

**Planning Commission
MINUTES – Special Meeting**

**August 15, 2017
City of Hagerstown, Maryland**

James W. Stone, vice chair, called the special meeting to order at 3:00 p.m., on Tuesday, August 15, 2017, in the Conference Room, Fourth Floor, City Hall. Also present were commission members R. Campbell (via teleconference), P. Corderman, R. Thomas, J. Wheeler, and D. Wright (late). The following staff members were present: K. Maher, Director of Planning and Code Administration; and S. Bockmiller, Development Planner/Zoning Administrator; and D. Calhoun, Secretary.

MOTION: (Thomas/Wheeler) I move that we allow Rodney Campbell to participate by telephone.
DISCUSSION: None.
ACTION: APPROVED (Unanimous)

Ms. Campbell joined the meeting via telephone.

Site Plan Revision: Cortpark – Redesign of New Entrance Road (Tabled on August 9).

Staff Report: (Copy of staff report in meeting file) Mr. Bockmiller read the staff report from August 9 into the record. New material was received after the last meeting and that was introduced as well. The City Engineer’s office requested that the northern flood warning flashing light be moved closer to the floodplain area. The applicant had no objection to the City Engineer’s request. Mr. Bockmiller entered into the record by reference the manufacturer’s literature concerning the warning light system and signage system.

As background, Mr. Bockmiller stated that the site plan for Cortpark was approved in January 2017. The approved site plan called for a right-in-right-out second access onto Eastern Boulevard. The road was initially designed to be an arc curve which would have kept most of the access road out of the floodplain. As the applicant proceeded through the state permitting process for construction in the floodplain, their models showed a 1.5-inch increase in flood elevation impacting the adjacent property to the west owned by Lowe’s. Lowe’s declined to sign off on the permit which forced the developer to redesign the access road. The new road design is a sag curve and most of the road is now in the floodplain.

At the meeting on July 19 there was concern about the road being located in the floodplain. The applicant was instructed to propose a flood warning system, which was presented at the last meeting. However, due to the small number of members who could vote on this project a motion to approve died for lack of a second. Since the last meeting staff received an email from a nearby citizen, Jack Byers, 242 Potomac Heights, Hagerstown, Maryland. Mr. Bockmiller read

Mr. Byers' concerns into the record (copy of email is in the meeting file). Mr. Bockmiller noted that the article referenced by Mr. Byers did not mention that the access road is proposed to be a right-in-right-out access point which was one of Mr. Byers' concerns that there would be a significant amount of traffic using this road. Although the requirements of the Land Management Code do not address police services, staff researched issues raised in Mr. Byers' correspondence and entered into the record that the number of Section 8 vouchers for the entire census tract for this development is five. Concerning the crime statistics cited, Mr. Bockmiller read into the record a memorandum from Captain Paul Kifer of the Hagerstown Police Department, stating that "With an estimated population just under 1,200 persons, the total calls for service average under 1% for all calls for service within the City of Hagerstown." Captain Kifer also commended the management at Cortpark for its continued commitment to working with the Hagerstown Police Department "in mitigating crime issues within their community." Captain Kifer's memo is in the meeting file.

Mr. Stone added that the issue of whether or not to allow the expansion project was decided some time ago and the commission was under judicial instruction to approve the expansion (without the amenities) and that has been done. At this time the only issue under discussion is the design of the entrance that is provided for as part of the site plan.

Applicant/Commission Discussion: Adam Hager and Justin Doty of Frederick, Seibert & Associates were present on behalf of the developer. (Douglas Wright joined the meeting, but indicated that he would be abstaining from the discussion and vote.) Mr. Hager explained that the road was originally designed to keep it out of the floodplain. Based on Maryland Department of the Environment (MDE) requirements and lack of cooperation from Lowe's, the developer is unable to comply. Technically the road meets the requirements of the Zoning Ordinance and the code. The access road will not be a public road, however the public will have access to it. The developer has done its best to accommodate everyone's concerns. Since this is a private street it is permitted to be constructed in a floodplain; a dedicated public road would not be permitted to be constructed in the floodplain. Mr. Corderman questioned who would be responsible for maintenance of the private road. Mr. Hager stated that the developer will be responsible for maintaining the access road.

