the required seating. An additional paver patio area has been provided along the westerly façade near the immediate entrance consisting of approximately 266 square feet in area, without the required seating. The minimum square footage required for this space is 500 square feet, and shall include a bench at a minimum, unless waivers are granted.

LIGHTING: A lighting plan was provided at the Technical Review Committee level, but was not included in the Planning Commission submission. Parking lot lighting will consist of full cut-off pole mounted LED fixtures within the landscape islands. Pole heights vary between 15' and 25'. On building lighting is proposed to consist of full cut-off architectural sconces above the entrances/ exits. All lighting is listed as 4000K, consisting of natural white light. The applicant should review the proposed locations of the light poles as it appears that one of the post locations may conflict with the sidewalk

along the front property line.

REFUSE REMOVAL: A dumpster pad has been provided to the rear of the building that will accommodate two dumpsters. They are proposed to be screened on three sides with 6' tall chainlink fence with slats and double-leaf chainlink swing gates. Section 20 of the *Design Guidelines and Standards for Commercial Uses* requires that these types of service areas be incorporated into the overall design of the building. In addition, they should be constructed of the same material as the building itself. It is therefore recommended (but not required) that consideration be given to the design of the dumpster enclosure.

LANDSCAPING: A landscape plan has been provided in accordance with §ZS 1-322 and Section 17 of the *Design Guidelines and Standards for Commercial Uses*. The plantings will be maintained by an automatic irrigation system with rain sensor. Landscaping has been provided within the parking area that meets the code requirements for quantity and location. Section 16(b)(8) requires landscape foundation plantings to be a minimum of 6' wide along 50% of the façade with public entrances, and 10' wide in along all other façades. The site plan illustrates 6' wide and 9' wide foundation beds along the westerly façade and the easterly portion of the façade adjacent to the community space. Additional foundation beds would be required along the easterly façade near the handicap parking area and on the southerly façade along the portion of the building not providing the covered entrance feature, with buffer foundation plantings required along the northerly facade and easterly façade where the community space is located. In addition, Section 17(b)(7) and (b)(8) specifically require enhanced landscaping at the customer entrances. Section 17(b)(6) requires that all perimeter property lines, curbs, etc. shall have a landscape buffer a minimum of 6' in width. Along the northerly property line, there is a section where the curbing for the travelway follows the property line, and no landscaping has been/ could be provided without modifications to the travelway. Waivers to these requirements can be requested.

Landscape screening is required where a commercial development adjoins an A-2 or any R Zoning District. The property on the opposite side of MD Route 589 is zoned A-2, therefore a 15' wide landscape screen is required by the Zoning Code. In addition, this landscaped area shall be a total of 35' wide, with the remaining 20' consisting of buffer type plantings under the *Design Guidelines and Standards for Commercial Uses*. A 40' section along the southerly property line where it abuts Parcel 134 is also required to be screened. The majority of the southerly boundary has screening-type material with the exception of this 40' portion. These requirements can be modified or waived by the Planning Commission where it is deemed that strict compliance would cause undue hardship on the applicant.

Waivers to some of the landscape provisions are being requested as outlined in the Planning Commission's considerations below.

In accordance with §ZS 1-322(g), a maintenance and replacement bond for required landscaping is mandatory for a period not to exceed two years in an amount not to exceed

one hundred and twenty-five percent of the installation cost. A landscape estimate from a nursery will be required to be provided at the time of permitting to accurately determine the bond amount.

FOREST CONSERVATION LAW: This property is subject to the Forest Conservation Law. A Forest Stand Delineation and Forest Conservation Plan have been approved. Confirmation of final approval shall be required from the Department of Environmental Programs prior to signature approval.

STORMWATER MANAGEMENT/ SEDIMENT EROSION CONTROL: Written confirmation that final approval has been obtained will be required from the Department of Environmental Programs prior to signature approval.

WATER SUPPLY AND WASTEWATER SERVICES: According to the comments provided by the Department of Environmental Programs at the Technical Review Committee meeting, this project will need to be served with at least 34 EDUs from the Ocean Pines Sanitary Service Area. A public hearing with the County Commissioners on the formal inclusion of the subject property into the Ocean Pines Sanitary Service Area is scheduled for Tuesday, February 19, 2019. The Water and Sewerage Plan Amendment was approved by the County Commissioners in December 2018. Staff would recommend conditioning the approval of this plan on obtaining all necessary approvals associated with the water and sewer service.

Please provide written confirmation from the Department of Environmental Programs that the necessary approvals and quantity of EDUs have been obtained prior to granting signature approval. Also provide written confirmation from the Department of Public Works, Water and Wastewater Division that the appropriate utilities and easements are shown on the plan.

ARCHITECTURAL JUSTIFICATION: The building elevations have been reviewed under the *Design Guidelines and Standards for Commercial Uses*. This project is located within an area designated as the Agricultural tradition based on the Staff Policy. Within this section of the MD Route 589 corridor, there is a mix of older single-family dwellings, as well as some commercial establishments. The majority of the commercial establishments were constructed prior to the implementation of the *Design Guidelines and Standards for Commercial Uses*, however developments such as Taylorville Center still have many of the architectural features that are common to the Agricultural architectural tradition, such as the sloped gable roof and earth tone siding. The addition to the Casino at Ocean Downs was constructed under the Agricultural tradition of this document.

The proposed building as designed is more consistent with the Town Center architectural tradition with dark red brick, a flat roof, tall rectangular windows, and metal sidewalk awnings. The applicant is requesting a number of waivers to the building design as outlined in the Planning Commission considerations below.

The items requiring a waiver from the Planning Commission have been itemized below under “Planning Commission Considerations”. The applicant is required to justify their waiver request based upon the criteria outlined in Section 2(b) of the *Design Guidelines and Standards*.

OWNER: Silver Fox, LLC, 9919 Stephen Decatur Highway, Berlin, MD 21811

DEVELOPER: Ocean Pines Medical Owners I, LLC, 5220 Hood Road, Suite 110, Palm Beach Gardens, FL 33418

ENGINEER: J.W. Salm Engineering, Inc., Post Office Box 397, Berlin, MD 21811

SURVEYOR: Frank G. Lynch, Jr. & Associates, Inc., 10535 Racetrack Road, Berlin, MD 21811

ARCHITECT: Array Architects, 1 West Elm Street, Suite 400, Conshohocken, PA 19428

PREPARED BY: Jennifer K. Keener, AICP, Zoning Administrator

PLANNING COMMISSION CONSIDERATIONS:

1. Section 15(b)(13) requires that all handicap parking be located within the front parking lot (between the front property line and the westerly façade of the building). The main entrance is located on the easterly façade interior to the project, and therefore a large number of the handicap accessible spaces are required to be located along this façade. Justifiably, a waiver will be needed to this standard;
2. Landscape screening is required where a commercial development adjoins an A-2 or R Zoning District. The property on the opposite side of MD Route 589 is zoned A-2, therefore a 15' wide landscape screen is required by the Zoning Code. In addition, this landscaped area shall be a total of 35' wide, with the remaining 20' consisting of buffer type plantings under the *Design Guidelines and Standards for Commercial Uses*. A 40' section along the southerly property line where it abuts Parcel 134 is also required to be screened. The majority of the southerly boundary has screening-type material with the exception of this 40' portion. Section 17(b)(6) requires that all perimeter property lines, curbs, etc. shall have a landscape buffer a minimum of 6' in width. Along the northerly property line, there is a section where the curbing for the travelway follows the property line, and no landscaping has been/ could be provided without modifications to the travelway. The Zoning Code requirements can be modified or waived by the Planning Commission where it is deemed that strict compliance would cause undue hardship on the applicant;
3. Per Section 16(b)(2) and (b)(3), a 5' wide sidewalk is required to be provided along the front yard setback of Racetrack Road (MD Route 589), with landscaping and human scale lighting. The sidewalk has been provided, however the landscaping is sparse (as identified in No. 2 above) and there is no human scale lighting proposed. The front parking lot and travelway will be lit with pole mounted light fixtures located just outside of the curbing. In addition, there is a lack of connectivity shown between the front sidewalk and the crosswalk/ depressed curbing provided across from the immediate entrance. To the rear of the development, sidewalks are required where the parking areas are located more than 100 feet from the building (parking lots identified as Lots B, C and D).
4. Section 16(b)(8) requires landscape foundation plantings to be a minimum of 6' wide along 50% of the façade with public entrances, and 10' wide in along all other façades. The site plan illustrates 6' wide and 9' wide foundation beds along the westerly façade and the easterly portion of the façade adjacent to the community space. Additional foundation beds would be required along the easterly façade near the handicap parking area and on the southerly façade along the portion of the building not providing the covered entrance feature, with buffer foundation plantings required along the northerly façade and easterly façade where the community space is located. In addition, Section 17(b)(7) and (b)(8) specifically require enhanced landscaping at the customer entrances. I would caution the Planning Commission to take note that the building schematics illustrate foundation plantings where none are proposed on the official landscape plan;

5. Section 16(b)(8) requires benches for seating every 100' along any façade having a customer entrance. Several benches have been added along the southerly and easterly façades near the main entrance, however additional benches would be required along the easterly façade near the handicap parking spaces, as well as along the westerly façade where the immediate entrance is located.
6. Section 19 addresses the requirements for community spaces. For a development of this size, with more than one customer entrance, an additional community space would be required. The main community space is located at the end of the easterly side of the building, and consists of 1,908 square feet of paver patio area with the required seating. An additional paver patio area has been provided along the westerly façade near the immediate entrance consisting of approximately 266 square feet in area, but without the required seating. The minimum square footage required for this space is 500 square feet, and shall include a bench at a minimum, unless waivers are granted.
7. As stated in the staff report above, the building design is more consistent with the Town Center tradition than with the Agricultural tradition. Several waivers are needed based on the current design of the building:
 - a. Visually, the building is very large in scale. The building is required to be broken into distinct modules that should be made to appear as either individual buildings or as additions to the primary structure [Section 7(b)(1) & (b)(3); Section 10(b)(1)D.]. Only the west façade has two modules that break up the façade width. In addition to modules, the building should have a base, body and cap. As designed, it is mainly a body, with a small cap in some areas where the parapet wall is a different material/ color. There is no clearly defined base. Finally, building recesses and projections are required that would break up the scale of the building along the public façades [Section 10(b)(1)B & C]. Items requiring a waiver are identified in bold within the chart:

| Façade | Recess/ Projection depth Required vs. Provided | Recess/ Projection length Required vs. Provided |
|--|---|--|
| West Façade (facing MD Route 589), Module 1 (121.33') | 3.6' / 4' | 24.26' / 28' |
| West Façade, Module 2 (192') | 5.76' / 12' | 38.4' / 0' |
| East Façade (main entrance, internal), no modules provided | 6.8' / 6' | 43.87' / 18' |
| North Façade (service façade), no modules provided | 0' | 0' |

- b. Within the design itself, please identify the building materials to be used per Section 9, and the colors per Section 12, to include the wall in the service area/ loading area. Section 10(b)(1)E requires two continuous details of 12" or less in height provided within the first 10' of the building wall (none appear to have been provided).
- c. Since this project is located in the Agricultural Tradition, a waiver is required in order to provide a flat roof/ appearance of a flat roof in general [Section 8(b)(4)]. In addition, the drive-thru canopy at the pharmacy is required to have a minimum pitch of 4:12 [Section 8(b)(8)]. The main roof is required to have two architectural features as specified in Section

8(b)(2) (none have been provided). With respect to the parapet wall, the average height of the parapet shall not exceed 15% of the height of the wall (equivalent to 4.2'). What I assume is the mechanical screening parapet feature exceeds this provision (11' proposed), and appears tacked on, rather than a part of the roof structure. In addition, the parapet should have a three dimensional cornice feature [Sections 8(b)(4)A, 8(b)(9), 8(b)(10) and 20(b)(5)].

- d. Any public façade is required to incorporate transparent features over a minimum of 25% and a maximum of 40% of the façade (such as windows and doors). Waivers are required to the three public facades as follows:

| | |
|---------------------------------------|--------------|
| West Façade (facing MD Route 589) | 22% |
| East Façade (main entrance, internal) | 20.2% |
| North Façade (service façade) | 11.3% |

- e. A dumpster pad has been provided to the rear of the building that will accommodate two dumpsters. They shall be screened on three sides with 6' tall chainlink fence with slats and double-leaf chainlink swing gates. Section 20 of the *Design Guidelines and Standards for Commercial Uses* requires that these types of service areas be incorporated into the overall design of the building. In addition, they should be constructed of the same material as the building itself. It is therefore recommended (but not required) that consideration be given to the design of the dumpster enclosure.
8. According to the comments provided by the Department of Environmental Programs at the Technical Review Committee meeting, this project will need to be served with at least 34 EDUs from the Ocean Pines Sanitary Service Area. The Water and Sewerage Plan Amendment was approved by the County Commissioners in December 2018. A public hearing with the County Commissioners on the formal inclusion of the subject property into the Ocean Pines Sanitary Service Area is scheduled for Tuesday, February 19, 2019. Staff would recommend conditioning the approval of this plan on obtaining all necessary approvals associated with the water and sewer service.



DEPARTMENT OF
DEVELOPMENT REVIEW AND PERMITTING

Worcester County

GOVERNMENT CENTER

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ZONING DIVISION
BUILDING DIVISION
DATA RESEARCH DIVISION

ADMINISTRATIVE DIVISION
CUSTOMER SERVICE DIVISION
TECHNICAL SERVICE DIVISION

April 26, 2019

J.W. Salm Engineering, Inc.
Post Office Box 397
Berlin, MD 21811

Re: Atlantic General Medical Center of Ocean Pines- Proposed construction of a 99,912 square foot medical office building, east side of MD Route 589 (Racetrack Road), north of Adkins Spur Road, Tax Map 21, Parcel 66A, Tax District 3, C-2 General Commercial District

Dear Mr. Salm:

This is to advise you that the Department has completed a review of the revised site plan, submitted on April 17, 2019, associated with the above referenced project. The plan has been reviewed in accordance with the pertinent sections of the Worcester County *Zoning and Subdivision Control Article* and the *Design Guidelines and Standards for Commercial Uses*. The following code requirements have yet to be addressed:

1. Are the freestanding light poles that were to be located within the front yard setback to be removed and replaced with the human scale lighting, or will they be relocated? An updated lighting plan will need to be provided for this project as part of the site plan signature approval set;
2. What is the proposed surface treatment beyond the easterly access point of the traffic circle? Will bollards need to be provided at the end of the circle as they have been provided at the edge of the property line?
3. Please revise the note at the end of the northwesterly travelway beyond the drive-thru exit to read "No Left Turn";
4. What do the wayfinding signs consist of? There are no notes or details that depict their purpose or wording. While not required, if they are to be provided, a little more detail is recommended;
5. The subject parcel as well as the one adjoining it were originally platted as agricultural parcels when they were zoned A-1 Agricultural District. To convert these properties to allow a commercial use, a new plat will be required prior to signature approval of the site plan. The applicant should work with the Department of Environmental Programs to include the applicable notes once the Water and Sewer Plan Amendment has been finalized, and a determination of the Forest Conservation requirements have been made. One plat may be able to address all of those concerns;

6. Please label the fuel tank and generator on the site plan and any other applicable sheets (it only appears to be labeled on the utility plan). I would recommend speaking with the Fire Marshal's Office as well to confirm any additional requirements prior to finalizing the location. Please keep in mind that a building permit and plans will be required to be submitted for these improvements;
7. Please provide written confirmation from the Department of Environmental Programs that the Stormwater Management/ Sediment Erosion Control requirements and Forest Conservation Law requirements have been addressed prior to signature approval;
8. Please provide written confirmation from the Department of Environmental Programs that the required number of EDUs have been obtained prior to granting signature approval;
9. Please provide written confirmation from the Department of Public Works, Water and Wastewater Division that the appropriate utilities and easements are shown on the plan prior to signature approval;
10. Written confirmation that the entrance configuration as shown on the plan meets the requirements of the State Highway Administration shall be provided prior to signature approval being granted;
11. Once the project is ready to receive signature approval, please submit the plans in an electronic format in accordance with §ZS 1-325(e)(1)F.;

Items to be addressed at the time of permitting include:

12. A demolition permit or building/zoning permit for relocation is required prior to the removal of any structures from the site;
13. Cross easements/ agreements will be needed for the shared access that is being proposed on Parcel 66B, but constructed with this project at the time of permitting;
14. In accordance with §ZS 1-322(g), a maintenance and replacement bond for required landscaping is mandatory for a period not to exceed two years in an amount not to exceed one hundred and twenty-five percent of the installation cost. A landscape estimate from a nursery will be required to be provided to accurately determine the bond amount;
15. Any signage shall meet the requirements of §ZS 1-324 and Section 14 of the *Design Guidelines and Standards for Commercial Uses* and shall be reviewed at permitting stage for compliance;

A copy of the Staff Report associated with this project is attached for your reference. Please do not hesitate to contact me at 410-632-1200 ext. 1123 with any questions or comments you may have concerning this matter.

Sincerely,



Jennifer K. Keener, AICP
Zoning Administrator

Enclosure

cc: Silver Fox, LLC, property owner
Ocean Pines Medical Owners I, LLC, developer
Frank G. Lynch, Jr. & Associates, Inc., surveyor
Array Architects, architect
file

WORCESTER COUNTY PLANNING COMMISSION

MEETING DATE: May 2, 2019

PURPOSE: Sketch Plan Review

DEVELOPMENT: Thrive at Ocean Pines

PROJECT: Proposed construction of a mixed commercial development consisting of approximately 30,000 square feet of retail/ office use, and approximately 100,000 square feet of assisted living with 110 units

LOCATION: Easterly side of MD Route 589 (Racetrack Road), north of Adkins Spur Road, Tax Map 21, Parcel 66B, Tax District 3, C-2 General Commercial District

COMMENTS: This project was submitted to illustrate the interconnections between the proposed and previously approved Atlantic General Hospital outpatient facility on Parcel 66A to the south, and the proposed improvements on Parcel 66B (the subject property). The applicants are required to develop more detailed plans to be submitted and reviewed under all pertinent regulations as well as the *Design Guidelines and Standards for Commercial Uses*. The following statements are general in nature and are subject to change based on more detailed submittals.

Assisted living facilities are a permitted use in the C-2 General Commercial District, with no maximum limit on the total square footage or number of units allowed. The types of amenities provided have not been identified. Likewise, retail, service and office uses are allowed in the C-2 District, with a maximum gross floor area of 100,000 square feet per parcel. It appears that as part of this proposal, the retail/ office uses in the front will be subdivided from the assisted living facility in the rear. While each parcel will have to stand on its own with respect to certain regulations, the development overall will be reviewed for design consistency during the formal site plan review process.

Please note that there are no approvals granted as part of a sketch plan review.

OWNER: Burbage/Melson, Inc., 9919 Stephen Decatur Highway, Berlin, MD 21811

DEVELOPER: Sina Companies, LLC, 5220 Hood Road, Suite 110, Palm Beach Gardens, FL 33418

ENGINEER: J.W. Salm Engineering, Inc., Post Office Box 397, Berlin, MD 21811

SURVEYOR: Frank G. Lynch, Jr. & Associates, Inc., 10535 Racetrack Road, Berlin, MD 21811

ARCHITECT: Reach Architects, 1107 S 8th Street, Austin, TX 78704

PREPARED BY: Jennifer K. Keener, AICP, Zoning Administrator



DEPARTMENT OF
DEVELOPMENT REVIEW AND PERMITTING

Worcester County

GOVERNMENT CENTER
ONE WEST MARKET STREET, ROOM 1201
SNOW HILL, MARYLAND 21863

TEL: 410-632-1200 / FAX: 410-632-3008

www.co.worcester.md.us/drp/drpindex.htm

ZONING DIVISION
BUILDING DIVISION
DATA RESEARCH DIVISION

ADMINISTRATIVE DIVISION
CUSTOMER SERVICE DIVISION
TECHNICAL SERVICE DIVISION

MEMORANDUM

TO: Worcester County Planning Commission
FROM: Phyllis H. Wimbrow, Deputy Director *PHW*
DATE: March 27, 2019
RE: Text Amendment Application - § ZS 1-318(d)(1) -
Campground Subdivisions - Occupancy

The attached text amendment application was submitted by Hugh Cropper, IV, attorney, on behalf of Sally Connolly and Susan Naplachowski seeking to amend the Zoning and Subdivision Control Article to permit by special exception year-round occupancy of no more than 25 percent of the units within a campground subdivision by persons at least 55 years of age. Specifically, the text amendment as submitted by Mr. Cropper sought to renumber existing § ZS 1-318(d)(1)K through § ZS 1-318(d)(1)Q as § ZS 1-318(d)(1)L through § ZS 1-318(d)(1)R and to insert a new § ZS 1-318(d)(1)K to read as follows:

- K. The Board of Zoning Appeals may authorize, by special exception, year round occupancy of individual units or sites in a campground subdivision as a retirement residence, where the youngest person occupying the residence shall be a minimum of fifty-five years of age, provided such permitted units or sites shall not exceed twenty-five percent of the total.

At present, two campground subdivisions exist: White Horse Park and Assateague Pointe. No new campground subdivisions are permitted. Section § ZS 1-318(d)(1) J of the Zoning and Subdivision Control Article currently states the following:

- J. Units or sites in a campground subdivision shall be occupied only on a seasonal basis and shall not be occupied as a place of primary residence or domicile. Between September 30 of each year and April 1 of the succeeding year, units or sites shall not be occupied for more than thirty consecutive days or an aggregate of

campground also has and permits recreational vehicles, recreational park trailers and cabins on approximately 465 sites. Assateague Pointe consists of 529 sites with manufactured homes or park trailers. The definitions provided for these types of units under § ZS 1-318(a) clearly state that they are only designed to provide for seasonal or temporary living quarters. Recreational vehicles are not intended to be, nor should they be, used for year-round occupancy. Cabins, recreational park trailers and recreational vehicles are also limited in size to no more than 400 square feet in area. This is a *minimum of 100 square feet below* the gross floor area required for a single-family dwelling (emphasis added). In essence, we would be permitting tiny homes to be occupied on a full time basis. If this amendment were to proceed, additional revisions may need to be made to definitions or other subsections to ensure consistency.

The DRP staff does not believe that the amendment should focus on the age of the individuals in the unit. To do so requires that the DRP Department be made responsible for obtaining proof of age for all occupants, not only at the time of application but for any future changes in occupancy (whether via sale, rental, marriage, death, divorce, etc.). Important questions become how would the Department verify that there are no additional occupants beyond those persons for which we are being provided identification and would such documentation be provided to the Department to confirm continued compliance with the special exception annually. Additionally, because the draft language is written such that the special exception would run with the unit or campsite, not with the individual occupants, despite the fact that it is based on the age of the occupants, in the event that a unit approved under this special exception is sold or a new renter occupies the space, the County would need to be notified to verify the age of the occupants. DRP is not generally notified of sales of property.

There are additional difficulties involved in tracking these units based upon age and occupancy. Since this is a first come, first serve situation for the 25% of campsite owners/ renters that could be permitted year-round occupancy, the DRP Department would be responsible for tracking the approvals that have been granted, which units they were granted to, as well as the individuals that were allowed to occupy/reside in the space and their respective ages. We would also have to clearly document whose approvals have expired to be able to know when additional approvals may be requested so that the percentage is not exceeded. If approved, our office will be overwhelmed with complaints from neighbors who knew that they had to obtain approval but their neighbor hadn't, allegations of occupancy under age, or those that want to have year-round occupancy but cannot because the campground is at capacity. Our office does not have the resources to inspect every home every day to verify the existing occupancy regulations for campground subdivisions, much less to add this level of data tracking.

While the DRP staff recognizes that this text amendment pertains only to campground subdivisions at the present time, if it were to be approved it would set a precedent. Efforts may very well then be made to permit the same type of year-round occupancy in other forms of campgrounds.

The DRP staff agrees that a case can certainly be made that the County needs affordable, small scale housing to accommodate a segment of the population such as Mr. Cropper describes,

McMahon states that if replacement units or new units within a 55 plus designated campground would require permanent fixed units, therefore requiring residential fire sprinklers, the Fire Marshal's Office has no further comment.

Frank Adkins, County Roads Superintendent, commented via e-mail (copy attached) that in response to an assertion that the roads within White Horse Park were not adequate to withstand full-time residents during a previous meeting between various staff and Mr. Cropper about the proposed amendment, he had maintained that he felt that if the roads were safe during the peak season, he felt they were also safe during the off season. Mr. Adkins stated that he still feels this is a legitimate thought.

John Tustin, Public Works Director, stated via e-mail (copy attached) that his comments mirror Mr. Adkins' on the adequacy of the road network in White Horse Park. He noted that one bill for water/sewer is sent to the White Horse Park Homeowners' Association as no units in the park are individually metered and all water/sewer lines within the community are owned and maintained by that homeowners' association.

John Ross, Public Works Deputy Director, stated via e-mail (copy attached) that the issue with water and wastewater is that White Horse Park is billed at a flat rate of \$134 per lot per quarter which he is sure accounts for owners not being full time. He also noted that the Water and Wastewater Division does not maintain the water and sewer lines in the community at present and that these conditions raise several questions. His questions include the following: 1) If these units become year-round residences, would they need to be assigned a stand-alone water/wastewater equivalent dwelling unit (EDU) and therefore would additional EDUs need to be purchased?; 2) Are enough EDUs available to convert these homes to regular residential customers?; 3) Should lots that are occupied year-round be charged as a standard residential customer because they use water and generate wastewater like a regular customer?; 4) Should water meters be installed to bill the lots individually (and fairly)?; 5) How would the County install meters on water lines that are not owned by Worcester County?; and 6) In that a homeowner in Ocean Pines pays \$170 per lot per quarter plus \$37 per EDU plus usage, how would a full-time homeowner in White Horse Park differ?

As you can see, there are many, many issues and concerns that must be adequately and appropriately addressed. It is far more than just a simple matter of letting a few residents live year-round in a campground subdivision.

Should you have any questions or require additional information, please do not hesitate to contact me.

cc: Edward A. Tudor
Maureen Howarth
Jennifer Keener
Robert Mitchell
John Tustin



DEPARTMENT OF
DEVELOPMENT REVIEW AND PERMITTING

Worcester County

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ZONING DIVISION
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ADMINISTRATIVE DIVISION
CUSTOMER SERVICE DIVISION
TECHNICAL SERVICE DIVISION

MEMORANDUM

TO: Phyllis H. Wimbrow, Deputy Director
FROM: Edward A. Tudor, Director *EAT*
DATE: March 1, 2019
RE: Text Amendment Application - Campground Subdivisions - Occupancy

Per your request I have reviewed the above referenced text amendment application submitted by Mr. Hugh Cropper, IV on behalf of his clients Sally Connolly and Susan Naplachowski seeking to amend the provisions of the Zoning and Subdivision Control Article relative to the occupancy restrictions for campground subdivisions. As you know, currently the units or sites in a campground subdivision are regulated by Section § ZS 1-318(d)(1) which reads as follows:

Units or sites in a campground subdivision shall be occupied only on a seasonal basis and shall not be occupied as a place of primary residence or domicile. Between September 30 of each year and April 1 of the succeeding year, units or sites shall not be occupied for more than thirty consecutive days or an aggregate of sixty days. Any condominium declaration or declaration of restrictions of a homeowners' association shall include language providing for such limited occupancy.

