

**Worcester County Planning Commission  
Meeting Minutes**

**Meeting Date:** July 5, 2018

**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

Jerry Barbierrri

Rick Wells

Brooks Clayville

**Staff**

Maureen Howarth, County Attorney

Ed Tudor, Director, DDRP

Phyllis Wimbrow, Deputy Director, DDRP

Jennifer Keener, Zoning Administrator

Robert Mitchell, Director, DEP

**I. Call to Order**

**II. Administrative Matters**

**A. Review and approval of minutes, June 7, 2018** — As the first item of business, the Planning Commission reviewed the minutes of the June 7, 2018 meeting. Following the discussion it was moved by Mr. Barbierrri, seconded by Mr. Wells and carried unanimously to approve the minutes as submitted. Mr. Knerr abstained.

**B. Board of Zoning Appeals agenda, July 12, 2018** — As the next item of business, the Planning Commission reviewed the agenda for the Board of Zoning Appeals meeting scheduled for July 12, 2018. 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 – Hooper’s Shopping Center**

As the next item of business, the Planning Commission reviewed a site plan for Hooper’s Shopping Center, consisting of the proposed construction of two mixed use buildings consisting of 23,358 square feet, located at the northeasterly intersection of US Route 50 (Ocean Gateway) and Inlet Isle Lane, Tax Map 27, 569 & 587, Tax District 10, C-2 General Commercial District. Pete and Royette Shepherd, property owners, Keith Iott, architect, and Hugh Cropper, IV, Esquire, were present for the review. Mr. Cropper noted that the Worcester County Commissioners have approved the allocation of the required Mystic Harbour service area sewer EDU’s for the shopping center, the applicants have been through Technical Review Committee and they also obtained approval from the Board of Zoning Appeals for their freestanding signage. Mr. Iott discussed the proposed uses within the two buildings, and distributed proposed architectural color renderings to the Planning Commission members. He noted that they have attempted to design an attractive pair of buildings that wouldn’t feel like a strip shopping center. They did that by placing the coffee shop drive-thru through between the two buildings, thus reducing the overall scale. The easterly building will have retail uses on the first floor, along with second floor offices which will command year round tenants and provide them with coveted water views. Mr. Iott stated that he tried to emulate existing themes included within the existing Hooper’s restaurant, which he had also designed. Mr. Cropper noted that there are eight Planning Commission considerations (technically seven due to the last being a State Highway Administration request that has since been addressed). He asked that the members consider the

conditions as one, but then he addressed them individually. Mr. Iott addressed the entry consideration (No. 2) to the coffee shop entrance. He stated that they have provided a cross walk through the drive-thru lane, which will facilitate access to the building from the westerly parking area. In addition, as identified in Consideration No. 3, they will be providing obscure glass for two of the windows on the westerly façade of the coffee shop as that area within the building is the coffee shop kitchen/ prep area. Relative to the consideration for a sidewalk along the front property line, Mr. Cropper noted that the existing sidewalk is within the State Highway right-of-way, and the sidewalk requirement has been waived for other developments within the Seaside Village commercial development. Regarding a second loading space, Mr. Iott stated that the coffee space tenant will have loading within the very early hours when the other tenants are not occupied. If needed, a truck could pull into the parallel spaces to unload. Regarding the requirement for foundation plantings along the rear (north) of the buildings, the applicants do not think that it is necessary, because they will be providing additional landscaping along the northerly perimeter property line. They noted that while the landscaping does not provide screening, similar waivers have been granted to the commercial projects within the Seaside Village development. Ms. Ott inquired whether landscaping was all that was being provided to separate the commercial uses from the residential townhouses to the north. Mr. Iott said that they will be providing a fence along the property line between the commercial and the residential uses.

Mr. Knerr asked about the loading space. He noted that per the applicants' testimony, the deliveries would only be in the early morning hours, but Mr. Knerr stated that they have other tenants that could receive Fed-Ex, UPS, etc. deliveries throughout the day. Mr. Iott stated that daytime deliveries will have to be restricted to parking in the proposed loading space, and the owner could enforce that requirement.

Relative to the sidewalk discussion, the staff noted that there is a sidewalk that exists at the southwesterly corner of this parcel at the intersection of US Route 50 and Inlet Isle Lane that wraps around near to the service road entrance of the existing Hooper's restaurant. Mrs. Keener had concerns about the safety of pedestrians trying to get from that public sidewalk in the right-of-way to the development. Pedestrians would either walk along the service road, or along Inlet Isle Lane, neither of which is safe. Mr. Cropper noted that the sidewalk was waived for the Seaside Village developments; however they had a large ditch between the sidewalk in the right-of-way that was inaccessible without a bridge. This property does not have that same issue.

