

**TOWN OF ELKTON  
PLANNING COMMISSION  
AUGUST 10, 2009**

**PRESENT:** David Wiseman, Chairman; Donna Short; H. Fred Thomas, II; Brad Carrillo; Commissioner Mary Jo Jablonski, Ex-Officio; Jeanne D. Minner, Director of Planning; Clara Campbell, Esquire; Theresa Thomas, Planner

**ABSENT:** Asma Manejwala; Sue Whitaker

Mr. Wiseman called the meeting to order at 6:00 p.m.

Mr. Michael Bayer of Environmental Resources Management presented three elements of the Comprehensive Plan for review (Land Use, Economic Development and Historic Resources).

**LAND USE ELEMENT**

He examined the goals and objectives of the Land Use element with the Board noting that these goals and objectives are broad. He asked if the Board felt this information was in alignment with their thinking and goals for the Town. The general consensus was that the goals and objectives presented were in line with those of the Board.

Mr. Bayer addressed the existing land use and noted that as of 2007, 53 percent of the Town's land area was developed, and 47 percent was undeveloped. He pointed out that one-fourth of the Town is developed as residential, 19 percent of which is at medium densities. He noted that commercial use in the Town, which incorporates approximately 14 percent of the Town and comprises 739 acres, is very important.

Discussion continued regarding 'mixed use' designation and the criteria utilized in determining these areas.

There was additional discussion regarding islands of County properties in Town and what the impact might be if these areas were annexed into the Town. Ms. Minner noted that the impact would be slight at most, if at all, as these properties are currently being provided water and sewer through the Town.

**PLANNING COMMISSION MEETING**

**ACTION:** Motion was made by Ms. Short to approve the minutes of the July 13, 2009 Planning Commission Meeting. Motion was seconded by Mr. Thomas and unanimously approved.

Mr. Wiseman addressed the audience and stated that due to the number of attendees he asked that people make their comments to the point and directed at the Board during the public comment session. He asked that each person who wishes to make a comment should give their name and address for the record prior to speaking.

**REQUEST OF DWIGHT L. THOMEY, ESQUIRE REPRESENTING THE WILLIAM M. SINGERLY STEAM FIRE ENGINE AND HOOK & LADDER CO. NO. 1 OF ELKTON, CECIL COUNTY, INC. FOR THE FOLLOWING: 1) REZONE TAX MAP 306, PARCEL 2154, FROM R-2 (TOWN RESIDENTIAL) TO C-2 (GENERAL COMMERCIAL); 2) REZONE TAX MAP 306, PARCEL 1852, LOT 4, NORTH SIDE OF NEWARK AVENUE, GILPIN HEIGHTS FROM R-1 (RESIDENTIAL ESTATE) TO C-2 (GENERAL COMMERCIAL)**

**REQUEST OF DWIGHT L. THOMEY, ESQUIRE REPRESENTING DANIEL L. & KIMBERLY L. LEWIS TO REZONE TAX MAP 306, PARCEL 1732, 213 GILPIN AVENUE, LOT 5, FROM R-1 (RESIDENTIAL ESTATE) TO C-2 (GENERAL COMMERCIAL)**

Ms. Clara Campbell informed the applicant that due to the fact that only four of the six members of the Board were seated for this meeting they had the opportunity to withdraw in order to be heard when a full board is seated. Mr. Dwight Thomey stated that his client wished to proceed.

Mr. Dwight Thomey, Esquire and Mr. David Strouss of McCrone, Inc. were introduced to the Board. Mr. Strouss pointed out the location of the parcels for discussion and noted that a paper street is part of Parcel 2154 that runs through the fire station. Mr. Strouss pointed out that the zoning lines are marked in red on the map submitted.

Mr. Thomey stated that the purpose for the application is to allow the Fire Company to redesign the fire house and parking and entrance/exit to provide for better access for the equipment out to Route 279. He said that The State Highway has long wanted the emergency equipment to have access to Route 279 further from the Route 279 & Route 213 intersection. They wish to provide additional office space as well. The intent would be to also provide a change in parking and change in entrance and exit from the property during events so as not to interfere with emergency equipment should it need to be dispatched during an event.