Mr. Cropper is proposing the addition of a new Subsection § ZS 1-318(d)(1)K which would read as follows:

The Board of Zoning Appeals may authorize, by special exception, year-round occupancy of individual units or sites in a campground subdivision as a retirement residence, where the youngest person occupying the residence shall be a minimum of fifty-five years of age, provided such permitted units or sites shall not exceed twenty-five percent of the total.

First, the current occupancy restrictions, which have been in the Code since the 1992 edition, have proven to be extremely difficult, if not nearly impossible, to enforce. Without assigning an inspector to monitor the two campground subdivisions on a daily basis and having that individual try to establish who is occupying units or sites on what days and determine if they are exceeding the consecutive or aggregate limitations, there is currently no way to

accurately enforce the provision. In my opinion, Mr. Cropper's proposed amendment takes this current messy situation to a whole new level of difficulty. As proposed, we would have a subset of units, up to 25 percent of the total, that could be occupied on a year-round basis subject to the granting of a special exception but limited to residents 55 years of age and older. Now not only would we have to attempt to monitor the number of days that 75 percent of the sites are occupied but we would also have to monitor the age of the individuals occupying the other 25 percent of the sites. It also create a first come, first served type of situation. The first 25 percent of the lot owners that apply for the special exception get to stay year-round and the others just have to wait until somebody dies or moves out. Do we create a waiting list for special exception applicants for those that don't make the first 25 percent? Do we go knocking on doors and checking driver's licenses or birth certificates of occupants when someone complains that there is a unit occupied year-round with an individual who is less than 55 years old?

Secondly, there are a number of other issues beyond the zoning limitations on occupancy that come into play. You only need to look at the title for the two parks in the County that are affected. They are called **campground** (emphasis added) subdivisions for a reason. They were never designed or intended for year-round occupancy by any number of the units or sites. As the title clearly states, they are **campgrounds** (emphasis added). There are a number of types of units located in these campgrounds, many of which are not designed or permitted for year-round occupancy, nor should they be used for year-round occupancy. Water and sewer infrastructure, road widths and construction standards, open space requirements, and setbacks for structures are not designed for a year-round subdivision. This amendment as proposed would allow 116 year-round units in White Horse Park and another 132 in Assateague Point, neither of which is designed to the standards required for a typical subdivision intended for year-round occupancy.

There is certainly a case to be made that we need affordable, small scale housing to accommodate the segment of the population Mr. Cropper describes but it should be done by planning from the start for an appropriate subdivision and not trying to modify the requirements of a **campground** (emphasis added). In my opinion, simply put, the amendment as proposed takes the current train wreck and adds a few airplane crashes for good measure.

As always, I will be available to discuss the matter in greater depth if need be when it is reviewed by the Planning Commission.

Phyllis Wimbrow

From: Jennifer Keener
Sent: Wednesday, February 20, 2019 11:52 AM
To: Phyllis Wimbrow
Subject: RE: Scanned from DRP-XeroxB8065

Since there were no changes to the text amendment as it was originally submitted, I have no further comments to add to those that I provided for the January 9, 2019 joint memo from DRP.

Jennifer K. Keener, AICP
Zoning Administrator
One West Market Street, Room 1201
Snow Hill, MD 21863
(410) 632-1200, extension 1123
jkkeener@co.worcester.md.us

-----Original Message-----

From: Phyllis Wimbrow
Sent: Thursday, February 14, 2019 3:33 PM
To: Maureen L. Howarth; Ed Tudor; Jennifer Keener; Jeff McMahon; Robert Mitchell; John Tustin; John Ross; Frank Adkins
Subject: FW: Scanned from DRP-XeroxB8065

Hugh Cropper has asked to proceed with the text amendment application for the campground subdivision occupancy. Attached is my memo requesting your formal written comments and the application. A hard copy will be delivered to you tomorrow.

Please let me know if you have any questions.

Phyllis H. Wimbrow
Deputy Director
Worcester County Development
Review and Permitting
1 West Market Street, Room 1201
Snow Hill, Maryland 21863
(410) 632-1200, ext. 1110

-----Original Message-----

From: wcg-xerox@co.worcester.md.us [<mailto:wcg-xerox@co.worcester.md.us>]
Sent: Thursday, February 14, 2019 3:39 PM
To: Phyllis Wimbrow
Subject: Scanned from DRP-XeroxB8065

Please open the attached document. It was sent to you using a Xerox multifunction printer.

Attachment File Type: pdf, Multi-Page

Multifunction Printer Location: Wor Co Development Review and Permitting
Device Name: DRP-XeroxB8065




Worcester County

Department of Environmental Programs

Memorandum

To: Phyllis Wimbrow, Deputy Director, Development, Review and Permitting

From: Robert J. Mitchell, LEHS 
Director, Environmental Programs

Subject: Zoning Text Amendment Application
Campground Subdivisions - Occupancy

Date: 3/19/19

Thank you for providing the above referenced text amendment package for my review and comment. Specifically, the amendment seeks to permit by special exception year-round occupancy of not more than 25% of the units within a campground subdivision by persons at least 55 years of age. This proposal comes from an expressed need of some of the older park residents to live in the park year-round as it has become an extreme hardship for those residents to temporarily relocate in the winter months. As new campground subdivisions are prohibited, this amendment would only apply to the parks existing at the time that provision was added to the Worcester County Zoning Ordinance.

While I do believe it is the right of such residents to request such an amendment, there are justifiable reasons for us to note why this proposed occupancy extension could create other issues that would be detrimental to the community residents and the utility provider.

The park was originally provided service from Maryland Marine Utilities, which was succeeded by the Worcester County Sanitary Commission. Ultimately, Worcester County took over service when the County succeeded the Sanitary Commission in 1993 and assumed all obligations. Our current water and sewer budget and rates resolution (Resolution No. 18-14) has White Horse Park billed at a quarterly water and sewer flat rate of \$134 per lot for 465 lots. By comparison, the Ocean Pines minimum quarterly charge is \$170/quarter with additional charges for consumption based on metered water usage.

The original Master Water and Sewerage Plan (The Plan) amendment for the community was in 1974 and it was for 350 campsites at 140 gpd/site with contract service from Maryland Marine Utilities for water and sewer. Through the years this office has reviewed the sanitary adequacy components of various development proposals from the park's owners, including the last

Citizens and Government Working Together

expansion to the current configuration. During the review of those expansion and development proposals, allowances were made on flows per campsite that took into account the seasonal nature of the community. Those allowances, while not fully agreeing with the original request, did reduce the flow per campsite to enable the expansion for additions above 350 sites. An additional determination related to flow arrangements and commitments of service to developments like this was included under Bill No. 94-16, which authorizes charges less than a full Equivalent Dwelling Unit (EDU) per lot and contract service charges under the Public Works Article.

An extension of occupancy for approved Worcester County campground subdivisions should contemplate the following items:

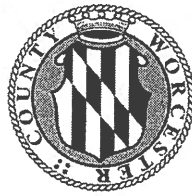
1. The White Horse Park community (or the applicants) would be responsible for acquiring additional sanitary capacity to cover this year-round occupancy of up to 25% of their residents which was not contemplated in the original and succeeding water and sewer service commitments by the utility providers.
2. Acquiring additional capacity from the Ocean Pines Service Area for White Horse Park and Assateague Pointe for the Assateague Point communities will be problematic. The Assateague Pointe capacity is fully committed and connected, while the Ocean Pines capacity would need to be taken from other properties in the planning area that have existing well and/or septic systems that need connection to the public system. Putting additional demands on plants that are at capacity risks existing sanitary infrastructure and presents a risk to public safety and the environment with potential sewer overflows and plant overloads.
3. The park has a master meter and is billed as a group unit. Installation of additional meters, monitoring, and acquiring additional sanitary capacity would be issues that do not appear to be addressed in the amendment text or reasoning provided by the applicant.
4. We do have a ratepayer protection policy included in The Plan where parties conducting expansions of an existing service area shall bear responsibility for all costs associated with sanitary system expansion to accommodate such development. The purpose of this policy is to protect the service area's existing ratepayers from costs unrelated to provision of service to them. The County would be forced to explore assigning responsibility for costs involved in acquiring additional capacity, metering, and monitoring. Following this policy could place accountability on the applicants as they are the parties responsible for expansions, not the HOA's for these communities.

Many, if not all of the items discussed above would be included in our comments to the Board of Zoning Appeals in deciding whether special exemptions should be granted if this text amendment were approved. I would refer to the findings required for a special exception under § ZS 1-116 (c)(3)A, specifically determinations made by the Board on an application's potential for a detrimental impact on ground or surface water quality and the potential to overburden public services and facilities. By approving this amendment as presented, we would be forced to request the Board examine these items in any future applications for special exception. As of

this date, there are no changes with respect to the above items that would alleviate any potential capacity determinations for extended occupancy.

As always, I will be available to discuss the proposed amendment further with the Planning Commission when it is scheduled for discussion.

cc: David Bradford, Deputy Director
John Tustin, Director, Public Works
John Ross, Deputy Director, Public Works
Jessica Wilson, Enterprise Fund Controller
PC Comments File



OFFICE OF THE FIRE MARSHAL
Worcester County

GOVERNMENT CENTER

ONE WEST MARKET STREET, ROOM 1302

SNOW HILL, MARYLAND 21863-1249

TEL: 410-632-5666

FAX: 410-632-5664

www.wcfmo.org

March 22, 2019

Jeffrey A. McMahon
Fire Marshal

Matthew W. Owens
Chief Deputy Fire Marshal

TO: Phyllis H. Wimbrow, Deputy Director
FROM: Jeff McMahon, Fire Marshal
RE: Text Amendment Application for Campground Subdivisions

In regard to the text amendment application for campground subdivisions and the occupancy thereof, I offer the following comments:

The Fire Marshal's Office does not have an issue with the way the text amendment is written.

The FMO concern would be with the type of "unit" (housing) that would be installed for future units and/or replacement units. In other campgrounds in the County there are "newer cabins" which meet the single family manufactured home requirement, but since they are still "readily movable" they are not considered permanent housing and therefore have been exempt by DRP from fire sprinklers.

If replacement of units or new units within a 55+ designated campground would require permanent fixed units, therefore requiring residential fire sprinklers the Fire Marshal's Office has no further comment.

Phyllis Wimbrow

From: John Ross
Sent: Monday, March 18, 2019 3:37 PM
To: John Tustin; Phyllis Wimbrow
Subject: RE: Text Amendment Application - Campground Subdivisions - Year-Round Occupancy

The issue with water and wastewater is that the park is billed at a flat rate of \$134/lot per quarter which I am sure accounts for owners not being full time. Currently the Water and Wastewater Division does not maintain the water and sewer lines within the community. These conditions raise several questions:

If these units become year-round residences, would they need to be assigned a stand-alone water/wastewater EDU and therefore would additional EDUs need to be purchased?

Are enough EDUs available to convert these homes to regular residential customers?

Should lots that are occupied year-round be charged as a standard residential customer because they use water and generate wastewater like a regular customer?

Should water meters be installed to bill the lots individually (and fairly)?

How would we install meters on waterlines that are not owned by Worcester County?

The homeowner in Ocean Pines pays \$170 per quarter minimum plus \$37 per EDU plus usage. How would a full time homeowner differ if they were in White Horse Park?

John S. Ross, P.E. Deputy Director of Public Works
1000 Shore Lane
Ocean Pines, MD 21811
(410)641-5251 X-2412
(410)641-5185 (fax)
(443-783-0032 (cell)

From: John Tustin
Sent: Monday, March 18, 2019 1:39 PM
To: Phyllis Wimbrow; John Ross
Subject: RE: Text Amendment Application - Campground Subdivisions - Year-Round Occupancy

My comments mirror Franks on the adequacy of the road network in WH Park .

JR will address the master meter billing issues for any full time residents and the fairness to all . currently I believe we send 1 bill to the HOA as no units in the park are individually metered and all water /sewer line within the community are owned and maintained by the HOA .

John H.Tustin P.E.
Director, Worcester County DPW
6113 Timmons Road
Snow Hill , Md 21863
Office 410-632-5623
Fax 410-632-1753

From: Phyllis Wimbrow <pwimbrow@co.worcester.md.us>
Sent: Monday, March 18, 2019 1:18 PM
To: Robert Mitchell <bmitchell@co.worcester.md.us>; Jeff McMahon <jmcmahon@co.worcester.md.us>; John Tustin

Phyllis Wimbrow

From: Frank Adkins
Sent: Wednesday, February 20, 2019 8:45 AM
To: Phyllis Wimbrow
Cc: John Tustin; Lisa Lawrence
Subject: FW: Scanned from DRP-XeroxB8065
Attachments: Scanned from DRP-XeroxB8065.pdf

Phyllis,

In our meeting with Hugh Cropper regarding this issue, I had only 1 comment. It was stated that the roads within White Horse Park were not safe enough to withstand full time residents. My comment was " if the roads are safe during the peak season, why aren't they safe during the off season"? I still feel that this is a legitimate question/thought.

That's the only thought/comment I have on this issue at this time.

Frank J. Adkins
Roads Superintendent
Worcester County DPW - Roads Division
5764 Worcester Highway
Snow Hill, MD 21863
Phone: 410-632-2244
Fax: 410-632-0020
Email: fadkins@co.worcester.md.us

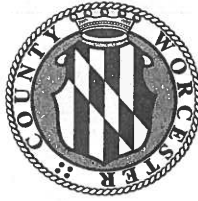
-----Original Message-----

From: Phyllis Wimbrow <pwimbrow@co.worcester.md.us>
Sent: Thursday, February 14, 2019 3:33 PM
To: Maureen L. Howarth <mhowarth@co.worcester.md.us>; Ed Tudor <etudor@co.worcester.md.us>; Jennifer Keener <jkkeener@co.worcester.md.us>; Jeff McMahon <jmcmahon@co.worcester.md.us>; Robert Mitchell <bmitchell@co.worcester.md.us>; John Tustin <jtustin@co.worcester.md.us>; John Ross <jross@co.worcester.md.us>; Frank Adkins <fadkins@co.worcester.md.us>
Subject: FW: Scanned from DRP-XeroxB8065

Hugh Cropper has asked to proceed with the text amendment application for the campground subdivision occupancy. Attached is my memo requesting your formal written comments and the application. A hard copy will be delivered to you tomorrow.

Please let me know if you have any questions.

Phyllis H. Wimbrow
Deputy Director
Worcester County Development
Review and Permitting
1 West Market Street, Room 1201



DEPARTMENT OF
DEVELOPMENT REVIEW AND PERMITTING

Worcester County

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ZONING DIVISION
BUILDING DIVISION
DATA RESEARCH DIVISION

ADMINISTRATIVE DIVISION
CUSTOMER SERVICE DIVISION
TECHNICAL SERVICE DIVISION

MEMORANDUM

TO: Edward A. Tudor, Director
Jennifer K. Keener, Zoning Administrator
Maureen Howarth, County Attorney
Robert Mitchell, Environmental Programs Director
John Tustin, Public Works Director
John Ross, Public Works Deputy Director
Frank Adkins, Roads Supervisor
Jeff McMahon, Fire Marshal

FROM: Phyllis H. Wimbrow, Deputy Director *Phyllis*

DATE: February 14, 2019

RE: Text Amendment Application - Campground Subdivisions - Occupancy

As you are aware, the attached text amendment application was submitted by Hugh Cropper, IV on behalf of Sally Connolly and Susan Naplachowski seeking to amend the Zoning and Subdivision Control Article to permit by special exception year-round occupancy of no more than 25 percent of the units within a campground subdivision by persons at least 55 years of age. Specifically, the text amendment as originally submitted by Mr. Cropper sought to renumber existing § ZS 1-318(d)(1)K through § ZS 1-318(d)(1)Q as § ZS 1-318(d)(1)L through § ZS 1-318(d)(1)R and to insert a new § ZS 1-318(d)(1)K to read as follows:

- K. The Board of Zoning Appeals may authorize, by special exception, year round occupancy of individual units or sites in a campground subdivision as a retirement residence, where the youngest person occupying the residence shall be a minimum of fifty-five years of age, provided such permitted units or sites shall not exceed twenty-five percent of the total.

As is DRP's customary practice, on January 4, 2019 I sent the application out to various County staff members seeking comment prior to preparing a staff report for the Planning Commission's review of the application. The County Administration asked that I send the application to additional staff members and schedule a meeting with Mr. Cropper and the staff to discuss the application. This meeting was scheduled for January 9, 2019. Prior to that meeting I prepared a memo on behalf of the DRP staff detailing our concerns about the proposed text amendment and comments were also received from Mr. Mitchell and Mr. Tustin. The comments were given to Mr. Cropper at the meeting on January 9, 2019. At that time Mr. Cropper stated that

he recognized that the County had concerns about year-round occupancy of campground subdivisions and asked to set the application aside until he notified me otherwise. Via e-mail today Mr. Cropper has advised me that he wishes to proceed with the application as originally submitted. Therefore, I am requesting that you submit your formal written comments to me at your earliest convenience.

I anticipate scheduling this text amendment for consideration by the Planning Commission at its April 4, 2019 meeting. So that I may incorporate them into the staff report, please submit your comments to me no later than March 20, 2019.

Should you have any questions or require additional information, please do not hesitate to contact me. Thank you for your attention to this matter.

attachment

Worcester County Commissioners
Government Office Building
One West Market Street, Room 1103
Snow Hill, Maryland 21863

Please Type or
Print in Ink

PETITION FOR AMENDMENT OF OFFICIAL TEXT
OF THE ZONING AND SUBDIVISION CONTROL ARTICLE

(Office Use Only - Please Do Not Write In This Space)

Date Received by Office of the County Commissioners: _____

Date Received by Development Review and Permitting: 1/2/19

Date Reviewed by Planning Commission: _____

- I. Application - Proposals for amendments to the text of the Zoning and Subdivision Control Article may be made by any interested person who is a resident of Worcester County, a taxpayer therein, or by any governmental agency of the County. Check applicable status below:

A. Resident of Worcester County. XXX

B. Taxpayer of Worcester County. XXX

C. Governmental Agency _____

(Name of Agency)

- II. Proposed Change to Text of the Zoning and Subdivision Control Article.

A. Section Number: Please See Attached

B. Page Number: Please See Attached

C. Proposed revised text, addition or deletion:

Please See Attached

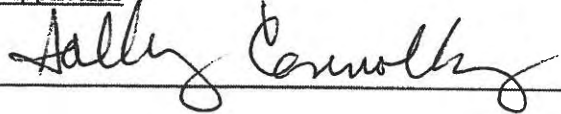
III. Reasons for Requesting Text Change:

- A. Please list reasons or other information as to why the proposed text change is necessary and therefore requested:

Please See Attached

IV. Signature of Applicants

Signature:



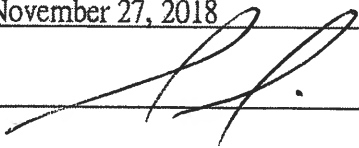
Printed Name of Applicant: Sally Connolly

Mailing Address: 11647 Beauchamp Road, Box 91, Berlin, MD 21811

Phone Number: 301-385-3119 E-Mail: sconnolly12000@yahoo.com

Date: November 27, 2018

Signature:



Printed Name of Applicant: Susan Naplachowski

Mailing Address: 11647 Beauchamp Road, Unit 132, Berlin, MD 21811

Phone Number: 410-935-0158 E-Mail: suenap@outlook.com

Date: November 27, 2018

Signature of Attorney

Signature:



Printed Name of Attorney: Hugh Cropper IV

Mailing Address: 9923 Stephen Decatur Hwy., D-2, Ocean City, Maryland 21842

Phone Number: 410-213-2681 E-Mail: hcropper@bbcmlaw.com

Date: November 27, 2018

V. General Information Relating to the Text Change Request.

- A. Applications for text amendments shall be addressed to and filed with the Office of the County Commissioners. The required filing fee must accompany the application.
 - B. Procedure for Text Amendments - Text amendments shall be passed by the County Commissioners of Worcester County as Public Local Laws according to legally required procedures, with the following additional requirements. Any proposed amendment shall first be referred to the Planning Commission for recommendation. The Planning Commission shall make a recommendation within a reasonable time after receipt of the proposed amendment. After receipt of the recommendation of the Planning Commission, the County Commissioners shall hold at least one public hearing in relation to the proposed amendment, at which parties and interested citizens shall have any opportunity to be heard. At least fifteen (15) days' notice of the time and place of such hearing and the nature of the proposed amendment shall be published in an official paper or a paper of general circulation in Worcester County. In the event no County Commissioner is willing to introduce the proposed amendment as a bill, it need not be considered.
-

ATTACHMENT TO PETITION FOR AMENDMENT
OF OFFICIAL TEXT

New Section ZS1-318(d)(1)K to be inserted as follows:

The Board of Zoning Appeals may authorize, by special exception, year round occupancy of individual units or sites in a campground subdivision as a retirement residence, where the youngest person occupying the residence shall be a minimum of 55 years of age, provided such permitted units or sites shall not exceed twenty five percent of the total.

***Renumber the remainder of the Statute**

REASONS FOR REQUESTING TEXT CHANGE

Although the proposed text change would apply to campground subdivisions throughout Worcester County, this proposed text change is to address the situation at White Horse Park. The applicants point out that there are very few campground subdivisions in Worcester County and "new campground subdivisions are prohibited." See, Section ZS1-318(d).

White Horse Park was originally developed in the early 1980's. The property is zoned A-2, Agricultural District. There are approximately 465 units.

Based upon information and belief, and by Resolution No. 92-11, which was passed in 1993, units or sites in a campground subdivision shall be occupied only on a seasonal basis.

Unfortunately, White Horse Park is an older campground, and it serves the needs of many older residents in the community. There are approximately thirty residents in the community that are age 70, or older, and it is an extreme hardship for these residents to move out in the winter months.

The applicants have fashioned a text amendment which would permit a certain percentage of the units to be occupied on a year round basis, as a retirement residence. A retirement residence is defined as a unit occupied by persons, the youngest of whom are 55 years of age.

Such units would be permitted by special exception from the Board of Zoning Appeals. This would act as a safety valve to make certain that the year round privilege was not being abused.

The number of units that could qualify would be limited to twenty-five percent. This would ensure that there would not be an over burdening of the infrastructure.

There are many elderly residents in this community on a fixed income. The proposed text amendment would address the hardship of these unit owners.

Respectfully submitted,



Hugh Cropper IV,

Attorney for the Applicants

Phyllis Wimbrow

From: Phyllis Wimbrow
Sent: Thursday, February 14, 2019 2:22 PM
To: 'Hugh Cropper'
Cc: Ed Tudor (ddrp@co.worcester.md.us); Maureen L. Howarth; Jennifer Keener; Robert Mitchell; Jeff McMahon
Subject: RE: White Horse Park Text Amendment

Good afternoon Mr. Cropper,

I take it you want to proceed with the application as you specifically submitted it, rather than make any revisions. If I am incorrect, please let me know.

I will send it out for comment to various parties and let you know when it will be scheduled before the Planning Commission. I seriously doubt it will be the March 7th meeting because of the need to prepare the staff report after the comments are received. Therefore, it will probably be scheduled for the April 4th meeting.

Phyllis H. Wimbrow
Deputy Director
Worcester County Development
Review and Permitting
1 West Market Street, Room 1201
Snow Hill, Maryland 21863
(410) 632-1200, ext. 1110

From: Hugh Cropper [<mailto:hcropper@bbcmlaw.com>]
Sent: Thursday, February 14, 2019 2:12 PM
To: Phyllis Wimbrow
Cc: Jennifer Keener; Ed Tudor; suenap@outlook.com
Subject: White Horse Park

Mrs. Wimbrow:

I want to thank you for all of your help regarding my proposed Text Amendment for White Horse Park. I would like to proceed to the Planning Commission, at your earliest convenience. Please let me know if you need anything else.

Thanks again, and if I can provide any additional information, please do not hesitate to contact me.

Hugh Cropper IV
Booth Booth Cropper & Marriner, P.C.
9923 Stephen Decatur Highway, D-2
Ocean City, Maryland 21842
410-213-2681-Telephone
www.bbcmlaw.com

Phyllis Wimbrow

From: Jeff McMahon
Sent: Wednesday, January 16, 2019 12:33 PM
To: Phyllis Wimbrow
Cc: Maureen L. Howarth
Subject: RE: campground subdivisions

Phyllis,

Below are my draft comments. Is this email sufficient or do you need the comments on official FMO Letterhead?

In response for comments regarding the Text Amendment for special exception for year round occupancy of individual units or sites in a campground subdivision as a retirement residence, occupied by a person 55 years of age or older and not to exceed 25 percent of said campground units or sites I offer the following comments:

If this text amendment is going to apply to other campground subdivisions like Castaways, Frontier Town, Fort Whaley, Island Resort and Bahi, to name a few, and the structure which the individual (over 55 years of age) will reside is beyond a portable/movable trailer/camper/structure then consistency would need to apply. As you are probably aware in Castaways, Frontier Town, and Fort Whaley they have recently built/installed cabins (Structures) that were listed a "readily movable" and therefore were exempt from the "residential sprinkler" requirement. I worry these could be sold or leased long term and therefore would not be for tentative (seasonal) occupation. Over the past several years White Horse Park has built/installed dwellings/structures which had to be equipped with residential sprinklers. Some of these "Campgrounds" have small mobile homes or trailers with additions attached to them which have been that way for many years (Bahi). A few years ago we dealt with the enclosure of some of these "lean to" additions and the safety aspect of proper egress.

This office is not against the amendment, but would like a better clarification of the following:

Infrastructure of the campground to include emergency apparatus access (planning), fire protection such as hydrants (or dry hydrants) and most importantly, residential sprinklers (all new units used for sleeping). 25 percent of White Horse Park is over 100 units or sites.

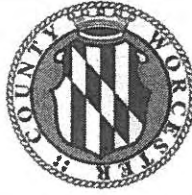
Finally some type of written description as to who will enforce the new regulations and what agency has the enforcement or policing authority and what penalties would apply.

Jeff



Jeffrey A. McMahon, CFI, CFPS
Fire Marshal, Worcester County Fire Marshal
Phone: (410) 632-5666 Ext. 1
Mobile: (443) 783-0070
Fax: (410) 632-5664
Email: jmcMahon@co.worcester.md.us
Web site: <http://co.worcester.md.us/departments/firemarshal>
Address: 1 West Market St - Room 1302 - Snow Hill, MD 21863

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Worcester County

Department of Environmental Programs

Memorandum

To: Phyllis Wimbrow, Deputy Director, Development, Review and Permitting

From: Robert J. Mitchell, LEHS *RAM*
Director, Environmental Programs

Subject: Zoning Text Amendment Application
Campground Subdivisions - Occupancy

Date: 1/15/19

Thank you for providing the above referenced text amendment package for my review and comment. Specifically, the amendment seeks to permit by special exception year-round occupancy of not more than 25% of the units within a campground subdivision by persons at least 55 years of age. This proposal comes from an expressed need of some of the older park residents to live in the park year-round as it has become an extreme hardship for those residents to temporarily relocate in the winter months. As new campground subdivisions are prohibited, this amendment would only apply to the parks existing at the time that provision was added to the Worcester County Zoning Ordinance.

