

**Planning Commission  
MINUTES – Regular Meeting**

**January 11, 2017  
City of Hagerstown, Maryland**

---

Douglas S. Wright, Jr., chair, called the meeting to order at 7:00 p.m., on Wednesday, January 11, 2017, in the Council Chamber, Second Floor, City Hall. Also present were commission members R. Campbell, P. Corderman, D. Miller, J. Stone, R. Thomas (late), and J. Wheeler. The following staff members were present: K. Maher, Director of Planning and Code Administration; S. Bockmiller, Development Planner/Zoning Administrator; A. Rohrbaugh, Planner; and D. Calhoun, Secretary.

**Approval of Minutes:**

December 14, 2016 – Regular Meeting.

**MOTION:** (Miller/Campbell) I will make a motion to approve the minutes.

**DISCUSSION:** Ms. Wheeler recalled that Mr. Stone was not late. She also pointed out on page 4, the motion alludes to an outstanding comment concerning a dumpster enclosure; however, there is no discussion about a dumpster enclosure in the minutes preceding the motion. She asked that a link be added from the discussion that ties the dumpster enclosure into the condition in the motion. (Mr. Thomas arrived.) Mr. Miller and Ms. Campbell agreed to the corrections to the minutes. Staff will come back with clarification after reviewing the recording.

**ACTION:** APPROVED AS AMENDED (Unanimous)

**CortPark – 12804 Little Elliott Drive, Site Plan, Case No. ZS-2016-03;  
and Forest Conservation Plan, Case No. FC 2001-02.**

As they have in the past, Mr. Wright and Mr. Miller recused themselves from the discussion of this case. Mr. Stone, vice chair, presided over this portion of the meeting.

Staff Report: (Copy of staff report in meeting file) In response to a request by Mr. Stone, Mr. Bockmiller outlined the history of this case. The property was developed about 13 years ago with a site plan for an apartment complex consisting of 36 buildings with 12 three-bedroom apartments and a rental office, an activity building, and a pool. There is one point of access near the Weis grocery store. In order to meet fire access requirements a gravel emergency access off of Eastern Boulevard was constructed. There are large forest conservation easements on this site for the overall Cortland tract which includes the Villas and Cortland Manor.

The developer is proposing to convert one apartment unit and hallway space on the second and third floors of each building into a two-bedroom and a one-bedroom unit thereby increasing the

number of units by 72. Total number of units in the development will go from 432 to 504 units. Staff pointed out that the number of sleeping rooms will remain the same. Because of the proposed upgrades, the developer is required to bring the original site plan into compliance with current site plan requirements as much as possible. This development has a history of noncompliance with the original approved site plan which was approved under the standards that were in effect at the time approval.

Planning staff, the City Engineer, and the project engineer met to identify all remaining issues from the previous site plan and any deficiencies and items that have deteriorated on the site faster than normal expectancies. The items identified have been incorporated into this site plan. Due to the increase in the number of units, a second full point of access into the development will be required. The existing emergency access road will become a right-in-right-out on Eastern Boulevard. Two alternates were presented for the second access point: an S-curve design that would go through the forest conservation area or widening of the gravel emergency access road. The developer is proposing to widen the gravel road and build it to meet flood plain requirements, which will require a waterway construction permit from the Maryland Department of the Environment (MDE). Thirteen pipes are proposed to be installed under the new road to handle flood water, and the surface of the road will be above flood level.

As a result of the previously mentioned site walk, there are a number of improvements being proposed including the addition of trees, driveway improvements/renovations, conversion of the existing open drainage swales to closed swales, and extension of the sidewalk system to connect rear access doors on all but one of the buildings. The entrance on Eastern Boulevard will be a right-in-right-out; however, it will be designed to accommodate westbound emergency vehicles. Mr. Bockmiller entered into the record by reference a list from the staff report of 19 items around the development that will be either new installations, retrofits of existing features, or corrections of past violations that have been incorporated into the site plan.

The developer is asking for two waivers from the design standards. The first is a waiver from the requirement for street trees along Eastern Boulevard. Given that this area is adjacent to a 280-foot wide forest conservation area which has mostly grown up into woods since it was planted 12 years ago and the fact that the applicant has been cooperative with staff's request to add trees within the development, staff endorsed the waiver requests. A new public sidewalk is being installed from the YMCA west to Potomac Avenue which would place any new street trees behind the sidewalk and in front of the forest conservation area. The second waiver is for permission to install a row of evergreen trees along the front of a parking bay adjacent to the Cortland Villas portion of the development rather than spaced trees and shrubs as specified in the ordinance. Staff believes the evergreen trees will provide more buffering than the ordinance requirement.

