

Meeting Date: April 6, 2023

Time: 1:00 P.M.

Location: Worcester County Government Office Building, Room 1102

Attendance:

Planning Commission

Jerry Barbierrri, Chair
Mary Knight, Secretary
Ken Church
Marlene Ott
Betty Smith
Rick Wells
Phyllis Wimbrow

Staff

Jennifer Keener, Director, DRP
Kristen M. Tremblay, Zoning Administrator
Stu White, DRP Specialist
Roscoe Leslie, County Attorney
Bob Mitchell, Director, Environmental Programs

I. Call to Order

II. Administrative Matters

A. Review and approval of minutes, February 2, 2023

As the first item of business, the Planning Commission reviewed the minutes of the February 2, 2023 meeting.

A motion was made by Ms. Ott, seconded by Ms. Knight, and carried unanimously with Ms. Wimbrow abstaining from the vote.

B. Board of Zoning Appeals Agendas, April 13, 2023 and April 19, 2023

As the next item of business, the Planning Commission reviewed the agenda for the Board of Zoning Appeals meetings scheduled for April 13, 2023 and April 19, 2023. Ms. Tremblay was present for the review to answer questions and address concerns of the Planning Commission. Mr. Barbierrri expressed concern regarding fire separation distances between the proposed park model campers associated with the Board of Zoning Appeals cases 23-22 – 23-29. Discussion between the Planning Commissioners continued with regard to the small site sizes and the request for variances to accommodate park model campers. Hugh Cropper, IV added that the request for a variance was justified as the proposal is simply to replace existing park model campers with new models. The Planning Commission requested a letter to be drafted to the Board of Zoning Appeals indicating their concerns.

C. Technical Review Committee Agenda, April 12, 2023

As the next item of business, the Planning Commission reviewed the agenda for the Technical Review Committee meeting scheduled for February 8, 2023. Ms. Tremblay was present for the review to answer questions and address concerns of the Planning Commission. No comments were forwarded to the Committee.

III. Draft Land Preservation, Parks and Recreation Plan

Land Preservation, Parks and Recreation Plan (LPPRP) Public Hearing

Bob Mitchell, Director, Environmental Programs, introduced Katherine Munson, Planner (Environmental Programs) and Kelly Rados and Jacob Stephens (Recreation and Parks Department). Katherine Munson introduced the purpose of the hearing and the drafted plan and presented a summary of Chapters 1, 3 and 4. Kelly Rados summarized Chapter 3.

The purpose of the LPPRP is to provide an update of the previous plan, compiling public feedback, analysis, inventory and recommended goals and strategies for parks, recreation, and protected land. This plan is required every five years as a prerequisite for participation in Program Open Space.

Chapter 1 contains updated information about the county's major economic drivers, population and land use/cover. Chapter 2 addresses recreation and parks, including accomplishments in county and town parks, inventory of parks, community survey results, proximity and park equity analysis, funding priorities and capital improvement plan. Chapter 3 addresses "other protected lands" and Chapter 4, agricultural land preservation.

Following the presentation on the content of the plan, Chair, Jerry Barbierri, opened the public comment period. Jacklyn Grinrod of Henry Rd, Germantown area, stated that Germantown is a historic and cultural area, and she wants steps to be taken to preserve that along with its natural value. She said forest around the Germantown area is surrounded by contiguous forest which is owned by many people, she wants to see that area preserved. She stated Maryland the Beautiful Act, if passed, would be a source of funding for land trusts.

Chair, Jerry Barbierri, closed the floor for public comments. He acknowledged written comment received from Jackie Kurtz of 1B Canvasback Court, who stated support for longer distance trails connecting destinations, as well as a skate track in Berlin and accessible playground in Ocean Pines. Written comment was also received from Mayor Zack Tyndall, updating the town's Capital Improvement Plan.

The Planning Commission reviewed the proposed addenda. Most of the addenda were proposed in response to state comments, that were also provided to the Planning Commission. Most of the addenda were to clarify, and in a few instances correct, minor errors in the text.

The most significant changes proposed were:

Chapter 2

- Update on MDOT Bikeways grant: Route 611.
- New map showing regional shared use path network.
- Minor clarifications/additions: staff input; analyses discussion; goals discussion.
- Capital Improvement Plan (CIP)— Expand CIP to include information from municipalities.
- Clarifications connecting the CIP to the proximity analysis and public input.