While I do believe it is the right of such residents to request such an amendment, there are justifiable reasons for us to note why this proposed occupancy extension could create other issues that would be detrimental to the community residents and the utility provider.

The park was originally provided service from Maryland Marine Utilities, which was succeeded by the Worcester County Sanitary Commission. Ultimately, Worcester County took over service when the County succeeded the Sanitary Commission in 1993 and assumed all obligations. Our current water and sewer budget and rates resolution (Resolution No. 18-14) has White Horse Park billed at a quarterly water and sewer flat rate of \$134 per lot for 465 lots. By comparison, the Ocean Pines minimum quarterly charge is \$170/quarter with additional charges for consumption based on metered water usage.

The original Master Water and Sewerage Plan (The Plan) amendment for the community was in 1974 and it was for 350 campsites at 140 gpd/site with contract service from Maryland Marine Utilities for water and sewer. Through the years this office has reviewed the sanitary adequacy components of various development proposals from the park's owners, including the last

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expansion to the current configuration. During the review of those expansion and development proposals, allowances were made on flows per campsite that took into account the seasonal nature of the community. Those allowances, while not fully agreeing with the original request, did reduce the flow per campsite to enable the expansion for additions above 350 sites. An additional determination related to flow arrangements and commitments of service to developments like this was included under Bill No. 94-16, which authorizes charges less than a full EDU per lot and contract service charges under the Public Works Article.

An extension of occupancy for approved Worcester County campground subdivisions should contemplate the following items:

1. The White Horse Park community (or the applicants) would be responsible for acquiring additional sanitary capacity to cover this year-round occupancy of up to 25% of their residents which was not contemplated in the original and succeeding water and sewer service commitments by the utility providers.
2. Acquiring additional capacity from the Ocean Pines Service Area for White Horse Park and Assateague Pointe for the Assateague Point communities will be problematic. The Assateague Pointe capacity is fully committed and connected, while the Ocean Pines capacity would need to be taken from other properties in the planning area that have existing well and/or septic systems that need connection to the public system. Putting additional demands on plants that are at capacity risks existing sanitary infrastructure and presents a risk to public safety and the environment with potential sewer overflows and plant overloads.
3. The park has a master meter and is billed as a group unit. Installation of additional meters, monitoring, acquiring additional sanitary capacity are all issues that do not appear to be addressed in the amendment text or reasoning.
4. We do have a ratepayer protection policy included in The Plan where parties conducting expansions of an existing service area shall bear responsibility for all costs associated with sanitary system expansion to accommodate such development. The purpose of this policy is to protect the service area's existing ratepayers from costs unrelated to provision of service to them. The County would be forced to explore assigning responsibility for costs involved in acquiring additional capacity, metering, and monitoring. Following this policy could place accountability on the applicants as they are the parties responsible for expansions, not the HOA's for these communities.

Many, if not all of the items discussed above would be included in our comments to the Board of Zoning Appeals in deciding whether special exemptions should be granted if this text amendment were approved. I would refer to the findings required for a special exception under § ZS 1-116 (c)(3)A, specifically determinations made by the Board on an application's potential for detrimental effect on ground or surface water quality and the potential to overburden public services and facilities. By approving this amendment as presented, we would be forced to request the Board examine these items in any future applications for special exception. As of this date, there are no changes with respect to the above items that would alleviate any potential capacity determinations for extended occupancy.

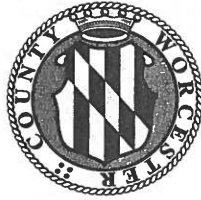
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As always, I will be available to discuss the proposed amendment further with the Planning Commission when it is scheduled for discussion.

cc: Maureen Howarth, County Attorney
David Bradford, Deputy Director
John Tustin, Director, Public Works
John Ross, Deputy Director, Public Works
Jessica Wilson, Enterprise Fund Controller
PC Comments File

Citizens and Government Working Together

WORCESTER COUNTY GOVERNMENT CENTER 1 WEST MARKET STREET, ROOM 1306 SNOW HILL, MARYLAND 21863-1249
TEL: 410-632-1220 FAX: 410-632-2012



DEPARTMENT OF
DEVELOPMENT REVIEW AND PERMITTING

Worcester County

GOVERNMENT CENTER
ONE WEST MARKET STREET, ROOM 1201
SNOW HILL, MARYLAND 21863
TEL: 410-632-1200 / FAX: 410-632-3008
www.co.worcester.md.us/drpd/index.htm

ZONING DIVISION
BUILDING DIVISION
DATA RESEARCH DIVISION

ADMINISTRATIVE DIVISION
CUSTOMER SERVICE DIVISION
TECHNICAL SERVICE DIVISION

MEMORANDUM

TO: Hugh Cropper, IV
FROM: Edward A. Tudor, Director
Phyllis H. Wimbrow, Deputy Director
Jennifer K. Keener, Zoning Administrator
DATE: January 9, 2019
RE: Text Amendment Application - Campground Subdivisions - Occupancy

We have reviewed the above referenced text amendment application which you submitted seeking to amend the Zoning and Subdivision Control Article to permit by special exception year-round occupancy of no more than 25 percent of the units within a campground subdivision by persons at least 55 years of age. Specifically, the text amendment you submitted seeks to renumber existing § ZS 1-318(d)(1)K through § ZS 1-318(d)(1)Q as § ZS 1-318(d)(1)L through § ZS 1-318(d)(1)R and to insert a new § ZS 1-318(d)(1)K to read as follows:

- K. The Board of Zoning Appeals may authorize, by special exception, year round occupancy of individual units or sites in a campground subdivision as a retirement residence, where the youngest person occupying the residence shall be a minimum of fifty-five years of age, provided such permitted units or sites shall not exceed twenty-five percent of the total.

From a practical standpoint, the staff has a significant number of concerns with the text amendment application as submitted. First and foremost, what you are proposing is as unenforceable as what the current law stipulates, if not more so. At present § ZS 1-318(d)(1)J states that “units or sites in a campground subdivisions shall be occupied only on a seasonal basis and shall not be occupied as a place of primary residence or domicile” and that “between September 30 of each year and April 1 of the succeeding year, units or sites shall not be occupied for more than thirty consecutive days or an aggregate of sixty days.” As you know, the County has struggled with enforcement of the current seasonal occupancy provisions for campground subdivisions. This is due

to the complex method for allowing part-time winter occupancy as well as a lack of staff to be able to actively and effectively regulate it. Based on admissions from residents in White Horse Park who have resided or currently reside there on a year round basis, it is clear that enforcement of the occupancy regulations has not been able to be accomplished. In order to effectively enforce this current regulation the County would have to have a staff person on site checking each unit in the campground subdivision daily from October 1 and March 31 and keeping track of who goes in and out and when, who is staying, who is not in residence. Without adequate staff, this 24/7 surveillance is next to impossible. In our opinion, your proposed amendment only further complicates the matter. To add a provision that up to 25 percent of the units can be occupied on a year-round basis by persons of at least 55 years age would escalate the monitoring and enforcement issues dramatically. Now the staff would also be responsible for verifying the age of residents and visitors as well as how long they're staying, etc. It would also create a first come, first served type of situation. The first 25% of the lot owners that apply for the special exception get to stay year round and the others just have to wait until somebody dies or otherwise gives one up. We would still have to enforce the current restrictions on the other 75% as well. Trying to keep track of all of that would be extremely difficult and consume much time and resources that could probably be put to better use elsewhere.

Equally important, however, is the fact that these facilities are *campground* subdivisions (emphasis added). By their very nature they are intended for seasonal or temporary use only. They are not intended nor are they designed for full-time residences. Compared to residential subdivisions which are intended for year-round use, campground subdivisions have much smaller lots, reduced yard setbacks, substandard roads, etc. that are all reflective of the supposed seasonal and temporary nature of such developments but are not adequate to serve year-round residences. The staff does not believe that any percentage of units within a campground subdivision should be used as year-round residences.

There are two campground subdivisions within Worcester County, namely Assateague Pointe and White Horse Park. Campground subdivisions allow a variety of unit types and while White Horse Park has many manufactured and modular homes, this campground also has and permits recreational vehicles, recreational park trailers and cabins on approximately 465 sites. Assateague Pointe consists of 529 sites with manufactured homes or park trailers. The definitions provided for these types of units under § ZS 1-318(a) clearly state that they are only designed to provide for seasonal or temporary living quarters. Recreational vehicles are not intended to be, nor should they be, used for year-round occupancy. Cabins, recreational park trailers and recreational vehicles are also limited in size to no more than 400 square feet in area. This is a *minimum* of 100 square feet below the gross floor area required for a single-family dwelling. In essence, we would be permitting tiny homes to be occupied on a full time basis. If this amendment were to proceed, additional revisions may need to be made to definitions or other subsections to ensure consistency.

Overall, the amendment should not focus on the age of the individuals in the unit. To do so requires that the Department be made responsible for obtaining proof of age for all occupants, not only at the time of application but for any future changes in occupancy (whether via sale, rental, marriage, death, divorce, etc.). How would the Department verify that there are no additional occupants beyond those persons for which we are being provided identification? Would such documentation be provided to the Department to confirm continued compliance with the special exception annually?

Based on the draft language, the special exception would run with the unit or campsite, not with the individual occupants, despite the fact that it is based on the age of the occupants. In the event that a unit approved under this special exception is sold or a new renter occupies the space, how would the County be notified?

The concern stated in the application is that there are many elderly residents on a fixed income for whom relocating would be an issue. The same argument could be made for those of a lower income bracket as well. So if year round occupancy is desired, why limit it based upon a condition such as age?

A clear definition would need to be provided for "occupy" or "occupying" as applied to this section. At what threshold is someone an occupant and not a visitor who must meet the age limit? Is this approval limited to those 55 and older who would use these units as a primary dwelling or could it be a second home without having to abide by the time restrictions that would still be in effect during the winter months? While the latter does not seem to be the intent behind the legislation, it could certainly be used in that manner.

A likely argument will be that as a special exception, the Board of Zoning Appeals would have continuing jurisdiction. However, practically speaking, the County will still be put into the situation of having to prove: 1. That a tenant is in fact occupying/residing in the unit more than the current part-time method allows without obtaining a special exception; or 2. That a change in occupancy has occurred that would result in noncompliance of a unit that had obtained a special exception. To further complicate matters, § ZS 1-116(c)(3)E. states that if a special exception that has been implemented is abandoned or ceased for a period of twelve consecutive months, the approval shall be considered abandoned and shall terminate. One could argue that an occupant who obtained a special exception could temporarily vacate the unit, or rent or sell to someone else who doesn't meet the age threshold, but the special exception could still be maintained as long as the age condition was met before the expiration of the twelve months.

There are additional difficulties involved in tracking these units based upon age and occupancy. Since this is a first come, first serve situation for the 25% of campsite owners/ renters that could be permitted year round occupancy, the Department would be responsible for tracking the

approvals that have been granted, which units they were granted to, as well as the individuals that were allowed to occupy/reside in the space and their respective ages. We would also have to clearly document whose approvals have expired to be able to know when additional approvals may be requested so that the percentage is not exceeded. If approved, our office will be overwhelmed with complaints from neighbors who knew that they had to obtain approval but their neighbor hadn't, allegations of occupancy under age, or those that want to have year round occupancy but cannot because the campground is at capacity. Our office does not have the resources to inspect every home every day to verify the existing occupancy regulations for campground subdivisions, much less to add this level of data tracking.

There are also likely issues related to the provision of sewer and/or water services, roads, and other public services and the adequacy of same to serve year-round occupants. Additionally, there are probably fire safety issues. The text amendment has been forwarded to those appropriate agencies for their response.

While we recognize that this text amendment pertains only to campground subdivisions at the present time, if it were to be approved it would set a precedent. Efforts may then be made to permit the same type of year-round occupancy in other forms of campgrounds.

As you can see, there are many concerns, issues and questions that must be adequately addressed before this text amendment application can proceed to the Planning Commission.

If you have any questions or require additional information, please do not hesitate to ask.

Phyllis Wimbrow

From: Robert Mitchell
Sent: Wednesday, January 09, 2019 6:05 AM
To: John Tustin
Cc: Phyllis Wimbrow; Ed Tudor; Jennifer Keener; Maureen L. Howarth; John Ross
Subject: Re: Text Amendment Application - Campground Subdivisions - Occupancy

We have training and Dave has the selsey pre-bid on-site today. So there we cannot attend.

There are flow issues with both this community and the assateague pointe community that gives pause to allowing the year round occupancy. The flow agreement and commitments made to white horse took into account the seasonal nature of the campground. The movement toward a different occupancy situation for up to a quarter of the community creates serious capacity issues that we would have issues meeting. The assateague plant is fully committed and to allow more from ocean pines means taking it from other septic properties that will eventually connect. This change in occupancy would need additional capacity commitments that simply are not there. JT mentioned metering and who would pay for that if the community boards opposed this? There are significant costs involved even if the capacity could be secured.

I wish you well on the meeting and sorry we cannot attend.

Sent from my iPhone

On Jan 8, 2019, at 12:53 PM, John Tustin <jtustin@co.worcester.md.us> wrote:

Not for me but you can brief me on the happenings

Concerns these are really HOA issues

Waterlines are private, will they be putting in meters, and then reading the meters to charge the full timers more for consumption than the seasonal residents.

We currently have a master meter and charge a flat rate
JR jump in with concerns

Roads are private, built to who knows what standard will they remain private yes!

How will the HOA be equitable to all homeowners for the services/fees that they pay if 25% are full time?

John H. Tustin P.E.
Director, Worcester County DPW
6113 Timmons Road
Snow Hill, Md 21863
Office 410-632-5623
Fax 410-632-1753

From: Phyllis Wimbrow <pwimbrow@co.worcester.md.us>
Sent: Tuesday, January 8, 2019 9:51 AM
To: Hugh Cropper <hcropper@bbcmlaw.com>; Ed Tudor <etudor@co.worcester.md.us>
Cc: Maureen L. Howarth <mhowarth@co.worcester.md.us>; Jennifer Keener <jkeener@co.worcester.md.us>; Robert Mitchell <bmitchell@co.worcester.md.us>; John Tustin

To: Phyllis Wimbrow
Cc: Maureen L. Howarth; Ed Tudor; Jennifer Keener; Robert Mitchell; John Tustin
Subject: RE: Text Amendment Application - Campground Subdivisions - Occupancy

Phyllis:

I have another meeting back in West Ocean City at 2:30 (ish) after TRC on Wednesday. Would another day work for everyone?

Thanks.

Hugh Cropper IV
Booth Booth Cropper & Marriner, P.C.
9923 Stephen Decatur Highway, D-2
Ocean City, Maryland 21842
410-213-2681-Telephone
www.bbcmllaw.com

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From: Phyllis Wimbrow [<mailto:pwimbrow@co.worcester.md.us>]
Sent: Monday, January 07, 2019 9:43 AM
To: Hugh Cropper <hcropper@bbcmllaw.com>
Cc: Maureen L. Howarth <mhowarth@co.worcester.md.us>; Ed Tudor <etudor@co.worcester.md.us>; Jennifer Keener <jkkeener@co.worcester.md.us>; Robert Mitchell <bmitchell@co.worcester.md.us>; John Tustin <jtustin@co.worcester.md.us>
Subject: Text Amendment Application - Campground Subdivisions - Occupancy

Good morning Hugh,

The staff would like to meet with you to discuss the above referenced text amendment application. Jennifer told me that you will be here on Wednesday, January 9, 2019 for the TRC meeting. Would it be possible to meet with us immediately following the TRC?

Please let me know so that I can inform the other staff persons.

Thank you.

Phyllis H. Wimbrow
Deputy Director
Worcester County Development
Review and Permitting
1 West Market Street, Room 1201
Snow Hill, Maryland 21863
(410) 632-1200, ext. 1110

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From: Phyllis Wimbrow [<mailto:pwimbrow@co.worcester.md.us>]

Sent: Monday, January 07, 2019 9:43 AM

To: Hugh Cropper <hcropper@bbcmclaw.com>

Cc: Maureen L. Howarth <mhowarth@co.worcester.md.us>; Ed Tudor <etudor@co.worcester.md.us>; Jennifer Keener <jkkeener@co.worcester.md.us>; Robert Mitchell <bmitchell@co.worcester.md.us>; John Tustin <jtustin@co.worcester.md.us>

Subject: Text Amendment Application - Campground Subdivisions - Occupancy

Good morning Hugh,

The staff would like to meet with you to discuss the above referenced text amendment application. Jennifer told me that you will be here on Wednesday, January 9, 2019 for the TRC meeting. Would it be possible to meet with us immediately following the TRC?

Please let me know so that I can inform the other staff persons.

Thank you.

Phyllis H. Wimbrow
Deputy Director
Worcester County Development
Review and Permitting
1 West Market Street, Room 1201
Snow Hill, Maryland 21863
(410) 632-1200, ext. 1110



DEPARTMENT OF
DEVELOPMENT REVIEW AND PERMITTING

Worcester County

GOVERNMENT CENTER
ONE WEST MARKET STREET, ROOM 1201
SNOW HILL, MARYLAND 21863
TEL: 410-632-1200 / FAX: 410-632-3008
www.co.worcester.md.us/drpd/index.htm

ZONING DIVISION
BUILDING DIVISION
DATA RESEARCH DIVISION

ADMINISTRATIVE DIVISION
CUSTOMER SERVICE DIVISION
TECHNICAL SERVICE DIVISION

MEMORANDUM

TO: Edward A. Tudor, Director
Jennifer K. Keener, Zoning Administrator
Maureen Howarth, County Attorney
Robert Mitchell, Environmental Programs Director
FROM: Phyllis H. Wimbrow, Deputy Director *PHW*
DATE: January 4, 2019
RE: Text Amendment Application - Campground Subdivisions - Occupancy

The attached text amendment application has been submitted by Hugh Cropper, IV on behalf of Susan Naplachowski and seeks to amend the Zoning and Subdivision Control Article to permit by special exception year-round occupancy of no more than 25 percent of the units within a campground subdivision by persons at least 55 years of age. Specifically, the text amendment as submitted by Mr. Cropper seeks to renumber existing § ZS 1-318(d)(1)K through § ZS 1-318(d)(1)Q as § ZS 1-318(d)(1)L through § ZS 1-318(d)(1)R and to insert a new § ZS 1-318(d)(1)K to read as follows:

- K. The Board of Zoning Appeals may authorize, by special exception, year round occupancy of individual units or sites in a campground subdivision as a retirement residence, where the youngest person occupying the residence shall be a minimum of fifty-five years of age, provided such permitted units or sites shall not exceed twenty-five percent of the total.

I anticipate scheduling this text amendment for consideration by the Planning Commission at its February 7, 2019 meeting. So that I may incorporate them into the staff report, please submit your comments to me no later than January 25, 2017.

Should you have any questions or require additional information, please do not hesitate to contact me. Thank you for your attention to this matter.

attachment

STAFF REPORT

REZONING CASE NO. 421

PROPERTY OWNER: William and Linda Ayres
2710 Cortland PL NW
Washington, D.C. 20008

ATTORNEY: Hugh Cropper, IV
9923 Stephen Decatur Highway, D-2
Ocean City, Maryland 21842

TAX MAP/PARCEL INFO: Tax Map 16 - Parcels 21 and 53 - Tax District 3

SIZE: The subject property is comprised of two parcels and totals 27.57 acres in size. Parcel 21 is fronts on MD Route 589 and is 10.01 acres in size. It is primarily an agricultural field, although aerial photos indicate that a small house is located on this parcel. Parcel 53 totals 17.56 acres and is generally wooded but also has an open area that appears to be used for agricultural purposes. The tax maps and aerials indicate that there is a "roadway" or other accessway that lies between the two parcels in the petitioned area and which provides access to other landlocked parcels to the south and west.

LOCATION: The petitioned area is located on the southerly side of MD Route 589 (Racetrack Road), directly across from the Ocean Pines North Gate.

CURRENT USE OF PETITIONED AREA: Agricultural fields and woods.

CURRENT ZONING CLASSIFICATION: A-1 Agricultural District

REQUESTED ZONING CLASSIFICATION: C-2 General Commercial District

APPLICANT'S BASIS FOR REZONING: According to the application, the request for rezoning is based upon a change in the character of the neighborhood.

ZONING HISTORY: At the time zoning was first established in the 1960s the petitioned area was given an A-1 Agricultural District classification. This classification was retained in the 1992 comprehensive rezoning and again during the 2009 comprehensive rezoning.

SURROUNDING ZONING: The two properties immediately to the east of the petitioned area are zoned C-2 General Commercial District. All other adjoining and nearby properties on the southerly side of MD Route 589 are zoned A-1 Agricultural District. Properties on the northerly side of MD Route 589 are zoned R-2 Suburban Residential District. The properties at the northwesterly side of the intersection of MD Routes 589 and 90 are zoned C-1 Neighborhood Commercial District while on the northerly side of MD Route 589 at the southeasterly side of

Beauchamp Road are zoned C-2 General Commercial District.

COMPREHENSIVE PLAN:

According to Chapter 2 - Land Use of the Comprehensive Plan and associated land use plan map, the petitioned area lies within the Agricultural Land Use Category, as do all surrounding properties on that side of MD Route 589 to the north of the intersection with MD Route 90. Properties on the opposite side of MD Route 589 are within the Existing Developed Area Land Use Category. With regard to the Agricultural Land Use Category, the Comprehensive Plan states the following:

“The importance of agriculture to the county cannot be overstated. Its significance is economic, cultural, environmental, and aesthetic. Agriculture is simply the bedrock of the county’s way of life. The county must do all it can do to preserve farming as a viable industry. This category is reserved for farming, forestry and related industries with minimal residential and other incompatible uses permitted. Large contiguous areas of productive farms and forest shall be maintained for agricultural uses and residential and other conflicting land uses, although permitted, are discouraged.” (Page 18)

With regard to the Existing Developed Area category, the Comprehensive Plan states the following:

“This category identifies existing residential and other concentrations of development in unincorporated areas and provides for their current development character to be maintained. Recognizing existing development and neighborhood character is the purpose of this designation. Appropriate zoning providing for densities and uses consistent with this character should be instituted.

Surrounding areas have been mapped with one of the other land use designations as appropriate and should not be considered for rezonings by virtue of their proximity to an EDA. Further, the EDAs are anticipated to remain as mapped at least until the next plan review period. This will provide for orderly infill development within EDAs and new community-scale growth in the growth areas.

Not designated as growth areas, these areas should be limited to infill development. Density, height, bulk and site design standards should also be consistent with the EDA’s existing character.” (Pages 13, 14)

Pertinent objectives cited in Chapter 2 - Land Use state the following:

“....

2. Continue the dominance of agriculture and forestry uses throughout the county’s less developed regions.
3. Maintain the character of the county’s existing population centers.

4. Provide for appropriate residential, commercial, institutional, and industrial uses.
 5. Locate new development in or near existing population centers and within planned growth centers.
 6. Infill existing population centers without overwhelming their existing character.
 -
 8. Regulate development to minimize consumption of land, while continuing the county's rural and coastal character.
 9. Minimize conflicts among land uses due to noise, smoke, dust, odors, lighting, and heavy traffic.
 10. Locate employment centers close to the potential labor force.
 -
 15. Balance the supply of commercially zoned land with anticipated demand of year-round residents and seasonal visitors.
 16. Locate major commercial and all industrial development in areas having adequate arterial road access or near such roads.
 17. Discourage highway strip development to maintain roadway capacity, safety, and character.
 -
 19. Limit rural development to uses compatible with agriculture and forestry.
 -"
- (Pages 12, 13)

Also in Chapter 2 - Land Use, under the heading Commercial Land Supply, the Comprehensive Plan states:

"Based on industry standards for the relationship of commercial land to market size, an excessive amount of commercial zoning exists in Worcester County. Discounting half the vacant land in this category as unbuildable, the remaining land if developed would have the capacity to serve a population of over 2 million people; the County's peak seasonal population is less than 25 percent of this number." (Page 24)

In Chapter 3 - Natural Resources, under the heading Farmland Conservation, the Comprehensive Plan cites the following as its objective relative to this matter:

"The county's farmland conservation objective is to avoid the loss of large contiguous working farming areas and to ensure that prime farmland is given the highest protection priority." (Page 50)

In Chapter 4 - Economy, the Comprehensive Plan provides a number of general objectives, including the following:

- "1. Raise the county's median income to the state's level by increasing higher paying year-round employment; low-wage jobs are not considered appropriate

- economic development.
2. Diversify the economic base by extending the tourist season and by encouraging growth of existing and new employers.
-" (Page 58)

This chapter also includes objectives related to Agriculture and Forestry. Included among these are the following:

- "1. Work to preserve farming and increase its economic viability.
 2. Provide for sufficient agricultural support services.
 3. Reduce farm area fragmentation through agricultural zoning permitting only minor subdivisions, the state's agricultural preservation program, the Rural Legacy program and explore the use of a transfer of development rights and other preservation mechanisms.
-" (Page 60)

In the same chapter, under the heading Agriculture, the Comprehensive Plan states:

"For the future, agriculture will remain an important component of the economy.

.....

Local support for agricultural infrastructure and encouragement of "value added" and alternative crops, along with development of agricultural tourism could help improve farming's economics.

Preservation of farm is a key to the county's rural character. Therefore, it is important to continue the "right to farm" policies and work to develop alternative income sources for farmers." (Page 64)

This chapter also includes objectives related to Commercial Services. Certain of these state the following:

- "1. Locate commercial and service centers in major communities; existing towns should serve as commercial and service centers.
 2. Provide for suitable locations for commercial centers able to meet the retailing and service needs of the population centers.
-
4. Bring into balance the amount of zoned commercial locations with the anticipated need with sufficient surplus to prevent undue land price escalation.
 5. Locate commercial uses so they have arterial road access and are designed to be visually and functionally integrated into the community.
-" (Page 60)

In the same chapter, under the heading Commercial Facilities, the Comprehensive Plan states:

"Retailing is one of the largest employers in the County and is a significant contributor to the economy. Currently, designated commercial lands far outstrip the potential demand for such lands. When half of these lands are assumed to be undevelopable (wetlands and other constraints), the potential commercial uses can serve an additional population of over two million persons. The supply of commercial land should be brought more in line with potential demand. Otherwise, underutilized sites/facilities and unnecessary traffic congestion will result." (Page 62)

In Chapter Six - Public Infrastructure, the Comprehensive Plan includes several objectives, including the following:

- "1. Meet existing public facility and service needs as a first priority. Health and safety shall take precedence.
 2. Permit development to occur only as rapidly as services can be provided.
 3. Ensure adequate public facilities are available to new development.
 4. Require new development to "pay its way" by providing adequate public facilities to meet the infrastructure demand it creates.
-" (Page 70)

Chapter Seven - Transportation of the Comprehensive Plan states that "Worcester's roadways experience morning and evening commuter peaks; however, they are dwarfed by summer resort traffic.Resort traffic causes the most noticeable congestion on US 50, US 113, US 13, MD 528, MD 589, MD 611, and MD 90." (Page 79)

"Of special note is the fact that the MD Route 589 corridor has experienced significant development and has reached an unsatisfactory level-of-service.and congestion has become a daily occurrence regardless of season. For this reason, MD Route 589 is considered impacted from a traffic standpoint. This implies that land use should not intensify in this area. Infill development of existing platted lots should be the extent of new development. This policy shall remain until road capacity is suitably improved." (Page 80)

This chapter also states that "c(C)ommercial development will have a significant impact on future congestion levels. Commercial uses generate significant traffic, so planning for the proper amount, location and design will be critical to maintain road capacity. The current amount and location of commercial zoned land poses problems for the road system, particularly for US 50." (Page 82)

With regard to MD Route 589 specifically, this chapter notes that this roadway is classified as a two-lane secondary highway/major collector highway and cites the following policies, projects and recommendations:

- "• Limit development in the corridor until capacity increases.
- Conduct scenic and transportation corridor planning.
- Dualize after the US Route 113 project is completed.

