

**TOWN OF ELKTON  
PLANNING COMMISSION  
AUGUST 17, 2020  
VIRTUAL MEETING MINUTES**

**Present:** Dave Wiseman; G. Edward Ginder; Keith Thompson; Rick Keane; William Muller; Lisa Blackson, Esquire; Jeanne Minner, Director of Planning

**Absent:** Art Blount

Mr. Wiseman called the meeting to order at 6:00 p.m. He stated the first item on the agenda was approval of the minutes from the July 6, 2020 meeting and called for a motion.

**MOTION:** Motion was made by Mr. Ginder to approve the minutes of the July 6, 2020 Planning Commission meeting as written. The motion was seconded by Mr. Thompson and unanimously approved by the remaining Commission members.

Mr. Wiseman asked that Ms. Blackson provide clarification to the Commission members with respect to how they are to address this particular variance application from MRA since the Commission has never heard a request of this nature previously. Ms. Blackson explained that technically each tree which is being addressed would be a separate variance request. She provided different scenarios with regard to how they could vote on the variance, whether individually or by groups of trees in specific areas. She stated they could put off the vote until the next meeting if they chose since they have a 45 day deadline to issue the legal opinion. If they feel they have enough information at the close of discussion on this variance then they can make their decision this evening. Ms. Blackson referred to Ms. Minner's letter which referenced the standards for the variance. Ms. Blackson stated that the members need to be in compliance with these standards when making their decision.

Ms. Minner read the information provided to the Commission which contained the six (6) variance standards. (See attached) Mr. Keane asked Ms. Blackson what would happen, in the next 30 days, if a decision is not made at this meeting. Ms. Blackson stated the final decision would need to be made at the September meeting and the 45 day requirement would still be able to be met. If at the September meeting any Commission members had questions regarding any legal counsel, with respect to making a decision on the variance, they could call a closed session in order for Ms. Blackson to provide legal advice at that time.

Mr. Ginder questioned the procedure with respect to DNR as noted in section (f) of this Article. Ms. Minner stated she had spoken to Ms. Marion Honeczy at DNR (Department of Natural Resources) and asked about their right and authority in this case. Ms. Honeczy stated they do not comment on the variance request, only on the Commission's response to the variance request.

**REQUEST OF MORRIS & RITCHIE ASSOCIATES, INC. REPRESENTING SOUTHFIELDS OF ELKTON CAPITAL DEVELOPMENT (C/O STONEWALL CAPITAL) FOR A VARIANCE FOR THE REMOVAL OF SPECIMEN TREES AND IMPACTS TO PRIORITY FORESTS. THIS ACTION CONCERNS PROPERTY LOCATED ON PARCEL I, LOTS 1, 2 & 3, IDENTIFIED AS: TAX MAP 316, PARCEL 169, CONSISTING OF 54.953 ACRES, ZONED PUB (PLANNED UNIT**

**DEVELOPMENT), LOCATED ON THE WEST SIDE OF MALONEY ROAD, OWNER: SOUTHSIDE LLC; AND TAX MAP 320, PARCEL 2371, CONSISTING OF 244.0779 ACRES; ZONED PUD (PLANNED UNIT DEVELOPMENT), LOCATED ON THE NORTH SIDE OF FRENCHTOWN ROAD, OWNER: SOUTHSIDE LLC**

Ms. Amy DiPietro of Morris & Ritchie Associates initiated the discussion for this request. She stated she and Andy Stansfield would handle the bulk of the discussion. She provided a list of representatives at the meeting who would provide input as needed during the presentation. (See attached list)

Ms. DiPietro provided an overview of the overall PUD project plan showing the proposed location of Parcel I with respect to the other parts of the project. Parcel I is approximately 230 acres consisting of 2.79 million square feet of industrial/e-commerce/logistics space with associated truck/car parking, etc.

She provided an update of the status of the project to date and their anticipated submittals for approval through the end of the year. They are anticipating submitting the Final Subdivision Plan and Final Major Site Plan to the Planning Commission in either October or November.

She referred to the plans for each warehouse parcel which indicated the areas of priority forest and specimen trees which they are proposing to remove as part of the project. She stated the site has approximately 115 acres of priority forest of which 60% will be kept.

Mr. Andy Stansfield of Geo Technology Associates (GTA) reviewed the process and regulations used to determine tree and forest removal. The Maryland Forest Conservation Act and Technical Manual are used for this process. These regulations are established for use by local jurisdictions like Elkton, these can be found referenced in Article XVIII of the Town's Zoning Ordinance.

