

**TOWN OF ELKTON
PLANNING COMMISSION
December 12, 2016**

PRESENT: David Wiseman; G. Edward Ginder; Rick Keane; David Fordyce; William Muller; Mayor Robert J. Alt, Ex-Officio; Lisa M. Hamilton Blackson, Esquire; Jeanne D. Minner, Director of Planning; Theresa C. Thomas, Assistant Planner

ABSENT: Keith Thompson

Mr. Wiseman called the meeting to order at 7:00 p.m.

ACTION: A motion was made by Mr. Muller to approve the minutes as amended from the November 7, 2016 Planning Commission meeting. The motion was seconded by Mr. Fordyce and unanimously approved.

CASE # 1500 – REQUEST OF JAY C. EMREY, III REPRESENTING RT. 40 VENTURE, LLC FOR A SPECIAL EXCEPTION FOR PLACEMENT OF UP TO FOUR (4) STORAGE TRAILERS. THIS ACTION CONCERNS PROPERTY LOCATED AT 1183 EAST PULASKI HIGHWAY, ELKTON, MARYLAND, TAX MAP 316, PARCEL 2333, ZONED C-2 (HIGHWAY COMMERCIAL)

Mr. Jay C. Emrey and Ms. Jacqueline Sexton were in attendance to address this request. Mr. Emrey stated that his client, Mr. Don Horton, has leased space on his property to Tim's Used Tires. In order for tires to be stored on the property for business use they will need up to four (4) storage trailers.

Ms. Jacqueline Sexton, an employee of Tim's Used Tires for the past six and a half years, stated that the intent of the trailers is to use three (3) of them for tires for resale and one (1) for scrap tires. She stated the business had previously been located at 722 E. Pulaski Highway. She believed the business had no effect on either traffic, or public facilities since there are only a few employees at the business and one (1) bathroom.

She noted that there is not a lot of traffic to the tire store but mentioned that there are three (3) other businesses at that location, as well as a strip mall, restaurant and gas station to the east and a car dealership to the west. She also stated she did not believe the business affected the property values in the area.

Mr. Wiseman inquired of legal counsel regarding the 'cease and desist' order from the court. He wondered how they could make a recommendation on a special exception with this legal action being taken against the owner of the property. Ms. Hamilton-Blackson stated that it would essentially be at the discretion of the Planning Commission but stated it is not out of the scope of the special exception if a business is unable to meet all of the conditions of the special exception to allow it contingent on conditions. Discussion ensued regarding conditions that could be placed and with regard to the business operating without an occupancy permit.

Mr. John Downs, attorney for the Town of Elkton, stated that the basis for the legal order is the fact that they are operating without an occupancy permit. Mr. Ginder questioned how the Board could recommend approval of the special exception if the building they are using does not meet the International Code requirements for the use. Mr. Emrey interjected that one of the conditions for a special exception is that the applicant will otherwise comply with all relevant rules and regulations. Mr. Emrey noted that there

has been an injunction requested but it has not been issued as yet. He stated that, other than the issue relating to the appeal they would otherwise comply with all regulations if the special exception is granted.

Mr. Ginder inquired whether his client has ceased operations at the current location. Mr. Emrey said he was not aware of whether they had ceased operations and he had not been out to the location to check. Mr. Downs added that he had asked Mr. Bromwell, the Town Building Official, to attend the meeting to address any questions the Board might have with regard to the building issues.

Mr. Ginder asked Mr. Bromwell if there was anything they could do to bring the building into compliance. Mr. Bromwell stated they were given the option of reducing the area for storage of tires to less than 20,000 cubic feet. Mr. Emrey stated there is an issue of statutory interpretation of the International Code and discussion ensued with respect to a difference of opinion between Mr. Bromwell's interpretation and Mr. Horton's interpretation of the code, which is the basis of the appeal.

Mr. Don Horton, Managing Member of the property in question appeared to address questions concerning the property and business use. He told the Board they have always intended to comply with the Town regulations but because there had been a used tire business in a building on this property in the past they did not think there would be any issues with the new business being located there. Mr. Horton stated that he does not believe Mr. Bromwell is interpreting the code correctly and therefore they are appealing his decision regarding placement of a wall. Depending upon the outcome of the appeal he stated they will comply by either moving into a newly vacated building or placing the wall which Mr. Bromwell has stated is necessary for the business use in the current location.

Mr. Wiseman inquired if there were any other issues with the building. Mr. Bromwell noted that they do not currently have a bathroom. Mr. Horton stated they are willing to place the bathroom but would prefer to wait for the appeal process decision so they can determine where the business will ultimately be located.

Mr. Emrey informed the Board that they had been advised by Mr. Bromwell that a special exception would be required to run the tire business at 1183 E. Pulaski Highway and they had made application for the special exception. They then received a letter addressing the code violations and then filed the appeal of Mr. Bromwell's interpretation with regard to the code violation letter.