A revision is proposed to the forest conservation plan which would relocate some of the planted area along the edges of the existing gravel emergency road to allow them the area necessary to construct the road. When original forest conservation plats were recorded, the forest conservation easement area extended into the City's street right-of-way on Eastern Boulevard by five feet. The five feet of easement within the right-of-way will be removed. No trees will be removed; it is only a correction to ensure the forest conservation easement boundary is correct. To offset that, the applicant is proposing a one-for-one swap for an area near the YMCA, which partially consists of trees, but some planting will be required. The total amount of easement area being removed is 0.43 acres and will be replaced with an equal amount of area (0.43 acres).

A concept plan was denied in July 2014 and a second concept plan was denied in October 2014. Subsequently an appeal was filed by the developer to Circuit Court. Based on the judge's guidance, a new concept plan was submitted that removed most of the amenities required by staff and was approved by the commission in August 2015. The design of the entrance onto Eastern Boulevard was presented to the Planning Commission in October 2015, and the Planning Commission permitted it to be added to the concept plan so the project could move on to the site plan stage.

The site plan was routed for review; all agencies have approved with the exception of the City Engineer, Water and Wastewater Divisions, and the Police Department. The City Engineer's concerns consist of a minor list of detail issues associated with the design of the Eastern Boulevard frontage improvements. The Water and Wastewater comments are subject to resolving a design issue related to the water vault that goes into the property. The Police Department comments centered on the site lighting in that there are still some areas that do not have adequate lighting. Mr. Bockmiller stated that currently the property is developed in such a way that the community is situated on two separate land condominium units. One of the Planning staff requirements is that a consolidation plat be recorded to convert the two parcels into one parcel. A consolidation plat is currently being reviewed by City agencies. Maryland Department of the Environment must also approve construction of the access road through a waterway construction permit.

Staff noted it had serious concerns regarding a plan for a 504-unit development with so few site amenities to meet the recreational needs of residents of the development. However, as directed by the Circuit Court, the amount of amenities cannot be considered in the commission's deliberations due to a defect in the code regarding those amenities standards. The proposed site plan is in substantial conformance with the concept plan approved by the Planning Commission in August 2015 as appended by the approval of the design of the access to Eastern Boulevard granted in October 2015. If completed in accordance with this plan, the proposed work will correct many of the problems incurred during the original construction and since the units have been occupied. Staff recommended approval of the site plan, the revised forest conservation plan, and the requested waivers subject to the following conditions:

- The applicant will resolve the remaining outstanding issues cited by the Water Division, Wastewater Division, the Hagerstown Police Department, and the City Engineer.
- No use and occupancy permits will be issued for the 13<sup>th</sup> and 14<sup>th</sup> units of any building until such time as the City Engineer and the Zoning Administrator have confirmed that all improvements and corrections cited in this site plan have been completed to their satisfaction. If the only remaining issue is the installation of landscaping as shown on this plan, use and occupancy permits may be provided if installation is being deferred due to a need to wait for an appropriate planting season, as long as the applicant provides a sufficient bond to guarantee the work will be completed.
- The Zoning Administrator shall not affix his signature to the site plan until the applicant has received their waterway construction permit from the Maryland Department of the Environment for construction in the floodplain.
- The Zoning Administrator shall not affix his signature to the site plan until the final plat abandoning the land condominium units has been recorded in the Land Records of Washington County, Maryland.

Commission/Applicant Discussion: Ms. Wheeler observed that the key item is the list of 19 items that have been incorporated into the site plan and how this development will positively move forward. She wanted to point out that since the original development of the site, the City has incorporated design criteria into the Land Management Code from lessons learned from the prior development of Cortpark. As a result of what happened with Cortpark, enforceable items were put in the ordinance to help prevent this from occurring again. Mr. Stone added that the commission did attempt to require a whole series of amenities in the first concept plan; however, the Circuit Court said the commission was wrong in doing so (due to a defect in the code), therefore, the commission must accept that result. Mr. Bockmiller stated that staff believes it is not advantageous for a development of this size not to have more recreational amenities. The items the commission can approve to improve the development (i.e., more trees, trenches filled in, masonry trash enclosures) will make a difference.

