

Cold Spring Planning & Zoning October 10, 2007

The regular meeting of Cold Spring Planning and Zoning Commission was called to order by Vice-Chairman Jim Drye. Pledge to the flag was recited. The roll call showed the following present – Roger Bay, Jim Drye, Joe Feinauer, Ken Sharp, Karen Stafford and Ken Warden, excused - Steve Taylor. Also present were Mike Schwartz, Rita Seger and Brandon Voelker. Vice-Chair Jim Drye pointed out all exits from Council Chambers, per Fire Department requirements.

The minutes of the September 12th meeting were reviewed by all. Jim Drye requested two wording revisions on the first page. Roger Bay made a motion for approve these minutes, with changes and Ken Warden seconded the motion. All were in favor. Motion carried.

Vice-Chair Jim Drye signed two final plats, one for Granite Spring, Building 16 and one for Granite Spring Section 19. Joe Feinauer made a motion for approval and Roger Bay seconded the motion. All were in favor. Motion carried.

A public hearing was called to order for a proposed text amendment to the Cold Spring zoning ordinance modifying off-street parking requirements. Mike Schwartz explained the Staff review and the Staff recommendation for approval. This application was submitted by city council. Current requirements are a minimum of three off-street parking spaces be provided for every 1,000 square feet of gross leasable area in an office building. The proposed text amendment would allow a minimum of two spaces per 1,000 square feet, with the other one space per 1,000 to be provided for if the situation warrants it to be built at a future date. The Stage II Development Plan must show how the full three spaces per 1,000 could be accommodated on site. Action taken tonight is a recommendation that goes back to city council.

Joe Feinauer questioned whether the Stage II Development Plan would have to show drainage data on storm runoff for the full three space requirements. Mike Schwartz stated the drainage calculations would be for what exactly was going to be built. If any additional parking spaces are needed, when they come in for that permit, then they would have to provide the data for additional storm runoff.

Ken Warden questioned who determines when they need additional parking spaces. Mike Schwartz stated that this would be at the discretion of the city. It could be when the Fire Department, Police Department, Code Enforcement, or citizens brings attention to the city that they are parking in grassy areas or other spots not designated for parking. Brandon Voelker stated that this would be done by action of council, or they could designate another body to take care of this. We could have it read that it would be at the discretion of the zoning administrator of the city, which is NKAPC, and all complaints would be forwarded to them. Ken Warden asked if this happened, would the owner of the property have to file an amended Stage II Development Plan. Mike Schwartz replied that their Stage II would already have shown those spaces, and they would only have to come in for a permit. Brandon Voelker stated that if they did not like the decision of the zoning administrator, they could then appeal to our Board of Adjustment.

Jim Drye verified that no correspondence was received from the Police or Fire Departments regarding this. There was no one from the public to speak on this issue.

Joe Feinauer made a motion to recommend approval of this text amendment based on Staff recommendation, with the provision that it would be at the discretion of the zoning administrator. Ken Sharp seconded the motion. Joe Feinauer stated that this will reduce pavement where it is not needed. It will benefit not only the developer but also the city because it will be less storm water runoff. Roll call vote showed all in favor. Motion carried.

The second public hearing was called to order for a proposed Stage I Development Plan, with variances, on an approximate five acre area located on the northeast corner of Alexandria Pike and E. Alexandria Pike, Griffin Industries. Mike Schwartz of NKAPC, reviewed Staff report, along with a slide presentation of the area which is located in a SDA zone. Part of this request is for the review and request of several variances. This Board has the authority to sit as a Board of Adjustment to review and grant variances. Staff has recommended approval of the Stage I Development Plan subject to nine conditions as outlined in Staff report, on the bases that it meets the minimum requirements of the Zoning Ordinance. Staff has recommended approval of the requested variances on the bases that the justifications of the variances are valid and will not adversely affect the public health, safety, or welfare, they will not alter the essential character of the area, they will not cause a hazard or nuisance to the public, and they do not allow an unreasonable circumvention of the regulation.