Mr. Stansfield stated field work began on this project in November of 2019 with the final report being published on July 29, 2020. The natural resource data was compiled, and along with the applicant and engineering team, they took the size and goals of the project, and the market needs into consideration when making the decision about what trees/forests would need to be removed. He stated they identified 30.93 acres of wetlands on the site. 90% of those wetlands will remain. There are 1,235 linear feet of streams on the site and 99.5% of the streams will remain undisturbed. For Building 1 the only impacts are to isolated wetlands and no connected wetlands are being disturbed. They anticipate receiving the report from Maryland Department of the Environment any day. He noted that there are 121 acres of forest on the site. 115.8 of those acres are identified as priority forest. Of the 115.8 acres, 67% will remain undisturbed. There are 121 specimen trees and 44% of them will be left undisturbed. Of the trees which are proposed to be removed 37% are in either poor or fair condition.

He stated that looking at the whole picture they feel they are striking a healthy balance with the site's natural resources and the site's needs. Ms. DiPietro mentioned that in regard to the water quality component of the variance regulations, with respect to similar projects in the area (specifically Principio Business Park) variances were granted to remove specimen trees. She believes they have demonstrated their ability to minimize and avoid as many impacts to natural resources as possible while still maintaining functionality of the project. They have been

working with Cecil County, MDE and now with KCI to develop new stormwater practices. This is a unique project and their goal is to continue to work to maintain good water quality practices.

Mr. Davis reviewed the application requirements for this particular variance request.

- 1) Describe the special conditions peculiar to the property which would cause the unwarranted hardship. Mr. Davis stated the special conditions are the unique shape of the parcels - there are irregular parcel lines with cuts and bends and twists;
- 2) Describe how enforcement of these rules will deprive the applicant of rights commonly enjoyed by others in similar areas. He stated the property consists of a number of wetlands. He stated they believe the most important wetland are the ones tied into the wetlands system to the west which they are actively preserving. These wetlands have a tremendous impact on the property;
- 3) Verify that the granting of the variance will not confer on the applicant a special privilege that would be denied to other applicants. Mr. Davis stated they have worked well with the neighboring properties on Sarah Drive and Maloney Road to make changes to keep from impacting their properties. He also noted that anyone else who would be developing and needs to remove specimen trees would have the opportunity to come before the Commission to seek their own variance;
- 4) Verify that the variance request is not based on conditions or circumstances which are the results of actions by the applicant. He stated they did not create the parcel lines or the wetlands. Although the unique circumstances were not created by them they are a hardship;
- 5) Verify that the request does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property. He stated they are not impacting neighboring properties by the proposed use and in fact they are trying to be good neighbors and working to have the least impact as possible on neighboring properties by providing buffers beyond what is required by Town regulations;
- 6) Verify that the granting of a variance will not adversely affect water quality. Mr. Davis again noted how they are going above and beyond what is required with the stormwater management rules and regulations and how they have worked successfully to maximize water quality benefits for the proposed development.

Ms. DiPietro made reference to the Concept Landscape Plan and pointed out all the trees which will be planted around Building #1. She noted they are exceeding the number of trees (flowering, evergreens and shrubs) that are requesting to be removed as part of this variance request.

Ms. Minner asked about the stormwater pond south west of Building 1 which is very close to existing wetlands. She wondered how the water quality from the overflow of the stormwater facility would be treated so as not to adversely affect those wetlands. Ms. DiPietro stated they have a series of erosion and sediment facilities that will treat the water quality before it reaches the larger stormwater facility. There was discussion regarding whether they were impacting wetlands in this area and Ms. DiPietro stated that they are not.

Ms. Minner asked if they have met with the Army Corps of Engineers with respect to impact to wetlands in the area of Buildings 2 and 3. Mr. Stansfield stated they have not. Ms. Minner

asked if there were going to be impacts to wetlands with respect to those buildings. Mr. Stansfield stated there would be impacts.

Ms. Minner asked about a reference to a hedge row with a stream channel mentioned in the forest stand delineation plans and asked where this was located. Mr. Canoles provided its location between the stormwater pond and Building 3.

Ms. Minner asked about her comment in May with respect to the connected wetlands which are being impacted by the access drive for Building 2. She asked how these areas will be protected and the hydrology of that area remain undisturbed so as not to affect the headwater of the stream. Mr. Stansfield noted that MDE and the Corps of Engineers typically do not permit for stormwater management within waters of the US wetlands and streams. He noted that stormwater ponds adjacent to these resources do provide supplemental hydrology to them. He stated that the stormwater pond near Building 3 is outside of the stream. Ms. Minner stated on the plans the road appears to be cutting off that waterway. Mr. Stansfield stated that the road, parking drainage and stormwater management take into consideration the hydrology. He said there used to be a culvert under the road which can be looked at again.