Ms. Wheeler recalled there was some discussion about trash enclosures. More units will create more wear and tear. Mr. Bockmiller stated that the developer did not install concrete approach pads to the trash enclosures so there are ruts where the trucks stop to empty the dumpsters. Concrete aprons are proposed to be added where the garbage trucks access the dumpsters. Also, when the original development was constructed, street signs were simply pushed into the ground and as a result many of them are askew. Street signs will now be anchored in concrete. Currently motorists are driving around speed bumps creating bare patches in the grass and efforts will be made to add barriers to prohibit that.

Mr. Thomas asked what could be done to guarantee that these items are taken care of in a timely fashion. Mr. Bockmiller stated that the developer will not receive occupancy permits for units

until all site improvements have been made. There is no specific time frame; however, the developer appears to be anxious to move forward.

Mr. Corderman stated he is concerned about the development and its impact on the north end of Hagerstown. Ms. Wheeler noted that police reports show that calls for service have gone down since the new property manager took over a year ago. She believed that progress is being made. Mr. Corderman cited instances of Lowe’s customers being held up and other crimes in the neighborhood. He stated he will do everything he can do to not approve this. It is already out of control and will perpetuate the disarray that has been occurring. Mr. Stone noted that commission members have the same concern; however, the commission’s job under the ordinance is to review site plan submissions and to approve them if they comply with the requirements of the ordinance. According to the Circuit Court, the Planning Commission went too far the last time when asking for amenities. The Circuit Court said that was wrong (due to a defect in the code) and that was the final word. Mr. Stone further explained that the issue is not whether this is a good project and whether it is good for Hagerstown. The submitted site plan meets the requirements of the ordinance. It is not the same question that would be asked if the project came to the commission on undeveloped land under the current site plan requirements. Mr. Thomas observed that the Planning Commission does not have the responsibility of policing the occupants of the property. It is the responsibility of management and the owner to ensure that units are rented to the right type of people.

Mr. Stone stated that the Planning Commission is charged with carrying out the law as written. The Mayor and City Council has a broader authority and scope; however, the Planning Commission must work with the ordinance as drafted. Any appeals to Circuit Court will cost the City money. Ms. Wheeler added that this site plan can be used as a mechanism to improve what is there now. Given the situation we are in, the Planning Commission has done the most it can do within its parameters, including going to court. The developer/management team is aware that there is an expectation to make things better.

Forest Conservation Plan:

- MOTION:** (Thomas/Wheeler) I’ll make a motion to approve the forest conservation plan.
- DISCUSSION:** None.
- ACTION:** APPROVED (4-1: YES – Campbell, Stone, Thomas, Wheeler; NO – Corderman; ABSTAIN – Miller, Wright)

Site Plan:

**MOTION:** (Wheeler/Campbell) I'll move approval of the site plan subject to the three conditions and the two waivers and subject to the comments on page 5 of the site plan (report).

**DISCUSSION:** None.

**ACTION:** APPROVED (3-2: YES – Campbell, Stone, Wheeler; No – Corderman, Thomas; ABSTAIN – Miller , Wright)

Mr. Miller and Mr. Wright rejoined the commission.

### **Minor Site Plan Policy.**

This matter was placed on the agenda after Mr. Wright raised concerns about how a certain project was approved. Mr. Rohrbaugh stated that he was the reviewer of this particular project. The site plan was scaled for 1 inch = 30 feet and based on that scale, the site plan was processed as a 4,100 square-foot building. The plan went through the review process, and after all the review agency comments were addressed, he approved it. After the commission brought it up, staff took a second look. At the time, Mr. Wright was concerned about the height of the building which is between 30-32 feet tall (which is within the limits of the Industrial General zoning district). However, some of the measurements seemed off. After some additional checking, staff discovered that the scale bar on the site plan was labeled incorrectly. Using the correct scale, the building is 6,200 square feet which puts it over the 5,000 square-foot threshold for minor site plans. The plan was done by a professional engineer out of Frederick.

Mr. Bockmiller stated that if it had been detected at the time, staff would have brought it to the commission for a waiver to use the minor site plan process since the disturbed area was minimal (approximately 500 square feet of post holes) and the building was being constructed on an impervious surface that would otherwise remain unchanged. There is no violation of the height limitations or setbacks, and there are no utilities.

Mr. Wright stated that something needs to be done to let the engineer and the owner know that the drawing submitted for review contained false data so it is on record.