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

1. The Planning Commission granted a waiver to Items 1 through 7, with the following exception: the pedestrian sidewalk shall be extended from what is currently located at the intersection of US Route 50 and Inlet Isle Lane. The sidewalk shall connect to the internal circulation of the development.

#### **IV. Map Amendment – Case No. 419**

As the next item of business, the Planning Commission reviewed a proposed map amendment identified as Rezoning Case No. 419 consisting of 6.0 acres, Tax Map 55, part of Parcel 22. The request is to change the zoning from A-1 Agricultural District to C-2 General Commercial District. Hugh Cropper, IV, Esquire, attorney was present for the review. Mr. Cropper stated that there were two amendments to the request that he needed to make. The first is that the property owner has changed to Mallard Landing, LLC, represented by Anthony Matarese. The second is that they wish to remove 1.3 acres from the requested rezoning. That portion represents the area that is located within the Critical Area Resource Conservation Area (RCA). Therefore, the total area being requested for rezoning will consist of approximately 4.7 acres.

Mr. Cropper then noted that his testimony will focus solely on a mistake, rather than both mistake and change in the character of the neighborhood, as he had outlined in his submittal. He introduced Chris McCabe, a consultant. Mr. McCabe stated that this building was originally an office for Holly Farms poultry operation, and then became a retail liquor store for the former Department of Liquor Control. Submitted as Applicant's Exhibit No. 1 was a copy of the permit package for Permit No. 14296, which was a permit for the construction of the original office building.

Mr. Cropper stated that a mistake was made during the 2009 Comprehensive Rezoning, as this area should have been commercial so it would be consistent with the historical use of the building. He noted that this property is located within the Agricultural Land Use category on the Land Use Map in the Comprehensive Plan. He said that the land use map is a broad brush approach, and should not be used as a specific parcel layer analysis. Mr. Cropper noted that there is commercial land use and zoning on the opposite side of the street, which runs all the way into Snow Hill. Mr. McCabe noted that the soils were well drained, and that portion of the current rezoning request is outside of the Critical Area. Mr. McCabe stated that the Critical Area Commission will allow the property owner to utilize the existing driveway that runs through the Critical Area for any future commercial uses. Mrs. Wimbrow confirmed that would be acceptable for zoning as well.

Gregory Wilkins, surveyor, did the survey work for the property and concurred with Mr. McCabe's testimony. Mr. Cropper asked Mr. McCabe about the property to the west of the subject property. Mr. McCabe stated that it is the State Highway Administration (SHA) office and yard, which is currently zoned RP Resource Protection District and is also in RCA. Mr. McCabe confirmed that the SHA yard was shown on the 1988 aerial, as well as the building on the subject property. The aerial photograph was submitted as Applicant's Exhibit No. 2.

Relating to population change, Mr. Cropper noted that there is no significant change in the population. He stated that the comments from Bob Mitchell, Director of the Department of Environmental Programs noted that the building was served by on-site septic with a capacity of 600 gallons per day, and that was sufficient for the former office use and retail liquor store. Mr. Cropper stated that this property is located at a major intersection in Worcester County with an

existing access road. The comments provided by the State Highway Administration only pertained to future consideration of any redevelopment or upgrades requiring SHA review. Mr. Cropper recalled when this property was used as a poultry operation, and it had significant truck traffic, more so than an office building use. With regard to compatibility with existing and proposed development, Mr. Cropper stated that this property abuts the SHA yard to the west, to the north and east are the remaining lands of the applicant, along with US Route 113 (Worcester Highway), and the properties to the south are commercial. Mr. Cropper again stated that the Comprehensive Plan's Land Use Map is a broad brush approach and that this property is truly commercial and should be used as such. Mr. Cropper then said that a change in zoning is more desirable with respect to the Comprehensive Plan. Mr. Wilkins said that with respect to the traffic circulation, he doesn't see any significant impacts on present or future transportation patterns. Mr. Cropper said that there are no impacts on any environmental conditions. He noted that the current property owner is not operating the poultry farm at this time.

Mr. Diffendal asked how they would define the 4.7 acres that were part of this request. Mr. Cropper stated that if the rezoning were approved by the County Commissioners, Mr. Wilkins will prepare a metes and bounds legal description.

