

**TOWN OF ELKTON
BOARD OF ZONING APPEALS
JANUARY 16, 2020
MINUTES**

Present: Robert Olewine; Heather Mahaffey; Shirley Hicks; Sam Goldwater; Kelly Bedder; Chip Bromwell, Zoning Administrator; Lisa Blackson, Esq., Legal Counsel

Absent: Dawn Schwartz

The meeting was called to order by Mr. Olewine. He called for any additions or corrections to the minutes of the December 19, 2019 meeting. Ms. Hicks provided a correction due to an incomplete sentence. There being no further corrections Mr. Olewine called for the motion.

ACTION: Motion was made by Mr. Goldwater to approve the minutes from the December 19, 2019 meeting as amended. The motion was seconded by Ms. Hicks and unanimously approved.

Mr. Olewine addressed the audience and asked that anyone who wished to speak during the meeting stand and be sworn in. Those who stood were sworn in by Ms. Carol Beresh, the court reporter for the Board of Zoning Appeals.

Mr. Olewine informed those in attendance that there would be opportunity for public comments after the presentation of the case for this evening. He asked that those providing comment would keep their comments to approximately three minutes per speaker. He noted there were sign in sheets in the hallway which could be used to request to be heard and if they had not already done so to please sign the form so they could be recognized during the comment portion of the meeting.

CASE # 1557 – REQUEST OF SOUTHFIELDS OF ELKTON CAPITAL DEVELOPMENT, LLC REPRESENTING TRAMMELL CROW COMPANY FOR A SPECIAL EXCEPTION FOR THE FOLLOWING: ARTICLE X, PERMISSIBLE USES, SECTION 7, PERMISSIBLE USES TABLE, 10.200 STORAGE OF GOODS NOT RELATED TO SALE OR USE OF THOSE GOODS ON THE SAME LOT WHERE THEY ARE STORED, WAREHOUSING AND SECTION 7, PERMISSIBLE USES TABLE, 10.210 ALL STORAGE WITHIN COMPLETELY ENCLOSED STRUCTURES. THIS ACTION CONCERNS PROPERTY LOCATED SOUTH OF US ROUTE 40, NORTH OF FRENCHTOWN ROAD, WEST OF MALONEY ROAD, IN ELKTON, MARYLAND, TAX MAP 320, PARCEL 2371 AND TAX MAP 316, PARCEL 169, ZONED R-3 (URBAN RESIDENTIAL)

Mr. Sean Davis of Morris & Ritchie Associates, LLC and Mr. Dwight Thomey, Esquire were in attendance to address this request.

Mr. Davis introduced himself as the Principal for MRA. He stated he has an undergraduate degree in landscape architecture and a law degree. He noted he has been practicing as a licensed landscape architect in Maryland, Delaware, Virginia and North Carolina for over 32 years. He stated he has qualified as an expert witness for most counties in the State of Maryland and has been involved in a number of different organizations.

Mr. Davis referred to information provided to the Board members which is in addition to the site plan previously submitted. He stated it shows the location of the subject property in relation to the overall Southfields PUD development.

Mr. Davis moved into addressing the standards for special exceptions as provided in Article IV, Part II, Section 6 - Standards – General.

1) That the establishment, maintenance, and operation of the special exception will not be detrimental to or endanger the public health, safety, convenience, morals, order or general welfare. He stated they do not believe the establishment, maintenance, or operation of the proposed warehousing use will be detrimental to or endanger the public health, safety, convenience, morals, order or general welfare of the surrounding community. He stated that in his professional opinion this use would not be detrimental. He stated this particular use at this particular location would not have any adverse effect above and beyond those inherently associated with such a special exception irrespective of its location in the zone. Basically this means these uses on this particular parcel would have no more detrimental effect than it would on any other part of the planned unit development. He noted there are a variety of uses surrounding every aspect of this property. He pointed out the proposed use is similar in size, nature and intensity to existing uses in close proximity along US Route 40 Corridor;

2) That the special exception will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood. Mr. Davis said in his professional opinion it will not. He pointed out that the site plan proposes substantial buffers for neighboring properties and the uses are setback a distance from the property lines. In the areas where they are closer they will be providing substantially more buffering than is required. The buffer required between residential and commercial/industrial properties is the most densely forested buffer according to the Town Zoning Ordinance.

Mr. Davis referred to the original submission (Exhibit A) which was submitted at Concept Plan to the Town and the revised 'Exhibit A'. The revised submission showed the changes made to the size of Building #1 and the distance to bordering properties. He noted these changes were in response to comments received from residents along Sarah Drive and Maloney Road at the January 6th Planning Commission meeting.