- Continue to deflect US Route 113 traffic to MD Route 90 rather than MD Route 589.
- Introduce interparcel connectors and service roads where feasible.” (Page 85)

In this same chapter, under the heading General Recommendations - Roadways, it states the following:

- “1. Acceptable Levels of Service -- It is this plan’s policy that the minimal acceptable level of service for all roadways be LOS C. Developers shall be responsible for maintaining this standard.
.....
3. Traffic studies -- Developers should provide traffic studies to assess the effect of each major development on the LOS of nearby roadways.
4. Impacted Roads -- Roads that regularly have LOS D or below during weekly peaks are considered “impacted.” Areas surrounding impacted roads should be planned for minimal development (infill existing lots). Plans and funding for improving such roads should be developed.
5. Impacted Intersections -- Upgrade intersections that have fallen below a LOS C.
..... (Page 87)

WATER AND WASTEWATER: According to the response memo from Robert J. Mitchell, Director of the Department of Environmental Programs (copy attached), the subject properties have a designation of Sewer Service Categories S-6 (No Planned Service) in the Master Water and Sewerage Plan. Mr. Mitchell states that his department’s well and septic records for the property file indicate a septic tank served the existing building for the property until the system was demolished and abandoned. He furthermore states that prior to being able to apply for public sanitary capacity, the owner will need to amend the Master Water and Sewerage Plan to include the subject property in the sewer and water planning areas for the Ocean Pines Sanitary Area. Mr. Mitchell states that there is an inconsistent land use, agriculture, which is incompatible with the provision of public services and that any future amendments including this subject property will invite state agencies to find the provision of public services to these properties inconsistent with the current land use designation in their comments. Mr. Mitchell states that the land use designation in the current Comprehensive Plan has to be addressed in any future amendment to the Master Water and Sewerage Plan through either an amendment to the Comprehensive Plan itself or some other means and that to garner approval of an amendment to the Master Water and Sewerage Plan to bring public sewer to this property to serve commercial uses will need the land use designation in the Comprehensive Plan amended. Neither John H. Tustin, P. E., Director of Public Works, nor John Ross, Deputy Director, responded to the request for comments on the proposed rezoning.

The primary soil types on the petitioned area according to the Worcester County Soil Survey are as follows:

Fa - Fallsington sandy loam - severe limitations to on-site wastewater disposal

WdA - Woodstown sandy loam - severe limitations to on-site wastewater disposal
NnB - Nassawango fine sandy loam - severe limitations to on-site wastewater disposal
HmA - Hammonton loamy sand - severe limitations to on-site wastewater disposal
Ke - Kentuck silt loam - severe limitations to on-site wastewater disposal

EMERGENCY SERVICES: Fire and ambulance service will be available from the Ocean Pines Volunteer Fire Company, with two fire houses located on Ocean Parkway, approximately five minutes away. No comments were received from the fire company with regard to this review. Police protection will be available from the Maryland State Police Barracks in Berlin, approximately ten minutes away, and the Worcester County Sheriff's Department in Snow Hill, approximately thirty minutes away. No comments were received from the Maryland State Police Barracks. Colonel Douglas A. Dods, Chief Deputy Sheriff with the Sheriff's Department, stated that after reviewing the packet submitted, they do not see any impact on the Sheriff's Office operations at this time.

ROADWAYS AND TRANSPORTATION: The petitioned area fronts on MD Route 589, a State-owned and -maintained roadway. MD Route 589 connects to US Rt. 50, US Route 113 and MD Route 90. The Comprehensive Plan classifies MD Route 589 as a two-lane secondary highway/major collector highway and recommends that development be limited in the corridor until capacity increases, that scenic and transportation corridor planning be conducted, that the roadway be dualized after the US Route 113 project is completed, that US Route 113 traffic continue to be deflected to MD Route 90 rather than MD Route 589, and interparcel connectors and service roads be introduced where feasible. James W. Meredith, District Engineer, for State Highway Administration District 1, states in his response memo (copy attached) that rezoning is a land use issue, which is not under the jurisdiction of the State Highway Administration, and that if development of the property is proposed in the future, the SHA may require a Traffic Impact Study to determine potential impacts to the surrounding State roadway network. He also states that future development may require an access permit to be issued from SHA, and that with the exception of the aforementioned comments, SHA has no objection to a rezoning determination by Worcester County. Frank J. Adkins, Worcester County Roads Superintendent, states in his response memo (copy attached) that he has no comment. Please note that one of the items included in the application is a schematic of a roundabout at the junction of MD Route 589 and the Ocean Pines North Gate. This project would require that right-of-way be obtained from the landowners of the subject property. The schematic indicates that an entrance will be provided into the subject property.

SCHOOLS: The petitioned area is within the area served by the following schools: Showell Elementary School, Berlin Intermediate School, Stephen Decatur Middle School, and Stephen Decatur High School. No comments were received from the Worcester County Board of Education (WCBOE).

CHESAPEAKE/ATLANTIC COASTAL BAYS CRITICAL AREAS: According to Mr. Mitchell's memo (copy attached), the petitioned area is not located within the Atlantic Coastal Bays Critical Area

(ACBCA). Mr. Mitchell further remarks that the property is subject to the Forest Conservation (FCA) Law. He states that neither of the parcels within the subject property have been subject to the FCA law in the past and that proposed future development will need to meet the requirements of the FCA that are in place at the time of development. He notes that a commercial zoning designation requires an afforestation threshold of 15 percent and reforestation threshold of 15 percent.

FLOOD ZONE: The FIRM map indicates that the petitioned area is primarily within Zone X (Area of minimal flooding).

PRIORITY FUNDING AREA: The petitioned area is not within a designated Priority Funding Area.

INCORPORATED TOWNS: The site is not within one mile of the corporate limits of any town but is within very close proximity to the Ocean Pines community. A request for comments was sent to the Ocean Pines Administration but none were received prior to the preparation of this staff report.

ADDITIONAL COMMENTS RECEIVED: Comments received from various agencies, etc. are attached and are summarized as follows:

Kathryn Gordon, Economic Development: Does not find anything that goes against her department's mission/plans.

Rob Clarke, Maryland Forest Service: No comments on the rezoning request.

!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!! **IMPORTANT** !!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!

THE PLANNING COMMISSION MUST MAKE FINDINGS OF FACT IN EACH SPECIFIC CASE, INCLUDING BUT NOT LIMITED TO THE FOLLOWING MATTERS:

- 1) What is the applicant's definition of the neighborhood in which the subject property is located? (Not applicable if request is based solely on a claim of mistake in existing zoning.)
- 2) Does the Planning Commission concur with the applicant's definition of the neighborhood? If not, how does the Planning Commission define the neighborhood?
- 3) Relating to population change.
- 4) Relating to availability of public facilities.
- 5) Relating to present and future transportation patterns.
- 6) Relating to compatibility with existing and proposed development and existing

environmental conditions in the area, including having no adverse impact on waters included on the State's impaired waters list or having an established total maximum daily load requirement.

- 7) Relating to compatibility with the Comprehensive Plan.
- 8) Has there been a substantial change in the character of the neighborhood where the property is located since the last zoning of the property (November 3, 2009) or is there a mistake in the existing zoning of the property?
- 9) Would a change in zoning be more desirable in terms of the objectives of the Comprehensive Plan?

**MAPS PREPARED BY TECHNICAL
SERVICES DIVISION OF DEVELOPMENT
REVIEW AND PERMITTING**

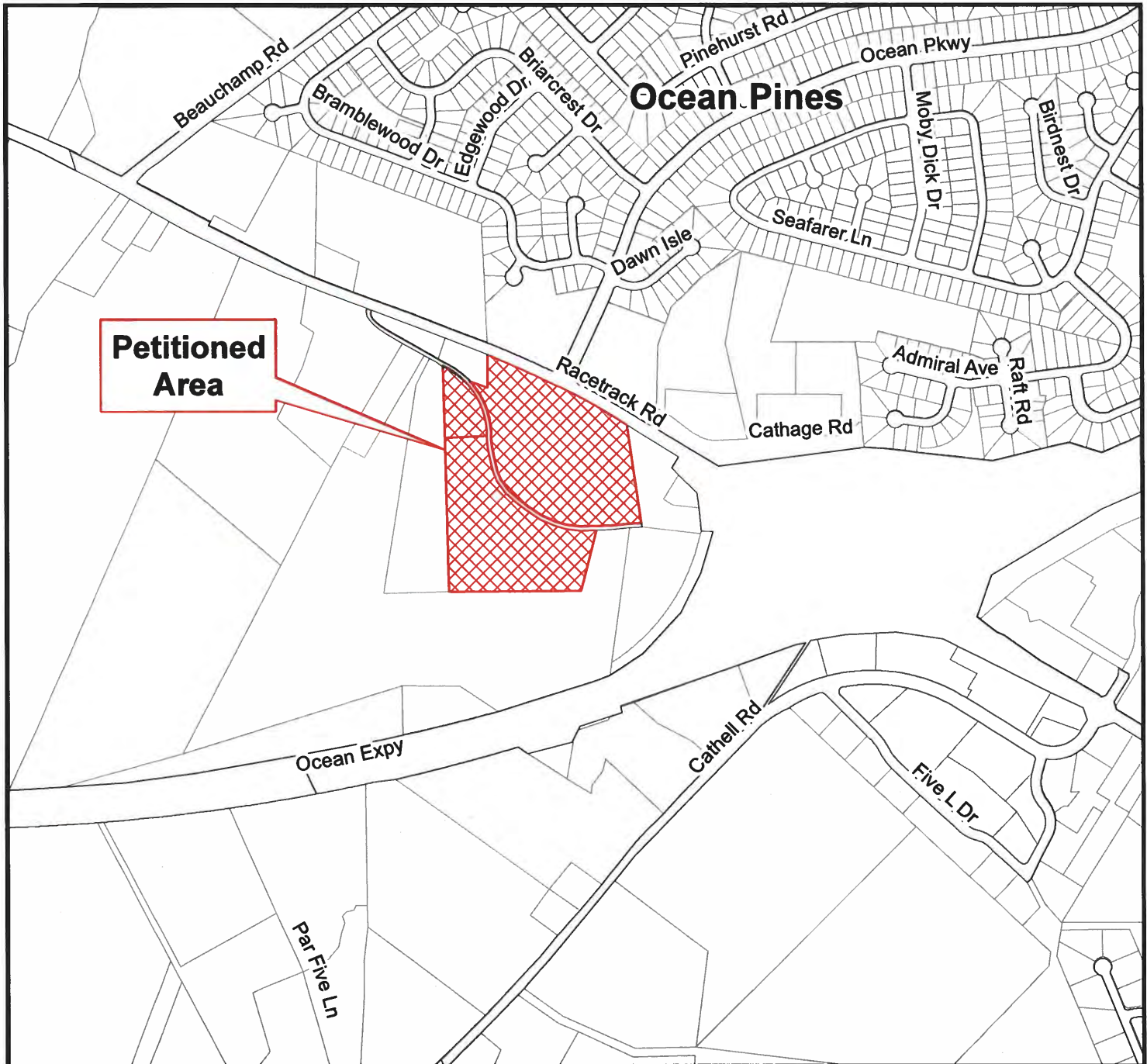


WORCESTER COUNTY, MARYLAND



REZONING CASE NO. 421
A-1 Agricultural District to C-2 General Commercial District
Tax Map: 16, Parcel 21 and 53

LOCATION MAP



DEPARTMENT OF DEVELOPMENT REVIEW AND PERMITTING
Technical Services Division - Prepared January 2019

0 500 1,000
Feet

Source: County Parcel and Road Centerline GIS Layers

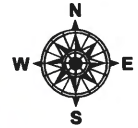
This map is intended to be used for illustrative purposes only and is not to be used for regulatory action.

Drawn By: KLH

Reviewed By: PHW

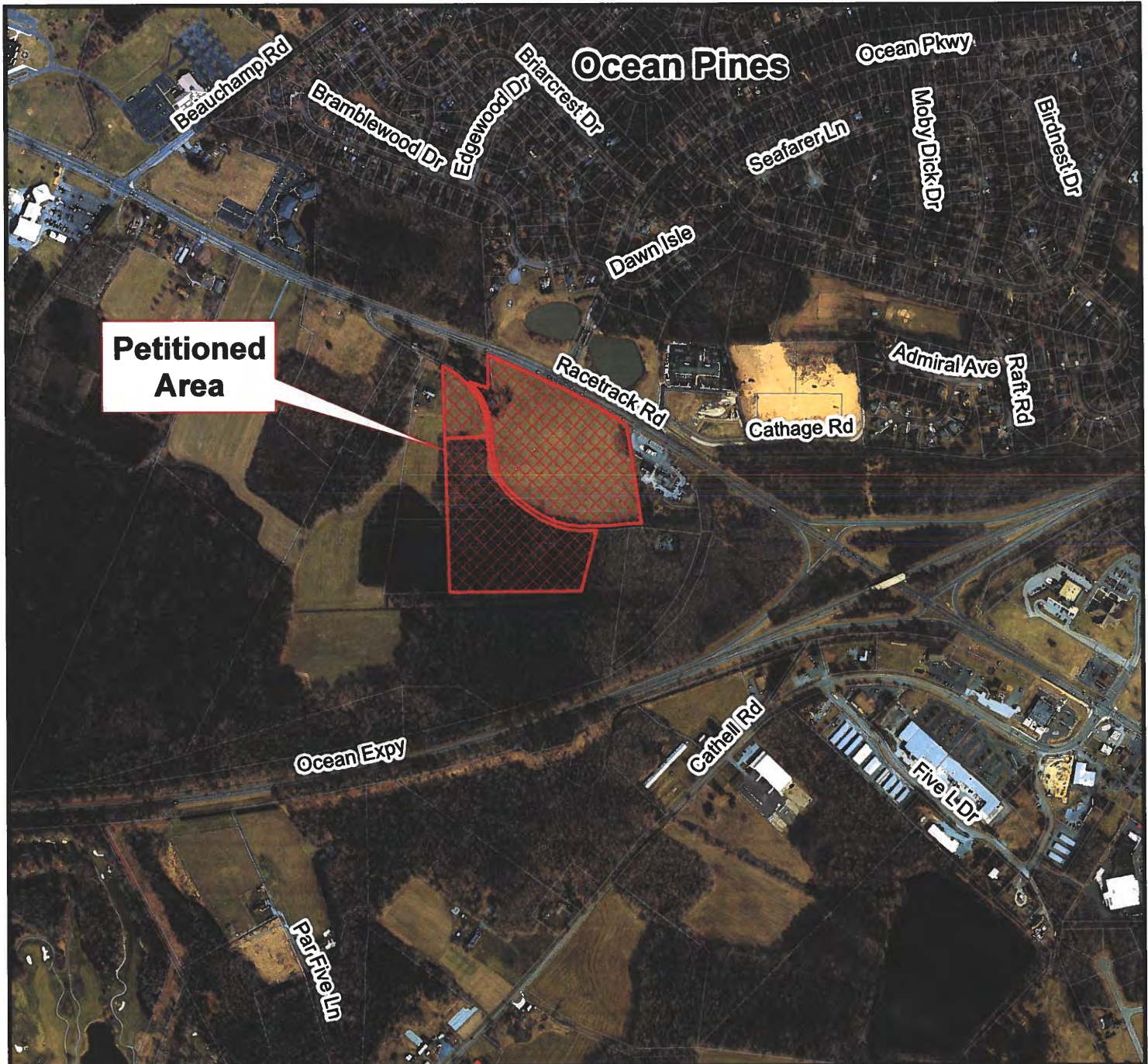


WORCESTER COUNTY, MARYLAND



REZONING CASE NO. 421
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Tax Map: 16, Parcel 21 and 53

AERIAL MAP



DEPARTMENT OF DEVELOPMENT REVIEW AND PERMITTING
Technical Services Division - Prepared February 2019

0 500 1,000
Feet

Source: 2016 Aerial Imagery

This map is intended to be used for illustrative purposes only and is not to be used for regulatory action.

Drawn By: KLH

Reviewed By: PHW

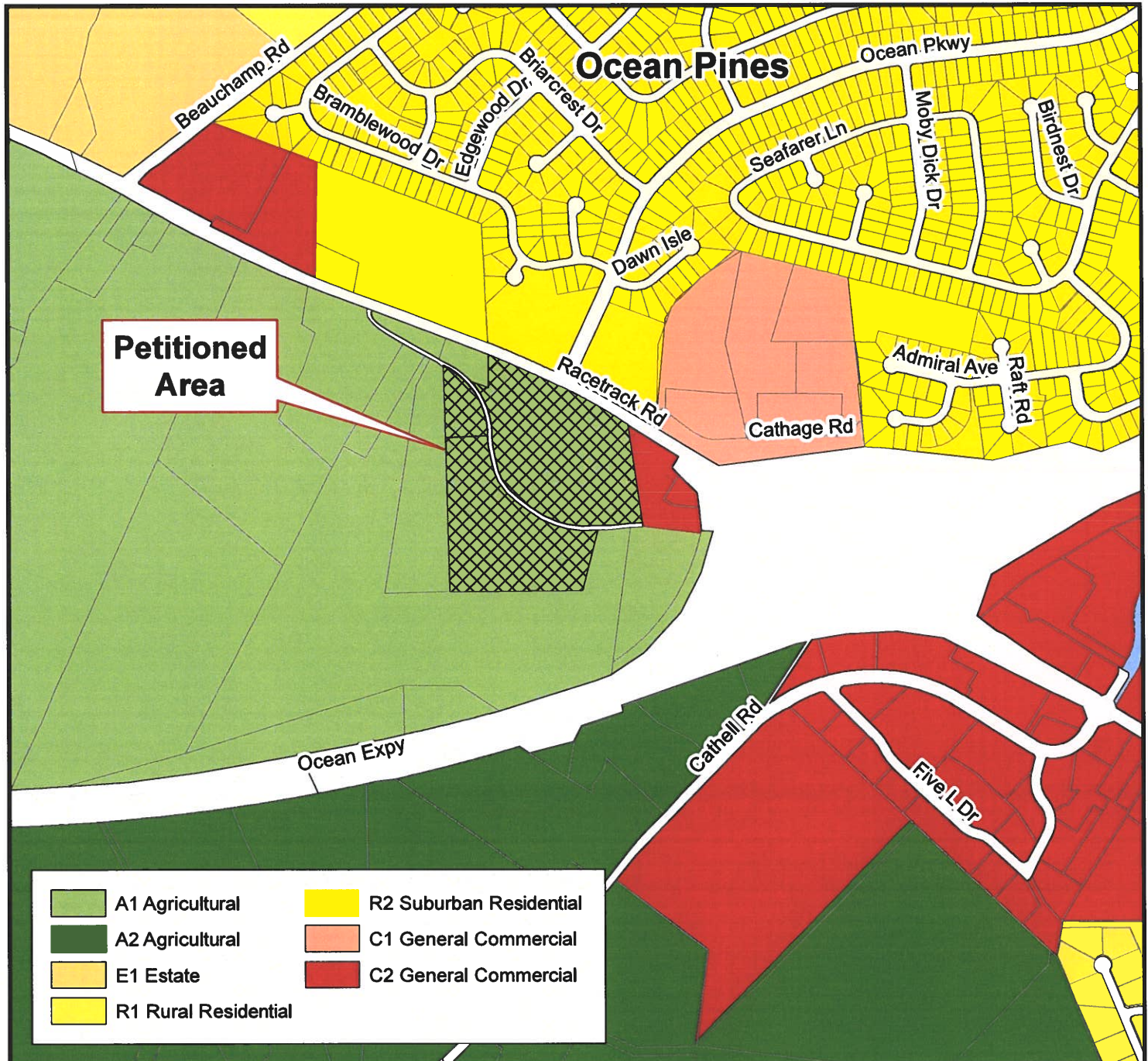


WORCESTER COUNTY, MARYLAND



REZONING CASE NO. 421
A-1 Agricultural District to C-2 General Commercial District
Tax Map: 16, Parcel 21 and 53

ZONING MAP



DEPARTMENT OF DEVELOPMENT REVIEW AND PERMITTING
Technical Services Division - Prepared January 2019

0 500 1,000
Feet

Source: 2006 Zoning District Map (current)

This map is intended to be used for illustrative purposes only and is not to be used for regulatory action.

Drawn By: KLH

Reviewed By: PHW

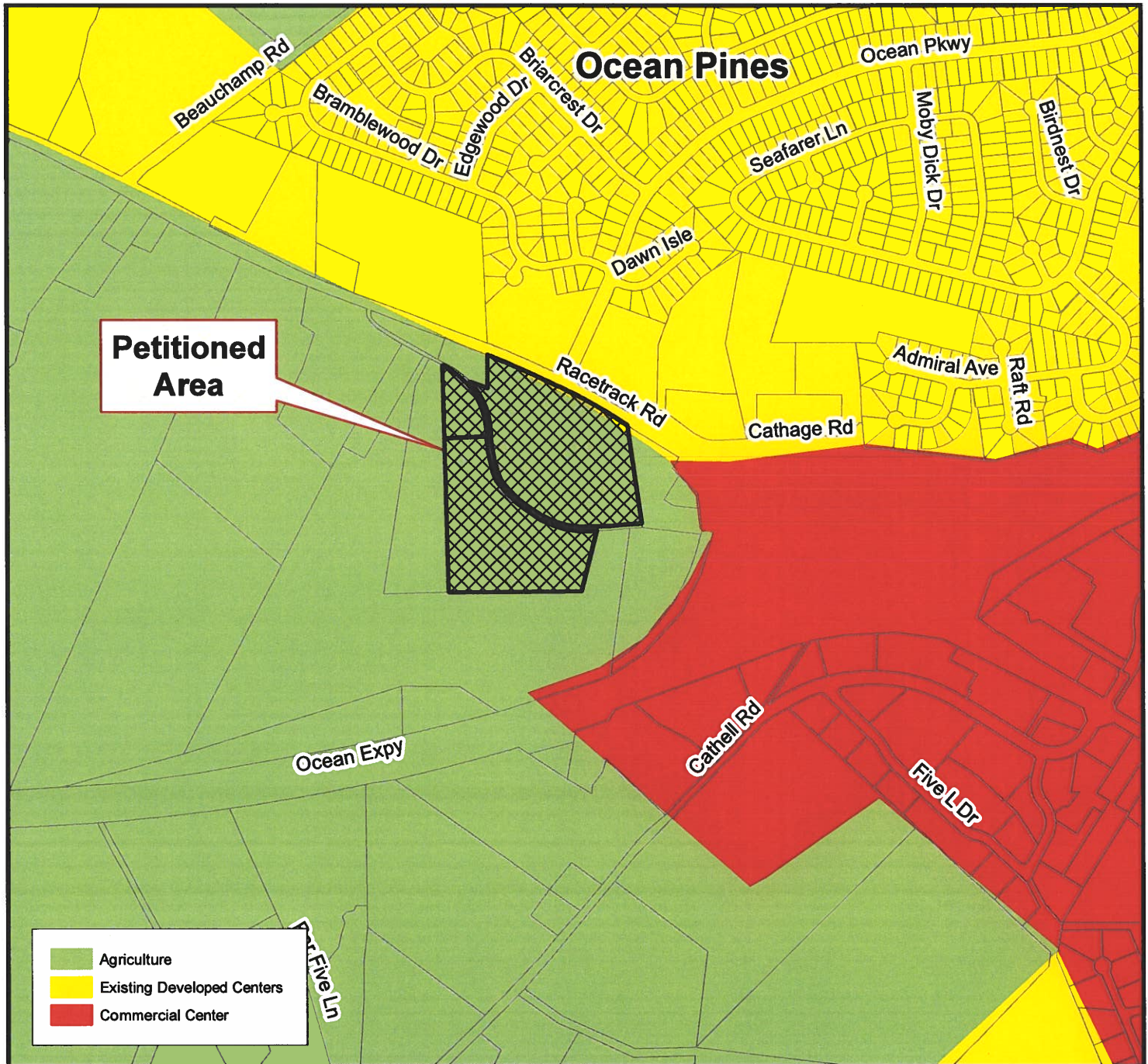


WORCESTER COUNTY, MARYLAND



REZONING CASE NO. 421
A-1 Agricultural District to C-2 General Commercial District
Tax Map: 16, Parcel 21 and 53

LAND USE MAP



DEPARTMENT OF DEVELOPMENT REVIEW AND PERMITTING
Technical Services Division - Prepared February 2019

0 500 1,000
Feet

Source: 2006 Land Use Plan

This map is intended to be used for illustrative purposes only and is not to be used for regulatory action.

