

MINUTES OF A MEETING OF THE PLANNING COMMISSION
TUESDAY, JANUARY 15TH, 2019

PRESENT: Chairman Rob Maricle, Vice Chairman David Parmelee, Rico Aiello, Doug Moore, Steve Jamison, Carvel Wright, Mayor and Council Liaison Rick Byrd

Staff Member(s): Town Planner / Zoning Administrator Ethan Strickler, Town Manager Paul Mantello

PRESIDING: Chairman Maricle called the meeting to order at 7:35 p.m.

APPROVAL OF MINUTES

Rob Maricle asked the commission if they had any questions or comments on the December 18th minutes for both the Public Hearing and Regular Meeting. Strickler stated that he included the Public Hearing minutes, Public Comments, and Regular Meeting Minutes. The minutes from December 18th, 2018 were approved as presented.

UNFINISHED BUSINESS

EASTERDAY ZONING MAP AMENDMENT REQUEST BNRZ18-01(Rev)

Town Planner Strickler gave a presentation and overview concerning the developer's (Easterday Land Development LLC and Preserve at Fox Gap LLC) Annexation Agreement and Amendments to Annexation Agreement to the Planning Commission. Strickler noted that the property in question was annexed into the Town with three zoning classifications, GC, MR, and TR, the same that it has today. However, he did note that Land Bay 1, which represents the north and east portion of the property, was considered for either TR or SR zoning at the time the property was annexed. This area of the property is surrounded by the County (bordered on three sides).

The original Annexation Agreement gave the Town several rights in terms of controlling density on the property. According to the agreement, the area zoned General Commercial only has to be developed in accordance with Town Ordinances, Standards, and Specifications, meaning there are no additional conditions placed upon this area of the property. The remaining portions of the property, however, require the developer to ask the Town's permission to submit any proposal for residential development, and that request must be approved, by resolution, by the Mayor & Council of Boonsboro. The density of any development on the property is controlled, as usual, by available public utility capacity. Other rights the Town has in the original Annexation Agreement is to require a contribution to Warrior Boulevard by amendment, to require additional traffic studies, to require school capacity studies, to impose a moratorium, to issue a work stop (by resolution), to require reimbursement for outside engineering costs the Town may incur, and to control the issuance of building permits for residential development.

Strickler noted that the original annexation agreement did not set a dollar amount on the cost of taps, but simply stated that the 40 EDUs the property owner could use for Commercial Development would cost the current rate (monetary consideration) of water and sewer benefit charges. He noted this issue would come up with the BMUC in the near future because the BMUC has a rate study in hand that suggests a rate increase. In order to get any allocation, the developer would need site plan approval, the completion of the state highway improvements, and need to follow all other Town ordinances. Strickler noted that the original annexation agreement was both severable and intended to run with the land, meaning any future landowner would be subject to the agreement.

Strickler then spoke about the two amendments to annexation agreement that were written and signed in early 2009. The first amendment provided for 20 residential sewer taps that would be developer owned upon completion of payment for the taps and provided that there would be no default. The payments were not completed and therefore the agreement was in default, meaning that an additional 113 residential sewer taps were no longer available to be allocated to the developer. The first agreement set a price of \$11,000.00 per sewer tap. The sewer taps purchased under the agreement were meant to be valid for a period of 10 years. The ten year period ends on March 2nd, 2019. A Default in this (first) agreement occurred, and default or no default the taps purchased under this agreement expire as of March 2nd, 2019. In the event of a Default, the right to purchase sewer taps is suspended until the Default is cured, and if not cured within 30 days, the right to purchase sewer taps is revoked. It has been over 6 years since there was a Default in the agreement, and therefore, the agreements, as written, give the developer no right to purchase residential sewer taps from the Town. The agreement also states that the Town has no further obligation to allocate sewer taps to the developer because of the Default.

Strickler showed the Commission the latest payment schedule update for the developer, updated in August of 2013, which showed the developer, at that time, was behind on payments for tap fees by \$332,875.89. This figure did not include late fees nor attorney fees. The agreement has Confession of Judgement, Late Payment, and Water Tap sections which provide more details into the terms and conditions of the agreement. Planner Strickler noted that the second amendment has the same terms and conditions as the first agreement, but is for 20 additional taps.

Discussion after the presentation began with how much the developer had paid in tap fees (approximately \$92,000 for 8 residential sewer taps), and the last time the developer made a payment (2010). Strickler noted that the annexation agreements and the map amendment request are two totally separate issues.

Town Planner Strickler again went over the process for a map amendment request, noted how the planning commission was to provide a recommendation to the Mayor & Council (approve or deny), and noted that their recommendation would be taken very seriously by the Mayor & Council. He spoke about the applicant's argument for the zoning map amendment request, smart growth and smart neighborhood principles, and proposing lower residential density on other portions of the property. He spoke about the concerns raised during the public hearing and public comment periods, and that many of the concerns would be addressed during the development review phase as opposed to the map amendment request because they cannot be conditioned as a part of any approvals or denials of the request. He noted that the Annexation Agreement and Amendments should be taken into account, but that they are separate, as an issue, from the map amendment request.