Chapter 3

- Revisions to Table 3 adding more information about some protected lands.
- New Appendix IV GIS data.

Chapter 4

- Revised Figure 4-1 (map) to add public lands.
- Add discussion about strengths and deficiencies, planned strategies and actions.

Kelly Rados and other staff provided the following information in response to questions from the Planning Commission:

- Outline of the various ways the Recreation and Parks Department publicizes events.
- An explanation of the areas of “low equity” in Pocomoke City and Berlin: mainly that Route 113/13 is a barrier for pedestrian access to Berlin & Pocomoke parks for people in low income parts of these towns.
- The railroad is active from Pocomoke City to the state line. If there were to be a bike path added here it would be adjacent/parallel to this.
- Timeframe of acquisition of 20 acres of land for more ball fields (Lion’s Club property in Berlin): this should occur in the next fiscal year.

Phyllis Wimbrow noted that the plan suggests that Sussex County’s extensive residential development seems to be impacting the County’s parks; many Delaware groups appear to using Worcester County parks and boat ramps.

Chair, Jerry Barbierri made the motion to recommend adoption of the plan to the County Commissioners, with the addenda recommended by staff and the updated CIP information provided by the Town of Berlin. The motion was seconded by Betty Smith and approval was unanimous.

IV. Rezoning

As the next item of business, the Planning Commission reviewed Rezoning Case No. 441 – Tax Map 26, Parcel 445, Lot 1B, 3.29 acres, C-2 General Commercial District to R-4 General Residential District, located on the easterly side of Stephen Decatur Highway, approximately 450 feet south of Sunset Avenue.

Hugh Cropper, IV, Gregory Wilkins, surveyor, and Steve Engel, engineer, were present for the review. Mr. Cropper stated the property was owned by Mr. Jack Burbage for years, until Mr. Islam purchased it recently. Mr. Cropper added that the property was used as a material storage yard recently, but nothing else for many years.

Mr. Cropper stated that the application was originally based on both a mistake in Zoning designation and a change in the character of the neighborhood. He added that based on feedback in the staff report, that he is not proceeding with the mistake argument, and that he has further refined the defined neighborhood. He added that as a result, it is now more consistent with the Comprehensive Plan. Mr. Cropper then handed out Exhibit No. 1, a separate land use map from the staff packet.

Mr. Cropper introduced Gregory Wilkins, land surveyor and handed out Applicant's Exhibit No. 2, the Land Use Map of the petitioned area prepared by the DRP and included in the staff report. Mr. Wilkins reviewed Exhibit No. 2 and agreed that the requested zoning is consistent with the Existing Developed Area (EDA) land use designation. Mr. Cropper submitted Applicant's Exhibit No. 3, consisting of Pages 13 and 14 from the 2006 Comprehensive Plan. Mr. Wilkins reviewed the underlined passage on EDAs and agreed that the proposed R-4 zoning would be the best fit with the description of the infill. Mr. Cropper described the adjacency of several large subdivisions that are also in the area and within the defined neighborhood. He also referenced Sea Oaks Village, though acknowledged that it is not in the EDA land use designation.

Relative to the definition of the neighborhood, Mr. Cropper stated that he has amended the neighborhood so that the southerly boundary is the Frontier Town campground. It is the same defined neighborhood used in the Frontier Town rezoning case (No. 395) where he had requested a down-zoning of twenty acres from C-2 General Commercial District to A-

2 Agricultural District. He noted that it also generally conforms to the Mystic Harbour sanitary service area.

Submitted as Applicant's Exhibit No. 4 was Resolution No. 17-19 which established an allocation process for the sale of Equivalent Dwelling Units (EDUs) in the Mystic Harbour Sanitary Service Area, constituting a change in the character of the neighborhood. Mr. Cropper listed many other properties that are in the defined neighborhood that were able to connect into the service area, as illustrated in the allocation chart on page 5 of 6 of the exhibit.