**MOTION:** (Wright/Wheeler) I'd like to make a motion that the City Planning Staff or the letter to come from the Planning Commission be directed to the property owner as well as the engineer of record saying that the City processed this [site plan] under good faith and followed all guidelines that the City uses, assumed that the professional engineer prepared the drawings according to his standards and the standards of his industry, and that it turned out that the plan was approved using City-established guidelines but based upon an incorrect drawing, but the engineer and the

- applicant needs to know that it was prepared and processed under false data.
- DISCUSSION:** Mr. Stone cautioned that the letter should not imply that the error was intentional. Mr. Bockmiller will provide a draft for chair’s review before it is sent out.
- ACTION:** APPROVED (Unanimous)

**Comprehensive Plan Update: Introduction/Implementation**

Staff Report: (Copy of staff report in meeting file.)

**Introduction.**

Mr. Rohrbaugh reported that the Introduction is the same as the 2008 plan, however, the data was updated and new plans completed by the City since 2008 have been incorporated. New plans included are the 2012 Sustainable Community Plan, the Urban Partners City Center Plan, and others. Most of the information in the Introduction was reviewed by the commission during its discussions of the other elements.

Staff is currently tackling the public involvement component which will include an online survey through Survey Monkey and will go to everyone on Planning’s email list serves. The survey will be published on the City of Hagerstown’s website. The goal is to make the survey available to as many people as possible. Some groups have already been contacted for input (City boards and commissions such as the Historic District Commission, Bicycle Advisory Committee, the Faith Community Committee; Neighborhoods 1<sup>st</sup> leadership, Convention and Visitors Bureau, etc.). Ms. Maher added that once the Planning Commission has completed its review and the plan is ready to go to the 60-day public review process—which includes sending the draft Comprehensive Plan to the State of Maryland, Washington County, and Funkstown—staff will present the draft plan to the Mayor and City Council. The Mayor and Council will have been briefed on the contents of the plan before the Planning Commission holds its public hearing.

Page 1-1:

- Second bullet point, “Water Resources,” Mr. Wright stated his recollection from serving on the “Merle Elliott task force” that studied water and sewer, was that there is a tremendous amount of untapped water resources. A source told him that the City is already permitted for twice the built capacity that currently exists. Mr. Rohrbaugh stated that the City’s permit capacity at the R. C. Willson Plant is 15 million gallons per day; the built capacity is 18 or 20 million gallons per day. Mr. Rohrbaugh will re-check the numbers. Twenty million gallons per day is the maximum that can be drawn. Sewer capacity will run out before water capacity. Mr. Rohrbaugh suggested changing the title

of this element to the “Water and Wastewater Element” to better reflect its scope. Mr. Stone suggested that the order of water and wastewater be reversed to put more emphasis on wastewater. Staff will work on the language in second bullet point on page 1-1.

Page 1-2:

- There was a question as to why the Sewer Capacity Allocation Program (SCAP) was still listed since it is no longer mandated by the state. Staff indicated that the SCAP is a useful planning tool and will continue to use it.

Page 1-6:

- Second paragraph – Ms. Wheeler suggested a wording change in the first line: “The strong manufacturing base proved ~~to be a weakness,~~ *vulnerable* beginning in the 1960s-*when* As the American manufacturing industry contracted, Hagerstown’s population and economy followed suit.”

Page 1-7:

- Correct a typographical error in the first line under Figure 1-1: “. . . City Center revitalization plans and efforts in *strengthening* Hagerstown’s role . . .”
- “Demographic Trends” – Ms. Wheeler suggested adding income over time as a factor. There could be a statement as to what median incomes have been and how median income has changed relative to the city, county, and state.

Pages 1-8 and 1-10:

- Mr. Wright suggested italicizing the percentage figures in Figures 1-2 and 1-4.

(Mr. Miller left the meeting.)

Page 1-37:

- Commission members suggested adding a sentence or two as an introduction or a header to Figure 1-22.

## **Implementation**

The Implementation Element repeats the Action Items listed in each element of the plan, but includes three columns that represent a time line for completion. Staff requested the Planning Commission’s input on the time lines for action items. Due to the hour, this discussion was postponed until the January 25 meeting.

**Planning Commission  
MINUTES – Regular Meeting**

**January 11, 2017  
City of Hagerstown, Maryland**

---

**Adjourn.** It was moved and seconded that the meeting adjourn (5:55 p.m.)

1/25/2017

---

Approved



---

Debra C. Calhoun - Secretary