

**FRUITLAND PLANNING COMMISSION
TUESDAY, AUGUST 5, 2008
MINUTES**

The Fruitland Planning Commission met at City Hall on Tuesday, August 5, 2008, with the following members present: Chairman Charles Shores, Leland Bonneville, Councilman Theodore Lokey, and Annette Noble. Member Robin Townsend was absent. Staff in attendance were City Manager John McDonnell, Asst. City Manager/Clerk Joyce Crouch, and City Solicitor Andy Mitchell. Guests included Brock Parker, Tim Bourcier and Dave Church of Davis, Bowen & Friedel, Gary Pusey, Dean Pusey, Bob Eaton, David and Toni Guy, Cynthia McDonald, Councilman Richard Tull, Michael Hickson and Steve Capelli of the Rotary Club of Salisbury, and numerous other interested citizens.

Chairman Shores called the meeting to order at 7:05 p.m. and asked for comments or changes to the minutes of July 1, 2008. There being none, Ms. Noble moved to adopt the minutes as written. Mr. Lokey seconded and the motion was approved by a four to zero vote.

Old Business

Davis Commercial Development – West Cedar Lane: Brock Parker, of Parker and Associates, presented a preliminary plat of the West Cedar Lane Commercial Shops for approval. Mr. Parker explained the revised plans for Eric Davis's proposed commercial development along West Cedar Lane and Warrior Avenue, including the closing of Warrior Avenue, an additional unit and the rerouting of stormwater outfall into a new pond within the nearby Camden East development. Also mentioned was the installation of a white, vinyl, six-foot high stockade fence at the south end of the property to separate the commercial property from the adjoining lot on which a house exists and the dumpster location along that fence which will be enclosed on all sides. It was also mentioned that with the closure of Warrior Avenue, the roadbed will become a utility and stormwater drainage easement but the portion from Cedar Lane will be paved to use as an entrance to the commercial development. In answer to a question from Solicitor Mitchell, Mr. Parker advised the revised stormwater drainage plan for Davis's development will not affect Dr. Taylor's property, which will include a separate stormwater plan when developed. Solicitor Mitchell then mentioned the provision of a greenbelt since the closure of Warrior Avenue.

Finally, Member Bonneville moved to approve the preliminary plat contingent upon the resolution of the greenbelt issue. Councilman Lokey seconded the motion which was approved by vote of four to zero.

Comprehensive Plan Update: Tim Bourcier and Dave Church, of Davis, Bowen & Friedel, presented an update for members and led discussion of the Municipal Growth Element of the Plan. Mr. Bourcier reviewed the timetable of submittals to County and State officials and mentioned that he was planning to complete the Plan in draft form and have it available at City Hall and online for citizens to review. Clerk Crouch advised that the link to the web site is currently on the City's homepage. Mr. Bourcier announced the second public input meeting will occur on August 26, 2008, at 7:00 p.m., after which any changes will be made for a draft approval at the September Planning Commission meeting. The Plan will then be submitted to the State for their review and comments and discuss how to address them. He concluded that all should be completed in December or January, explaining that the Plan does not necessarily have to be adopted prior to the grant deadline.

Mr. Bourcier then offered a PowerPoint presentation of the Municipal Growth Element and explained the State's formula for figuring future growth. Solicitor Mitchell pointed out that the enclaves shown on the Land Use map were in error, as there are no enclaves in the City. The

Development Capacity Analysis, Priority Funding Areas, Annexations and the suggestion to reserve more areas as Conservation districts for recreational and park space were also discussed.

Chairman Shores questioned an area on the future Land Use Map adjoining Rowen's Mill development just inside the Salisbury-Fruitland Bypass. Clerk Crouch explained that one parcel along with Cedar Lane remain outside City limits and so no enclave exists there.

Chairman Shores questioned the exclusion of the Walnut Tree Road area for future annexation. Mr. Bourcier explained that the State model would not allow it as a Priority Funding Area (PFA) and that he was waiting to hear from the State regarding whether or not a municipality would have to reimburse any grant money if an area was annexed that is not included in a PFA.

Solicitor Mitchell questioned the difference in the planning and growth areas and asked about the Timberlake Subdivision. Mr. Bourcier explained that areas already developed would be considered in a PFA. Discussion then resulted in having the City's planning area extend to the river on the northwest side of town. Solicitor Mitchell advised although there was no map provided in the 1998 Comprehensive Plan, the area was in the written part of the Plan.