Mr. Cropper then stated that the development of the mixed-use project known as Sea Oaks Village Residential Planned Community constituted a change in the character of the neighborhood. Submitted as Applicant's Exhibit No. 5 was the draft County Commissioner's Findings of Fact and Resolution for the amended Sea Oaks Village RPC Step I from June 2022. He argued that the 134 new residential units and commercial development were authorized by the service of Mystic Harbour EDUs. He referenced pages 8-6 of the exhibit, where it references in the Comprehensive Plan that sewer service is one of the county's most powerful growth management tools. Therefore, he concluded that the provision of sewer constituted a change in the character of the neighborhood.

Mr. Cropper stated that the property is in the Intensely Developed Area (IDA) of the Atlantic Coastal Bays Critical Area. According to Mr. Bob Mitchell's staff report, the purpose and intent section of the R-4 District, noting that the proposed zoning would allow for compatible infill development. It is completely surrounded by EDA, and abuts other R-4 zoned properties. Mr. Cropper referenced the zoning map included in the staff report which illustrates the 'finger' strip of C-2 General Commercial District zoning where the subject property is located. It would be eliminated if the amendment is passed.

Mr. Cropper then introduce Steve Engel, landscape architect and designer for the proposed project. Mr. Engel confirmed that he was asked to prepare a residential site plan for the property conforming with the R-4 zoning district. He agreed there were no issues, environmental conditions or constraints with a proposed residential development on the parcel.

With respect to the consideration of any population changes in the neighborhood, Mr. Cropper stated that the population has been fairly steady, with a small increase in residential population in several small developments, with the largest population change being within the Sea Oaks Village RPC.

With respect to the availability of public facilities, Mr. Cropper stated that the property is currently allocated twenty water and sewer EDUs from the Mystic Harbour Sanitary Service Area with direct access to utilities. He further stated that the property has access onto MD Route 611 (Stephen Decatur Highway) and would not cause any negative transportation patterns. He stated that this type of development would have less of an impact than the formerly proposed 42,000 square foot retail development.

With respect to the compatibility with existing and proposed development, and environmental conditions in the area, Mr. Cropper stated that this property would constitute a logical extension of the Mystic Harbour subdivision. As previously stated, there are no environmental conditions that warrant concern; Maryland Department of the Environment (MDE) has walked the property and is not taking jurisdiction over any wetlands, and there are no impacts on waterbodies or TMDL requirements. He further suggested that this project would be more environmentally friendly than 42,000 square feet of commercial development with its associated site improvements.

In response to a question from the Planning Commission, Mr. Engel confirmed that the R-4 density is eight units per net acre and that they have estimated twenty residential units would be included in the first phase. Mr. Cropper stated that there is some commercial land use designation included in his defined neighborhood, but that it is mostly considered non-conforming because it is developed with a high-density residential use (Sunset Village). Mrs. Wimbrow stated that she believes that EDAs refer to both residential and commercial uses, however she doesn't have an issue with the requested zoning. She does think that the defined neighborhood should be scaled down, and include properties on both sides of MD Route 611, as that ties the neighborhood together. She concurred that the availability of public sewer is a change to the area because it allowed the development of properties that previously were unable to be developed. She also stated that there were other rezoning's in the larger area outside the neighborhood that offset the change from residential to commercial, such as near the commercial harbor.

Next, the Findings of Fact were discussed with the following results:

PLANNING COMMISSION'S FINDINGS AND CONCLUSIONS

- A. **Regarding the definition of the neighborhood:** The Planning Commission concurred with Mr. Cropper's *amended* definition of the neighborhood as illustrated on Applicant's Exhibit No. 1.
- B. **Regarding population change:** The Planning Commission concluded that there has been only a modest increase in population within the neighborhood of the

petitioned area since the comprehensive rezoning of 2009.