Mr. Carl Krienen of ABHA Architects presented the proposed changes to the property which show the equipment bays facing Route 279. The event parking will be placed at the rear of the existing building which they intend to expand. This plan necessitates the use of the two lots fronting Gilpin Avenue they are requesting to be rezoned.

Mr. Thomey reviewed the conditions as presented in Article 19, Section 5, Subsection 4 sites findings of fact which includes, but is not limited to, the following: 1) population change - he stated this is an issue regarding this use as there has been an increase in the population both in the County and the greater Elkton area and they believe that this need was overlooked; 2) adequacy of public facilities - he stated that this project would not create an increase in the use of public facilities; 3) present and future transportation patterns – he stated that this proposed project would improve the transportation pattern in the area by moving the emergency equipment back from the intersection and allow two means of ingress and egress; 4) compatibility with existing and proposed development for the area – he stated that the Fire Company has been at the location for many years and the community is familiar with it being at this location; 5) the recommendations of the Planning Commission, 6) relation to the Comprehensive Plan – the plan recognizes this area as one that provides some public services, Fire Company and Public Library, and acknowledges future growth; 7) fiscal impact upon Town government – they do not see any

impact to the Town government as they are not requesting any funds from the Town; and 8) the suitability of the property in question to the uses permitted under the existing and proposed zoning classifications – He stated that he does not envision any other commercial uses at this property due to the fact that they intend to place a restriction that the rezoning would be for the use of the Fire Department only and no other uses should the property be sold in the future.

Mr. Thomey summarized their presentation by stating that by not zoning the Fire Company's property as C-2 during the last comprehensive rezoning that an error was made in overlooking the fact that the Fire Company would need to expand as the Town grows. He also mentioned that the citizens of the Town have become familiar with this service being located in this area.

Mr. Wiseman asked when the original building was placed. It was determined that it was placed prior to the last comprehensive rezoning.

Mr. Wiseman asked if Ms. Minner had any other comment regarding these parcels. Mr. Wiseman entertained additional comment from the Board. Mr. Thomas inquired whether the majority of residents in that area approve this request. Mr. Thomey stated that they addressed the majority of homeowners who would be impacted with the proposed changes and referenced a plat from the 1960's which identified the lots in question (one of which was not in Gilpin Heights).

Mr. Wiseman inquired whether the property owners on Route 213 had been contacted regarding the rezoning request. Mr. Thomey stated that he did not believe the property owners were contacted because they would not be impacted by the changes. It was subsequently noted that Mr. Strauss had mailed certified letters to some property owners along Route 213.

Mr. Carrillo asked if the expansion proposed included additional equipment or simply space to store existing equipment. Mr. Donald Hicks of the Singerly Fire Department stated that a new engine is on order, they have 19 pieces of apparatus, they run an 89 mile area out of this station and they need the area for space for the volunteer fire fighters. Mr. Wiseman asked if the existing bays will remain. Mr. Hicks stated that the bays would remain and probably be used for training areas. He added that they may be adding another ambulance next year. Mr. Hicks noted that a Fire Department representative walked the neighborhood to speak with people about their plan. He stated that the Fire Department offered to have a community meeting in order to present the plan. He pointed out that deed restrictions have been placed on the property that the property could not be used for anything other than a fire department.

Mr. Thomas confirmed that this is just the first step in the process and the fire department would have to come back before the Board with more formalized plans. Mr. Wiseman asked if there is a plan which does not include the Lewis property. Mr. Krienen stated that they did have a plan which did not include the Lewis property.

Mr. Wiseman opened the meeting to comments from the audience.