Mike Schwartz stated that the Alford property, which is zoned R2, has a large open space along the common property line. Approval of the variances within this area will continue to provide for a sufficient separation of the proposed use and residential use. Existing trees on the Alford property will remain and are sufficient bases to provide a variance along the east property line. Also, the site is occupied by a landmark structure with pronounced visibility from Alexandria Pike. Any construction in front of the existing structure would compromise its' visibility and its' stature within the city, and any expansion on the site would have to be to the rear or to the east of the existing building. The requested variances along the east and south property lines will allow sufficient expansion while retaining the historic significance and visibility of this property. The adjoining property owner, Louis Alford, did provide a letter in support of this application and in support of the 18 foot separation of his property and the proposed building. Mike Schwartz stated that this Board's decision in the development plan and variances is final and does not go back to council.

Joe Feinauer stated that the Alford property could be developed in the future, and the trees could possibly be removed. He asked if storm water would collect in their retaining basin and eventually go down to the existing pond. He also had concerns about what looked like a 1" PVC pipe, which is pretty small. Mike Schwartz stated that the drainage issue will be reviewed at the Stage II level.

Karen Stafford questioned a discrepancy in the number of parking spaces shown in staff report and the development plan. Mike Schwartz stated that he believes the Staff numbers are correct, but they will have to check the validity of those numbers at the Stage II level, based upon final square footage calculations.

Dennis Griffin was present and he gave a history of his family's business and the building which was 104 years old at the time they purchased it in 1973. They did expand in 1989 and again in 1997. They need to expand the building again because they do not have enough room to do the functions that they need. They want to keep the addition as close to the existing building as they can so they won't disturb the view and how it comes together on their complex. Their demand for parking and space is different than what is normally done, because they are not a retail store and their parking is basically for their 69 employees. After 33 years, they call Cold Spring home and they want to stay here. He has hired the Hemmer Group as general contractor and KZF Design as architect, and they have come up with a very good plan. They are trying to meet our current regulations, but in order for Griffin Industries to remain at this site, they will need to request variances on some of the issues in order to make it feasible for what they are hoping to do. The most critical issue is the variance with their closest neighbor's lot, Mr. Alford.

Mr. Griffin said when he realized that they were closer to the rear property line than he thought would be required he visited Mr. and Mrs. Alford and discussed his plans. Mr. Alford did not see any reason why they couldn't work this out. Mr. Alford has a small pond right behind the proposed office and they have planted nice big trees there. Mr. Alford's pond does back up onto their property and they agreed that this is not a problem. Everything drains to that pond, including drainage from across the road onto their property. Mr. Griffin stated they will address hooking up all of the drainage pipes into an area that holds retention and the pipe will be of good size.

Mr. Griffin referred to the sidewalk variance request along E. Alexandria Pike. There is at least a ten foot drop in elevation from the road to the Griffin parking lot along that side of the property. This would only be a little strip of sidewalk that has nowhere to go. If people walk down that small strip, when it ends they will have to cross over the street, not at the light, to get to the perfectly good sidewalk on the other side of the road.

Mr. Griffen stated that their current 9 ft. x 20 ft. parking spaces have worked very well for them. They would like to keep the 9 ft. parking spaces instead of the 10 ft., which would leave about 120 square feet of pavement that doesn't have to be put down, and lets them redesign the detention pond. They agree to the screening and lighting. They have done a lot on landscaping and hope that will be included tonight. Because they are trying to fight weather on the construction, and knowing that there has to be a Stage I and Stage II, and this Stage I does contain significant detail, they ask that this Board consider combining the Stage I and Stage II Development plans so that they can get things moving as promptly as possible.

Ken Warden questioned the width of the drive aisles, which Mr. Griffin stated were 24 feet. Joe Feinauer stated that an exception could be made to reduce the 24 ft. to 22 ft. drive aisles, because of that 10 ft. width requirement.