The Planning Commission then discussed each one of the findings to determine whether they had a consensus. They were as follows:

1. With respect to the definition of the neighborhood, they noted that Mr. Cropper had amended his argument to be solely decided on the basis of mistake. Therefore no definition of the neighborhood is required.
2. With respect to the Planning Commission's concurrence with the definition of the neighborhood, this item is not applicable.
3. Relating to population change, the Planning Commission finds that there is no change in population.
4. Relating to the availability of public facilities, the Planning Commission finds that public facilities are in place (police and fire service) and have served this area since the building was constructed in 1988.
5. Relating to present and future transportation patterns, the Planning Commission finds that there is no change, nor would future commercial uses have an impact on future transportation patterns.
6. Relating to compatibility with existing and proposed development, and environmental conditions in the area, the Planning Commission finds that the commercial zoning and uses would be compatible.
7. Relating to compatibility with the Comprehensive Plan, the Planning Commission finds that it will be more compatible if rezoned to C-2 General Commercial District.
8. Relative to the consideration of whether there has been a substantial change in the character of the neighborhood since the last Comprehensive Rezoning, the Planning Commission determined that there was a mistake made in 2009, and the applicant is not arguing for a change in the character of the neighborhood.

9. Relative to whether the change would be more desirable in terms of the Comprehensive Plan, the Planning Commission found that the rezoning of the property to C-2 General Commercial District is more desirable, with the caveat that should the rezoning be approved by the Worcester County Commissioners, the applicant shall provide a legal description of the 4.7 acres.

Following the discussion, a motion was made by Mr. Barbierri, seconded by Mr. Knerr and carried 6 to 1 with Mr. Clayville opposed to find the map amendment consistent with the Comprehensive Plan and forward provide a favorable recommendation to the Worcester County Commissioners based on the findings as previously outlined.

#### **V. Sectional Map Amendment – McAllister Road/ MD Route 589 Corridor**

As the next item of business, the Planning Commission reviewed a Sectional Map Amendment discussion on the McAllister Road/ MD Route 589 Corridor. Mr. Mark Cropper had provided the Planning Commission with a letter dated June 21, 2018 relative to his five individual rezoning applications, and discussion of the sectional rezoning currently before the Planning Commission. Staff had prepared a response memo to this letter, which was also provided to the Planning Commission. Mr. Diffendal offered Mr. Cropper the chance to address the Planning Commission with respect to his letter and the staff's response.

Mr. Cropper stated that he does not agree with the staff's legal opinions, and he believes that a rezoning to a commercial designation could be upheld on appeal to the higher courts on the basis of the definition of the neighborhood and its changes in character. The change in the neighborhood is the same argument provide for the previous cases (Rezoning Case Nos. 392 and 396), and was approved by the County Commissioners to be rezoned to commercial. Unless something dramatic has happened since then, he argued that is the defined neighborhood, which must be applied to his five cases as well. Mr. Cropper stated that the E-1 Estate District must be eliminated, and to rezone them to R-1 Rural Residential District is to rezone them just another residential zone, while he has five property owners arguing that it should be commercial. Mr. Cropper stated that these properties were purchased and utilized residentially long before the casino was developed into what it was, back when MD Route 589 was a two lane road. These property owners have the most intense development in Worcester County located right across the road from them. Overall, he stated that fairness is a huge issue in zoning, and he thinks that the zoning should be consistent with the change that has occurred in the neighborhood. He discussed the lack of road improvements on MD Route 589 in front of the previously approved cases, whereas the properties in question have a built-in service road. Therefore, they are starting with a road system that is massively improved compared to those other properties, with more improvements to come. Mr. Cropper maintained that when you compare the differences between the two areas, you cannot possibly argue that these properties are not as impacted by the casino than the other.

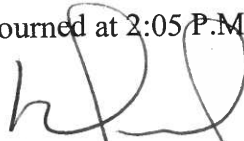
Mr. Knerr inquired why one would argue to add more commercial uses and traffic to a highway that Mr. Cropper has testified as being already highly impacted? Mr. Cropper stated that as part of any site plan approval, the property owners expect to have to build and pay for additional road improvements.

Mr. Diffendal asked the staff about the policy of meeting in a closed session to get legal advice. Ms. Howarth stated that is something that should be scheduled on the agenda. Mr. Clayville said that he thinks the discussion should occur in open session. The Planning Commission generally had a consensus to schedule a closed session meeting for the first meeting in August.

#### **VI. Miscellaneous**

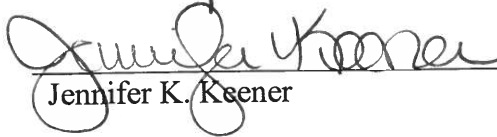
Mr. Tudor noted that the Worcester County Commissioners have scheduled the South Point Corridor Sectional Rezoning public hearing for 10:30 am on Tuesday, August 7, 2018. He encouraged the members of the Planning Commission to attend.

**VII. Adjourn** – The Planning Commission adjourned at 2:05 P.M.



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Mike Diffendal, Secretary pro tem



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Jennifer K. Keener