Ms. Nancy Wells of 105 James Street stated that she has been at this location since 1964. She stated that she is against the zoning change because the rules of zoning clearly state that a change in zoning can only be made if, either a mistake was made, which she stated that this was not the case. From its inception there have only been residential properties in this subdivision. There have been no gas stations or stores. The schools, library and fire department were welcomed

adjacent to it. The only other legitimate criteria for zoning change is that there has been a fundamental change to the nature of the community. Change must not be confused with the fulfillment of the inception of the original planners. All but two of the lots have been developed. As recently as two years ago a home was built. An overwhelming majority of the community have maintained and, in fact, most have improved and enlarged the original structures. She noted that a few of the neighbors are undergoing remodeling. She stated that she has enlarged her home twice and has plans to replace siding and update her home next year. The community intention is to avoid becoming rundown and remain vital and vested and interested in their community. There are a few exceptions but the majority of the community has maintained their property well. The biggest change has been cars, which is normal across the country and traffic flow is the enemy of the community. She pointed out that the community has not changed but this proposal will change the community. The community respects the fire department for their work in the community and she understands their need to grow. She pointed out that they are choosing not to fully use their property behind them and to the left and she feels there are alternatives which would protect their community and enable them to expand. She stated that she feels their proposed changes will decrease the property values in the Gilpin Heights community and she thinks they need to reconsider the way they are planning to expand.

Mr. Hampton Scott of 140 Frenchtown Road owns the property near the corner of Route 279 and Route 213. He stated that he and his neighbors have concerns that their properties are becoming an island. He had considered moving the house on his parcel on Newark Avenue to his parcel on Bridge Street but since it did not happen he feels any potential buyer would be concerned about having commercial property behind a residential property. He wondered if consideration would be given to rezoning the other properties on Singerly Road as C-2 as well. He asked about the zoning restriction Mr. Thomey had mentioned earlier. Mr. Thomey stated that he was not sure if the properties Mr. Scott was referring to were part of the original Gilpin Heights subdivision with the deed restrictions.

Mr. Bob Litzenberg of 105 Walnut Lane stated that he agreed with everything Ms. Wells said but wondered about the 20 foot right of way access to Route 213. He noted that his street is only 17 feet wide so if 20 feet is not big enough for them to use that right of way how can they use a 17 foot road and exit near his home. He has problems with bus and car traffic near his home from the school. He does not feel they have proven either mistake or change by their presentation.

Mr. Monty Litzenberg stated that he owns the property noted by Mr. Scott near the right of way on Route 213 and the width is actually 40 feet. He noted that it is a street of record, called Gwendolyn Avenue and he felt this right of way would be a more practical use for the fire department to take congestion out of the Gilpin Heights neighborhood.

Mr. Dan Lewis stated that, in the same way that Ms. Wells is trying to improve her property, the Fire Department is trying to improve their property to serve the community. He stated that originally three houses were to be built behind the house he owns, which were purchased by the Fire Department, and he feels the character of the neighborhood was changed when those purchases were made.

Mr. Tom Swauger of 204 Gilpin Avenue stated that he agrees with Ms. Wells comments. He noted that since the school was placed a lot of the open space was turned into concrete and he believes that if this proposal is approved that more concrete will replace open space. He would

like to see their neighborhood remain the way it is now for the families. He felt that the Gilpin Heights homeowners should have the right to know how the Board votes with regard to this proposal.

A question was raised regarding whether the parcel behind the properties on Bridge Street could be used for carnivals and other such events should the rezoning be approved. Ms. Minner stated that the property could currently be used for those events.

Mr. Hicks wanted to clarify that at least one homeowner at each residence, where possible, was talked to concerning the proposed changes to Singerly Fire Company's property. He noted that no vote was taken but people were given the opportunity to sign a release of restrictions.

Ms. Deborah Holderer of 211 Gilpin Avenue stated that she has been very concerned about the proposed plans for the Fire Company. Her house lies between the road to the school and the Lewis' house. If the plans are approved she will have a road on either side of her house. She is opposed to the improvements and does not want more commercial property near her home. She felt the access to Route 213 would be a better alternative.