Ken Warden questioned the amount of people using the access off this property to US 27. He questioned if they could use the E. Alexandria Pike access instead, to make the intersection safer. Mr. Griffin said they need this access, especially for their delivery trucks who can't bring deliveries through the E. Alexandria access.

Louis and Helen Alford were present. Mr. Alford is Mr. Griffin's neighbor and stated that he is dealing with two of the best companies that he can think of, Griffin and Hemmer. The 18 feet to his property line and the parking lot over to his driveway doesn't bother him a bit. His only concern is about water. He questioned if the detention pond doesn't do what it is supposed to do, is there a possibility that part of this water could be taken through a culvert around his property either to the right of the detention pond or to the left through Griffin. There will be a lot of water with that much backstop. The detention pond might make it better than it was before, but it may not. There is no reason why this can't be worked out.

Jim Drye verified that this building will be "sprinkled" for fire protection, and asked about access to the back area from the Fire Department's aspect. Mr. Griffin said there will be a wide sidewalk in that area for maintenance which will give access. The building will have sprinklers and generators, etc.

Roger Bay questioned the 1" PVC pipe at the retention area. Lou Alford said that pipe is not coming out of the retention pond. There was a spring and that is why the pond is full of water. Mr. Alford put in the 1" PVC pipe from the spring to the pond because the water was so bad. Mr. Griffin said the pipe will be whatever size is required.

Joe Feinauer questioned the measurements on the height of the building. Mike Schwartz stated that the height of the structure is measured from the front of the building.

The variance requests were reviewed. Jim Drye said the setbacks are created to protect the adjacent property owners Mike Schwartz said that it is the intent of having a greater setback between a commercial use and a residential use, so the commercial doesn't infringe on the residential. If the Alford property is ever re-developed, the developer would have to comply with whatever the setback is for the R2 zone, but he would be developing the area knowing where this building is sitting, as opposed to having it imposed upon him.

Joe Feinauer stated there should be more screening above the spring between the building and the lot line. The big trees will not have leaves on them. Mr. Griffin stated the trees are evergreens and will not lose their leaves.

Jim Drye stated that the recommendations of the landscape committee should reside with P & Z. They do approve that. There is more than enough basal area. The soil borings or subsurface investigations have already been prepared.

Variances on the parking areas to the Alford property and the south property line were discussed. Jim Drye asked if it would be better to reduce the size of the parking spaces to leave more space. Joe Feinauer said he would prefer to give them a variance on the number of parking spaces, and reduce the drive aisle to 22 feet, gain two feet on each side of the drive aisle, and move the parking four feet away from E. Alexandria. If the city would actually build a sidewalk along that side of E. Alexandria Pike, there would be room to get it done. Mike Schwartz said we can't grant a variance on the number of parking spaces, that is what the text amendment is dealing with. The parking space size has to stay 10 ft x 20 ft and the number of spaces has to stay right now, but if the text amendment is adopted by the city, it will be shown on the Stage II.

The sidewalk issue on E. Alexandria Pike was discussed. Roger Bay stated that there is not a sidewalk on that side of the street for it to meet up with. Joe Feinauer said he would rather they cross at the light. Ken Warden questioned if a handrail would be necessary because of the steep drop off. Mike Schwartz stated that is part of the building code. Lou Alford said a sidewalk would be a sore eye in this area. The Board agreed that no sidewalks were necessary.

On the request that they combine Stage I with Stage II, Mike Schwartz stated that this Board could authorize Staff to handle administratively. Jim Drye said Stage II has to be approved before a building permit will be issued. He asked if they could obtain a grading permit and get started. Mike Schwartz replied that if staff is authorized, they can review it and get a permit approved in about a week after submittal to them. If unauthorized, the time crunch is that they couldn't come back to the Board until the December meeting. Building permits no longer have to go to the state but through NKAPC. Mike Schwartz said it will look substantially the same as what is before this Board, with the additional parking shown.