Mr. Davis added they have removed the trailer parking along Sarah Drive which increased the distance to 256 feet between the building and the property line, of which 135 feet is forested buffer. For the properties along Maloney Road they reduced the size of the building by 50 feet (or 30,000 square feet) in order to increase the forested buffer to 104 feet. From the forested buffer to the building is 117 feet which is a total of 221 feet from the building to the residential property lines.

Mr. Davis noted there were comments about the potential effects of diesel exhaust to neighboring properties. He provided information addressing studies which were done by the EPA (Environmental Protection Agency), the Institutes of Health and the CDC (Center for Disease Control) ranging from 2003 to 2006 (see information attached). He noted there are continued advanced in addressing these environmental issues. He gave an example of H&S Bakery in Baltimore whose trucks are fuels by natural gas.

3) That the exterior architectural appeal and functional plan of any proposed structure will not be so at variance with either the exterior architectural appeal and functional plan of the structures already constructed or in the course of construction in the immediate neighborhood or the character of the applicable district, as to cause a substantial depreciation in the property values within the neighborhood. He stated that in his opinion the proposed warehousing buildings will be in keeping with similar uses along US Route 40. He felt the buffering being provided from the neighboring residences would not cause the depreciation of property values.

4) That adequate utilities, water, sewer or septic system, access roads, storm drainage and/or other necessary public facilities and improvements have been or are being provided. Mr. Davis noted that all the proposed uses will be served by public sewer and water in accordance with Town standards. He stated that the site must comply with the current Town and County stormwater management and erosion and sediment control regulations.

He noted there have been many concerns at other meetings about potential flooding due to the size and nature of these buildings and parking areas. He confirmed that they must capture the rainfall and treat it on site so that any water that goes on to neighboring properties would not be injurious at all. There are very strict rules and regulations in place to address these issues. He mentioned the fact they are doing the same at Principio Business Park with great success.

5) That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets. Mr. Davis confirmed that in December they issued a traffic impact analysis which was submitted to the Town, County and State. It identifies specific improvements necessary for various roads (Route 40, 213 and Whitehall Road) to bring the service of those roads up to an acceptable level.

He stated it is likely a traffic light will be warranted on Route 40 which will be the only access point to the logistics warehouse facility. State Highway has determined that a traffic light will be required on Route 40 through a traffic warrant analysis. It must be constructed prior to the first building opening.

6) That the proposed special exception is not contrary to the objectives of the current Comprehensive Plan for the Town of Elkton. He stated the current Comprehensive Plan for the Town is ten (10) years old and a lot has changed in that time. At the time the Comprehensive Plan was written in 2010 large warehouse building weren't on the radar but it is a critical part of our commerce now.

The current property is zoned Urban Residential (R-3) which is primarily for high density residential use. The future land use per the Comprehensive Plan is zoned Town Estate (R-1) and Suburban Residential (R-2).

He addressed the approximate breakdown of acreage between critical areas, residential, and commercial uses. He pointed out the number of homes which could be placed by the current zoning. He stated that one of the visions of the Comprehensive Plan was to attract growth to Elkton between residents, jobs and commercial uses to reinforce the Town's role as the center of commerce in Cecil County. Logistics is the fastest growing commerce in the marketplace. He referenced Exhibit 3 from Cecil County's Economic Development department (attached) which provides information on employment, wages and top industries. He believes logistic warehousing would provide significant growth and financial potential for the Town.

7) That the special exception shall, in all other respects, conform to the applicable regulations of the district in which it is located or to the special requirements established for the specific use. Mr. Davis said the floating zone was approved by the Mayor & Commissioners and complies with all the rules and regulations included in the PUD.

8) Conditions and Guarantees. Prior to granting of any special exception, the Board of Appeals shall stipulate such conditions and restrictions upon the establishment, location, construction, maintenance and operation of the special exception as is deemed necessary for the protection of the public interest and to secure compliance with the standards and requirements specified in Article XII. In all cases in which special exceptions are granted, the Board of Appeals shall require such evidence and guarantees as it may deem necessary as proof that the conditions stipulated in connection therewith are being and will be complied with. He stated that the Board of Zoning Appeals may place any condition they deem necessary for this use. He confirmed that they would comply with any conditions placed by the Board of Zoning Appeals.

Mr. Davis went on to say that in his opinion the proposed use meets all the special exception requirements and asked that the condition placed by the Planning Commission be removed. He stated he believed the new information provided to the Board this evening would have addressed their concerns if it had been available at the presentation before that Commission.