Ms. Lisa Crouse of 210 Gilpin Avenue stated that she has two small children who play in her yard and she already has to deal with the traffic from the school for events there and buses coming and going each day. She is concerned with people who may be intoxicated leaving the events at the Fire Company and coming through the neighborhood where children are playing. She is in opposition to the proposed changes.

Dr. Barbara Parey of 207 Gilpin Avenue stated that she agrees with Ms. Wells and Ms. Holderer regarding children in the neighborhood. She is concerned about more traffic being channeled through the neighborhood. She feels they need to look at another alternative.

Ms. Theresa Kivlin of 208 Gilpin Avenue stated that she is in opposition to the proposed changes and rezoning which affect any Gilpin Avenue lot. She cited the close knit neighborhood and additional traffic which would interrupt their community. She stated that she believes the changes would compound the traffic already on Gilpin Avenue. The additional noise and air pollution are other concerns to the community. She feels the value of their homes and quality of their life will be affected by the changes. She thinks they should consider other avenues rather than rezoning properties within their community. She addressed the Declaration of Restrictions, created in April 1963, and pointed out that 1) the document pertains to lots owned by Gilpin Manor Development Corporation, Inc. as of April 1963 excluding those lots which were developed earlier and part of the original Gilpin Heights plat, therefore this document pertains only to the lots sold and developed after April 1963. These are the properties currently located in the 200 block of Gilpin Avenue. This excludes all others of the original Gilpin Heights plat because these were developed prior to the April 1963 document; 2) Document clearly states under Covenant and Restrictions under Land Use and Building Type "the land in said tract, and any lot or lots, now or hereafter laid out thereon, shall be used for residential purposes only and no building shall be erected, altered, razed or permitted to remain on any lot other than one detached single family dwelling not to exceed two and one half stories in height. Further, under Subsection A it states 'There shall be no commercial enterprise whatsoever on said tract'; 3) Under Subsection 12 this document states in part "These covenants are to run with the land and shall be binding on all parties and all persons claiming under them unless an instrument signed by the

majority of the owners of the lots has been recorded agreeing to the change in said covenant in whole or in part". She stated that based on the list of signatures she has with her this evening the majority of owners do not agree with these changes.

Mr. David Mau of 202 Gilpin Avenue stated that he is doing a lot of renovations on his house. What he has seen in the last few years is an encroachment on the open areas of the neighborhood, such as the high school expansion, and the traffic during school hours. Another access onto Gilpin Avenue would just add to these problems. Children play in the streets in the neighborhood and they feel another access would be unsafe. He felt the amount they are selling the house for may raise the taxes on the other homes in the neighborhood.

Mr. Matt Crouse of 210 Gilpin Avenue said he agreed that the price being asked for the house is more than it would cost to build the retaining wall in order to use the existing property owned by the Fire Department.

There were no other comments regarding this case and Mr. Wiseman closed this comment session.

**MOTION: Motion was made by Mr. Brad Carrillo to recommend approval of the rezoning request for Parcel 2154, owned by the Singerly Fire Company. Motion was seconded by Mr. Wiseman with the remaining members voting as follows: Mr. Thomas – Nay; Ms. Short – Nay. The motion failed for lack of a majority.**

**MOTION: Motion was made by Mr. Fred Thomas to table the decision of the rezoning request for Parcel 1852 until such time as the Board is able to hear the Zoning Administrator decision regarding expansion of this nonconforming lot. The motion was seconded by Ms. Short with the remaining members voting as follows: Mr. Carrillo – Yes; Mr. Wiseman – Nay.**

**MOTION: Motion was made by Ms. Donna Short to recommend denial of the rezoning request for Parcel 1732. The motion was seconded by Mr. Thomas and unanimously approved.**

**REQUEST OF JAY C. EMREY, III, ESQUIRE REPRESENTING RED HILL SUBDIVISION TO REQUEST A WAIVER OF THE SIDEWALK REQUIREMENT ALONG RED HILL ROAD**