Ms. Minner asked about a champion tree on this site. Mr. Canoles said it was a pignut hickory and would be retained. There was a question about labelling between two different pages of the plans submitted. Ms. DiPietro stated that was being rectified. Ms. Minner asked that they notify the County and State regarding the champion tree. She asked if it was in good shape and Mr. Canoles stated it was in good shape and far from any impact areas.

Mr. Wiseman entertained questions from the Commission members. Mr. Keane asked Mr. Davis about the second variance requirement. He said Mr. Davis had mentioned that other warehouse projects had received approval to remove specimen trees. Mr. Keane asked if he knew what percentage of trees had been removed on those projects. Ms. DiPietro mentioned that they have done six buildings over the course of the last five years and some of those sites had removed 80% of the trees. Mr. Davis mentioned that this area has unique characteristics with wetlands, etc. whereas other areas of this project do not contain as many of the same characteristics. He stated due to the shape of these parcels this is the right site for the use they are proposing due to its location to Route 40. They are trying to minimize as many impacts as they can.

Ms. DiPietro provided as an example the Amazon Building at Principio cleared 48 acres and retained 19.5 acres of forest. She said she would be happy to pull together the numbers and share them with the Commission members. Mr. Keane said he would like to see those numbers.

Mr. Keane noted they are required to consider Part 1(a) of the regulations for this variance which states 'A person may request a variance from this Part from the Planning Commission, if the person demonstrates that enforcement would result in unwarranted hardship...' Mr. Keane asked that they clarify how not removing the amount of forest they are proposing would be an unwarranted hardship. Mr. Davis explained that this project has significantly less square footage of warehouse space than other projects. By imposing the letter of the law the buildings would have to change and it would make the property less marketable and therefore unviable. They believe they have struck the right balance with their proposal.

Mr. Keane asked how not approving this project would devalue the site. Mr. Davis explained the business portion of not being able to develop the square footage in order for it to be viable economically. Discussion ensued regarding how denial would affect the project viability. Mr. Davis used one of the buildings as an example showing the trees, etc. and how small the usable square footage in the building would have to be to avoid all wetlands/trees. Even with a smaller square footage they would still have to develop the roads and other public improvements required and those costs would remain the same therefore building smaller would cut the yield significantly, possibly in half.

Mr. Neumann of Trammel Crow mentioned that having developed over 20 million square feet in Maryland and Pennsylvania in the past 10 years, this project retains more forest than most of their projects and they are very proud of the results they have been able to achieve with this project.

Mr. Canoles interjected that with respect to hardship, many of the trees they are proposing to remove are in poor condition already and the new trees they will be placing will grow into specimen trees over time.

Mr. Ginder questioned the number of parking spaces required for Building #2. Ms. DiPietro stated they are providing the number of parking space according to industry standards and Trammel Crow experience.

Mr. Wiseman noted that regardless of the outcome this evening, stormwater management still has to meet Maryland standards, the engineers still have to approve parcels 2 & 3, DNR will be looking at the Planning Commission recommendation and the Commission doesn't have anything to compare to because of the uniqueness of this site. Concessions have been made on by sides. The variance standards seem to have been addressed to the best of their ability at this time. He stated looking at other development in this area he feels they have done a good job in the percentage of trees and wetlands remaining on the site.

There being no further Commission questions Mr. Wiseman opened the floor to public comment.

Mr. John Connolly addressed the landscaping plan specific to the rear of the Sarah Drive properties and the north side of Building #1. He has concerns regarding the distance between the north side of Building #1 and the property lines along Sarah Drive. There are a lot of areas that will not be able to be landscaped – such as loading docks, trailer drops and an access road. There is also a stormwater management facility in the same area which looks to have a topographic drop.

Ms. DiPietro stated they are providing, at a minimum, a 75 foot bufferyard which is significantly planted and in some areas over 100 feet. She stated they will be providing stormwater management plans which will address the landscaping on the facilities. Mr. Davis said when those plans are finalized he would go over them personally with Mr. Connolly. Jennifer Jonach said she appreciated the overview of the administrative (variance) requirements for this request. She questioned the items noted by the developer with regard to hardships (building shape and the priority forests). She felt this was interesting since the property was this

shape and the priority forests were known at the time it was purchased. She thanked the Commission members for their consideration for the environmental impacts.