Ken Warden stated that additional shrubbery or trees may be needed. Roger Bay said that with the building being 60 ft high, it will be shaded and nothing will grow. The area will be grass at the rear of the building and at the fence line the trees on the Alford property. You won't be able to see any landscaping at the back of the building from US 27.

Mr. Griffin had concerns about the change on the variance along E. Alexandria Pike distance be increased by 4 feet, by reducing the drive aisle by two feet in each of the pads. He said that four feet doesn't do anything for them, because that area is big slope. They may need to redraw everything and that is a sticking point. Joe Feinauer stated that if sidewalks were ever built, you would have more room and it would be easier to put a sidewalk in there in the future. He is allowed to, but

does not have to narrow his drive aisle from 24 to 22 feet if he does not wish to do so. Mike Schwartz stated that this Board could approve the variance as submitted and then the applicant can, in the Stage II, determine whether he wants to move it four feet back or not.

Joe Feinauer made a motion to approve of the Stage I Development Plan and the variances, on the bases of Staff recommendations, including Staff recommended conditions 1, 3, 4, 5, 6, 8, and 9, and excluding condition #2 and condition #7, and with the Stage II Development Plan to be handled administratively by Staff. The variances are approved on the bases that it would not adversely affect the public health, safety and welfare, based on staff report. Roger Bay seconded the motion. Roll call vote showed all in favor. Motion carried.

The next item on the agenda was the proposed Preliminary Plat with a waiver, and Stage II Development Plan on an approximate 11.0 acre area located along the east side of Alexandria Pike, approximately 600 ft. south of Ripple Creek Road, Oxford Development, both of which were discussed in the last two Planning and Zoning Commission meetings. Mike Schwartz stated that the Stage II Development Plan is for the street construction only. Other items shown on the plan are not part of the application. Mike Schwartz stated that there are no further comments from Staff, as P & Z requested at the September meeting, because what was submitted is what was reviewed and there is no more information to review. The Staff recommendation stands as is.

Jim Drye verified with Mr. Schwartz that items such as setback lines, sewer, and water, are not part of this approval of action. Joe Feinauer verified that the proposed roadway itself is the only thing they are looking at tonight. The Preliminary Plat includes a waiver to the sidewalk along that roadway. Joe Feinauer questioned the width of that street. Mike Schwartz said the Preliminary Plat is a concept drawing. Those details are administrated and enforced at the Improvement Drawing Stage which this Board does not see. The only reason that the waiver for the sidewalk is folded into this Preliminary Plat is because it is essential to the question of the street. The applicant has asked for variances at this Preliminary Plat concept stage so this Board can act on it, and, if favorably, they can fold that action into their next set of drawings.

Mike Schwartz stated that this Board will see individual Stage II Plans for each of these sites, which will show the setbacks, the building and parking locations. Jim Drye questioned if this was the proper stage to see if a sidewalk is required along US 27. Mike Schwartz stated that because it was not asked that it be waived, it will be required. There is only one waiver request which is sidewalks on both sides of the internal streets.

Jim Drye questioned the basal area which was fully canopied at one time and it all disappeared. He questioned if we needed to include additional information to say this area in the right of way should be counted and applied to the total project site as opposed to each lot having only 15 ft. of basal area per acre of each lot. Mike Schwartz said this will be part of the Stage II Plan for each of those lots, and not this Stage II for the circular roadway.

Joe Feinauer questioned the drainage calculations per lot. Mike Schwartz said the improvement drawings will have to show drainage for the entire site, whether they are going to be combined or have a detention on each of the lots. Joe Feinauer questioned if the improvement drawings would then be required to show what the city will get as their property. Mike Schwartz said if there is going to be any facilities in that land area, they will coordinate with council on whether or not they will accept it. The improvement drawings will show drain pipes, ditch areas, etc, and not acreage of each lot.