The Town Planner provided his recommendation, that he recommends approval of the map amendment request based upon a mistake in the existing zoning classification with the supporting argument of the lack of a smart neighborhood overlay zone and the map amendment request allowing for smart neighborhood principles to take shape on the property. He noted that conditions should be considered in this approval of the map amendment request. He also recommended that any residential development on this property would be tightly managed and controlled by the Town, and be subject to the original annexation agreement, which provides strong development controls and does not set a rate schedule for utility benefit charges. He recommended that the original annexation agreement stay intact, and that the amendments to annexation agreement be reviewed by the Mayor & Council to see if they are still legitimate. He also noted that future development review should take into account the dedication of public parks, landscape buffers, close development controls, limitations on the number of units, and rezoning other portions of the property for lower density development. Strickler stated that the only way to be sure that no higher density would occur on the overall property would be to rezone these other portions of the property to a lower residential density. He stated the Town could do this on its own through a piecemeal rezoning or through a comprehensive rezoning.

Rico Aiello asked if the Town could add smart growth provisions to the rezoning approval. Strickler stated that you could, but because the Town has no law about smart growth or smart neighborhoods the condition would have no binding effect and therefore would not be enforceable.

David Parmelee stated that his concerns were that the conditioned approvals were not enforceable enough, and stated that he thought that the applicant needed to bring the original annexation agreement and amendments out of default as a condition of approval for the map amendment request. Doug Moore indicated his support. Discussions continued about the annexation agreement and amendments, including about the default and the developer's right to purchase sewer taps. It was noted that these issues would likely be addressed in more detail by the BMUC and Mayor & Council. Carvel asked when the original Default occurred, and Rob Maricle responded by looking at the spreadsheet and noting the last payment was in October of 2010. Strickler noted the last Default or Late Payment letter was sent to the developer in late 2012.

Rob Maricle noted the issues at hand were 1) the Default, 2) prevailing tap rates, 3) surrounding resident concerns, 4) remaining land use, 5) zoning of remaining lands, and 6) the amount of money that has been spent on tap fees and the development of the property thus far. Ed Kuczynski, at the meeting on behalf of the developer, suggested that a conversation needed to take place between the Town and the Developer at the negotiating table with respect to the annexation agreement and amendments. He stated that conditional zoning map amendments were difficult to support. The Planning Commission discussed recommending that the Mayor & Council address the developer's annexation agreement and annexation agreement amendments. The group continued on the discussion of the separate nature of the two issues; 1) the annexation agreement and amendments and 2) the map amendment request.

Rob Maricle spoke about how the developer has indicated the remaining lands will not be developed any time soon, and that if the Town leaves the zoning on those areas of the property as is then the developer or someone they sell the property to could always develop that property at a later time. He then recommended that the zoning map amendment request be amended to take into account the additional lands. He stated a new request needed to be put in to account for these lands. Town Planner Strickler stated that the Town has the power to rezone those lands on their own. Maricle stated that the concern is that the map amendment request can be used to increase the overall density on the property, and that he would recommend to rezone, at a lower density, other portions of the property not directly addressed by the applicant's

request. Strickler stated that, to protect the Town from higher density on the property in the long run, the Town has the ability to rezone the other portions of the property to a lower density.

Strickler stated that any approval must either be for the mistake or change in the neighborhood clause. He stated that a separate recommendation would be necessary for rezoning the other portions of the property to a lower residential density.

The motion was made to approve the applicant's zoning map amendment request based upon a mistake in the original zoning classification, with the additional recommendation that the Town amend the zoning map for the property's remaining lands to a lower residential density based upon smart growth and smart neighborhood concepts in order to not create more overall density on the property. The motion noted that the property and the Planning Commission's recommendation were subject to the applicant's original annexation agreement between the Mayor & Council of Boonsboro and the Easterday's dated December 28th, 2006 as amended. Carvel Wright made the motion, David Parmelee seconded the motion, and the motion passed unanimously.

The Town Planner then noted that if the Planning Commission wanted the Mayor & Council to address the annexation agreements and amendments that they can make a separate recommendation indicating so. The Commission entertained a motion and had a discussion. Ed Kuczynski stated that if the Planning Commission wanted to have their minutes reflect that the Town would not move forward with any development approvals until the Annexation Agreements were addressed, the Commission had the right to do so. The group discussed that the Town needs to actually pass an ordinance in order to officially change the zoning map.

Chairman Maricle then stated that he proposed an amendment to the first motion to reflect that the development in towards the center of the property would be developed according to smart growth principles, which would intensify that development area and therefore necessitate reducing the zoning density of the surrounding areas to balance that growth and density. David Parmelee motioned, Carvel Wright seconded, and the motion passed.