Drawn By: KLH

Reviewed By: PHW

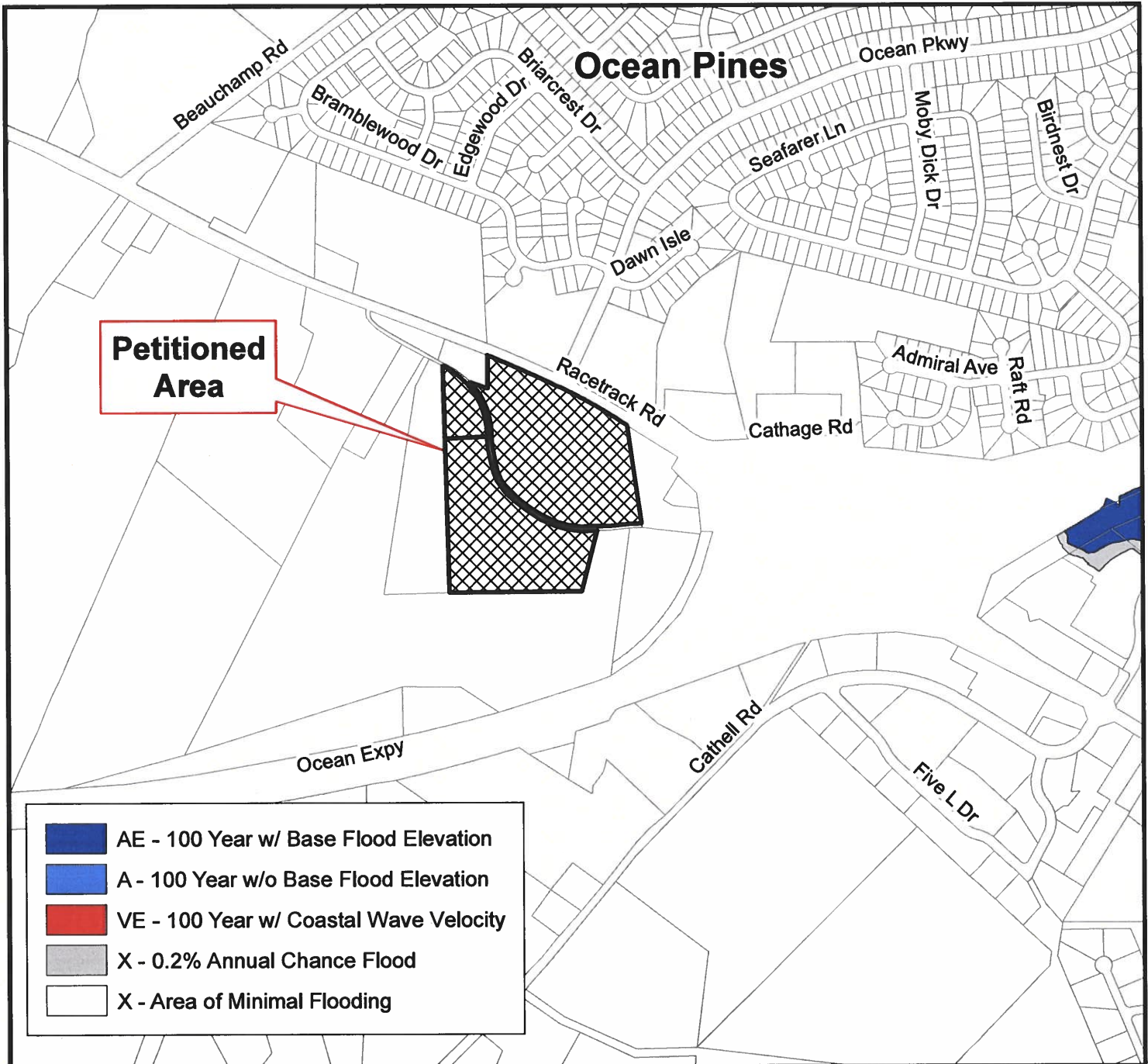


WORCESTER COUNTY, MARYLAND



REZONING CASE NO. 421
A-1 Agricultural District to C-2 General Commercial District
Tax Map: 16, Parcel 21 and 53

FLOODPLAIN MAP



DEPARTMENT OF DEVELOPMENT REVIEW AND PERMITTING
Technical Services Division - Prepared February 2019

Source: 2015 FEMA Flood Insurance Rate Maps

This map is intended to be used for illustrative purposes only and is not to be used for regulatory action. Drawn By: KLH Reviewed By: PHW

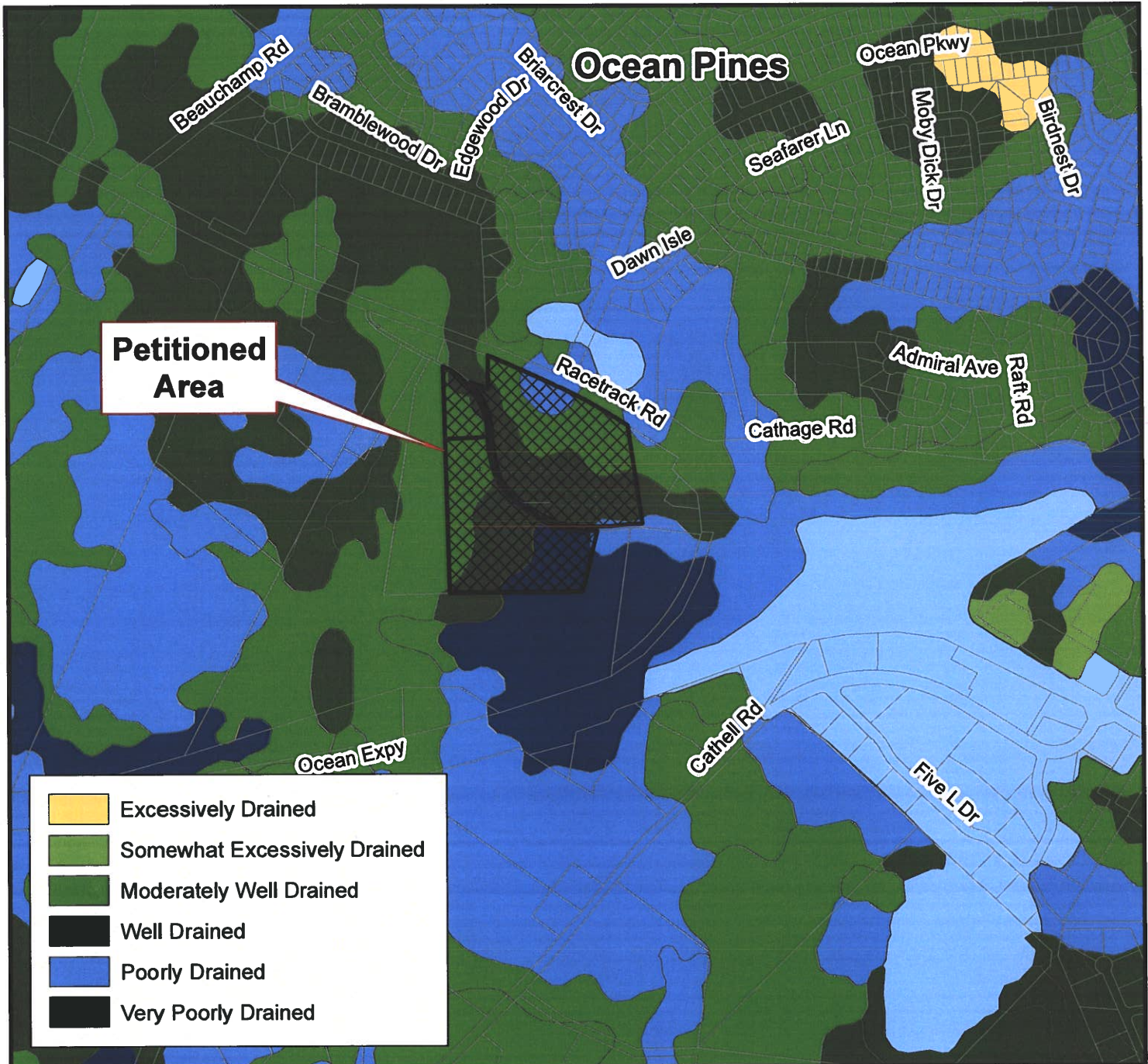


WORCESTER COUNTY, MARYLAND



REZONING CASE NO. 421
A-1 Agricultural District to C-2 General Commercial District
Tax Map: 16, Parcel 21 and 53

SOIL MAP



DEPARTMENT OF DEVELOPMENT REVIEW AND PERMITTING
Technical Services Division - Prepared February 2019

0 500 1,000
Feet

Source: 2007 Soil Survey

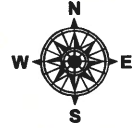
This map is intended to be used for illustrative purposes only and is not to be used for regulatory action.

Drawn By: KLH

Reviewed By: PHW

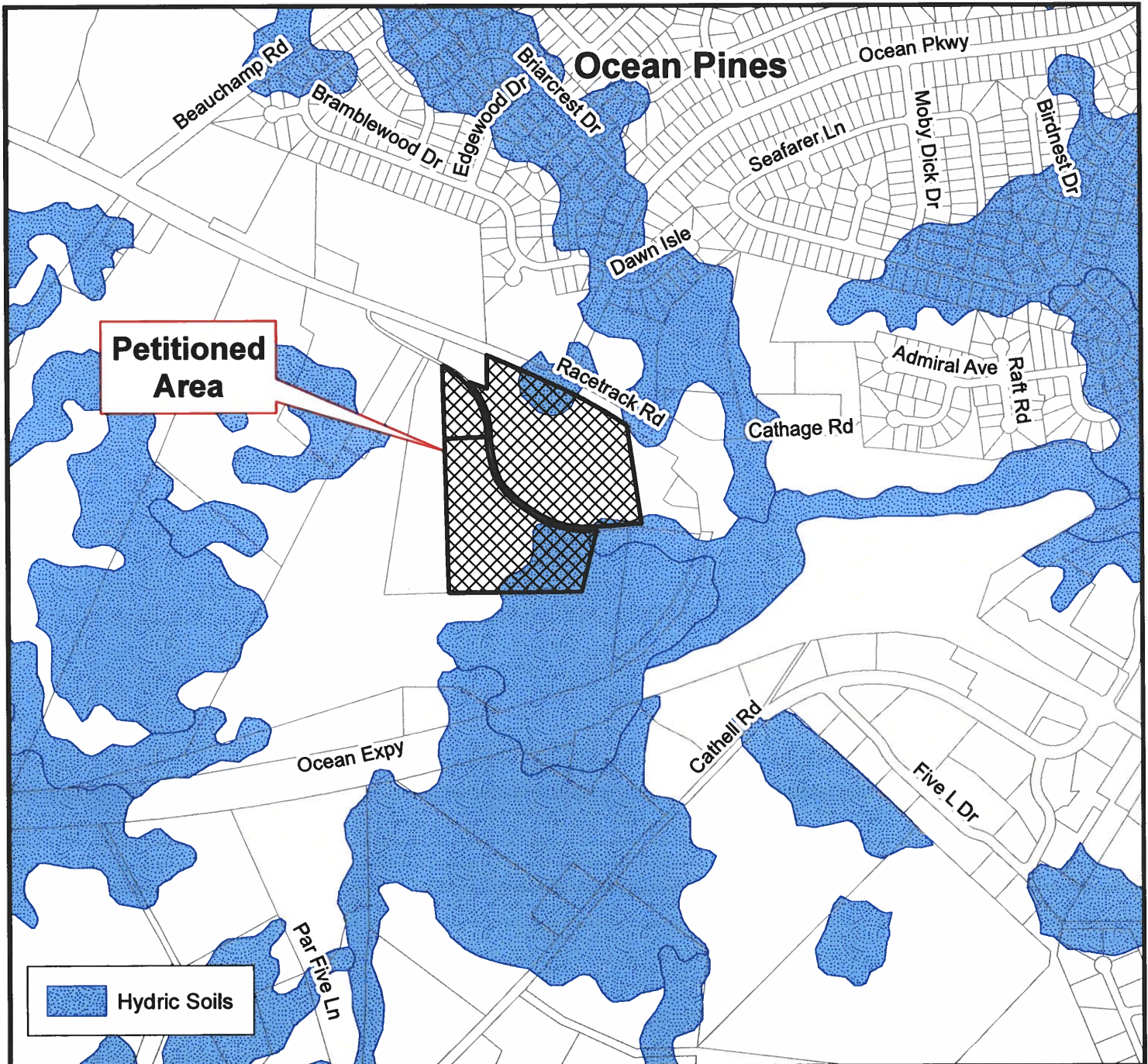


WORCESTER COUNTY, MARYLAND

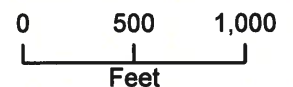


REZONING CASE NO. 421
A-1 Agricultural District to C-2 General Commercial District
Tax Map: 16, Parcel 21 and 53

HYDRIC SOIL MAP



DEPARTMENT OF DEVELOPMENT REVIEW AND PERMITTING
Technical Services Division - Prepared February 2019



Source: 2007 Soil Survey

This map is intended to be used for illustrative purposes only and is not to be used for regulatory action.

Drawn By: KLH

Reviewed By: PHW

**COMMENTS SUBMITTED BY STAFF
RELATIVE TO THE REZONING
APPLICATION**




Worcester County

Department of Environmental Programs

Memorandum

To: Phyllis Wimbrow, Deputy Director, DDRP

From: Robert J. Mitchell, LEHS 
Director, Environmental Programs

Subject: EP Staff Comments on Rezoning Case No. 421
Worcester County Tax Map 16, Parcels 21 and 53
A-1 Agricultural District to C-2 General Commercial District
27.57 Acres

Date: 3/19/19

This response to your request for comments is prepared for the map amendment application associated with the above referenced property. The Worcester County *Zoning and Subdivision Control Article*, Section ZS1-113(c)(3), states that the applicant must affirmatively demonstrate that there has been a substantial change in the character of the neighborhood since the last zoning of the property or that a mistake has been made in the existing zoning classification. The application argues that there was a mistake in the Comprehensive Rezoning that was approved by the County Commissioners on November 3, 2009 and argues a substantial change in the character of the neighborhood has occurred as well. The Code requires that the Commissioners find that the proposed "change in zoning" would be more desirable in terms of the objectives of the *Comprehensive Plan*.

Referring to the *Comprehensive Plan*, the site is located in the Agricultural land use district. This district is reserved for farming, forestry and related industries with minimal residential and other incompatible uses permitted. It is expected that residential and other conflicting land uses although permitted, are discouraged within this district. The areas adjacent to this property are all in the Agricultural land use district on south side of MD Route 589 (Racetrack Road).

The property is surrounded by properties carrying an agricultural zoning designation except for the two small parcels adjacent to the property on its eastern border. Those properties have a C-2, General Commercial District zoning designation. The surrounding zoning and uses for the most part have corresponding land use designations in the *Comprehensive Plan*.

Citizens and Government Working Together

The Department of Environmental Programs has the following comments:

1. The subject property has a designation of Sewer Service Category S-6 (*no Planned Service*).
2. Our well and septic records for the property file indicate a septic tank served the existing building for the property until the system was demolished and abandoned.
3. Prior to being able to apply for public sanitary capacity, the owner would need to amend the *Master Water and Sewerage Plan* to include the subject property in the sewer and water planning areas for the Ocean Pines Sanitary Area. I would note that we do have an inconsistent land use, agriculture, which is incompatible with the provision of public services. Any future amendments including this subject property will invite state agencies to find the provision of public services to these properties inconsistent with the current land use designation in their comments. The land use designation in the current *Comprehensive Plan* has to be addressed in any future amendment to the *Master Water and Sewerage Plan* through either an amendment to the *Comprehensive Plan* itself or some other means. That should be considered by the applicants should they be successful in this endeavor. To garner approval of an amendment to the *Master Water and Sewerage Plan* to bring public sewer to this property to serve commercial uses will need the land use designation in the *Comprehensive Plan* amended.
4. On Page 80, in the *Comprehensive Plan*, the *Plan* notes traffic concerns on MD Rt. 589 with the following: "For this reason, MD Rt. 589 is impacted from a traffic standpoint". This implies that land use should not intensify in this area. The applicant should be prepared to address this item before the Planning Commission.
5. This proposed rezoning is located outside of the Atlantic Coastal Bays Critical Area (ACBCA) and will be subject to the Forest Conservation Act (FCA). Neither of the properties have been subject to the FCA law in the past. Proposed future development will need to meet the requirements of the FCA that are in place at the time of development. Since the FCA requirements area based upon applicable zoning, this conversion will result in a different requirement when compared to the present agricultural zoning designation. A commercial zoning designation requires an afforestation threshold of 15 percent and reforestation threshold of 15 percent.

If you have any questions on these comments, please do not hesitate to contact me.

Citizens and Government Working Together

MDOT
MARYLAND DEPARTMENT
OF TRANSPORTATION
STATE HIGHWAY
ADMINISTRATION

Larry Hogan
Governor
Boyd K. Rutherford
Lt. Governor
Pete K. Rahn
Secretary
Gregory Slater
Administrator

February 21, 2019

Ms. Phyllis H. Wimbrow
Deputy Director
Department of Development Review and Permitting
Worcester County Government Center
One West Market Street, Room 1201
Snow Hill MD 21863

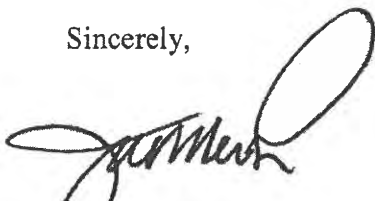
Dear Ms. Wimbrow:

Thank you for the opportunity to review the Rezoning Application from Hugh Cropper for Rezoning Case No. 421 – William and Linda Ayres, in Worcester County. The property is described as Tax Map 16, Parcel numbers 21 & 53, located on the west side of MD 589, approximately 2,873 feet east of the intersection of Beauchamp Road and MD 589, in Ocean Pines, MD. The Maryland Department of Transportation State Highway Administration (MDOT SHA) has reviewed the application and associated documents and we are pleased to respond.

Rezoning is a land use issue, which is not under the jurisdiction of the MDOT SHA. If development of the property is proposed in the future, MDOT SHA may require a Traffic Impact Study to determine potential impacts to the surrounding state roadway network. Future development may also require an access permit to be issued from this office.

With exception of our aforementioned comments, MDOT SHA has no objection to a rezoning determination by Worcester County. Thank you for the opportunity to provide a response. If you have any questions regarding our response, please feel free to contact Mr. Daniel Wilson, Access Management Regional Engineer, via email at dwilson12@sha.state.md.us or by calling him directly at 410-677-4048.

Sincerely,



James W. Meredith,
District Engineer

cc: Ms. Jennifer Keener, Zoning Administrator, Worcester County
Mr. Hicham Baassiri, Project Development Assistant District Engineer, MDOT SHA
Mr. Mike Marvel, Worcester County Resident Maintenance Engineer, MDOT SHA
Mr. Daniel Wilson, Access Management Regional Engineer, MDOT SHA

Worcester County Sheriff's Office

Matthew Crisafulli
Sheriff



Mark C. Titanski
Chief Deputy

February 13, 2019

Phyllis H. Wimbrow
Department of Development Review and Planning
Worcester County Government Center
Snow Hill, Md

REF: Rezoning Case No. 421

After reviewing the packet submitted, we do not see any impact on Sheriff's Office operations at this time.

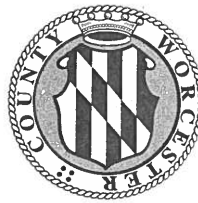
Sincerely,

A handwritten signature in black ink, appearing to read 'Douglas A. Dods', is written over the printed name and title.

Douglas A. Dods
Captain, Operations Officer

“Proud to Protect, Ready to Serve”

Worcester County Sheriff's Office
One West Market Street, Room 1001
Snow Hill, MD 21863
410-632-1111- phone / 410-632-3070- fax
www.WorcesterSheriff.com



Worcester County
DEPARTMENT OF PUBLIC WORKS
6113 TIMMONS ROAD
SNOW HILL, MARYLAND 21863

MEMORANDUM

TO: Phyllis H. Wimbrow, Deputy Director
FROM: Frank J. Adkins, Roads Superintendent (FA)
DATE: March 19, 2019
RE: Rezoning Case No. 421

.....

Upon review of the above referenced rezoning case, I offer the following comments:

Rezoning Case 421: No comments at this time – borders State Highway.

Should you have any questions, please do not hesitate to contact me.

cc: John H. Tustin, P.E., Director

FJA/ll
\\wfile2\users\llawrence\Rezoning\Rezoning Case 421.doc

JOHN H. TUSTIN, P.E.
DIRECTOR

JOHN S. ROSS, P.E.
DEPUTY DIRECTOR

TEL: 410-632-5623
FAX: 410-632-1753

DIVISIONS

MAINTENANCE
TEL: 410-632-3766
FAX: 410-632-1753

ROADS
TEL: 410-632-2244
FAX: 410-632-0020

SOLID WASTE
TEL: 410-632-3177
FAX: 410-632-3000

**FLEET
MANAGEMENT**
TEL: 410-632-5675
FAX: 410-632-1753

**WATER AND
WASTEWATER**
TEL: 410-641-5251
FAX: 410-641-5185

Phyllis Wimbrow

From: Kathryn Gordon
Sent: Wednesday, March 13, 2019 10:54 AM
To: Phyllis Wimbrow
Subject: Rezoning Cases 421 and 418

Good Morning Phyllis,

I have received and reviewed both rezoning cases referenced above and do not find anything that goes against my department's mission/plans.

Thank you and have a wonderful day!
Kathryn



Kathryn Gordon
Deputy Director
Worcester County Economic Development
100 Pearl Street, Suite B
Snow Hill, Maryland 21863

P: [410.632.3112](tel:410.632.3112)
F: [410.632.5631](tel:410.632.5631)
C: [410.430.8776](tel:410.430.8776)

Phyllis Wimbrow

From: April Mariner
Sent: Tuesday, February 12, 2019 10:34 AM
To: Phyllis Wimbrow
Subject: FW: Rezoning Case #421 Request for Comment



April L. Mariner

Office Assistant IV
Worcester County Development Review & Permitting
amariner@co.worcester.md.us
410-632-1200 x1172

From: Rob Clarke -DNR- [<mailto:rob.clarke@maryland.gov>]
Sent: Tuesday, February 12, 2019 10:37 AM
To: April Mariner
Subject: Re: Rezoning Case #421 Request for Comment

Hi April,

On behalf of the Maryland Forest Service, I have no comments on the proposed rezoning case # 421.

| | |
|---|--|
|  <p>CHANGING Maryland <i>for the Better</i></p>  <p>dnr.maryland.gov</p> | <p>Rob Clarke Acting Project Manager Lower Shore Project</p> <p>Maryland Forest Service Department of Natural Resources 10990 Market Lane Princess Anne, MD 21853-2910 Office: 410-651-2004 Mobile: 443-235-1636 Rob.Clarke@Maryland.gov</p> |
|---|--|

[Click here](#) to complete a three question customer experience survey.

REZONING APPLICATION AND
ALL ATTACHMENTS SUBMITTED
BY HUGH CROPPER, IV

Worcester County Commissioners
Worcester County Government Center
One W. Market Street, Room 1103
Snow Hill, Maryland 21863

PLEASE TYPE
OR PRINT IN
INK

APPLICATION FOR AMENDMENT OF OFFICIAL ZONING MAP

(Office Use One - Please Do Not Write In This Space)

Rezoning Case No. ~~1506~~ 421

Date Received by Office of County Commissioners: _____

Date Received by Development, Review and Permitting: 1/30/19

Date Reviewed by Planning Commission: _____

I. Application

Proposals for amendment of the Official Zoning Maps may be made only by a governmental agency or by the property owner, contract purchaser, option holder, leasee, or their attorney or agent of the property to be directly affected by the proposed amendment. Check applicable status below:

- A. _____ Governmental Agency
B. _____ Property Owner
C. _____ Contract Purchaser
D. _____ Option Holder
E. _____ Leasee
F. XXX Attorney for B (Insert A, B, C, D, or E)
G. _____ Agent of _____ (Insert A, B, C, D, or E)

II. Legal Description of Property

- A. Tax Map/Zoning Map Number(s): 16
B. Parcel Number(s): 21 & 53
C. Lot Number(s), if applicable: _____
D. Tax District Number: 3

III. Physical Description of Property

- A. Located on the west side of Racetrack Road
approximately _____ to the _____ of _____
B. Consisting of a total of 27.57 acres of land.
C. Other descriptive physical features or characteristics

Parcel 21 - 10.01 acs.
Parcel 53 - 17.56 acs.

necessary to accurately locate the petitioned area:

See attached definition of neighborhood.

- D. Petitions for map amendments shall be accompanied by a plat drawn to scale showing property lines, the existing and proposed district boundaries and such other information as the Planning Commission may need in order to locate and plot the amendment on the Official Zoning Maps.

IV. **Requested Change to Zoning Classification(s)**

- A. Existing zoning classification(s): **A-1 , Agricultural District**
(Name and Zoning District)
- B. Acreage of zoning classification(s) in "A" above: **27.57 acres**
- C. Requested zoning classification(s): **C-2, General Commercial**
(Name and Zoning District)
- D. Acreage of zoning classification(s) in "C" above: **27.57 acres**

V. **Reasons for Requested Change**

The County Commissioners may grant a map amendment based upon a finding that there: (a) has been a substantial change in the character of the neighborhood where the property is located since the last zoning of the property, or (b) is a mistake in the existing zoning classification and that a change in zoning would be more desirable in terms of the objectives of the Comprehensive Plan.

- A. Please list reasons or other information as to why the rezoning change is requested, including whether the request is based upon a claim of change in the character of the neighborhood or a mistake in existing zoning:


This application is based upon a substantial change in the character of the neighborhood, per the attached.

IV. **Filing Information and Required Signatures**

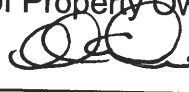
- A. Every application shall contain the following information:
1. If the application is made by a person other than the property owner, the application shall be co-signed by the property owner or the property owner's attorney.


2. If the applicant is a corporation, the names and mailing addresses of the officers, directors and all stockholders owning more than 20 percent of the capital stock of the corporation.
3. If the applicant is a partnership, whether a general or limited partnership, the names and mailing addresses of all partners who own more than 20 percent of the interest of the partnership.
4. If the applicant is an individual, his/her name and mailing address.
5. If the applicant is a joint venture, unincorporated association, real estate investment trust or other business trust, the names and mailing addresses of all persons holding an interest of more than 20 percent in the joint venture, unincorporated association, real estate investment trust or other business trust.

B. Signature of Applicant in Accordance with VI.A. above.

Signature: 
Printed Name of Applicant: _____
Hugh Cropper, IV, Attorney for William & Linda Ayres
Mailing Address: **9923 Stephen Decatur Hwy., D-2, Ocean City, MD 21842** Phone Number: **410-213-2681**
E-Mail: **hcropper@bbcmlaw.com**
Date: **1/29/19**

D. Signature of Property Owner in Accordance with VI.A. above

Signature: , attorney
Printed Name of Applicant: **William Ayres**
Mailing Address: **2710 Cortland Pl., NW, Washington, DC 20008**
Phone Number: **516-220-6905**
E-Mail: **ayreswilliam@netscape.com**
Date: **1/29/19**

Signature:  Attorney
Printed Name of Applicant: Linda Ayres
Mailing Address: 2710 Cortland Pl., NW, Washington, DC 20008
Phone Number: 202-332-5111
E-Mail: lindaayres2710@gmail.com
Date: 1/29/19

(Please use additional pages and attach to application if more space is required.)

VII. General Information Relating to the Rezoning Process

- A. Applications shall only be accepted from January 1st to January 31st, May 1st to May 31st, and September 1st to September 30th of any calendar year.
- B. Applications for map amendments shall be addressed to and filed with the Office of the County Commissioners. The required filing fee must accompany the application.
- C. Any officially filed amendment or other change shall first be referred by the County Commissioners to the Planning Commission for an investigation and recommendation. The Planning Commission may make such investigations as it deems appropriate or necessary and for the purpose may require the submission of pertinent information by any person concerned and may hold such public hearings as are appropriate in its judgment.

The Planning Commission shall formulate its recommendation on said amendment or change and shall submit its recommendation and pertinent supporting information to the County Commissioners within 90 days after the Planning Commission's decision of recommendation, unless an extension of time is granted by the County Commissioners.

After receiving the recommendation of the Planning Commission concerning any such amendment, and before adopting or denying same, the County Commissioners shall hold a public hearing in reference thereto in order that parties of interest and citizens shall have an opportunity to be heard. The County Commissioners shall give public notice of such hearing.

- E. Where the purpose and effect of the proposed amendment is to change the zoning classification of property, the County

Commissioners shall make findings of fact in each specific case including but not limited to the following matters:

population change, availability of public facilities, present and future transportation patterns, compatibility with existing and proposed development and existing environmental conditions for the area, including no adverse impact on waters included on the State's Impaired Waters List or having an established total maximum daily load requirement, the recommendation of the Planning Commission, and compatibility with the County's Comprehensive Plan. The County Commissioners may grant the map amendment based upon a finding that (a) there is a substantial change in the character of the neighborhood where the property is located since the last zoning of the property, or (b) there is a mistake in the existing zoning classification and that a change in zoning would be more desirable in terms of the objectives of the Comprehensive Plan.