Mr. Bourcier then stated he would eliminate the enclave mentioned and extend the planning area to include Burning Tree (Timberlake) and asked for approval to forward the draft Plan to the County for review.

Mr. Kenny Mills asked about the Growth Area map, advising he has a farm on Walnut Tree Road for future development. Mr. Bourcier again explained the Development Capacity Analysis and how that proposed future growth could fit within the existing City boundaries if available areas in the City were developed. With that being considered, he added that it would not make sense to allow additional residential growth outside the City boundaries, but added that the Plan can be changed in six years when the City could consider the potential to annex other areas if some existing lands within City boundaries are reserved as conservation for future park and recreation areas instead of developable uses. Mr. Bourcier also stated that if it is beneficial for the City to annex an area not in the Priority Funding Area, such as if a developer will pay for something the City needs, such as the Southwest Interceptor, then it would make sense for the City to amend their Comprehensive Plan, as long as the County also amends its future water and sewer areas.

Councilman Lokey then moved to approve the draft Municipal Growth Element to forward to the County contingent upon the Growth Area including Burning Tree (Timberlake) and the elimination of the enclave on Cedar Lane. Ms. Noble seconded and the motion was approved by vote of four to zero.

New Business

100 West Main Street Parking Plan – Shawn Harrison presented a parking plan for 100 West Main Street for approval. Mr. Harrison explained that he will convert the former residence to offices and include a circular drive around the structure, using the existing garage for storage. Ms. Noble asked about access for emergency vehicles. Mr. Bonneville, who was familiar with the property, explained that there should be no problem due to the corner lot with access on two streets, along with the space on one side and the new circular driveway.

Councilman Lokey moved to approve the parking plan for 100 West Main Street as presented. Ms. Noble seconded and the motion was approved by vote of four to zero.

101 North Fruitland Boulevard Sign Setback – Variance Request – Mr. Gary Pusey and his attorney, Bob Eaton, came forward and requested the Commission’s recommendation of approval for replacing a sign destroyed by a storm at 101-103 North Fruitland Boulevard.

Member Bonneville reviewed the variance request by stating that to replace the same sign as it was would not meet front and side setback requirements and mentioned the square footage of the sign.

Mr. Eaton questioned Mr. Pusey about the history of the property and sign and the process for applying for a variance. Mr. Pusey described his business being located at the current site since 1986 and that it has been a Fruitland landmark for many years. He added that State inspections are a major part of his business there. Mr. Pusey further described the unusual shape of his lot, the hardship that would be created if he could not replace the sign as it once existed, as many people look for the sign to locate his business, and many of his customers are non-English speaking but who can recognize the sign. Also mentioned was as many as 80% of vehicles inspected onsite do not pass inspection and, although they may seek repairs anywhere they wish, a majority of them seek repairs at his business. With the economy as it is and fewer car sales, a reduction of his inspection business would create a hardship, as expressed by Mr. Pusey. Also mentioned was that the neighbor’s sign would be visible if Mr. Pusey’s replacement sign is installed at the same location.

Chairman Shores asked Solicitor Mitchell about permitting the replacement of a structure after destruction by a storm. Mr. Mitchell explained that we require reconstruction to be in conformity with the provisions of the Ordinance. Mr. Eaton stated he is also appealing that interpretation because of the configuration of the lot. Also, the sign had been there for a long period of time and is not unlike the other signs in the same zoning district.

Councilman Lokey asked about blocking the sign next-door if Mr. Pusey’s sign was replaced in the same location. Mr. Pusey denied his sign would block the Accurate Auto sign. Discussion followed about possible setback scenarios to eliminate blocking the view.

Member Bonneville brought up that the adjoining property owner had appealed the decision to issue a building permit and asked if Mr. Pusey had been able to resolve anything with Mr. Guy. Mr. Pusey stated he had a building permit issued but Mr. Bonneville explained that the permit was canceled by the appeal. Mr. Pusey advised there has been no resolution to the problem. Mr. Eaton advised a compromise would be acceptable to move back the first sign pole and accept an eight-foot variance request.