Jim Drye asked if the signage would be taken care of at a later stage. Brandon Voelker stated that the signs were part of the Development Agreement. Mike Schwartz said when a Stage II Plan comes in for each individual lot, they will have to show that signage, which will be checked against the Development Agreement. The ground sign for the whole site is reviewed at the Stage II Plan for the individual site or the lot that contains that sign.

Brandon Voelker reviewed his draft of possible language for a motion, because this Board had stated that they had concerns that an approval vote would be deemed an endorsement to the Department of Transportation for the horseshoe. His draft gives language that says you are not endorsing this horseshoe concept. It would have to be approved by KDOT and is subject to KDOT approval.

Joe Feinauer said, in reading the Development Agreement, that this has to come before this Planning and Zoning Board, but there is nothing for this Board to vote on. Brandon Voelker replied that it says that you have an exhibit adopted as a Stage I that serves as review level one. If it is not addressed in that Agreement, then you turn to the zoning ordinance and the applicable state or federal laws. You are allowed to deviate from your zoning ordinances and it is done routinely.

City Council took action to allow a deviation from the normal 600 ft. curb cut, and they allowed and adopted a horseshoe design in this agreement. At that point the first level for staff is whether or not the design is in conformity with the agreed upon, executed Development Agreement. It is a contractual obligation between the city and the developers in this case, and it is a matter of Stage II coming before you. Council could have taken action to totally removing the Stage II from this Board's review if they wanted to, but they chose to keep this under the purview of this body. This Board must first look at the Development Agreement and then look at everything else.

Karen Stafford questioned why Staff recommended disapproval. Mike Schwartz said Staff felt that this plan, which was agreed to by Council, does not meet the zoning ordinances and subdivision regulations, noting that it is in agreement with the Development Agreement with the developer and the city. This Board has to make a decision on which way to go and he suggested they listen to legal council as much, if not more than you listen to a Staff recommendation that is not legal opinion.

Jim Drye verified that a vote against this could open the city up to a potential litigation for violation of the agreement, and could open this up individual lawsuits. Brandon Voelker stated that this is an agreement that has been entered into lawfully between the city and the developer. You have a charge from the legislative body that they lawfully enacted and to deviate from that, you would be going outside the role that you have. He is brought here to provide legal advice and Staff does not give legal advice.

Ken Warden stated that there is not one person here that likes it, but city council has given its' approval and the only thing that we can do is move it on to the next stage.

Joe Feinauer disagreed. He made a motion that we give the city council the authority to do whatever they want with this, and this Board doesn't want to see anything else that comes in, Stage II regardless.

Brandon Voelker replied that there would be a breach of the agreement. They do not have the authority to give this back to council. The city could have taken it away from this Board through their agreement, but they did not. It falls to this Board, under regular planning and zoning, to follow this. This Board may disagree with what council has decided, but that is their role. At this point an applicant has come before you, and they have to submitted a plan consistent with the Development Agreement. If it doesn't address a certain issue, then the zoning ordinance or any other law or regulation can be applied. This issue can't be classified totally on the horseshoe. This Board asked them to annex and fill up the holes and cut down the R3 zones, and a product of that was an agreed upon horseshoe. Motion died for lack of second.

Karen Stafford questioned what would happen if they have a motion, and if all members abstain from that vote. Brandon Voelker stated that a vote with an abstention goes to the majority, but there would not be a majority because it would be a zero vote, and no action would be taken.

Ken Warden stated that Council approved this horseshoe, which this Board would not have done. This does not go back to city council. There is no other way around it. This Board is looking after the safety, health, and welfare of the citizens of Cold Spring by getting those curb cuts farther apart. It is more economically feasible for the developer to have this, but it is not the safest way for the property to be developed according to our ordinances. We are still required by law to take action in the ninety day period of time.

Ken Warden questioned if this action is to add sidewalks to both sides of the horseshoe. Mike Schwartz verified that this is the time to address the sidewalk requirements to the horseshoe. Two motions will be required, one for the Preliminary Plat and one for the Stage II Plan.