**MOTION: Motion was made by Mr. Ginder to approve the variance as requested to remove specimen trees and impact the priority forest as presented contingent upon addressing all outstanding comments from the Town, KCI, Army Corps of Engineers; MDE, DNR, meeting all stormwater management criteria and addressing comments from all other agencies. A follow up meeting was recommended but was determined unnecessary as Ms. Blackson would be writing a legal opinion for the variance. The motion was seconded by Mr. Keane with the remaining Commission members voting as follows: Mr. Muller – Aye; Mr. Thompson – Aye and Mr. Wiseman – Aye.**

**REQUEST OF EN ENGINEERING REPRESENTING FREESTATE BUSINESS PARK, LP, FINAL MINOR SUBDIVISION PLAN. THIS ACTION CONCERNS PROPERTY LOCATED AT THE INTERSECTION OF MUDDY LANE AND BELLE HILL ROAD, ELKTON, MARYLAND, TAX MAP 304, PARCEL 2102, ZONED C-3 (HIGHWAY INTERCHANGE COMMERCIAL)**

Mr. Bob Capalongo of EN Engineering gave a quick overview of the project. He noted the Preliminary Plan was approved on July 6<sup>th</sup> and they have addressed the majority of the comments received.

Mr. Wiseman asked if Ms. Minner had any comments on the Subdivision Plan. She stated she had requested them to provide notes regarding the presence of sensitive areas, such as the 100 year Flood Plain, non-tidal wetlands and the Chesapeake Bay Critical Area. Mr. Capalongo stated they will address her comments.

Mr. Wiseman called for comments from the Commission members. There were no comments.

Mr. Wiseman entertained comments from members of the audience. Mr. John Grego noted his request regarding trees on the right side of his property – he had suggested that the old trees be eliminated and new landscaping be placed. Mr. Wiseman suggested that Mr. Grego bring up his request during the Final Major Site Plan review.

**MOTION: Motion was made by Mr. Thompson to approve the Final Minor Subdivision Plan for Freestate Business Park contingent upon addressing all outstanding comments. The motion was seconded by Mr. Keane with the remaining members voted as follows: Mr. Ginder – Aye; Mr. Muller – Aye and Mr. Wiseman – Aye.**

There being no other comments Mr. Wiseman moved on to the next agenda item.

**REQUEST OF EN ENGINEERING REPRESENTING FREESTATE BUSINESS PARK, LP, FINAL MAJOR SITE PLAN. THIS ACTION CONCERNS PROPERTY LOCATED AT THE INTERSECTION OF MUDDY LANE AND BELLE HILL ROAD, ELKTON, MARYLAND, TAX MAP 304, PARCEL 2102, ZONED C-3 (HIGHWAY INTERCHANGE COMMERCIAL)**

Mr. Capalongo continued with his presentation for this request. He mentioned they are requesting a waiver from the Town's Public Road Cul-De-Sac/Turnaround Detail (R-9) to eliminate the 38' diameter planting space in the center of the proposed cul-de-sac on Belle Hill Road coming into their property. He showed the landscaping they are proposing around the cul-de-sac which they believe will be adequate. It was noted that the interior of the cul-de-sac will be flat rather than raised concrete/macadam. He pointed out that there is a telephone pole at the cul-de-sac and they are requesting to make changes to the typical width of the road and the sidewalk near the pole in order for trucks to be able to avoid it. Mr. Wiseman asked if that was noted on the plan as a waiver request. Mr. Capalongo stated it was not and Ms. Minner asked that the Commission call that out in the motion in order to allow that waiver request.

Mr. Capalongo asked for a waiver for the height of the landscape berm in one section which is less than 6' high. He stated this is a hardship because they would have to impinge on the swale if it were higher in this area. Mr. Capalongo explained how they would be buffering Mr. Grego's property from their development with the berm and landscape on the embankment along Radkie Lane. They will also be placing a fence to provide a barrier between his property and their property.

Mr. Grego was happy with the berm and landscaping and asked if the old trees could be removed. Mr. Capalongo stated they would be removing the old trees and placing all new landscaping and berm. The landscaper for Freestate told Mr. Grego he would bring him a copy of the plan. Mr. Grego was pleased with his suggestion.

Mr. Wiseman asked if Ms. Minner had any other comments. She stated that State Highway has requested a Traffic Impact Study for the project but she stated that shouldn't affect the layout of the site. Mr. Wiseman opened the floor to questions from the Commission members. Mr. Keane asked where the sidewalk will be located. Mr. Capalongo stated it will start at the cul-de-sac and come all the way down to the building and connect. They are also placing sidewalk along the cul-de-sac on both sides of Muddy Lane and down Muddy Lane to Radkie Lane. Mr. Keane asked how far the sidewalk is from the electric pole. Mr. Capalongo said it was about 1 ½'. Discussion ensued. It was determined they would widen the sidewalk to provide a three foot clearance for pedestrian and wheelchairs.