Mr. Jay Emrey and Mr. Ken Simmons were introduced to the Board. Mr. Simmons stated that the project, Baker's Hill, LLC, has had several issues occur. They have a State Highway permit but were approached by SHA regarding work they would need to have done in the right of way. Mr. Simmons stated that they were allowed to proceed with their work and discovered a Town water line within the State right of way. Upon contacting the State they were told that in order to place the sidewalk they would need to dig under the pipe and make corrections as it was located incorrectly. Mr. Simmons negotiated with the State and they determined the most economical way to make the correction. Essentially, the State approved the decel lane to be decreased and stated, that if the ADA agreed, that the sidewalk within the State right of way, but not on the Baker's Hill property, could be eliminated along Red Hill Road.

Mr. Simmons stated that since the sidewalk was recorded on the signed Construction Plans for the project the Board would need to approve the corrections as noted. There was discussion concerning whether sidewalk was necessary, the soil compaction and the issues that each party felt were non negotiable. Mr. Simmons stated that he did not have an issue with placing the sidewalk but that he believed that when it was originally approved that it was done in error.

Ms. Thomas clarified that Mr. Simmons is saying that the Town is requesting sidewalk be placed on properties that are not owned by the project and that the Town has never made this kind of request in the past. It was noted that the sidewalk was placed on the plans by McCrone, Inc. and approved by the Town and State Highway and recorded.

Ms. Campbell stated that no proof has been shown that the sidewalk cannot be placed at the location shown on the plans. The plans were submitted with the sidewalk in place and therefore the project is bound by the recorded plans. It was determined that in order to place the sidewalk as requested would cost the project approximately \$42,000.00.

Mr. Carrillo requested an opinion from Counsel. Ms. Campbell stated that the decision could be tabled until such time as additional information is received in order for the Board to make an informed decision.

Mr. Emrey stated that there are decisions made and changed throughout the process and he felt the minutes would provide information that would show whether the sidewalk was placed or requested.

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

**MOTION: Motion was made by Mr. Wiseman to table the decision in order to gather additional information from Ms. Minner and Mr. Trostle regarding this issue. The motion was seconded by Mr. Thomas and unanimously approved.**

**OLD BUSINESS – None**

**NEW BUSINESS – None**

### **COMPREHENSIVE PLAN MEETING – Land Use Element (Continued)**

Discussion resumed under the Land Use Element. Mr. Carrillo questioned whether the Land Use Element would be the place to add any additional land use designations, such as a PUD zone and/or placement of guidelines or consensus for the zone. The discussion centered around existing PUD's in other states and what guidelines might be placed on development in a PUD zone in Elkton.

Ms. Minner shared the section of the current Comprehensive Plan relating to the Town's goals for Planned Developments and how these areas should be developed to become extensions of the Town rather than isolated pockets of residential development.

There was discussion regarding a possible 'mixed use' zoning district and the Board's vision for that district. Discussion followed regarding areas where this mixed use might be incorporated into Town.

### **Economic Development Element**

The goals and objectives for this element were examined. Ms. Short pointed out that she felt that using the 2000 census statistics does not accurately represent a number of the issues under this element.

There was general discussion regarding the train station and the timeline projected for its development. The condition of the businesses along the Route 40 corridor, within the Town limits, was mentioned as well.

### **Historic Resources Element**

Mr. Bayer stated that the Historic District boundaries would be revisited to determine whether they should be expanded. There was discussion regarding the Historic and Architectural Review Committee, seated in July 2007, and their role with regard to structures within the historic district. Ms. Minner mentioned that this element was provided to the HARC members for review. Mr. Wiseman stated that he felt the HARC members should be involved in determining additions to the Historic District.

The final element for review will be the Transportation Element. Mr. Wiseman requested that the meeting on September 14<sup>th</sup> begin at 6:00 p.m.

There being no further items for discussion Mr. Wiseman adjourned the meeting.

Respectfully submitted,

Brenda Humphreys