The waiver of sidewalks on both sides of the horseshoe was then discussed. Joe Feinauer said he doesn't think there is a need for a sidewalk on the interior side of the interior lot. There does need to be a sidewalk on US 27 which will be taken care of. They will have a sidewalk on the outside of the loop. It would go on US 27 all the way around the loop and back onto US 27 on the outside of the loop.

Ken Warden said the whole boundary of this development on US 27 would have sidewalks. On the inside it would be around the outside of the horseshoe. Karen Stafford confirmed that the waiver would be for the sidewalk inside the horseshoe only.

Ken Warden made a motion to approve the Preliminary Plat, with the sidewalks as discussed along US 27 and circling the inside on Lots 1, 2, 4, 5 and 6, outside of the horseshoe. Ken Sharp seconded the motion. Roll call vote showed five yeases and one no –Joe Feinauer. Motion carried.

Joe Feinauer made a motion to disapprove the Stage II Development Plan on the bases of Staff recommendation. Roger Bay seconded the motion. Jim Drye stated that any action to approve this would be held up against this Board in the future. There are too many things on here, with setback lines and nothing on the basal, among other things. He doesn't see the clarity and how this relates to everything else, even though they have stated several times that this is just the right of way. There being no further discussion, roll call vote showed four yeases and two noes – Ken Warden and Ken Sharp. Motion carried.

Brandon Voelker questioned what the legal bases was to go against the Development Agreement. He stated this Board needed to make a finding that is in consistence with the Development Agreement. Jim Drye said it is more than the Development Agreement. There isn't a plan. Brandon Voelker said it is just a road, and verified with Mike Schwartz that many times he has just reviewed a roadway. Mike Schwartz stated that the fact that there is other information on the plan does not mean that is what was reviewed by Staff. Their report reflects what was reviewed, which was just the road.

The partners of the development entered into a discussion with the Planning and Zoning Commission, and relayed a short history about how this agreement with the city came about, the purpose for the design of the horseshow roadway, and various ways they could move the traffic for any kind of motion limitation that you want. Also, their development satisfied five of eight warrants need for a traffic light in that location. They want to be good neighbors in the city and they followed all the rules and regulations laid out for them with the mayor and council in good faith. They changed the roof pitch on the South Ripple Creek property at considerable expense. They didn't intend to create a dilemma with the Planning Commission.

Joe Feinauer said no one has anything against their company, but it is a difference of opinion between this body and the body that they dealt with. It is hard for this Board to allow something that they believe to be wrong. He suggested various ways a road could be used in the development without the horseshoe. Joe Feinauer stated that City Council did what they thought best, but it is against why this Board is here and is supposed to do. This was one of the rules that may be setting a precedent for other people to put more and more entranceways onto US 27.

Brandon Voelker stated a debate should not be entered into how they could fix this. The issue is, at some point, if it is changed, there is a breach of the agreement. If a party is going to change the agreement, it would need to be the city. This Board has no authority to change the agreement. The agreement speaks for itself. The discussion was closed.

Karen Stafford stated that there was nothing new to report on annexations in the city.

Jim Drye attended the NKAPC, APA Audio Conference last Tuesday on LEED, neighborhood design, for one and one half hours. Karen Stafford made a motion to approve and Ken Warden seconded the motion. All were in favor. Motion carried.

The next topic discussed was the Hiland Pancake House, Plaza Drive issue. Mike Schwartz reported that Staff has determined that Plaza Drive is a public street. A top coat was put on without an inspection. Staff will have work with developers and try to come up with a way to be sure that that top coat was done correctly. If they can determine that, then they can issue a report saying so, release the bond saying that they have inspected it, and things will take its normal course.

Ken Warden moved to adjourn the meeting and Karen Stafford seconded the motion. All were in favor. Motion carried.

Respectfully submitted,



Rita Seger