The fact that an application for a map amendment complies with all of the specific requirements and purposes set forth above shall not be deemed to create a presumption that the proposed reclassification and resulting development would in fact be compatible with the surrounding land uses and is not, in itself, sufficient to require the granting of the application.

- E. No application for map amendment shall be accepted for filing by the office of the County Commissioners if the application is for the reclassification of the whole or any part of the land for which the County Commissioners have denied reclassification within the previous 12 months as measured from the date of the County Commissioners' vote of denial. However, the County Commissioners may grant reasonable continuance for good cause or may allow the applicant to withdraw an application for map amendment at any time, provided that if the request for withdrawal is made after publication of the notice of public hearing, no application for reclassification of all or any part of the land which is the subject of the application shall be allowed within 12 months following the date of such withdrawal, unless the County Commissioners specify by formal resolution that the time limitation shall not apply.

EXHIBIT A
REASONS FOR REQUESTED CHANGE

William Ayres and Linda Ayres, by their attorney, Hugh Cropper, IV, respectfully submit the following in support of their rezoning application:

This rezoning application is based upon a substantial changes in the character of the neighborhood, as follows:

1. The State Highway Administration ("SHA") has proposed replacing the traffic signal at the North Gate of Ocean Pines with a round-about. SHA should complete its Concept Phase within the next month, and a copy of the preliminary plan is attached. The proposed round-about will provide direct access to the Ayres Property. The round-about will consume approximately one acre of the Ayres Property, and it will represent a substantial change to the character of the neighborhood. It will be virtually impossible for combines and tractors to enter the Ayres Property via the round-about. Alternatively, residential uses will be inappropriate, because all sorts of vehicles will shine their headlights directly on the Ayres Property.
2. The sectional rezoning at Maryland Route 589 (Racetrack Road) represents a substantial change in the character of the neighborhood. Copies of those documents are attached.
3. Upgrades to the Ocean Downs Casino represent a substantial change in the character of the neighborhood. Perhaps more importantly, Worcester County amended its Comprehensive Water and Sewerage Plan to permit a force main under Turville Creek to a pump station at the Ocean Downs Casino. This allowed the Ocean Downs Casino to purchase additional EDU's, thereby authorizing the expansion (all of which was unplanned for). The pump station was designed to accept additional effluent, and Crabs to Go is in the process of running a force main along Maryland Route 589 and connecting to this pump station.
4. On March 15, 2016, the Worcester County Commissioners rezoned 11.5 acres for the Estate of Mildred Parsons, Margaret Bunting, Personal

Representative, in Case Number 396.

5. On September 4, 2012 the Worcester County Commissioners rezoned 30.9 acres in Rezoning Case No. 392. This rezoning was appealed to the Circuit Court, and subsequently appealed to the Court of Special Appeals, which upheld the decision of the Worcester County Commissioners. The Protestants filed a Petition for Writ of Certiorari, which was denied by the Court of Appeals (effectively confirming the rezoning). The aforementioned two rezonings were based on substantial changes in the character of the neighborhood since the last Comprehensive Rezoning, November 3, 2009.

6. Coastal Venture Properties, LLC obtained special exceptions and other unplanned for approvals in connection with its medical office complex on Worcester County Tax Map 16, Parcel 24, directly across Maryland Route 589 from the subject property.

7. The Worcester County Commissioners recently amended the Worcester County Comprehensive Water and Sewerage Plan to include Worcester County Tax Map 21, Parcels 66A and 66B, for connection to the Greater Ocean Pines Sanitary Service Area. A force main will be designed and installed along Maryland Route 589.

8. There have been other expansions/connections to the Greater Ocean Pines Sanitary Service Area. There have been other changes to the neighborhood, some of which are outlined in the Silver Fox Court of Special Appeals Opinion, a copy of which is attached hereto.

Although the property is designated Agricultural in the Worcester County Land Use Plan, it does abut Commercial Center. It is directly across from the North Gate of Ocean Pines. It is adjacent to commercially zoned property to the south. It is part of a predominately commercial neighborhood. Taken as a whole, the Comprehensive Plan is a broad brush approach to guide future development. In this case, with respect to this specific piece of property, the proposed round-about will render agricultural uses on the property not appropriate. The round-about and increasing development in the neighborhood will also render it unsuitable for residential uses. The commercial zoning is

more desirable in terms of the Comprehensive Plan.

With respect to traffic, the round-about will have a net effect of decreasing traffic at the North Gate of Ocean Pines. The round-about is only possible with the dedication of land by the Ayres Family, which essentially is creating a change in the character of the neighborhood.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Hugh Cropper IV', written in a cursive style.

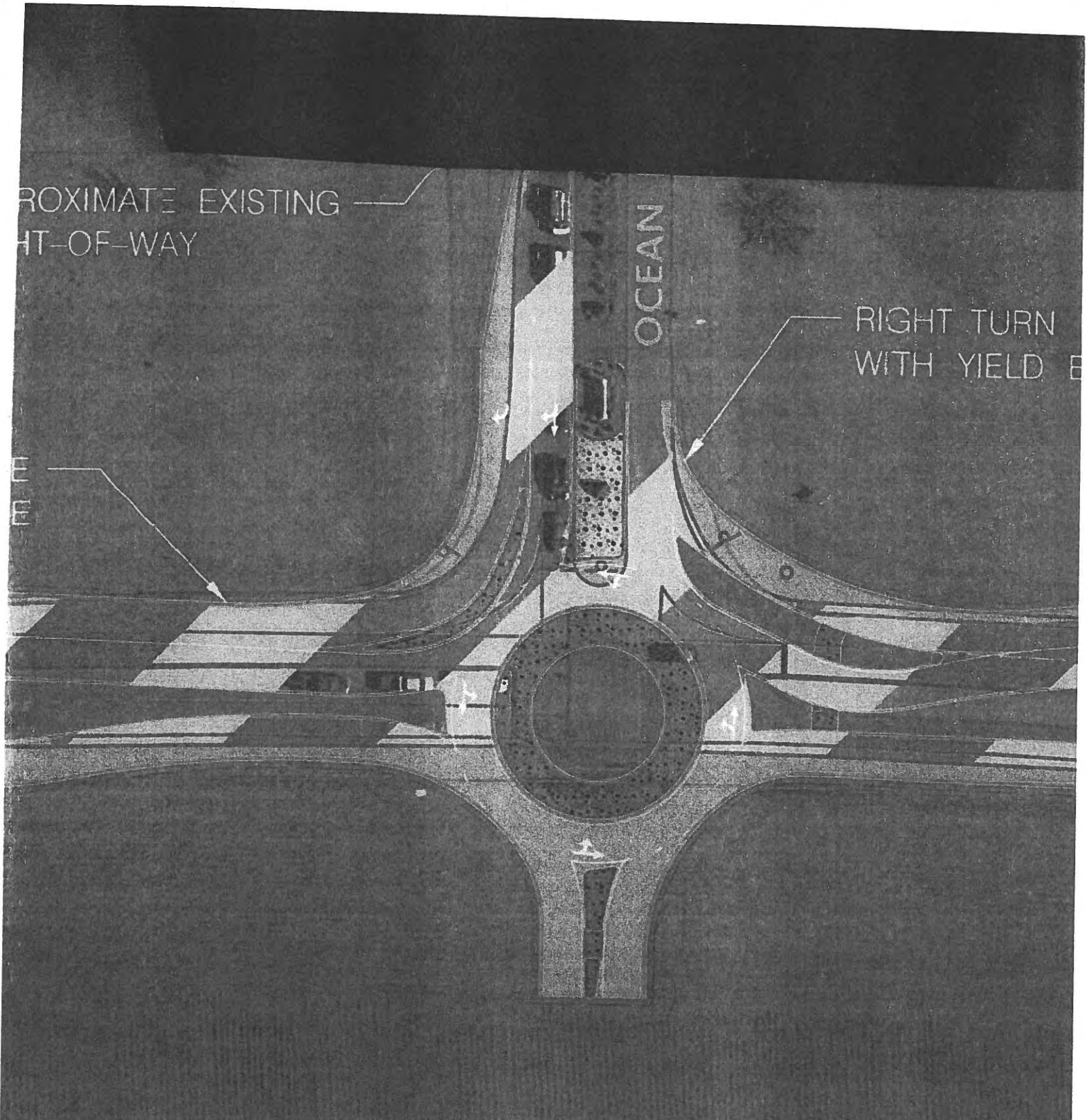
Hugh Cropper IV

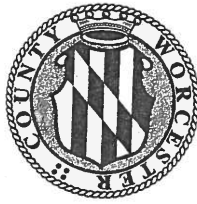
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DEPARTMENT OF
DEVELOPMENT REVIEW AND PERMITTING

Worcester County

GOVERNMENT CENTER

ONE WEST MARKET STREET, ROOM 1201

SNOW HILL, MARYLAND 21863

TEL: 410-632-1200 / FAX: 410-632-3008

www.co.worcester.md.us/drp/drpindex.htm

ZONING DIVISION
BUILDING DIVISION
DATA RESEARCH DIVISION

ADMINISTRATIVE DIVISION
CUSTOMER SERVICE DIVISION
TECHNICAL SERVICE DIVISION

FORMAL NOTICE OF ZONING ACTION

January 11, 2019

RE: Sectional Rezoning - MD Rt. 589 (Racetrack Road) area north of US Rt. 50 (Ocean Gateway)

Date of Public Hearing: December 18, 2018

Location: North of Grays Corner Road, on easterly and westerly sides of McAllister Road, and the westerly side of MD Rt. 589 (Racetrack Road)

This is to advise that the County Commissioners of Worcester County, Maryland, after public hearing, have voted to:

Reclassify the land shown on Tax Map 21 as Parcels 32, 71, 83, 84, 87, 88, 94, 97, 110, 111, 114, 219, 265, 276, and those portions of Parcels 79 and 151 which were zoned E-1 Estate District or A-1 Agricultural District to C-2 General Commercial District.

A formal Resolution had been signed by the County Commissioners. Pursuant to the Zoning and Subdivision Control Article of the Code of Public Local Laws of Worcester County, Maryland, copies of the County Commissioners' Resolution are being sent to those listed in the County tax records as owners of properties adjoining the subject property and of properties opposite any intervening road from the subject property.

Pursuant to § ZS 1-119 of the Zoning and Subdivision Control Article of the Code of Public Local Laws of Worcester County, the time for appeal shall run from the date of the mailing of the decision, Resolution to the applicant and all other parties.

Sincerely,

Phyllis H. Wimbrow
Phyllis H. Wimbrow

Deputy Director

Enclosures

cc: Kelly L. Henry

Maryland Department of Assessments and Taxation

Citizens and Government Working Together

1/16/19

RESOLUTION NO. 19 - 2

**SECTIONAL REZONING OF MARYLAND ROUTE 589 (RACETRACK ROAD) AREA
NORTH OF U.S. ROUTE 50 (OCEAN GATEWAY)**

A RESOLUTION OF THE COUNTY COMMISSIONERS OF WORCESTER COUNTY, MARYLAND, PURSUANT TO SECTION ZS 1-113 OF THE ZONING AND SUBDIVISION CONTROL ARTICLE OF THE CODE OF PUBLIC LOCAL LAWS OF WORCESTER COUNTY, MARYLAND, ADOPTING A COMPREHENSIVE (SECTIONAL) REZONING OF CERTAIN PARCELS OF LAND SHOWN ON TAX MAP 21 FROM E-1 ESTATE DISTRICT AND A-1 AGRICULTURAL DISTRICT TO C-2 GENERAL COMMERCIAL DISTRICT.

WHEREAS, on November 3, 2009, by Resolution No. 09-24, the County Commissioners of Worcester County, Maryland adopted comprehensive rezoning maps for Worcester County, Maryland referenced as the "Official Zoning Maps of Worcester County, Maryland Numbers 1 - 102"; and

WHEREAS, Section ZS 1-113(c)(6) of the Zoning and Subdivision Control Article of the Code of Public Local Laws of Worcester County, Maryland, provides for comprehensive (sectional) reclassification map amendments; and

WHEREAS, the County Commissioners of Worcester County, Maryland found it desirable and necessary to conduct a comprehensive (sectional) reclassification map amendment of Worcester County on those properties zoned E-1 Estate District and A-1 Agricultural District that are located to the north of Grays Corner Road, on the easterly and westerly sides of McAllister Road, northerly and southerly sides of Griffin Road, and the westerly side of MD Route 589 (Racetrack Road) to ensure that the zoning maps for Worcester County are compatible with the 2006 Comprehensive Plan for Worcester County; and

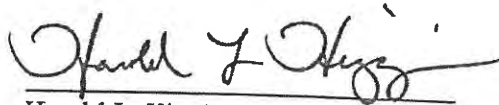
WHEREAS, the County Commissioners of Worcester County, Maryland have complied with all requirements for said comprehensive (sectional) reclassification map amendment, including the holding of a public hearing on December 18, 2018 to hear public comment on the potential comprehensive (sectional) map amendment.

NOW, THEREFORE, BE IT RESOLVED by the County Commissioners of Worcester County, Maryland that the land shown on Tax Map 21 as Parcels 32, 71, 83, 84, 87, 88, 94, 97, 110, 111, 114, 219, 265, 276, and those portions of Parcels 79 and 151 which were zoned E-1 Estate District or A-1 Agricultural District are hereby reclassified to C-2 General Commercial District.

AND, BE IT FURTHER RESOLVED that the effective date of this Resolution shall be nunc pro tunc, December 18, 2018.

PASSED AND ADOPTED this 8th day of January, 2019.

ATTEST:



Harold L. Higgins
Chief Administrative Officer

COUNTY COMMISSIONERS OF
WORCESTER COUNTY, MARYLAND

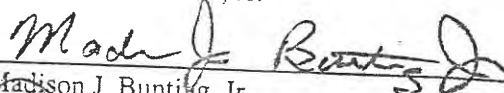


Diana Purnell, President

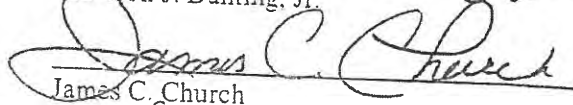
Absent

Joseph M. Mitrecic, Vice President

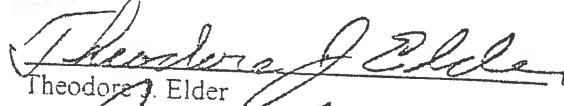
Anthony W. Bertino, Jr.



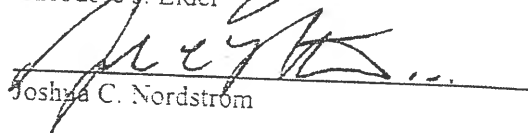
Madison J. Bunting, Jr.



James C. Church



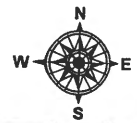
Theodore J. Elder



Joshua C. Nordstrom

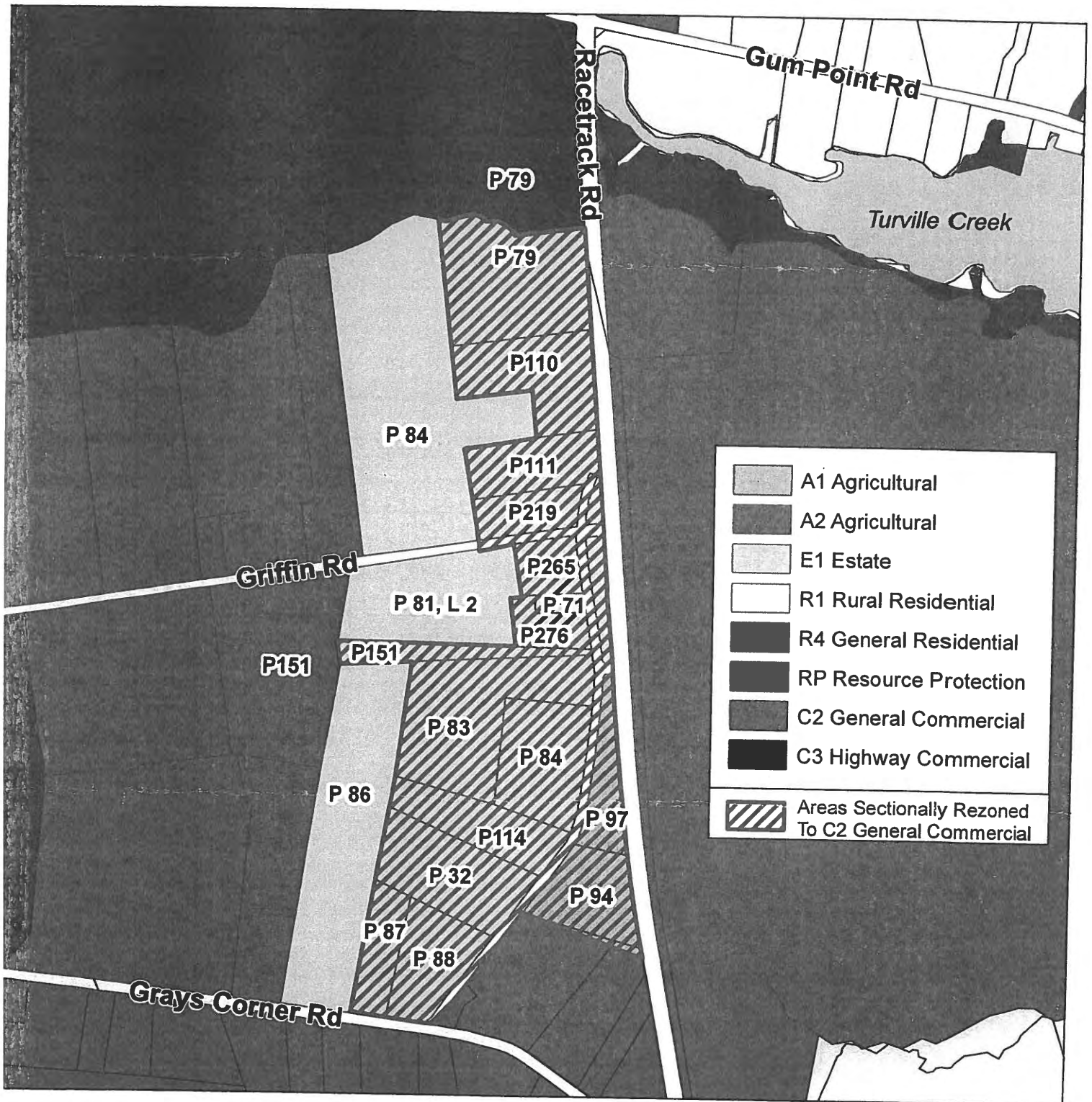


WORCESTER COUNTY, MARYLAND



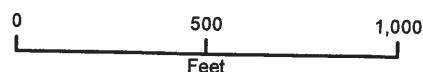
SECTIONAL REZONING MD ROUTE 589 / RACETRACK ROAD SOUTH

ZONING MAP



DEPARTMENT OF DEVELOPMENT REVIEW AND PERMITTING
Technical Services Division

Prepared: December 2018
Source: 2009 Official Zoning Map



Drawn By: KLH

Reviewed By: PHW

This map is intended to be used for illustrative purposes only and is not to be used for regulatory action.



DEPARTMENT OF
DEVELOPMENT REVIEW AND PERMITTING

Worcester County

GOVERNMENT CENTER

ONE WEST MARKET STREET, ROOM 1201

SNOW HILL, MARYLAND 21863

TEL: 410-632-1200 / FAX: 410-632-3008

BOARD OF APPEALS
PLANNING COMMISSION
AGRICULTURAL PRESERVATION

ELECTRICAL BOARD
SHORELINE COMMISSION
LICENSE COMMISSIONERS

FORMAL NOTICE OF ZONING ACTION

March 22, 2016

RE: Rezoning Case No.: 396

Date of Public Hearing: March 1, 2016

Applicant(s): The Estate of Mildred L. Parsons, Margaret P. Bunting, Personal Representative

Attorney: Hugh Cropper, IV

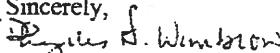
Location: Approximately 11.5 acres of land located to the easterly side of MD Rt. 589 to the north of Gum Point Road

This is to advise that the County Commissioners of Worcester County, Maryland, after public hearing, have voted to:

Approve the rezoning of the petitioned area from A-1 Agricultural District to C-2 General Commercial District

A formal Resolution and Findings of Fact have been signed by the County Commissioners. Pursuant to the Zoning and Subdivision Control Article of the Code of Public Local Laws of Worcester County, Maryland, copies of the County Commissioners' Resolution and Findings of Fact are being sent to those requesting same on the public hearing attendance roster and to those listed in the County tax records as owners of properties adjoining the subject property and of properties opposite any intervening road from the subject property.

Pursuant to § ZS 1-119 of the Zoning and Subdivision Control Article of the Code of Public Local Laws of Worcester County, the time for appeal shall run from the date of the mailing of the decision, Resolution and Findings of Fact to the applicant and all other parties who have requested the decision, Resolution and Findings of Fact in writing at the hearing.

Sincerely,

Phyllis H. Wimbrow
Deputy Director

Enclosures

cc: Kelly L. Henry

Maryland Department of Assessments and Taxation

Citizens and Government Working Together

3/24/16

ZONING RECLASSIFICATION RESOLUTION NO. 16-01

A RESOLUTION OF THE COUNTY COMMISSIONERS OF WORCESTER COUNTY, MARYLAND, PURSUANT TO SECTION ZS 1-113 OF THE ZONING AND SUBDIVISION CONTROL ARTICLE OF THE CODE OF PUBLIC LOCAL LAWS OF WORCESTER COUNTY, MARYLAND, CHANGING THE ZONING CLASSIFICATION OF A CERTAIN PARCEL OF LAND SHOWN ON TAX MAP 21 AS PARCEL 72 FROM A-1 AGRICULTURAL DISTRICT TO C-2 GENERAL COMMERCIAL DISTRICT.

WHEREAS, pursuant to Section ZS 1-113 of the Zoning and Subdivision Control Article of the Code of Public Local Laws of Worcester County, Maryland, The Estate of Mildred L. Parsons, Margaret P. Bunting, Personal Representative, applicant, and Hugh Cropper, IV, applicant's attorney, filed a petition for the rezoning of approximately 11.5 acres of land shown on Tax Map 21 as Parcel 72, located on the easterly side of MD Route 589 to the north of Gum Point Road, requesting a change in zoning classification thereof from A-1 Agricultural District to C-2 General Commercial District; and

WHEREAS, the Worcester County Planning Commission gave said petition a favorable recommendation during its review on December 3, 2015; and


WHEREAS, subsequent to a public hearing held on March 1, 2016, following due notice and all procedures as required by Sections ZS 1-113 and 1-114 of the Zoning and Subdivision Control Article of the Code of Public Local Laws of Worcester County, Maryland, the County Commissioners made findings of fact and found that there has been a substantial change in the character of the neighborhood of the petitioned area and also made findings of fact relative to the other criteria as required by law;

NOW, THEREFORE, BE IT RESOLVED by the County Commissioners of Worcester County that the land petitioned by The Estate of Mildred L. Parsons, Margaret P. Bunting, Personal Representative, applicant, and Hugh Cropper, IV, applicant's attorney, and shown on Tax Map 21 as Parcel 72, is hereby reclassified from A-1 Agricultural District to C-2 General Commercial District.

BE IT FURTHER RESOLVED that the effective date of this Resolution shall be nunc pro tunc, March 1, 2016.

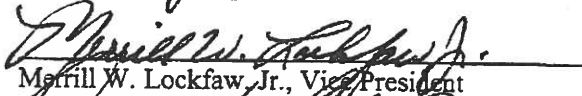
EXECUTED this 15th day of March, 2016.

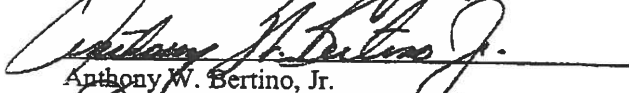
ATTEST:

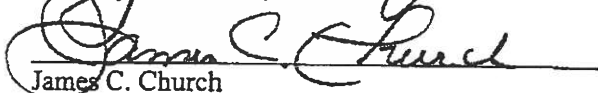

Harold L. Higgins
Chief Administrative Officer

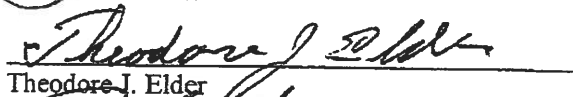
WORCESTER COUNTY COMMISSIONERS



Madison J. Bunting, Jr., President

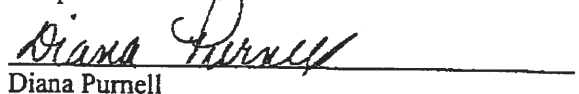

Merrill W. Lockfaw, Jr., Vice President


Anthony W. Bertino, Jr.


James C. Church


Theodore J. Elder


Joseph M. Mitrecic


Diana Purnell

IN THE MATTER OF *
THE REZONING APPLICATION OF *
THE ESTATE OF MILDRED L. * REZONING CASE NO. 396
PARSONS, MARGARET P. BUNTING, *
PERSONAL REPRESENTATIVE *

FINDINGS OF FACT

Subsequent to a public hearing held on March 1, 2016 and after a review of the entire record, all pertinent plans and all testimony, the Worcester County Commissioners hereby adopt the findings of the Worcester County Planning Commission and also make the following additional findings of fact as the County Commissioners' complete findings of fact pursuant to the provisions of Section ZS 1-113 of the Zoning and Subdivision Control Article of the Code of Public Local Laws of Worcester County, Maryland.

Regarding the specifics of Rezoning Case No. 396: This case seeks to rezone approximately 11.5 acres of land (hereinafter referred to as the petitioned area) located on the easterly side of MD Route 589 to the north of Gum Point Road from A-1 Agricultural District to C-2 General Commercial District. The petitioned area is shown as Parcel 72 on Tax Map 21.

Regarding the definition of the neighborhood: Mr. Cropper entered that Planning Commission's findings of fact and recommendation on Rezoning Case No. 396 into the record as Applicant's Exhibit No. 1. He then entered into the record as Applicant's Exhibit No. 2 a large scale full color zoning map showing the petitioned area, the zoning of all properties and the limits of the neighborhood as defined by the applicant. The neighborhood was defined on behalf of the applicant by R. D. Hand, landscape architect for R. D. Hand and Associates, Inc., as being that area bound on the north by MD Route 90, on the east by the Isle of Wight Bay, on the south by US Route 50, and on the west by those properties on the westerly side of MD Route 589. As did the Planning Commission, the County Commissioners agree that this is an appropriate definition of the neighborhood because it contains similar uses and zoning, primarily residential and commercial in nature.

Regarding population change in the area: Mr. Hand testified before the Planning Commission and the County Commissioners that there had not been a substantial change in the neighborhood's population since the comprehensive rezoning of 2009, with most resulting from infill development of vacant lots in the neighborhood. The County

Commissioners concur with the Planning Commission's conclusion there has been a general increase, though not a substantial one, in the population of the neighborhood since the comprehensive rezoning of 2009 as vacant lots in residential subdivisions in the neighborhood have been constructed upon, leading to infill development. Additionally, the County Commissioners agree with the Planning Commission's finding that the population of visitors to the neighborhood has escalated as patrons at the Casino at Ocean Downs and at commercial facilities in the neighborhood have increased.