Mr. Dwight Thomey summarized that planning has changed dramatically with more emphasis on development where mixed uses are all in the same area rather than having to travel so far to find what you need. He stated he believes the approval of the floating zone by the Mayor & Commissioners shows their desire for the future direction of the Town.

Mr. Davis stated the wetlands are concentrated mainly on the west side of the access road on Parcel I with spotty areas of wetlands on the east side. He stated he believes they can get permits to impact the wetlands from MDE (Maryland Department of the Environment) to place the large format uses on Parcel I.

Mr. Olewine asked if they have any potential tenants for the warehousing use. Mr. Davis said what often happens is that marketing takes place while the construction is taking place. He mentioned that they may have tenants who are doing no or little truck use. They don't know at this point.

Mr. Olewine opened the floor to Board questions. Mr. Goldwater questioned whether there was any thought to a fourth building on the 47 acres parcel. Mr. Davis responded they are limited by

planning and development to specific square footage which is 3.9 million square feet and they are proposing 3 million square feet.

Discussion ensued regarding how the amount of water needed for fire protection. Mr. Davis stated they would be proposing a water tower which they have shown on the plan.

Mr. Goldwater asked if the traffic impact study included the warehousing use. Mr. Davis stated it included the warehousing and more development than they are proposing currently due to comments from the Critical Area Commission regarding the proposed uses on the west side of the project in the Critical Area. The critical area part of the plan needs to go through growth allocation review prior to the Overlay Zone being applied and therefore it has been removed from the proposal at this time. There was additional discussion regarding the completed traffic impact study.

Mr. Goldwater inquired about other impacts fees they are responsible for which will impact the local governments (Town of Elkton & Cecil County). Mr. Davis noted they are responsible to construct all utilities which impact the project so as not to disturb existing facilities – this would include water and sewer, stormwater improvements and traffic improvements.

Ms. Hicks said Mr. Davis had mentioned similar facilities in the area and questioned where the closest similar use, that includes 700 bays, might be located. Mr. Davis stated Principio Business Park is currently in use in Perryville. She asked how many acres have been set aside for the warehousing use. Mr. Davis explained that 56% of the PUD includes residential and open space uses; 229 acres are for the logistics warehousing of which approximately 50 is wetlands and therefore 175 acres will be used for the buildings, roads, parking, stormwater, etc. He noted there will be approximately 130 acres provided for residential use. He added that the acreage designated for the warehousing is critical to the total operation.

There being no further questions or comments from the Board, Mr. Olewine opened the floor for public comment.

John Guns of Enfield Road voiced his concerns regarding the distance between the residential properties and the industrial use. He is also concerned about the environmental runoff from the trucks. He has been in the trucking industry for many years and is aware of the salt, cinders, chemicals, soot and other harmful runoff which can affect the surrounding properties. He is concerned that this harmful runoff could affect the septic system on his and other residential properties. He stated he also has concerns for his well water although he is currently unable to drink the water at his home due to past contaminants in the ground. He mentioned the truck traffic, lights and noise all day and night and does not believe this is the appropriate area for this type of use.

John Conolly of Sarah Drive spoke in opposition to the industrial part of the project. He stated he doesn't believe a 24/7 operation belongs so close to residential properties. He doesn't agree with Mr. Davis that there is no danger to public health and cited MDE Osha reports regarding particulate matter which includes elements found in diesel fumes. He has concerns for his

property values and the fact it doesn't line up with the current Comprehensive Plan which provides protections for residential properties. He believes this will not be a benefit with regard to the existing jobs report; school impacts and standard of living in the area. He asked that the Board deny the special exception.

Sandra Edwards of the Cecil County Office of Economic Development spoke in favor of the project. She stated their office is seeing a push for development where residents can have access to work and recreational areas close enough to their homes to be able to walk or bike and thus reduce the need for gas consumption. She felt the information regarding household income presented was good for the area. She believes the Town needs to expand their commercial and industrial tax base for stabilization purposes. She said they are seeing a demand with regard to the Route 40 and 95 growth corridors and this is very important for the area.

Patricia Wells of Frenchtown Road and voiced her agreement with other neighbor's concerns. She stated that in addition to the diesel concerns she also has concerns about all the asphalt which will be laid for this project. She referenced a study done by the Worcester Polytechnic Institute in May of 2010 which stated that unsealed asphalt runoff is a relatively under addressed problem and of great concern. She stated the EPA did a similar study of sealed asphalt which said basically the same thing. She stated they noted their concerns for aquatic life. She noted that she suffers from asthma and an autoimmune disorder and is concerned for her own health since this will be so close to her home. She asked the Board to take this information into consideration as they make their decision. She also voiced her concerns for the truck traffic and lights affecting her property. She provided copies of the studies to the Town.