The Commission then stated that no further development of the property should occur until the Annexation Agreement and Amendments are discussed and resolved with the Town.

At the end of the agenda topic, Town Planner Strickler summarized the motions by stating that the approval is that the request is approved based upon a mistake in the existing zoning classification with the additional recommendation that the Town rezones remaining portions of the property to a lower residential density, with both actions and map amendment approval being based upon Smart Neighborhood Principles for Residential Development.

FLETCHER'S GROVE – Amended Concept Plan BNCP18-02(Rev)

Town Planner Strickler gave a brief summary on the official special exception form for Fletcher's Grove for single family detached dwellings and two-family duplex dwellings in the MR Zone. He stated he needed a formal recommendation from the commission to move their request forward to the Board of Zoning Appeals. Carvel Wright made a motion to recommend approval of the applicant's special exception request to have single family detached dwellings and two-family semi-detached dwellings in the MR Zone, David Parmelee seconded, and the motion passed unanimously. Town Planner Strickler let the commission know that the BZA meeting is scheduled for February 19th, 2019.

Strickler then stated that there are no dimensional requirements for two-family semi-detached dwellings in the MR zoning district (what was proposed by the developer in Dean South). He expressed the need to update our zoning ordinance to establish standards for this use in this zoning district. Strickler stated he could take the developer through the Request for Modification process if the Commission felt the need. Based upon previous discussions, Chairman Maricle stated that he felt like the commission could just move forward with the proposed setbacks and lot sizes. David Parmelee stated that the minimum lot size shown was 8,000 square feet not 4,000 square feet. The commission stated that, for this plan, they didn't feel the need to worry about it, and that they could move the proposed lot sizes and setbacks forward to the BZA for this plan and subsequently draft an ordinance to ensure the Town has requirements for any future similar development in that zone. It was suggested to look at SouthPointe in Hagerstown for design standards.

NEW BUSINESS

PLANNING AND ZONING UPDATES

Discussion and Recommendation on Scheduling Joint Meetings and/or Workshops with the BMUC and/or Mayor & Council

Town Planner Strickler proposed that the Planning Commission work out a schedule with the BMUC and Mayor & Council concerning joint meetings. David and Robert suggested that, once per quarter, the workshops take place before regularly scheduled meetings for the commissions. Rob suggested quarterly between the BMUC and PC, and semi-annually with the Mayor & Council. Strickler noted he would take this suggestion to both bodies in the near future.

Discussion and Recommendation on Scheduling a Planning Commission Workshop in early February for Ordinance and Policy Amendments

Strickler noted that there are two Tuesdays available for a potential workshop for the Planning Commission; February 5th and February 12th. The Commission settled on February 5th @ 7pm in the second floor conference room.

Other Development Updates – Sycamore Run Update, Fletcher’s Grove Update (February Board of Zoning Appeals – February 19th @ 7pm)

Strickler noted that King Road Associates submitted their request for Bond Reduction for Phase III of their development. He stated it would likely be on the March 2019 agenda. He stated that he had three new home permits for Sycamore Run. David Parmelee asked about where they were on their punchlists for Phase I and Phase II. Strickler expressed concern over the stormwater ponds in Sycamore Run.

Strickler let the commission know that he and the Mayor would be attending a meeting soon with Fletchers Grove and State Highway to ensure that the Town’s interest were taken into account with respect to the SHA access permit. The commission spoke briefly about the Fletchers Grove sign project.

February 2019 Regular Meeting – High’s of Baltimore: Site Plan Review

Strickler stated that High’s Convenience Store submitted a Site Plan that will be on the February agenda.

Planning Commission Vacancy (Update)

The commission stated that six weeks was enough time to field applications for the Planning Commission vacancy.

CITIZEN COMMENTS

A citizen asked if it was possible to conduct water studies for any future development on the Easterday property. Chairman Maricle stated that would be a good question for the BMUC. Tony Nally, their council liaison, was present. The citizen stated that she would have felt more comfortable if the Town had legal counsel at the meeting instead of the developer only having legal counsel. Chairman Maricle stated that the Town had received legal counsel over the issue previously. Strickler stated that Mr. Wantz asked if he needed to be at the meeting and that Paul Mantello and Strickler told him that they didn’t need him there. Mr. Wantz provided significant legal counsel to Town staff prior to the meeting.

Mary Ernst asked if the overall density of the property will go down, why was there a need to amend the zoning map and approve the request. Chairman Maricle and Strickler explained the lot size and potential home size issue, as well as re-zoning other portions of the property to a lower density. The approved re-zoning would further discourage development on environmentally sensitive areas.

COMMISSION MEMBER COMMENTS

None.

ADJOURN

Chairman Maricle declared the meeting adjourned at 9:07pm.

Respectfully submitted,

Ethan Strickler,
Town Planner / Zoning Administrator