Regarding availability of public facilities: Based upon the Planning Commission's findings, the County Commissioners find that as it pertains to wastewater disposal and the provision of potable water, the petitioned area itself is not within an area which receives public sewer or water service at the present time. The County Commissioners find that Robert J. Mitchell, Director of the Department of Environmental Programs, by memo included in the staff report attached to the Planning Commission's findings of fact, stated that the petitioned area has a designation of Sewer Service Category S-6 (No Planned Service). Mr. Mitchell also stated that his department has no well or septic records or soil evaluation records in the property file indicating any onsite capacity exists to support construction that would require water and sewerage be supplied. Mr. Mitchell further noted that if the applicant is intending to utilize public water and sewer for the development of this property, there are currently 24 excess sewer Equivalent Dwelling Units (EDUs) remaining as of the date of his memo (November 17, 2015) in the Ocean Pines Sanitary Service Area. The County Commissioners find that Edward Launay, an environmental consultant with Environmental Resources, Inc., testified on behalf of the applicant that he had conducted a site evaluation of the petitioned area and performed soil borings. Applicant's Exhibit No. 3 was entered into the record and is comprised of a large full color aerial soils map and two smaller aerial maps showing elevation mapping. Mr. Launay testified that based upon his evaluation he had determined that the site is well drained, has good depth to groundwater and its soils are suitable for on-site septic disposal if need be. Based upon the comments of Mr. Mitchell and the testimony of Mr. Launay, the County Commissioners find that adequate wastewater disposal facilities of some type, be they on-site or public wastewater, may be available to serve the petitioned area if rezoned. The County Commissioners find that fire and ambulance service will be available from the Ocean Pines and Berlin Volunteer Fire Company, located approximately five and ten minutes away respectively while police protection will be available from the Maryland State Police Barracks in Berlin, approximately ten minutes away, and the Worcester County Sheriff's Department in Snow Hill, approximately thirty minutes away. Chief Deputy J. Dale Smack 3rd of the Worcester County Sheriff's Office by memo included in the staff report attached to the Planning Commission's findings of fact stated that he had reviewed the application and spoken with Sheriff Mason and with Lt. Starner of the State Police relative to the rezoning case and they saw no issues with the proposed rezoning and concluded that it will not interfere with law enforcement activities. The petitioned area is within the area served by the following schools: Ocean City

Commission's finding and adopt said finding that although there will impacts to the present and future transportation patterns arising from the proposed rezoning of the 11.5 acre petitioned area, they will not be as substantial as those arising from the previously approved rezoning (Case No. 392) of 33 acres and will have to be dealt with at some future point.

Regarding compatibility with existing and proposed development and existing environmental conditions in the area, including having no adverse impact to waters included on the State's impaired waters list or having an established total maximum daily load requirement: The County Commissioners concur with the Planning Commission's conclusion that the neighborhood displays a mixture of land uses, with residential subdivisions and commercial uses being the predominant ones. The Casino at Ocean Downs is a predominant feature. Although the petitioned area and the adjoining property to the north are currently tilled cropland, there is virtually no other agricultural use in the neighborhood. It is essentially the agricultural use that is the blatant anomaly in the neighborhood, not commercial or residential use. The County Commissioners note that Edward Launay, professional wetlands scientist, testified that his examination of the petitioned area showed that there are no wetlands on the site, it is well-drained and has no archeological sites or endangered species. He also asserted that the proposed rezoning and anticipated development of the site will not have an adverse impact on impaired waters or increase the Total Maximum Daily Loads (TMDLs). Based upon their review the County Commissioners find that the proposed rezoning of the petitioned area from A-1 Agricultural District to C-2 General Commercial District is compatible with existing and proposed development and existing environmental conditions in the area.

Regarding compatibility with the County's Comprehensive Plan: According to the 2006 Comprehensive Plan and associated land use map, the petitioned area lies within the Commercial Center and Existing Developed Area Land Use Categories. With regard to the Commercial Center Land Use Category, the Comprehensive Plan states that this category designates sufficient area to provide for anticipated needs for business, light industry, and other compatible uses. Retail, offices, cultural/entertainment, services, mixed uses, warehouses, civic, light manufacturing and wholesaling would locate in commercial centers. The Comprehensive Plan also states that commercial areas by their nature locate on prominent sites and can visually dominate a community. For this reason, special attention must be given to the volume, location and design of these uses. The Comprehensive Plan states that the first step is to balance supply with demand and that strip commercial centers are discouraged. Commercial areas provide important services but they should be developed to enhance community character, according to the Comprehensive Plan. With regard to the Existing Developed Area (EDA) category, the Comprehensive Plan states that this category identifies existing residential and other concentrations of development in unincorporated areas and provides for their current development character to be maintained, that recognizing existing development

and neighborhood character is the purpose of this designation, and that appropriate zoning providing for densities and uses consistent with this character should be instituted. The Plan furthermore states that the EDAs are anticipated to remain as mapped at least until the next plan review period and that this will provide for orderly infill development within EDAs and new community-scale growth in the growth areas. The Plan also states that, not designated as growth areas, these areas should be limited to infill development and that density, height, bulk and site design standards should also be consistent with the EDA's existing character. The Planning Commission found that certain pertinent objectives were also cited in the Land Use chapter of the Comprehensive Plan and state that the character of the County's existing population centers should be maintained, that the County should provide for appropriate residential, commercial, institutional, and industrial uses, that new development should be located in or near existing population centers and within planned growth centers, and that existing population centers should be infilled without overwhelming their existing character. Other objectives state that development should be regulated to minimize consumption of land, while continuing the County's rural and coastal character, that the supply of commercially zoned land should be balanced with anticipated demand of year-round residents and seasonal visitors, that major commercial and all industrial development should be located in areas having adequate arterial road access or near such roads, and that highway strip development should be discouraged to maintain roadway capacity, safety, and character. The Planning Commission found that the Transportation chapter of the Comprehensive Plan states that Worcester's roadways experience morning and evening commuter peaks; however, they are dwarfed by summer resort traffic and that resort traffic causes the most noticeable congestion on US 50, US 113, US 13, MD 528, MD 589, MD 611, and MD 90. The Plan further states that of special note is the fact that the MD Route 589 corridor has experienced significant development, has reached an unsatisfactory level-of-service and congestion has become a daily occurrence regardless of season. The Plan asserts that for this reason, MD Route 589 is considered impacted from a traffic standpoint. The Comprehensive Plan states that this implies that land use should not intensify in this area, that infill development of existing platted lots should be the extent of new development, and that this policy shall remain until road capacity is suitably improved. This chapter also states that commercial development will have a significant impact on future congestion levels and that commercial uses generate significant traffic, so planning for the proper amount, location and design will be critical to maintain road capacity. Additionally, the Planning Commission found that the Comprehensive Plan states that it is the Plan's policy that the minimal acceptable Level of Service (LOS) for all roadways be LOS C and that developers shall be responsible for maintaining this standard. Mr. Hand on behalf of the applicant testified that as part of the previous rezoning of the adjacent Silver Fox property in Case No. 392, at 33 acres approximately three times the size of the now petitioned area, a traffic study was submitted into evidence and upheld which indicated that although traffic impacts would arise after development of that site with commercial uses, a Level of Service C would still be maintained on MD Route 589, a level which the Comprehensive Plan considers acceptable.

As did the Planning Commission, the County Commissioners find that although there will most likely be adverse impacts to MD Route 589 arising from commercial development of the 11.5 acre petitioned area, they will be much less significant than those anticipated to arise from the previous rezoning and will have to be dealt with at the time of development. Based upon their review, the County Commissioners adopt the findings of the Planning Commission and find that the proposed rezoning of the petitioned area from A-1 Agricultural District to C-2 General Commercial District is compatible with the Comprehensive Plan and in keeping with its goals and objectives.

Regarding the recommendation of the Planning Commission: The County Commissioners find that the Planning Commission gave a favorable recommendation to the rezoning of the petitioned area from A-1 Agricultural District to C-2 General Commercial District. Having made the above findings of fact, the County Commissioners concur with the recommendation of the Planning Commission and adopt its findings.

As a result of the testimony and evidence presented before the Commissioners and the findings as set forth above, the County Commissioners find that there has been a change in the character of the neighborhood since the 2009 comprehensive rezoning. As did the Planning Commission, the County Commissioners concur with the applicant's assertion that the most predominant change is the approval of Rezoning Case No. 392 which reclassified the adjacent property to the north from A-1 Agricultural District to C-2 General Commercial District in 2012. That rezoning has left the petitioned area as an island of A-1 Agricultural District zoning. Other changes to the character of the neighborhood include the significant expansion of the Casino at Ocean Downs, its connection to public sewer service, and the expansion of the Ocean Pines wastewater and water service areas. Furthermore, the County Commissioners conclude that the proposed development of the adjacent property to the east into a residential subdivision constitutes a change to the character of the neighborhood because the granting of Atlantic Coastal Bays Critical Area growth allocation by the Worcester County Commissioners and the Critical Area Commission was necessary to allow the subdivision to occur. Additionally, the County Commissioners agree with the applicant's argument that although the Casino is located on an agriculturally zoned property, it is truly not an agricultural use and is in fact commercial in nature, given its size of approximately 10,000 square feet and the extensive expanse of parking lots associated with the use. Like the Planning Commission, the County Commissioners agree with the applicant's contention that because Rezoning Case No. 392 was upheld in court it is only equitable to give the petitioned area the same zoning. The County Commissioners find that the existing A-1 Agricultural District zoning is inconsistent with the Comprehensive Plan, particularly in regards to the Land Use Categories placed on the petitioned area, and with existing zoning and development in the area and that the proposed rezoning of the petitioned area from A-1 Agricultural District to C-2 General Commercial District is more desirable in terms of the Comprehensive Plan. In consideration of their findings the County Commissioners hereby approve Rezoning Case



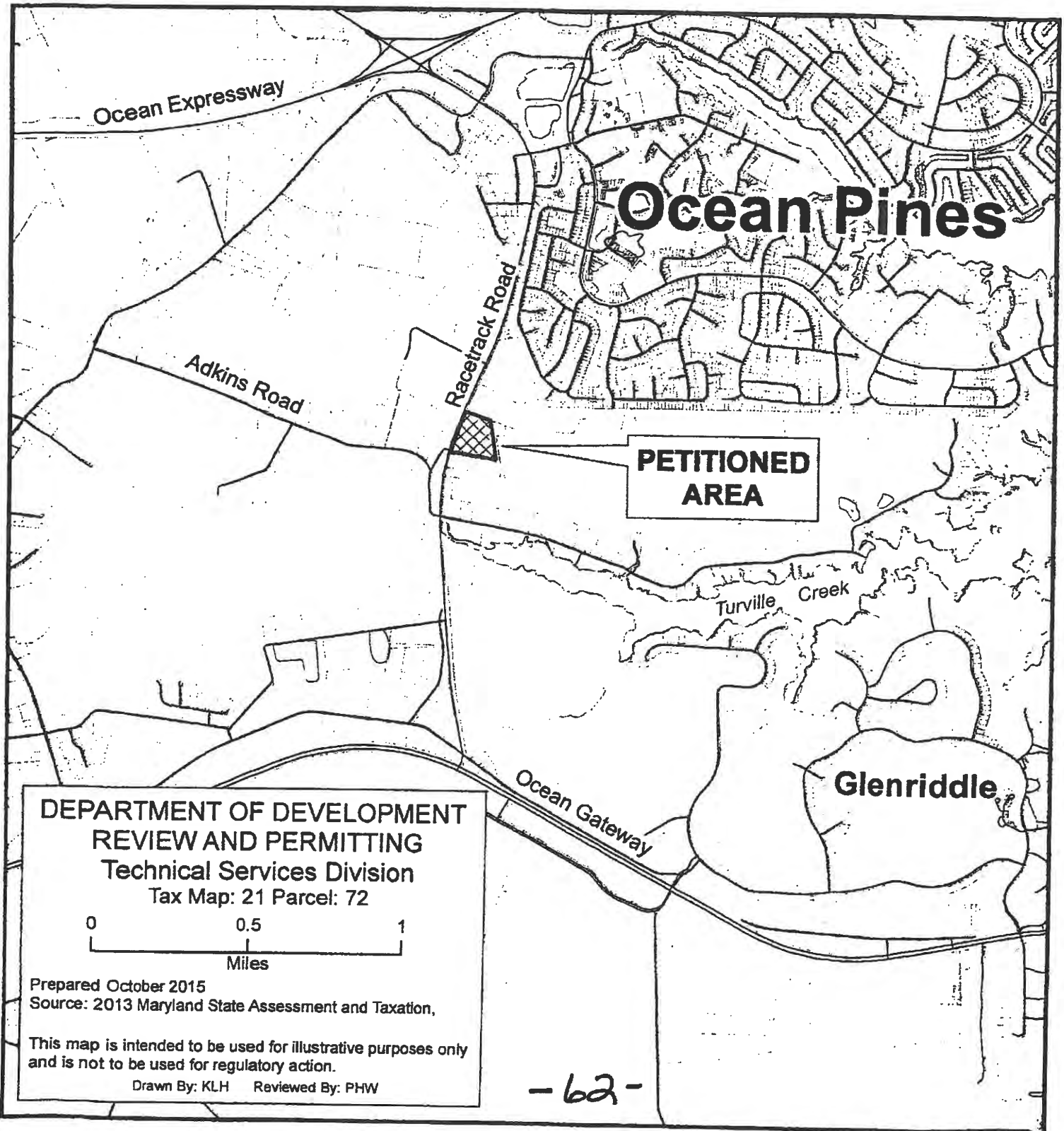
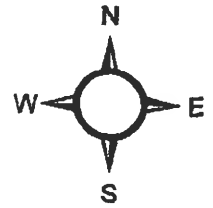
WORCESTER COUNTY, MARYLAND

REZONING CASE NO. 396

MAP AMENDMENT REQUEST

A-1 Agricultural District to C-2 General Commercial District

LOCATION MAP



Real Property Data Search

Search Result for WORCESTER COUNTY

| | | | | | |
|--|----------------------------|---|---|--|---|
| View Map | | View GroundRent Redemption | | View GroundRent Registration | |
| Tax Exempt: Exempt Class: | | Special Tax Recapture: NONE | | | |
| Account Identifier: | | District - 03 Account Number - 169855 | | | |
| Owner Information | | | | | |
| Owner Name: | | SILVER FOX LLC | | Use: Principal Residence: RESIDENTIAL NO | |
| Mailing Address: | | 9919 STEPHEN DECATUR HWY OCEAN CITY MD 21842- 0000 | | Deed Reference: /04956/ 00440 | |
| Location & Structure Information | | | | | |
| Premises Address: | | RACETRACK RD BERLIN 21811-0000 | | Legal Description: AG PAR A 14.89 ACS E SIDE OCEAN DOWNS ROAD MIN SUB BURBAGE/MELSON | |
| Map: | Grid: | Parcel: | Sub District: | Subdivision: | Section: Block: Lot: Assessment Year: Plat No: 217065 |
| 0021 | 0008 | 0066 | | 0000 | PAR A 2019 Plat Ref: 0217/ 0065 |
| Special Tax Areas: | | Town: NONE Ad Valorem: Tax Class: | | | |
| Primary Structure Built | Above Grade Living Area | Finished Basement Area | Property Land Area 14.8900 AC | County Use 000000 | |
| Stories | Basement | Type | Exterior | Full/Half Bath | Garage Last Major Renovation |
| Value Information | | | | | |
| | Base Value | Value As of 01/01/2019 | Phase-in Assessments As of 07/01/2018 As of 07/01/2019 | | |
| Land: | 93,800 | 83,800 | | | |
| Improvements | 0 | 0 | | | |
| Total: | 93,800 | 83,800 | 93,800 | 83,800 | |
| Preferential Land: | 0 | | | 0 | |
| Transfer Information | | | | | |
| Seller: BURBAGE/MELSON, INC | | Date: 06/27/2007 | | Price: \$0 | |
| Type: NON-ARMS LENGTH OTHER | | Deed1: SVH /04956/ 00440 | | Deed2: | |
| Seller: | | Date: | | Price: | |
| Type: | | Deed1: | | Deed2: | |
| Seller: | | Date: | | Price: | |
| Type: | | Deed1: | | Deed2: | |
| Exemption Information | | | | | |
| Partial Exempt Assessments: | Class | 07/01/2018 | 07/01/2019 | | |
| County: | 000 | 0.00 | | | |
| State: | 000 | 0.00 | | | |
| Municipal: | 000 | 0.00 0.00 | 0.00 0.00 | | |
| Tax Exempt: Exempt Class: | | Special Tax Recapture: NONE | | | |
| Homestead Application Information | | | | | |
| Homestead Application Status: No Application | | | | | |

Real Property Data Search

Search Result for WORCESTER COUNTY

| View Map | | View GroundRent Redemption | | View GroundRent Registration | |
|--|----------|--|---------------|--|---|
| Tax Exempt: | | Special Tax Recapture: | | | |
| Exempt Class: | | NONE | | | |
| Account Identifier: | | District - 03 Account Number - 169863 | | | |
| Owner Information | | | | | |
| Owner Name: | | BURBAGE/MELSON INC | | Use: RESIDENTIAL Principal Residence: NO | |
| Mailing Address: | | 9919 STEPHEN DECATUR HWY BERLIN MD 21811-2674 | | Deed Reference: /03971/ 00220 | |
| Location & Structure Information | | | | | |
| Premises Address: | | RACETRACK RD BERLIN 21811-0000 | | Legal Description: AG PAR B 16.01 ACS E SIDE OCEAN DOWNS ROAD MIN SUB BURBAGE/MELSON | |
| Map: | Grid: | Parcel: | Sub District: | Subdivision: | Section: Block: Lot: Assessment Year: Plat No: 217065 |
| 0021 | 0008 | 0066 | | 0000 | PAR B 2019 Plat Ref: 0217/ 0065 |
| Special Tax Areas: | | Town: NONE Ad Valorem: Tax Class: | | | |
| Primary Structure Built | | Above Grade Living Area | | Finished Basement Area | |
| | | | | Property Land Area 16.0100 AC County Use 000000 | |
| Stories | Basement | Type | Exterior | Full/Half Bath | Garage Last Major Renovation |
| Value Information | | | | | |
| | | Base Value | | Value | |
| | | | | As of 01/01/2019 | |
| Land: | | 95,000 | | 85,000 | |
| Improvements | | 0 | | 0 | |
| Total: | | 95,000 | | 85,000 | |
| Preferential Land: | | 0 | | 95,000 85,000 | |
| Phase-in Assessments | | | | | |
| | | | | As of 07/01/2018 As of 07/01/2019 | |
| | | | | 0 0 | |
| Transfer Information | | | | | |
| Seller: | | Date: | | Price: | |
| Type: | | Deed1: | | Deed2: | |
| Seller: | | Date: | | Price: | |
| Type: | | Deed1: | | Deed2: | |
| Seller: | | Date: | | Price: | |
| Type: | | Deed1: | | Deed2: | |
| Exemption Information | | | | | |
| Partial Exempt Assessments: | | Class | | 07/01/2018 07/01/2019 | |
| County: | | 000 | | 0.00 | |
| State: | | 000 | | 0.00 | |
| Municipal: | | 000 | | 0.00 0.00 0.00 0.00 | |
| Tax Exempt: | | Special Tax Recapture: | | | |
| Exempt Class: | | NONE | | | |
| Homestead Application Information | | | | | |
| Homestead Application Status: No Application | | | | | |
| Homeowners' Tax Credit Application Information | | | | | |

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0144

September Term, 2013

SILVER FOX, LLC, ET AL.

v.

WALTER M. STANSELL, JR., ET AL.

Meredith,
Zarnoch,
Eyler, James R.
(Retired, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: July 22, 2014

7/23/14

In this zoning case, appellants Silver Fox, LLC and Burbage/Melson, Inc. (collectively, "Silver Fox") petitioned the Worcester County Commissioners ("County Commissioners") to rezone/reclassify Silver Fox's property from A-1 Agricultural District to C-2 General Commercial District under the Worcester County Zoning Code. The County Commissioners granted this petition. Appellees in this case are nearby property owners ("the Residents")¹ who protested the rezoning/reclassification and petitioned the Circuit Court for Worcester County for judicial review. The circuit court reversed the decision of the County Commissioners. We now reverse the judgment of the circuit court, leaving intact the County Commissioners' decision to grant the rezoning.

FACTS AND LEGAL PROCEEDINGS

Silver Fox owns the property at issue in this case, which consists of two parcels totaling about thirty-one acres ("the Property"). The Property is located in Worcester County, on the east side of Maryland Route 589 ("Rt. 589"), also known as Race Track Road, and on the south side of Manklin Creek Road. The Property is adjacent to the southwesterly side of the Ocean Pines subdivision, and contiguous to the westerly side of R-1 Single-Family Residential District zoned land, which is currently undeveloped. Turville Creek separates the Ocean Pines neighborhood and the Property from the Ocean Downs Racetrack and what is now called the Casino at Ocean Downs ("the Casino").

¹As identified in Silver Fox's brief, the appellees are Walter and Pamela Stansell, Jeanne R. Lynch, Carol J. Chauer, and Paul R. Bredehorst.

The Property currently consists of cropland and woodland, with a seasonally-operated produce stand. It has been zoned A-1 Agricultural District since 1965, and is the only A-1 Agricultural District property south of Route 90, though some property is zoned as an A-2 Agricultural District on the opposite side of Rt. 589.

In 2006, the Worcester County Comprehensive Land Use Plan ("Comprehensive Plan") designated the Property as a combination of "Existing Developed Area" and "Commercial Center." The Comprehensive Plan stated that its policy would be to limit development of the Rt. 589 corridor until road capacity improved.

In September 2009, the Video Lottery Facility Location Commission awarded a slots license to the owner of the Ocean Downs Racetrack, land zoned A-2 Agricultural. The Casino is about 2,000 feet south of the Property, on the same side of Rt. 589. On November 3, 2009, Worcester County adopted a Comprehensive Rezoning Plan ("2009 Rezoning Plan"), which found an adequate supply of commercial zoning in the area and discouraged additional development along Rt. 589 until the roadway improved.

Since the 2009 Rezoning Plan, the 35,000 square foot Casino has been constructed on the site, along with a 10,000 square foot clubhouse. The Casino presently has 800 video lottery terminals, though the Maryland General Assembly has approved a total of 2,500 video lottery terminals for this location.² Rt. 589 now has more traffic signals and turn lanes.

²The Casino did not open until January of 2011, some fourteen months after adoption of the Rezoning Plan. Although advertised as a "casino" (perhaps with an eye toward
(continued...)

Additionally, the owners of the Casino received "site plan approval" for the construction of a movie theater and bowling alley, which have not yet been constructed.

Also, since the 2009 Rezoning Plan, an adjacent seventy-acre property ("the Steen Property") received approval from Worcester County to reclassify from a Resource Conservation Area, which permitted one dwelling unit per twenty acres, to a Limited Development Area, which would allow a total of sixty residential units on the Steen Property. The Steen Property shares at least "a few hundred feet" of common property line with the Property.

On May 28, 2010, Silver Fox submitted a petition to Worcester County to rezone the Property, requesting a change from A-1 Agricultural District to C-2 General Commercial District. It set forth two grounds for rezoning in its petition: a substantial change in the character of the neighborhood since the 2009 Rezoning Plan, and a mistake in the existing zoning classification. On April 12, 2012, the Worcester County Planning Commission ("Planning Commission") held a public hearing on the application. Silver Fox presented evidence, including a witness from Atlantic General Hospital, who testified that the Property is an ideal site for a medical campus facility. Ocean Pines residents stated that traffic congestion is a serious health and safety issue. On May 3, the Planning Commission held a

²(...continued)

expansion), the facility at that time was more appropriately characterized as a "racino," *i.e.*, a slots parlor at a racetrack. See http://en.wikipedia.org/wiki/Ocean_Downs (last visited July 10, 2014).

work session to discuss the character of the neighborhood, and then forwarded its Findings of Fact and Recommendation to the Worcester County Commissioners ("County Commissioners").

On August 7, the County Commissioners held an advertised public hearing.³ Silver Fox presented testimony from three professional engineers, including a traffic engineer, a land planner, and a surveyor. On September 4, the County Commissioners granted the rezoning request. They adopted the Planning Commission's Findings of Fact and Recommendation. The County Commissioners concluded that the neighborhood had substantially changed since the 2009 Rezoning Plan, based on the opening of the Casino,⁴

³Commissioner Church was asked to recuse himself because of an affiliation with the Atlantic General Hospital and with Mr. Burbage, a principal of Silver Fox. The County Attorney determined that this was not a conflict of interest.

⁴The Commission granted the rezoning request some two weeks after the Governor signed legislation that would result in a significant expansion of gambling at Ocean Downs and the other casino sites. See Chapter 1, *Laws of 2012*, (2d Spec. Sess.). Although the legislation could not take effect until a November, 2012 referendum, among other things, it authorized a licensee: 1) to offer table games; 2) to operate 24 hours per day; and 3) to offer live entertainment.

The legislation contemplated that Ocean Downs would generate additional revenue from table games, see Revised Fiscal & Policy Note on SB 1 (2012 2d Spec. Sess.), dated September 19, 2012, and provided for an increase in revenues for Ocean Downs as long as it spent a percentage of the proceeds on capital improvements to the facility. *Id.* Not surprisingly, as a result of these changes in the law, Ocean Downs, in September, 2013 announced a 50,000 square foot expansion to include table games and a new restaurant. See http://en.wikipedia.org/wiki/Ocean_Downs (last visited July 10, 2014). When this expansion takes place, Ocean Downs will no longer be a racino, but will be a genuine casino.

the approval for the movie theater and bowling alley, and the anticipated subdivision on the Steen Property.

On October 4, the Residents filed a petition for judicial review of the County Commissioners' decision. Silver Fox filed a cross-petition for the County Commissioners' failure to find there had been a mistake in the 2009 Rezoning Plan. On March 18, 2013, the circuit court held a hearing on the petition. The court denied Silver Fox's motion challenging the Residents' standing, and held that no mistake occurred in the 2009 Rezoning Plan, and that Silver Fox had not demonstrated a substantial change since that date. Judge Beck explained his denial of the rezoning:

So the Commissioners rely primarily on three points for the change: the . . . casino gambling at the racecourse. On that point, the site location commission approved the one mile area in September of 2009 prior to this rezoning and I believe that what happened at the racecourse with regard to casino gambling was known to the Commissioners at the time that they adopted their comprehensive rezoning. The Steen property has always been R-1. Some changes were made with regard to the density, but also [known] to the Commissioners at the time that they granted comprehensive rezoning in November of 2009. The movie theater and the bowling alley are extensions of nonconforming use and certainly could be within the contemplation of the Commissioners at the time they granted the comprehensive rezoning. The Atlantic Hospital interest in perhaps someday putting a medical facility on the subject property was speculative or remote at best. I read somewhere that soils are suitable for this kind of development which clearly does not fall within the realm of substantial change.

So there's been a number of changes. The appellate courts are clear that mere changes are not enough, it must be a substantial change to affect the character of the neighborhood and even

cumulatively I can't find that that occurred in the facts that before the Court.

On April 12, the court issued a written order reversing the decision of the County Commissioners. On May 7, Silver Fox filed a notice of appeal. The issue of mistake was not raised in this appeal. Additional facts will be provided as necessary in our discussion of the issues.