Ms. Minner asked if they had any other issues with comments from the Town or KCI. Mr. Capalongo stated they have concerns about the comments regarding the stormwater management emergency spillway. They don't believe it is required but are consulting with Cecil County. He stated that according to State Requirements they do not need a dedicated emergency spillway. Mr. DeLorimier stated his concern was that there are drainage issues down to the railroad track underpass and in the last two weeks they have had that area underwater. If something clogs the existing pipe it could spill over from the pond and he would like to know where that water is going to go. He also stated he requested the pipe to be moved somewhere other than where that water would flow so that it doesn't undercut that pipe and cause different damage. His concern is for the residential properties in this area. He stated he felt there should be some redundancy to avoid additional flooding issues. Mr. Capalongo said they will look at the Amtrak comments along with Mr. DeLorimier's concerns. He asked Mr. DeLorimier to look over the engineer's comments again which he feels address the clogging concerns.

Ms. Minner asked about the concerns with the curve in Belle Hill Road regarding large trucks. Mr. Capalongo provided 2 alternatives: 1) change the shape of the road near the Cracker Barrel and 2) change the striping on the other side of the road so trucks can swing out further into the pavement by the park and ride. He stated they are awaiting responses from the State and Cecil County regarding these proposed changes to the sidewalks and road widths. Once they receive the comments they will meet with Jeanne and KCI to go over them in order to finalize the changes.

Ms. Minner had no further comments. Mr. Wiseman opened the floor for questions from the Commission members. Mr. Keane inquired of Ms. Minner about one of her comments regarding the Stony Ridge

Forest Bank. Ms. Minner explained how the forest bank worked and the location of the Stony Ridge Forest Bank. Mr. Capalongo added that the reason they are providing the forest conservation off site is because there is no forest on site.

There was discussion regarding how to keep trucks from turning right onto Muddy Lane. Mr. Capalongo stated they haven't addressed the issue at this point. There are two existing signs which address the 11' height restriction. Mr. DeLorimer wondered if it could be addressed when the striping is done or a sign to discourage turning onto Muddy Lane.

Mr. Grego stated he watches cars go toward the railroad bridge and try to turn around in Radkie Lane. Mr. Capalongo asked Mr. Muller if fines could be given when trucks turn onto Muddy Lane and get stuck because they are not obeying the traffic signs. Mr. Muller stated if there was a sign which stated "No trucks over 'this' height" or weight limits then they would be able to enforce it.

Mr. Wiseman asked them to contact Amtrak for any suggestions since their property is being damaged. Mr. Grego stated people say they don't see the signage and he suggested placing a sign at the beginning of Muddy Lane. He said he thought the sign should be on the left hand side so they see it before they make the turn. He asked Mr. Capalongo to evaluate the signage to see what can be done.

There being no further questions from the audience of the Commission members Mr. Wiseman moved on to the next agenda item.

**MOTION:** Motion was made by Mr. Muller to approve the Final Major Site Plan for Freestate Business Park contingent upon the following: 1) Addressing all outstanding comments; 2) A waiver of the landscape island in the center of the cul-de-sac at the entrance of the property on Belle Hill Road (see plan note #31; 3) A waiver for the sidewalk width to be reduced to three (3) feet at the cul-de-sac; 4) Allowing for a reduction of the berm height from six (6) feet to four (4) feet along the property line with the Grego property; 5) Evaluate stormwater management for emergency over flow protection and present to Town and KCI; 6) Provide an evaluation of the signage on Muddy Lane and Old Baltimore Pike after review by the State and Cecil County; 7) Provide traffic evaluation of the turning radius for trucks along the curve on Belle Hill Road near the Cracker Barrel. The motion was seconded by Mr. Thompson with the remaining Commission members voting as follows: Mr. Ginder – Aye; Mr. Keane – Aye and Mr. Wiseman – Aye.

**OLD BUSINESS:** Ms. Minner stated the next few meetings will be busy.

**NEW BUSINESS:** Ms. Minner stated the Town has filled the Assistant Planner position left vacant when Terri Thomas retired. The position has been accepted by Nicholas Cannistraci who she believes will be an asset to the Planning Department and the Town.

The next meeting of the Planning Commission will be on Monday, September 21<sup>st</sup>.

There being no additional items for discussion Mr. Wiseman adjourned the meeting at 8:27 p.m.

Respectfully submitted,

Brie Humphreys