John Dixon voiced his support of the Southfields project. He referenced the Town Comprehensive Plan calls for economic development. This includes residential, recreational, environmental protection and economic development. He noted that, although the residential and recreation uses are key, the economic uses are essential for growth. He stated that Cecil County is at the forefront of the e-commerce market. He said he believes the developer has done their due diligence in order to protect the residential properties and address the needs and desires of the community and he thinks this project will be an opportunity to move Cecil County into the 21st century.

Peter Kline of Town Point Road voiced his concern for the Chesapeake Bay Watershed which he believes has been underrepresented in these proceedings. He noted the stream restoration work being done by Mr. Kilby with taxpayer monies on the Little Elk Creek. He is concerned that tax breaks are being given for developers to pave farmland. His main concern is for runoff from the paved areas into the Bay. He said he doesn't believe the Bay can handle that much runoff at once and stated it needs to be introduced slowly. He asked the Board not to approve this special exception which will undue all the work that is currently being done on stream restoration.

Jennifer Jonach of Town Point Road asked the Board to deny the special exception for Southfields. She mentioned an electronic petition that has been signed by 1,100 people to request denial of the special exception. She asked that their concerns be considered. Her main two concerns were: 1) that the project is contrary to the Comprehensive Plan – she stated she

disagreed with previous statements that e-commerce was not even thought of during that process. She believed the Town's vision was that this land was not to be used for commercial purposes. She noted that Amazon was started in 1994, 16 years before the Comprehensive Plan was written so the plan could have included e-commerce.

She noted that it is possible for the Comprehensive Plan to be reviewed and updated by the Planning Commission as necessary. She stated the Plan states that development needs to be consistent with existing community character. She stated the objectives of the Comprehensive Plan with regard to protecting the Chesapeake and Coastal Bays and said she doesn't feel those objectives are being met. She noted the goals and objectives of the Plan state that residential neighborhoods should be protected from excessive through traffic and the encroachment from commercial and industrial uses and to ensure that future development avoids environmentally sensitive areas. The proposed plan does not meet those stated objectives. She stated it also states uses should primarily serve the local neighborhood. She stated the residential uses are only 22% of the total project.

She went on to state that the health concerns are significant. Small particulate pollution according to the World Health Organization has health impacts even at very low concentrations and no threshold has been identified below which no damage to health has been observed.

Bill Horne of 113 Mike Court stated that many people have been expressing their concerns and have done significant research which has been presented to the Board. He asked that this information be considered in making their decision regarding this request. He asked them not to let this happen to Cecil County's open land and wildlife.

Mike Welker stated he was born and raised in Elkton and has a degree in political science with a focus on political economy and urban development. He urged the Board members to vote for the project. He stated that Cecil County doesn't have jobs available for college graduates and he believes these jobs are needed. He said he recognizes and understands the concerns voiced by others and believes the technology is available in this country for the environment to be protected and stated he feels the developer knows what they are doing and will protect the environment. He stated his main concern is how this will impact small businesses. He believes this project will lay the groundwork for bringing in higher paying jobs and although it may not affect him he believes it will be an asset for younger people who live in this area.

John Kampes of Liddell Road stated his support for the project. He explained how his personal and professional life has always been a part of sports, athletics and recreation for young people. He said he felt it was ironic that a few of the people complaining about diesel fumes are the same people who built their homes and raised their families doing the same kind of work. He explained that he is part of a private sports program whose founders have provided over 200 athletic scholarships for boys and girls to go to school and get a free education. He has been privileged to have both of his children be recipients of those scholarships. He is very excited about the possibility of a sports complex being part of this proposed development. He stated he travels from Florida to Maine every weekend and can't imagine being able to spend time in his own County doing the thing he loves. He believes this sports complex will have a significant

economic impact on this area. He asked that the Board consider that, outside of the logistics warehousing use, this is a massive project and there are many different contributions it can bring to this County.

Peggy Meehan of Frenchtown Road stated she has lived in this area for 15 years and wondered why the train station hasn't been opened in order for people to travel to and from Philadelphia or Washington D.C. since there are no jobs here. She voiced her concern for the health impacts this project will have not only on the residents but on the wildlife in the area. There are a lot of animals that will have to find other places to live once the development begins. She is concerned about the traffic issues which are already terrible and the additional traffic impact this project will create. She asked the Board to consider these concerns and find a way to make it work for everyone. She is feeling forced out of her home and that this will bring Baltimore to Elkton.

Rick Deaner spoke in favor of the sports complex and agrees with Mr. Kampes that there is a need for this around this area so that people don't have to travel so far to get their kids involved.