QUESTION PRESENTED

Silver Fox presents the following question for our review:

Was the decision to rezone/reclassify the [Silver Fox's] Property from the A-1 Agricultural Zoning District to the C-2 General Commercial District, fairly debatable and supported by substantial evidence, considering the aggregate, cumulative changes in the neighborhood since the last rezoning?

We answer in the affirmative, and reverse the decision of the circuit court.

DISCUSSION

I. Standard of Review

When a decision of an administrative agency like the County Commissioners comes to us from the circuit court, we review the decision of the agency itself, not the decision of the circuit court. *Long Green Valley Ass'n v. Prigel Family Creamery*, 206 Md. App. 264, 273 (2012). We will review the agency's decision in the light most favorable to the agency because its decisions are prima facie correct, though we are "under no constraint to affirm an agency decision premised solely upon an erroneous conclusion of law." *Catonsville Nursing Home, Inc. v. Loveman*, 349 Md. 560, 569 (1998) (Citations omitted).

We “will not disturb an administrative decision on appeal if substantial evidence supports factual findings and no error of law exists.” *Long Green Valley Ass’n*, 206 Md. App. at 274. Substantial evidence means “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Catonsville Nursing Home, Inc.*, 349 Md. at 569. Thus, “[i]t is only where there is no room for reasonable debate, or where the record is devoid of supporting facts, that the court is justified in declaring the legislative action of the board arbitrary or discriminatory.” *Offutt v. Bd. of Zoning Appeals of Baltimore Cnty.*, 204 Md. 551, 562 (1954). We appraise and evaluate the agency’s fact finding, but do not make an independent decision on the evidence. *Catonsville Nursing Home, Inc.*, 349 Md. at 569.

II. Substantial Change in Character

Zoning authorities in Maryland, like the County Commissioners, “implement their plans and determinations regarding appropriate land use zoning categories” through original zoning, comprehensive rezoning, and piecemeal rezoning. *Mayor & Council of Rockville v. Rylyns Enterprises, Inc.*, 372 Md. 514, 532 (2002). The zoning regulations and boundaries may be amended or repealed. Md. Rule 4-204(a). The zoning authority may grant a change in a zoning classification based on a finding that there was a substantial change in the character of the neighborhood where the property is located or a mistake in the existing zoning classification. Md. Rule 4-204(b)(2). *See also Rylyns Enterprises, Inc.*, 372 Md. at 535-36.

To change the zoning of a property based on change of character in a neighborhood, the petitioner must establish:

(a) what area reasonably constitutes the neighborhood of the subject property, (b) the changes which have occurred in that neighborhood since the comprehensive rezoning and (c) that those changes resulted in a change in the character of the neighborhood.

Montgomery v. Board of Cnty. Comm'rs for Prince George's Cnty., 256 Md. 597, 602 (1970). The changes in the character of the neighborhood must be evaluated cumulatively, in order to determine "whether the aggregate changes in the character of the neighborhood since the last zoning were such as to make the question fairly debatable." *Bowman Grp. v. Moser*, 112 Md. App. 694, 700 (1996).

A. Definition of Neighborhood

The first step in determining a change in a neighborhood is to define the neighborhood. *Montgomery*, 256 Md. at 602. Silver Fox contends that the issue is not preserved. It argues that the circuit court rejected the Residents' argument that the County Commissioners' definition was incorrect, and the Residents did not file a cross-appeal. The Residents contend that because this Court evaluates the decision of the administrative agency and not the circuit court, the Residents were not required to file a cross-appeal on the issue of the neighborhood.

We agree with the Residents that they did not need to file a cross-appeal to preserve this issue. However, we find that the neighborhood was sufficiently defined by the County

Commissioners. The Planning Commission clearly considered the definition, shown by their alterations to the definition originally presented by Silver Fox. The Planning Commission excluded the commercial property on the south side of U.S. Route 50. At the public hearing, the County Commissioners heard testimony concerning the neighborhood from Steven Soule, an engineer, and from an Robert Hand, a lander planner. Hand explained that when he was asked to define the neighborhood as an expert witness, he included areas that were a five to ten minute drive from the population centers as described in the Comprehensive Plan. Based on this evidence, the County Commissioners accepted the definition of the Planning Commission. Judge Beck explained that "there was no mistake in the appropriateness of the neighborhood and I'm not going to put my judgment in place of the Commissioners on the appropriateness of the neighborhood. I think that is fairly debatable" On this point, we agree with the circuit court.

B. Changes in the Character of the Neighborhood

Silver Fox contends that the County Commissioners' determination concerning the changes in the neighborhood was based upon substantial evidence. It looks to the construction of the Casino, the approval of the bowling alley and movie theater, the authorization of a subdivision at the Steen Property, and other changes. We will address each factor in turn.

1. Casino

Silver Fox contends that the County Commissioners were correct to find that the addition of the Casino was a significant change in the character of the neighborhood. Silver Fox argues that the County Commissioners found a change due to the Casino's \$45,000,000 complex, adjacent 10,000 square foot clubhouse, and related road improvements like traffic signals and turning lanes. It points to evidence such as testimony from an engineer representing the Casino, and testimony from the County Attorney, John Bloxom, who described how the Casino went from a "simple venue that's open two or three months during the summer, evening time for racing, now to a casino that's open 24/7 with all of the traffic that comes and goes every day of the year, 24 hours a day." Silver Fox also argues that the slot machines were an unanticipated change after the 2009 Rezoning.

Residents contend that the County Commissioners knew prior to the 2009 Rezoning that the Casino had been approved. They argue that prior to the Casino, there was more than harness racing because the center was open for more than 320 days for off-track betting.

In our view, it is at least fairly debatable for the Commissioners to conclude that the opening and operation of the casino represented a substantial change in the neighborhood. What they knew at the time of the 2009 Rezoning was that a slots license had been issued to the owner of Ocean Downs. By 2012, racino interests were more than poised at the gate. A large and unique facility was in place and in operation. Moreover, by the time the Commissioners granted the rezoning request, the General Assembly had enacted legislation

that contemplated that Ocean Downs and the other sites would become genuine 24-hour casinos with table games and entertainment. It is hard to think of a more substantial change in a neighborhood.

2. Bowling Alley and Movie Theater

Silver Fox contends that the County Commissioners were correct to find a cumulative change in the character of the neighborhood because of the design waivers granted for the bowling alley and movie theater. It notes that the County Commissioners stated that the grant of the waivers was a discretionary decision after the 2009 Rezoning Plan. The Residents argue that the County Attorney said these would not constitute a change in the character of the neighborhood.

We find the County Commissioners were correct to find that the granting of the waivers for the bowling alley and movie theater was a substantial change. Zoning authorities are entitled to consider projects that are “reasonably probable of fruition in the foreseeable future.” *Jobar Corp. v. Rodgers Forge Cnty. Ass’n*, 236 Md. 106, 112 (1964). It is fairly debatable that the granting of these waivers and the future projects were unforeseeable at the time of the 2009 Rezoning Plan and that they represented a substantial change for a neighborhood that previously offered only off-track betting and harness racing.

3. Steen Property Subdivision

Silver Fox contends that the County Commissioners also found a change in the character of the neighborhood since the 2009 Rezoning Plan due to the rezoning of the Steen

Property. It argues that the County Commissioners heard testimony that the development was not a planned change for the neighborhood.

The Residents contend that the Steen Property was classified as a Residential District in the 2009 Rezoning Plan, and though now it may develop at a greater density, there was no evidence that any actual development has occurred or would be a change from the plan.

A change in residential density can constitute a substantial change. *Bosley v. Hosp. for Consumptives of Md.*, 246 Md. 197, 204 (1967), and again the County Commissioners are entitled to consider probable future changes. *Jobar Corp.*, 236 Md. at 112. We find when considered cumulatively with the opening and operation of the Casino and the design waivers for the bowling alley and movie theater, the change in the zoning of Steen Property contributed to a fairly debatable change in the neighborhood.

In light of our conclusion that the Commissioners did not err in finding a substantial change in the neighborhood, we need not consider additional factors addressed by the parties.

III. Worcester County Zoning Ordinance Criteria

In addition to the issue of a substantial change in the character of the neighborhood, the parties disagree over the Commissioners' application of some of the other criteria specified in the County zoning laws. To change the zoning classification of a property, the Worcester County Code, Zoning and Subdivision Control Article ("ZS"), § 1-113(c)(3)(2009) requires the County Commissioners to make certain findings of fact. These findings shall include:

- (a) population change,
- (b) availability of public facilities,
- (c) present and future transportation patterns,
- (d) compatibility with existing and proposed development and existing environmental conditions for the area, including having no adverse impact on waters included on the State's impaired waters list or having an established total maximum daily load requirement,
- (e) the recommendation of the Planning Commission, and
- (f) compatibility with the County's Comprehensive Plan.

The County Commissioners are permitted to adopt the findings of the Planning Commission, *id.*, and they did so in this case, in addition to making findings of their own. For reasons set forth below, we find that the County Commissioners did make appropriate findings on the required factors.

A. Population Change

The Residents did not challenge that the County Commissioners made a sufficient finding on population change.

B. Availability of Public Facilities

The Residents have not contested the issue of whether the County Commissioners made an appropriate finding on the availability of public facilities.

C. Present and Future Transportation Patterns

Silver Fox contends that the County Commissioners made findings on traffic patterns when it stated that “with minor configuration changes at one intersection all the intersections in the defined neighborhood would operate at a minimum Level of Service “C” which is acceptable under the Comprehensive Plan and the State Highway Administration Guidelines.⁵

The Residents argue that the County Commissioners did not base their traffic findings on the evidence. They state that there was no testimony about a plan for road improvements or funding. They also contend that there was no evidence to support the County Commissioners’ assumption that the increased traffic would be mitigated by the potential jobs created by the rezoning. The Residents argue that the County Commissioners ignored findings from the Comprehensive Plan that Rt. 589 is impacted by traffic congestion.

A zoning board “is entitled to consider . . . proposed improvements to existing highways in determining the proper classification of property” if the improvements are reasonably probable to occur in the foreseeable future. *Cnty. Comm’rs of Howard Cnty. v. Merryman*, 222 Md. 314, 323 (1960). Here, the County Commissioners based their finding on testimony from Betty Tustin, a traffic engineer,⁶ which is sufficient evidence to consider

⁵Under the State Highway Administration guidelines, the Level of Service standard that should be achieved at State intersections is “D.” Intersections are graded from A through F, with A being the best and F being the worst. The grades take in to account vehicle length, traffic light cycle times, and queue times. See Maryland Dep’t of Transp, State Highway Access Manual, *Guidelines for Traffic Impact Reports/Studies, Appendix E*, <http://www.roads.maryland.gov/Index.aspx?PageId=461>.

⁶Tustin explained that to conduct traffic counts her firm will:

(continued...)

an issue “at least fairly debatable.” *Montgomery*, 263 Md. at 6-7. We conclude that the County Commissioners made a sufficient finding on the issue of traffic patterns.

D. Compatibility with Development and Environmental Conditions

Silver Fox contends that the County Commissioners made sufficient findings of fact on the rezoning’s compatibility with development and environmental conditions: that the Property is not within any environmentally critical areas; that the property was too small to be productively farmed and residential use was not desirable; and that the majority of the mixed uses within the neighborhood were commercial or residential in nature that were not compatible with agricultural uses.

The Residents contend that the County Commissioners’ finding regarding the compatibility with development and environmental conditions was not supported by the evidence. They argue that the County Commissioners rezoned the Property in the A-1 Agricultural District within the last three years, making a change inappropriate.

⁶(...continued)

analyze what the worst case scenario would be. For example, we study the worst hour of the day, and then we actually take the worst 15 minutes within that hour and add a factor to our setting. So that we are assuming— we’re adding the safety factor in, if you will, so to make sure that we are analyzing what the worst hour of the whole week, and in this case since we did summer, of the whole year would be. If we can provide for that traffic, then we can provide for traffic for the other 23 hours of the day.

We find that the County Commissioners made sufficient findings of fact on this issue. They cited evidence such as a staff report included in the Planning Commission's findings of fact,⁷ exhibits on the record, and their judgment that the present area consists of tilled cropland, a produce stand, and wooded areas.

E. Recommendation of the Planning Commission

The parties do not disagree on whether the County Commissioners made findings on the Planning Commission's recommendations. The Commissioners stated: "[We] find that the Planning Commission gave a favorable recommendation to the rezoning of the petitioned area from A-1 Agricultural District to C-2 General Commercial District. Having made the above findings of fact, the County Commissioners concur with the recommendation of the Planning Commission."

F. Compatibility with County's Comprehensive Plan

Silver Fox contends that the County Commissioners made findings on compatibility and desirability with the Comprehensive Plan: an environmental consultant testified that the soil was suitable for development; a land planner stated that the property is designated as "Existing Developed Area" on the land use plan, which encompasses many commercial uses,

⁷This staff report addresses the Chesapeake/Atlantic Coastal Bays Critical Areas by stating, "According to an email received from Roby Hurley, Natural Resources Planner for the Critical Area Commission, the petitioned area is not within either the Atlantic Coastal Bays Critical Area or the Chesapeake Bay Critical Area."

and that commercial zoning was more desirable; and the Property was unlikely to be utilized for viable and profitable agricultural purposes.

The Residents contend that the County Commissioners' finding disregards statements in the Comprehensive Plan about the development of Rt. 589. The Residents argue that purpose of C-2 zoning is to provide for more intense commercial development, which is contrary to the provisions of the Comprehensive Plan.

Generally, comprehensive plans are

advisory in nature and have no force of law absent statutes or local ordinances linking planning and zoning. Where the latter exist, however, they serve to elevate the status of comprehensive plans to the level of true regulatory device. In those instances where such a statute or ordinance exists, its effect is usually that of requiring that zoning or other land use decisions be consistent with a plan's recommendations regarding land use and density or intensity.

Rylyns Enterprises, Inc., 372 Md. at 530-31. Here, the Worcester County Zoning Code does not require consistency. Instead, it requires the County Commissioners to consider the Comprehensive Plan by making findings on the issue of compatibility, and it directs the Commissioners to make a finding "that a change in zoning would be more desirable in terms of the objectives of the Comprehensive Plan." ZS § 1-113(c)(3).

The County Commissioners' decision stated that they

recognize[d] that the Comprehensive Plan state[d] that development along the MD Rt. 589 corridor should be limited until capacity increased but note[d] that the traffic study provided by the applicant indicates that MD Rt. 589 will still operate at least a Level of Service C or greater, the threshold

called for by both the County's Comprehensive Plan and State Highway guidelines, if the petitioned area is rezoned and developed commercially.

They also noted that a portion of the Commercial Center Land Use Category already extends on to the Property. The County Commissioners explained that rezoning would lead to a more profitable use of the land and would likely create more jobs in the neighborhood. We conclude that the County Commissioners sufficiently considered the compatibility of the zoning change with the Comprehensive Plan.

Viewing the record as a whole, we believe the County Commissioners' findings were consistent with the requirements of ZS § 1-113(c)(3). We cannot say that the County Commissioners acted arbitrarily in granting Silver Fox's request to rezone the property.

For all of these reasons we reverse the judgment of the circuit court and uphold the decision of the County Commissioners.

**JUDGMENT OF THE CIRCUIT COURT
FOR WORCESTER COUNTY REVERSED.
COSTS TO BE PAID BY APPELLEES.**

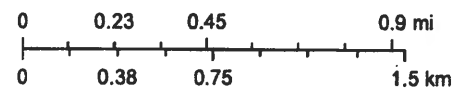
② Revised

Commercial Corridor along RTE 589, from RTE 50 to Beauchamp Road



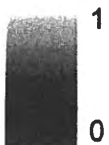
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☐ State Boundary Mask High Resolution Imagery 2016-2017

Tax Map Image



Red: Band_1

Green: Band_2

Blue: Band_3

MD iMAP, MDP, Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), swisstopo, © OpenStreetMap contributors, and the GIS User Community, MD iMAP, DoIT, MD iMAP, ESRI

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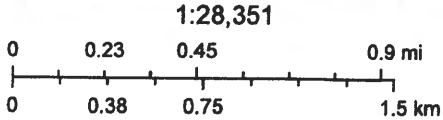
Commercial Corridor along RTE 589, from RTE 50 to Beauchamp Road



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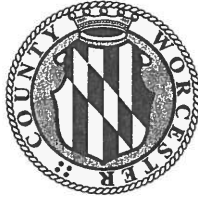
☐ State Boundary Mask

Tax Map Image



MD iMAP, MDP, Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), swisstopo, OpenStreetMap contributors, and the GIS User Community, MD iMAP, ESRI

**MEMO REQUESTING COMMENTS AND
ATTACHED MAPS SUBMITTED TO STAFF**



DEPARTMENT OF
DEVELOPMENT REVIEW AND PERMITTING

Worcester County

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ZONING DIVISION
BUILDING DIVISION
DATA RESEARCH DIVISION

ADMINISTRATIVE DIVISION
CUSTOMER SERVICE DIVISION
TECHNICAL SERVICE DIVISION

MEMO

TO: Robert Mitchell, Director, Worcester County Environmental Programs
William Birch, Director, Worcester County Emergency Services
Matthew Crisafulli, Sheriff, Worcester County Sheriff's Office
John H. Tustin, P.E., Director, Worcester County Public Works Department
John Ross, P.E., Deputy Director, Worcester County Public Works Department
Frank Adkins, Roads Superintendent, Worcester County Public Works Department
Jeff McMahon, Fire Marshal, Worcester County Fire Marshal's Office
Kathryn Gordon, Deputy Director, Economic Development
Louis H. Taylor, Superintendent, Worcester County Board of Education
James Meredith, District Engineer, Maryland State Highway Administration
Lt. Earl W. Starnes, Commander, Barracks V, Maryland State Police
Rebecca L. Jones, Health Officer, Worcester County Health Department
Rob Clarke, State Forester, Maryland Forest Services
Nelson D. Brice, District Conservationist, Worcester County Natural Resources Conservation Service
John Bailey, General Manager, Ocean Pines Association
Doug Parks, President, Ocean Pines Association
Steve Grunewald, Fire Chief, Ocean Pines Volunteer Fire Department

FROM: Phyllis H. Wimbrow, Deputy Director *PHW*

DATE: February 11, 2019

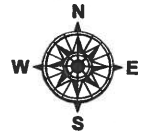
RE: Rezoning Case No. 421- William and Linda Ayres, Applicants, and Hugh Cropper IV,
Attorney - 27.57 Acres located on the southerly side of MD Rt. 589, north of MD Rt. 90 and
opposite the Ocean Pines North Gate

The Worcester County Planning Commission is tentatively scheduled to review the above referenced rezoning application at its meeting on April 4, 2019. This application seeks to rezone

Citizens and Government Working Together

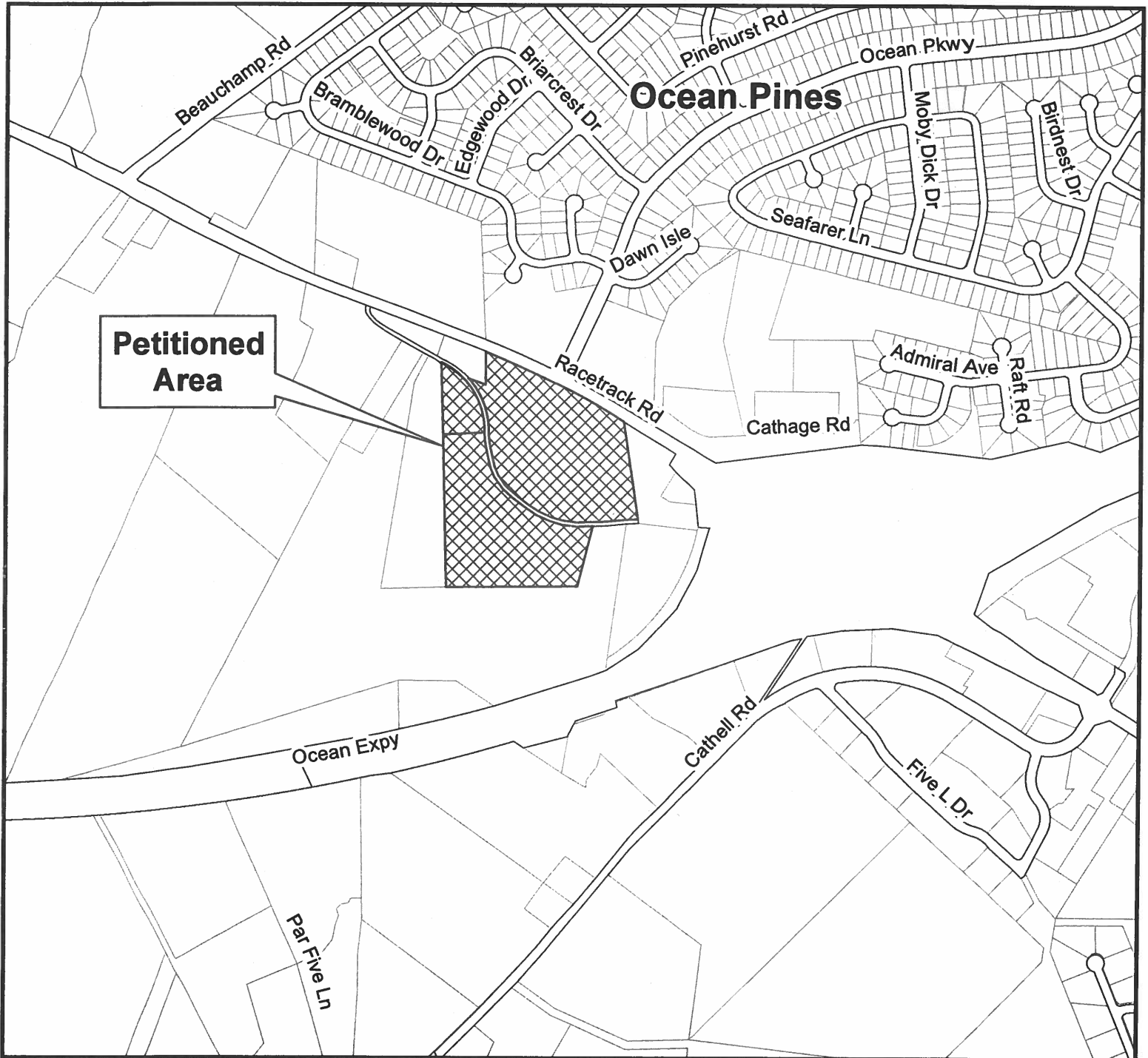


WORCESTER COUNTY, MARYLAND



REZONING CASE NO. 421
A-1 Agricultural District to C-2 General Commercial District
Tax Map: 16, Parcel 21 and 53

LOCATION MAP



DEPARTMENT OF DEVELOPMENT REVIEW AND PERMITTING
Technical Services Division - Prepared January 2019

0 500 1,000
Feet

Source: County Parcel and Road Centerline GIS Layers

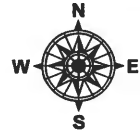
This map is intended to be used for illustrative purposes only and is not to be used for regulatory action.

Drawn By: KLH

Reviewed By: PHW

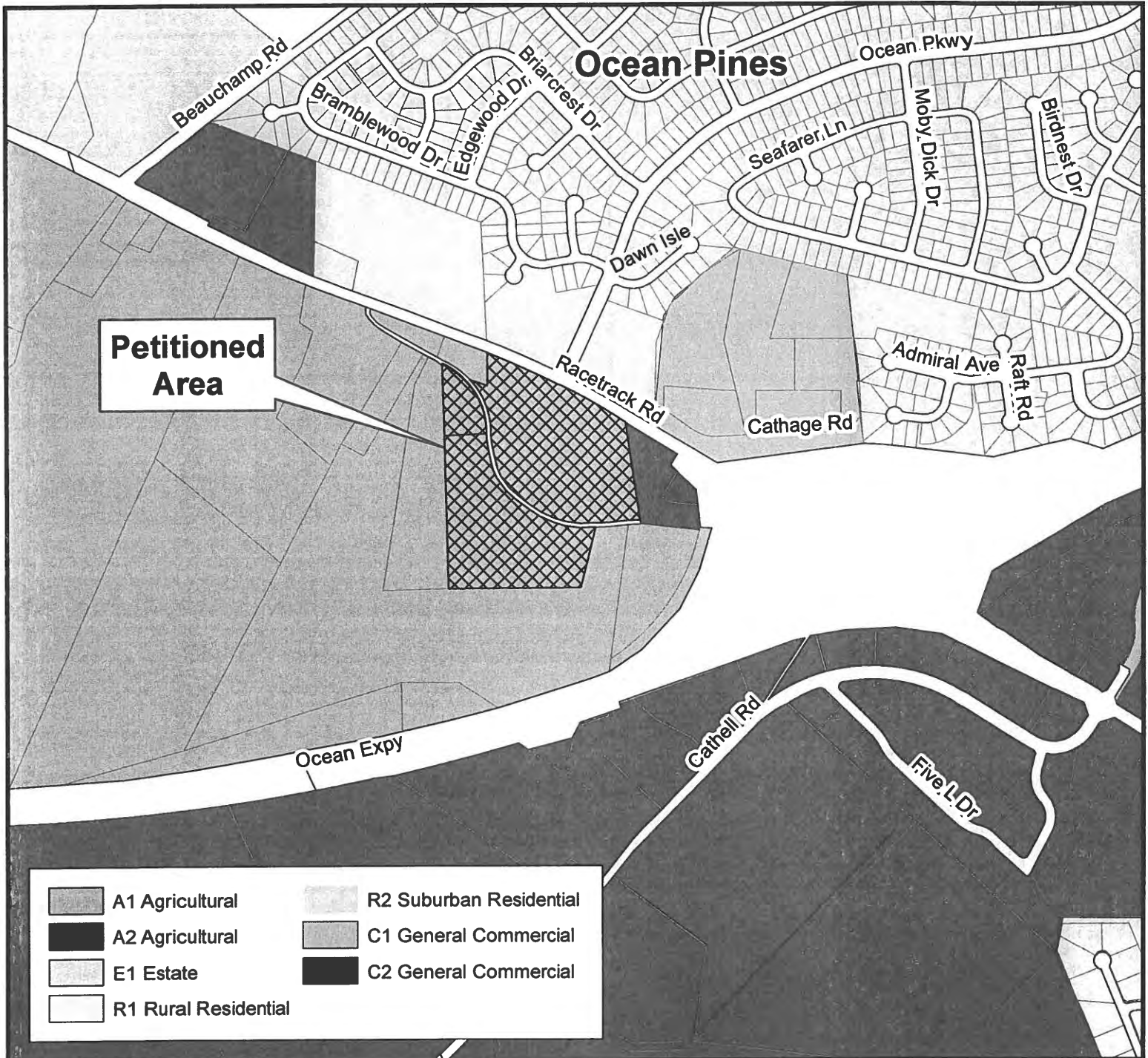


WORCESTER COUNTY, MARYLAND



REZONING CASE NO. 421
A-1 Agricultural District to C-2 General Commercial District
Tax Map: 16, Parcel 21 and 53

ZONING MAP



DEPARTMENT OF DEVELOPMENT REVIEW AND PERMITTING
Technical Services Division - Prepared January 2019

0 500 1,000
Feet

Source: 2006 Zoning District Map (current)

This map is intended to be used for illustrative purposes only and is not to be used for regulatory action.

Drawn By: KLH

Reviewed By: PHW