Mr. Wiseman questioned how long they intend to have the trailers at this location. Mr. Horton stated they would like to have them permanently. Ms. Hamilton-Blackson interjected that as of the new Zoning Ordinance adopted in November of 2013 there is now a maximum placement of six (6) months for storage trailers.

Other issues discussed regarded health, safety and welfare, distance of storage trailers from Pulaski Highway and the existing building, and security of trailers after hours.

Mr. Fordyce stated that he would have liked to have seen the code that is in question since it was a recent code. Mr. Bromwell stated that the section of the code in question has not changed since 2000. He noted that the code is what is used for interpretation rather than the definitions which is the basis of the appeal.

Mr. Emrey called Mr. Tom Holleran, a local real estate broker for over 25 years, to testify on behalf of his client. It was determined that Mr. Holleran had sold both commercial and residential properties in both Maryland and Delaware. He asked Mr. Holleran if he had ever been called to testify in court to which he replied he had. He asked if he had been considered as an expert witness to which he replied that he had

not. He asked if he had occasion to view properties to determine their value to which he said he has. He asked whether he has viewed similar tire sale businesses and whether he felt the use would affect property values. Mr. Holleran stated that he could only make that determination based on neighboring properties. He stated he did not feel this use would have a negative impact on neighboring properties.

Mr. Wiseman entertained questions from the audience. There were none.

MOTION: Motion was made Mr. Ginder to recommend approval of the special exception contingent upon the Board of Zoning Appeals decision with regard to the pending appeal, the approval is not for more than six (6) months placement, the trailers are positioned consistent with the plan presented to the Board, the trailers are placed on a concrete or macadam surface, the trailers are neutral in color with no advertising and/or consistent with the color of the building. The motion was seconded by Mr. Fordyce and unanimously approved.

REQUEST OF FREDERICK WARD ASSOCIATES REPRESENTING SEGALL DEVELOPMENT ASSOCIATES, LLC FOR PRELIMINARY SITE PLAN, SHOPPES AT ELKTON, 722 E. PUALSKI HIGHWAY, TAX MAP 316, PARCEL 0728, ZONED C-2 (HIGHWAY COMMERCIAL)

Mr. Dan Blevins of Frederick Ward was in attendance to address this submittal. He stated he had received comment letters from the Town Planning Department and Department of Public Works, KCI Technologies and Cecil Soil Conservation. He stated his client's intention is to remove the existing building for placement of a small strip center which will include a dental office, mattress or other type of retail store and a small restaurant.

Mr. Blevins stated he had turned in the concept plan to Town Planning and Cecil Soil. Ms. Minner pointed out that there are still outstanding comments with regard to stormwater management, erosion & sediment control and environmental site design at the concept level. He stated he has received all the comments from Cecil Soil and will have them back to them sometime next week. The biggest issues they are having are with State Highway regarding road improvements and coordination with Lidl.

Mr. Wiseman asked if a traffic impact study had been done. Mr. Blevins stated it had been completed and approved. Ms. Minner asked if there were any requirements for the road which were extensive. He stated they will be using the existing entrance and will be shared with Rite Aid. Mr. Blevins stated he spoke with Bill Carroll of State Highway and they will be adding a right turn only entrance at the west end of the property. He added that they would be extending the water line to Rite Aid as well.

Mr. Ginder inquired whether there were any waivers being requested. Mr. Blevins mentioned fencing along the rear property line against the residential properties where there are 30' evergreen trees which will remain. He also mentioned that they would be removing the existing chain link fence. Ms. Minner stated they need to be sure the fence belongs to that property. Ms. Connor stated that the fence belongs to her. He noted a waiver in the front bufferyard to allow a relaxation of nine (9) canopy trees and nine (9) understory trees and replacing them with additional shrubs and smaller plants. Mr. Keane noted that there are a number of businesses which request waivers of the landscaping requirements and he questioned whether the Town bufferyard specifications are incorrect or if we feel they are correct then waivers should not be granted. Ms. Minner noted that some of the parcels along the Highway Corridor tend to be small and therefore the developers are trying to fit a lot of infrastructure and landscaping in a smaller area. She pointed out that stormwater management was not required in years past when the parcels were

created and therefore there are currently more requirements for development. She gave an example of car dealerships that prefer less landscaping around cars in order to keep the cars clean and for visibility for customers. Mr. Keane noted a waiver regarding the stacking requirements for the restaurant drive thru. Mr. Blevins stated he is requesting a waiver from the Town requirements for one (1) car in the drive thru lane.