Mr. Stone observed that Cortpark is made up of private roads which was permitted when this development was approved and built. Since then the City has amended its ordinances to not permit private roads in developments. Mr. Bockmiller added that the ordinance does not distinguish between a driveway and a private road. At one time staff approached the Planning Commission about amending the Zoning Ordinance to require that each apartment building in a development be on its own lot which would require every building to front on a public street; however, that idea never received traction from the Planning Commission. Ms. Maher added this property was annexed before the City had an annexation policy. At the time of annexation the owner requested to be able to develop the site with a private street system. Mr. Corderman felt

that the commission was being asked to make an exception for a private driveway for the same thing that would not be permitted if it was a public road. Mr. Stone stated that given this portion of Eastern Boulevard is also in the floodplain, you would have to make an exception, otherwise nothing could connect to it.

In answer to a question by the commission, Jim Bender, Assistant City Engineer, stated that if this access road was a public street it would be classified as a local street which would need to stay dry in a 25-year storm. Mr. Bender did not believe this road would comply with that. Mr. Doty stated that a 25-year event would also inundate the connection points of the street in its current configuration. It was Mr. Bender's professional opinion that the road does not employ good engineering design; however, there are other factors to consider, including the desire to have a second point of access for Cortpark. The direction taken by the City Engineer's office since the last meeting is that if the road has the potential to flood as designed and constructed, what measures can be taken to warn people that a flood situation exists. The City Engineer suggested at the last meeting that the applicant's insurance carrier weigh in on the matter as to whether they are comfortable with only warning lights on a road that will inevitably flood. Mr. Corderman was concerned about people being stranded in flood water. He was concerned about lawsuits from the public against the City for approving this situation.

Ms. Campbell questioned whether the same flooding concerns could have been raised when Eastern Boulevard was constructed. Mr. Corderman agreed but said two wrongs do not make it right. There is an opportunity for not creating an additional hazard. Eastern Boulevard is a major thoroughfare with the same chance of significant flooding hazards occurring. Ms. Wheeler pointed out that the flooding safety argument is only one piece of the pie. Another major safety issue is only having one access route for the number of units (existing and proposed) in this development. Mr. Corderman asked about the proposed Eastern Boulevard Extended which will skirt this development. Mr. Bockmiller stated that when that road is built it should relieve much of the traffic from this portion of Eastern Boulevard. There is a stub on the back of Cortland Villas to make the connection to Eastern Boulevard Extended. However, that proposal would not satisfy the second access point requirement for Cortpark apartments.

Mr. Thomas observed that even if the original proposal had been signed off by Lowe's and the road was built above the floodplain, this area would still flood and drivers still would not be able to get through because Northern Avenue and Eastern Boulevard would be flooded anyway. Mr. Stone noted that this section of Eastern Boulevard has drainage swales on both sides. He was not aware of this area flooding. Mr. Doty stated that when the flood models are run, the swales on the sides are convenient for taking water away during smaller storms. The models they ran for a 100-year storm shows that the whole area floods. There is a 1% annual chance (or once every 100 years) that this scenario would occur. He added that the flood risk is lower than the desire of this board to provide safe and adequate access to this development.

Mr. Bockmiller stated that the proposal complies with City ordinances. Mr. Stone added that the commission's charge is to determine whether the proposal meets the requirements of the ordinance. He believed it did because the fact of whether or not this is a public street is not the point. From a design standpoint it is a question of weighing the advantages vs. the disadvantages. Mr. Thomas indicated that if the commission decides to accept the warning system proposal there should be a stipulation that the lights are inspected annually to make sure they are working properly and a certificate be submitted to the code compliance official stating that the inspection has been done.

MOTION: (Thomas/Wheeler) I make a motion then that we approve the design subject to the above condition and that the road be built to the standard that would support the emergency equipment that would support it.

DISCUSSION: Mr. Doty stated that the roadway is designed to the City section and depth. Ms. Wheeler asked if a gate will be installed that would close in the event of a high water incident so vehicles could not go through the flooded area. Mr. Doty indicated that his client has declined to put in a gate. Mr. Corderman observed that the developer's engineers and the City Engineer have admitted this is a bad design and the commission is willing to go forward. Ms. Wheeler noted that the solution is not optimal.

ACTION: APPROVED (YES – Thomas, Wheeler, Campbell, Stone; No – Corderman; Abstain – Wright; Absent - Miller)

Adjourn. It was moved and seconded that the meeting adjourn (3:40 p.m.)

9/27/2017

Approved



Debra C. Calhoun - Secretary