- C. **Regarding availability of public facilities:** The Planning Commission found that there would be no impact upon public facilities as it pertains to wastewater disposal and the provision of potable water, as the parcel has twenty EDUs of water and sewer allocated to it from the Mystic Harbour sanitary service area. The petitioned area has utility access and direct access onto MD Route 611 (Stephen Decatur Highway). No comments were received from the local fire companies, the Worcester Sheriff's Office, nor the Maryland State Police to indicate any negative impact on fire, EMS or police coverage. In addition, no comments were received from the Worcester County Board of Education relative to the potential increase in attendance within the school system. In consideration of its review, the Planning Commission found that there will be no negative impacts to public facilities and services resulting from the proposed rezoning, and the site will be subject to the availability of public water and wastewater as well as the Critical Area regulations.
- D. **Regarding present and future transportation patterns:** The Planning Commission found that the petitioned area fronts on MD Route 611 (Stephen Decatur Highway), a State-owned and -maintained roadway. Any potential development would be subject to Maryland Department of Transportation State Highway Administration (MDOT SHA) review and approval. Based upon its review, the Planning Commission concurred with Mr. Cropper's argument that any traffic impacts for a proposed residential development would be significantly less than for a commercial development in the C-2 General Commercial District. Therefore, the Planning Commission found that there will be no negative impact to the transportation patterns arising from the proposed rezoning of the petitioned area.
- E. **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 Planning Commission found that the petitioned area is currently vacant but previously disturbed. Based upon Maryland Department of the Environment's review of the parcel, there are no significant environmental impacts to waters on the State's impaired waters list or those having an established total maximum daily load requirement. Additionally, the Planning Commission agreed that the petitioned area constitutes infill development, with residential uses and requisite open space being more environmentally friendly than a large-scale commercial development. Based upon

its review, the Planning Commission found that the proposed rezoning of the petitioned area from C-2 General Commercial District to R-4 General Residential District is compatible with existing and proposed development and existing environmental conditions in the area.

- F. **Regarding compatibility with the Comprehensive Plan:** The Planning Commission found that according to the Comprehensive Plan and associated land use plan map, the petitioned area lies within the Existing Developed Areas (EDA) Land Use category within the Comprehensive Plan. Therefore, rezoning the petitioned area would further its compatibility with the Comprehensive Plan with respect to providing compatible infill development and protect the existing residential neighborhoods. Based upon its review, the Planning Commission found that the proposed rezoning of the petitioned area from C-2 General Commercial District to R-4 General Residential District is compatible with the Comprehensive Plan and in keeping with its goals and objectives.

Following the discussion, a motion was made by Mr. Church and seconded by Ms. Knight and carried unanimously to make a recommendation of favor for the proposed rezoning.

V. **Text Amendment**

As the next item of business, the Planning Commission reviewed a proposal to revise §ZS 1-202(c)(42) - Separation Distances for Commercial Non-Agricultural Functions in Agricultural Structures and Lands in the A-2 Agricultural District.

Mr. Mark Cropper and his client, Paul Carlotta, were present for the review. Mr. Cropper stated that he was instrumental in the development of the existing section of the code that he is now seeking to amend. While the proposed text amendment is not site specific, his client has a farm in the A-2 Agricultural District and this separation distance would apply to his personal residence on an adjacent lot.

First, Mr. Cropper stated that he doesn't recall any concerns during the initial discussion relative to the separation issue if the neighboring property is also owned by the individual to which the separation distance is applied. Mr. Cropper stated that the separation distance requirement does not make sense if it is the same owner.

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Second, Mr. Cropper stated that the 500-foot separation distance was an arbitrary number and that it was not tied to any logical distance or requirement.

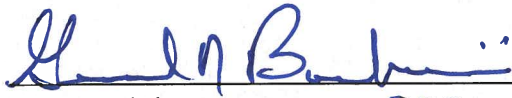
Third, he is not proposing to eliminate the requirement, only establish a special exception provision in which the Board of Zoning Appeals would have the authority to reduce the distance on a case-by-case basis at a duly advertised public hearing. The proposed amendment is enabling legislation that will allow a farm owner to seek the reduction; it will be left to the neighbors or affected property owners to show up for or against the request, and the board to decide whether to lessen the requirement.

Following the discussion, the board made a unanimous favorable recommendation for the amendment as submitted.

VI. Miscellaneous

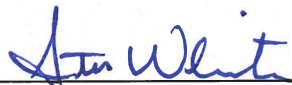
Mary Knight volunteered to assume Mr. Brooks Clayville's role as Planning Commission Representative to the Technical Review Committee.

VII. Adjourn – A motion to adjourn was made by Ms. Knight and seconded by Ms. Smith.



Mary Knight, Secretary

JERRY BARBIERRI, CHAIR



Stuart White, DRP Specialist