Mr. Ginder asked if the lighting plan was acceptable. Ms. Minner stated that some areas need to be adjusted so that light does not spill onto neighboring residential properties. Mr. Ginder asked if Singerly Fire Company have approved the plans. Mr. Blevins stated they would not be required to sprinkler the building according to the Code but they would be placing fire hydrants at different ends of the property. A question arose about whether a Knox box would be required. Ms. Minner stated that they have not received Singerly Fire comments as yet but that it usually addresses the lettering size and Knox box requirements are part of their standard comments.

Ms. Minner stated that most of the new KCI comments are regarding stormwater management. There was discussion regarding whether a variance would be required for signage and it was noted that this would go before the Board of Zoning Appeals.

Mr. Keane reviewed the waivers being requested for this project. There were five (5) total waivers for this project.

Mr. Wiseman entertained additional questions from the Board. There were none. He entertained questions from the audience.

Ms. Ann Connor of 45 Enfield Road stated that neither she nor Mr. Guns were notified as adjacent property owners of this meeting. Mr. Blevins stated he would ensure notification of adjacent property owners for future. She confirmed that the chain link fence belongs to her and is 6 (six) inches onto her property. She voiced her concerns with the dumpster location and smells from the dumpster in summer, as well as the odors and sounds of cars idling in the drive thru and trucks being unloaded at the rear of the property adjacent to her property. She wondered if the dumpster could be placed at another location on the property. Mr. Blevins stated he would check with the developer. Mr. Wiseman interjected that they are limited as to where the dumpster can be placed.

Mr. Blevins stated that her property is approximately seventy (70) feet from where the trucks would be unloading and one hundred (100) feet from where the cars would be idling.

Mr. Michael Guns of 75 Alda Drive reviewed the plans and commented on the shielding of the lights with respect to spillover from the shopping center. Mr. Wiseman noted that the lights would shine down onto the parking lot and would be adjusted so that no light would spill over onto their properties. Mr. Guns stated that the chain link fence belongs to him and Ms. Connor and is on their properties and that a survey was done to confirm its location. Mr. Blevins stated a survey would be done for placement of the eight (8) foot privacy fence.

Ms. Connor asked if they could get a copy of the plans. They were provided with same.

A question arose about the hours the restaurant would be open. Mr. Blevins stated he was not aware of the operating hours for the restaurant.

MOTION: Motion was made by Mr. Ginder to approve the Preliminary Site Plan for the Shoppes at Elkton contingent upon addressing all outstanding comments, including future comments from Singerly Fire Company and allowing for the following: 1) a design waiver of nine (9) canopy trees and nine (9) understory trees in the front bufferyard 'C'; 2) a design waiver to allow a solid white vinyl fence in lieu of the required landscaping for the rear bufferyard 'D'; 3) a design waiver to allow one (1) less stacking space required for a restaurant drive thru; and 4) a design waiver to allow twelve (12) parking spaces for one (1) landscape island along the rear property line. The motion was seconded by Mr. Keane and unanimously approved.

**PUBLIC HEARING – ORDINANCE 10-2016 – AMENDMENT TO TOWN OF ELKTON
ZONING ORDINANCE ARTICLE XVI, SIGNS, SECTION 18 PERMITTED SIGNS,
SUBSECTION 5(C) PROJECTING SIGNS**

Ms. Minner noted that Mr. Bromwell, the Building Official, is recommending changing the allowances for projecting signs in the Zoning Ordinance from five (5) square feet to twelve and a half (12 ½) square feet for a two sided sign. This would give better visibility for potential customers whether they are pedestrians or passing by in a vehicle. She noted that the sign business changes frequently and they used best practices.

MOTION: Motion was made by Mr. Fordyce to recommend approval to the Mayor & Commissioners for the proposed amendment to the Town Sign Ordinance regarding projecting signs as presented. The motion was seconded by Mr. Keane and unanimously approved.

OLD BUSINESS - Ms. Minner noted that Lidl is moving forward with their project.

NEW BUSINESS

**DISCUSSION ITEM – ORDINANCE 11-2016 – AMENDMENT TO TOWN OF ELKTON
ZONING ORDINANCE ARTICLE XIII DENSITY AND DIMENSIONAL REGULATIONS,
SECTION 8 ~~RESERVED~~ DECKS**

Ms. Minner noted that decks are considered structure and have different setbacks depending upon the zone. She stated that Mr. Bromwell felt we should allow fifty percent (50%) of the deck to encroach into the required rear setback. She noted that resident use their decks as part of their living space especially for those in townhouse units. She asked whether the Board is comfortable with this request. Mr. Wiseman asked that a draft be made and brought before the Board.

The next meeting of the Planning Commission will be Monday, January 9, 2017.

There being no additional business to discuss Mr. Wiseman adjourned the meeting at approximately 8:35 p.m.

Respectfully submitted,

Brie Humphreys