Mr. Olewine asked if anyone else would like to speak either for or against this project. There being no one else in the audience who wished to speak Mr. Thomey provided some additional comments. He stated that with respect to the stormwater flow there are requirements for water quality and quantity which have to be followed and therefore water will not be flowing into the Big Elk Creek or anywhere else. He stated what they are proposing will have less asphalt than if only residential properties were placed there and mentioned that the truck traffic will be segregated from the other traffic.

He stated they believe the Town has a vision for a planned community that by its nature will provide employment, commercial, residential and recreational uses. He feels they can provide all of these things and still leave much of the land natural and provide buffers to address the environmental concerns of the residents.

Mr. Thomey reminded the Board that there are guidelines which address the conditions by which a particular use requiring a special exception should be approved or not. Those guidelines address how they are to handle the concerns that come before them. He stated a special exception generally is a use that should be approved short of dire negative impacts. He noted the criteria states that the particular use at a particular location has no more of an effect than at any other location in the zone. He requested that the Board approve the special exception.

Mr. Olewine questioned how they propose to handle stormwater. Mr. Davis stated they can use a number of environmental site designs throughout the site all of which require them to capture the rainwater and place it as close as possible to the area where it would have fallen. Although these uses are unique, due to the size of the facilities, the same principles apply. These regulations are extensive and the plans have to be approved by the Town in a three-stage process, Concept, Preliminary and Final. As part of that process they have to show that the soils can handle stormwater runoff. This process gets more detailed with each submittal.

Mr. Olewine asked if there is any type of monitoring that is done once the stormwater facilities are in place. Mr. Davis noted there is a maintenance agreement completed as part of the approval process. Mr. Thomey stated the County has facilities in subdivisions which are inspected and if work needs to be done to the facility the responsible party would have to address any identified issues. These inspections would be done by a third party rather than the owner.

Mr. Goldwater asked how the issues of light from the facilities would be handled with respect to the neighboring residential properties. Mr. Davis stated a lighting plan is required that would show how the foot candle intensity will affect residential properties.

Ms. Hicks questioned how the entities associated with this project are connected. Mr. Davis stated Stonewall Capital is the overall developer of the Southfields project. The project is under contract to Southfields of Elkton Capital Development, LLC. Trammel Crow is one of the purchasers of the logistic warehouse uses and MRA (Morris & Ritchie Associates) are consultant hired by Stonewall Capital to be the planners, engineers, etc. for the project.

Ms. Hicks noted they provided a revised plan to the Board this evening. She asked if they had to remove any one part of the development what part would they choose. Mr. Davis stated that since all the parts of the development work together they would not eliminate anything. He noted that the critical areas had been removed due to concerns of the Critical Area Commission.

Mr. Thomey asked that the exhibits provided at the meeting be made a part of the official record of the hearing. Ms. Blackson stated that everything presented this evening, whether by the presenters or the audience would be made a part of the official record of the hearing.

Mr. Olewine called for a motion to enter a closed session in order for the Board members to speak with counsel.

MOTION: A motion was made by Mr. Goldwater to go into closed session. The motion was seconded by Ms. Bedder and unanimously approved.

The Board members moved to another room for the closed meeting. The closed meeting was in session from 7:41 p.m. until 8:01 p.m. Mr. Olewine again called the meeting to order. He called for a motion to bring the meeting into session.

MOTION: Motion was made by Mr. Goldwater to bring the meeting into session. The motion was seconded by Ms. Hicks and unanimously approved.

Mr. Olewine stated that what is being looked at for approval or denial is the limited scope of the project with reference to the special exception for the warehousing use. He stated the reason for the closed meeting was to be sure the Board handles their decision according to the standards laid down in the Zoning Ordinance with respect to special exceptions.

Mr. Olewine called for a motion.

MOTION: Motion was made by Ms. Bedder to approve the special exception with the condition that an environmental study be done for the environmental impact of runoff. The study is to be completed prior to the submission of the Preliminary Plans and submitted along with the plans for Site “I”. The motion was seconded by Ms. Hicks and unanimously approved.

Old Business: None

New Business: The next meeting of the Board of Zoning Appeals will be February 20, 2020 at 6:00 p.m.

Mr. Olewine informed the audience that the members of the Board of Zoning Appeals are all appointed to this Board, they are not paid, and they are all residents of Elkton.

There being no further business to discuss, Mr. Olewine called for a motion to adjourn the meeting.

MOTION: A motion was made by Mr. Goldwater to adjourn the meeting. The motion was seconded by Ms. Bedder and unanimously approved.

The meeting was adjourned at 8:03 p.m.

Respectfully submitted,

Brie Humphreys