Ms. Noble asked about the size of the sign. Mr. Pusey advised the sign is not a billboard, describing it as 288 square feet in size and in order to be clearly seen must remain that size. Mr. Bonneville advised that his sign was nearly double of that allowed, which is 150 square feet in size. Solicitor Mitchell advised that if a sign is 150 square feet or less he would not be required to adhere to the larger setbacks. Mr. Eaton presented some photos of the site which also showed the neighboring property’s sign. Mr. Pusey advised he had originally offered to move the first pole back to the third position but it was unacceptable by his neighbor. Code Enforcement Officer Scholl explained that the original sign was approximately four feet from the State easement and if Mr. Pusey moves the first pole back to the third position it would be approximately 16 feet from the easement line. Mr. Eaton stated that he and his client would like to replace the sign where it was originally located but were willing to move back the first pole and sought the Commission’s positive input.

Mr. David Guy, owner of Accurate Auto Repair at 105 North Fruitland Boulevard, stood and clarified the account of the damaged sign and replacement. Mr. Guy advised when the sign had

fallen he contacted the City building inspector, Danny Scholl, who assured him a permit would not be issued as the sign was a nonconforming structure. However, Mr. Guy stated a permit was issued which led to his appeal and the law supported his position in the case. Mr. Guy continued with describing the nonconforming sign, Mr. Pusey's appeal, the lack of a recording being available of the first hearing and because Circuit Court will not accept the case without the recording, another hearing must be held. Mr. Guy continued explaining that to maintain a sign two and one-half feet from his property line requires encroachment on his property to do so. Mr. Guy said a customer's vehicle parked on his property was destroyed when Mr. Pusey's sign was blown down and the customer's insurance had to pay for the loss. Mr. Guy stated he wanted two poles removed back and emphasized that the law has supported his position and opposes the variance request because of there is adequate room on Mr. Pusey's lot. Mr. Guy further complained of the banner placed on a truck trailer on Mr. Pusey's lot since the appeal and plead for the Commission not to consider a favorable recommendation of the variance.

Cynthia MacDonald, legal counsel for Mr. Guy, advised that Mr. Guy explained the personal and business side of the story but she offered the legal side. She described the law regarding variances and appeals in Maryland and the requirement to find that Mr. Pusey's property is so unique that the zoning provision would cause a disproportionate impact on him because of the uniqueness of his property than it would cause on anyone else in the vicinity if the same zoning law were to be applied. She further stated that the only evidence that Mr. Pusey has presented with regard to the uniqueness of his property is that the billboard is a landmark, which does not demonstrate a uniqueness of his property. Ms. MacDonald pronounced that Mr. Pusey had not demonstrated any disproportionate impact the zoning law had on him as opposed to others in Fruitland. Ms. MacDonald also described the matter as having become too personal and it was time to look at the law and what is required to grant a variance and asked that a variance not be granted to Mr. Pusey.

Mr. Eaton described the difference between use variances and area variances and the law Ms. MacDonald was citing was to a use variance. Hardship applies to a use variance but an area variance is for practical difficulty. Mr. Eaton also stated Mr. Pusey testified as to the shape of his lot and the difficulty of looking at the way the configuration of his lot makes it a distinction which permits the Commission to make a positive recommendation because he does meet those factors.

Ms. Toni Guy, of 105 North Fruitland Boulevard, questioned the maintenance of the sign by having it set back only two and one-half feet. Mr. Guy described Mr. Pusey's double lot of 101-103 and the billboard is on a rectangular lot, not on the rounded lot at the corner. Mr. Guy then presented pictures of what exists and a possible scenario which would provide visibility to his lot.

Mr. Dean Pusey, Gary's son, stated that he is willing to move the poles five feet from the side lot line and remove the front pole to the back.

Solicitor Mitchell described the legal concept that whether they are trying to prove hardship or practical difficulty, they only get so much as is necessary to alleviate their problem. Gary and Dean Pusey already testified that any problem could be alleviated by moving the sign back by one pole and five feet off the side, having explained that would work. Coming under the billboard ordinance, the size of the sign could be within 300 square feet.

Following additional discussion, Mr. Lokey stated he could not make a favorable recommendation for approval because he believed it could be moved back and still be visible. Solicitor Mitchell injected that by moving the poles off the side lot line by five feet, they will be out of the ground so a variable number of feet could be recommended for the front setback. In

answer to a question from Councilman Lokey, Mr. Pusey advised the City of Fruitland issued the permit to replace his sign. Solicitor Mitchell advised that a permit was issued for the sign replacement because it was believed to be grandfathered in. Mentioned was the banner placed on the truck trailer on the Pusey lot and Mr. Mitchell advised that although it was not what was anticipated it was allowed during the appeal.

Finally, Ms. Noble moved to recommend approval to the Appeals Board to allow a 14-foot variance for a front setback of 16 feet with the five-foot side setback. Chairman Shores seconded the motion. Member Bonneville stated he could not approve the distance requested. Mr. Lokey also stated he opposed the distance. It was then determined that the appeal would go before the Board of Zoning Appeals without recommendation.

Annexation Petition - Rotary Club of Salisbury – 1715 Riverside Drive: Mike Hickson and Steve Capelli came forward to speak on behalf of the Rotary Club. Solicitor Mitchell explained that the Planning Commission will review for recommendation to the City Council to accept or not accept the Rotary's request for annexation and also recommend to the City Council the type of zoning to apply to the property, the R1-C zone being requested. He also mentioned approving the designation of the building as a patriotic or nonprofit civic use. The Zoning Ordinance states that the use designation can be approved by the Planning Commission, which he believed sufficient. But to be safe, in case of an appeal, the Rotary would like to treat the matter as a special exception and hold a public hearing. It was suggested that the Rotary hold that public hearing on August 26 following the Comprehensive Plan Update meeting. Ms. Noble asked if the City Council accepted the Petition of Annexation. Mitchell advised the Council accepted the Petition of Annexation and there were a couple of changes made and the revised Plan was presented to the City Council at a special meeting held on August 4, 2008. Mr. Hickson mentioned the City's request to use a portion of their property for a recreational area and the Board has agreed to lease an area to the City, which has been included in the Plan.

Mr. Hickson reviewed the Rotary's history and the history of their property. Further discussion involved the highlights of their presentation at the July 1, 2008 Planning Commission. Mr. Hickson offered the commonality the Rotary Club has with Fruitland, mentioning the Fruitland residents and businessmen who are or have been Rotarians, and mentioning that the Bald Cypress trees planted along Route 13 through Fruitland were planted by the Rotary Club. Also, included in the Annexation Agreement is the provision of an easement for a future lift station.

Councilman Lokey asked lightheartedly if the annexation is approved, would the organization consider changing its name to the Fruitland Rotary Club. Mr. Hickson advised that with an 88-year tradition, he, as one member, had no control over that issue.

Mr. Hickson added that the annexation is consistent with Fruitland's Comprehensive Plan, as Fruitland's proposed growth area extends to the Wicomico River.

The application of the R1-C zoning, which is a condition of the annexation, was also requested. Mr. Hickson presented a letter from the Wicomico County Planning Commission which voted unanimously in favor of the R1-C zone being applied to the Rotary property.

Finally, motion was made by Councilman Lokey to recommend to the City Council that the Rotary annexation be accepted and finalized. Mr. Bonneville seconded and the motion was approved by vote of four to zero.

Motion was then made by Councilman Lokey to recommend to the City Council that the R1-C zoning be applied to the Rotary property at 1715 Riverside Drive upon approval of the annexation. The motion was seconded by Ms. Noble and approved by a four to zero vote.

A consensus of the Commission was to consider the use designated as a nonprofit civic club facility at a public hearing on August 24, 2008, at 7:30 p.m., and if necessary, advise at that time the hearing will follow the already scheduled Comprehensive Plan public input meeting scheduled to begin at 7:00 p.m.

Day Care Facilities as Permitted Uses vs. Permitted Uses by Special Exception: Solicitor Mitchell and Clerk Crouch described the conflict in the Zoning Ordinance where in some zoning districts day care facilities are permitted uses but also allowed by special exception in the same district.

Mr. Bonneville moved to recommend to the City Council that any conflict involving day care facilities in the Zoning Ordinance be corrected. The motion was seconded by Ms. Noble and approved by vote of four to zero.

General Discussion: Ms. Noble asked about the adult business moratorium and it was explained that the moratorium was extended to one year in order to be discussed with the Comprehensive Plan update and revised Zoning Ordinance.

With no further business to discuss, Ms. Noble moved to adjourn. Mr. Bonneville seconded and the motion was approved by a four to zero vote. The meeting adjourned at 10:13 p.m.

Respectfully submitted,

Joyce E. Crouch
Asst. City Manager/Clerk