

Cold Spring Planning & Zoning August 8, 2012

The regular meeting of the Cold Spring Planning and Zoning Commission was called to order by Chairman Christopher Vaught. Pledge to the flag was led by the city clerk. Roll call showed the following present – Peter Glenn, Alan McCullough, Donna Schmidt, Vince Sticklen, Tami Trunick, Christopher Vaught – excused was Tony Ponting. Also present were City Clerk Rita Seger, Attorney Brandon Voelker, and Andy Videkovich, NKAPC.

Chair Vaught pointed out the exits from the building, per Fire Department regulations.

The July 11, 2012 regular meeting minutes were reviewed by all. Vince Sticklen made a motion to approve these minutes and Tami Trunick seconded motion. All were in favor. Motion carried.

Christopher Vaught stated that he had signed a final plat for Granite Spring Building 25 on 7/11/2012. Alan McCullough made a motion for approval and Vince Sticklen seconded the motion. All were in favor. Motion carried.

The next agenda item was a public hearing on an **amended Stage I Development Plan on a thirteen acre area located on the east side of Alexandria Pike between Ripple Creek Road and East Alexandria Pike, approximately 2,000 feet north of Ripple Creek Road, to subdivide the property into five buildable lots which are currently zoned R-RE and NSC – applicant Oxford Development LLC.**

Andrew Videkovich, NKAPC, addressed the Board. He presented slides of the area, reviewed the current the zoning, the history of this development, descriptions of the topography, the existing Stage I Development Plan approved by Council in 2007, and reviewed the proposed amended Development Plan. Staff has recommended disapproval of the submitted Stage I Development Plan but should this Planning and Zoning Commission approve this amended Stage I Plan they have recommended that the approval be subject to eight conditions as listed in Staff Report.

Brandon Voelker stated that when the city annexed the developer's property at south Ripple Creek, the developer agreed to that annexation in exchange for a two-pronged development agreement which included this north Ripple Creek parcel. At that time it was zoned NSC and they never asked for a zone change. NSC is more of a strip mall setup versus an individual parcel lot. Council approved this development agreement in 2007, however, at that time the Planning and Zoning Commission voted it down. Obviously that vote couldn't happen because there was already an approved development agreement. The developer has now come to the city with the concern that, because of the topography and the way the development plan was laid out, the concept of that development agreement from an engineering standpoint does not work. Those lots are not buildable. The setbacks as approved are unattainable, so it means they either go back to the drawing board, make a zone change, and start from scratch, or they are asking that Planning and Zoning approve this concept. Then the developer and council will sit down and in exchange for amending the development for setbacks, they would allow us to have aesthetic controls, basically a give and take on both sides.

Mr. Voelker stated that this Board is being asked to consider the concept and defer the setbacks, and then we can clean up the development agreement. From a practical standpoint if they used the required 100 foot setback all the way around, it gives them a building area of about the size of a driveway. Rather than going through a zone change we would like to maintain aesthetic control, to make sure the development is top notch. That has been our commitment with the developer from day one. The original plan had a horseshoe access which was the point of discussion and debate between P & Z and Council. That horseshoe access now goes away.

Phillip Sousa commented that a traffic signal has been approved by the State of Kentucky who told them to hold off putting in the signal until the first development. The State told them that that curb cut had to line up directly across the driveway of the First Baptist Church to create the intersection affect. They had Bayer Becker do a transportation study as part of the State approval on the signal and they will be happy to provide those results to NKAPC. Alan McCullough verified that the traffic study did not include the entrance in and out of the development. Mr. Sousa stated that the in and out access road has not been approved by the state. Brandon Voelker stated that it is the State who has the final say on that access drive.

Vince Sticklen questioned if that can be changed to an "in only" road and have everyone exit where the traffic light is. It would cause less congestion. Peter Glenn stated that you do not want a curb cut in a de-acceleration lane. Brandon Voelker stated that he didn't believe the State would approve it with a de-acceleration lane. This Board could limit it to a minimum right in / right out but it is up to the State to approve or deny it.

A resident of Ripple Creek Road addressed the Board. He verified that there would not be an access from this development to Ripple Creek Road, and questioned what kind of uses are permitted to be there. Brandon Voelker stated that the very back top portion will be deeded by the developer to the city, and would be considered residential. The city may put in a park, or sell it for a house, but that is all that may be built. The back portion is a detention area which will never be developed. Mr. Voelker read all of the permitted uses within the NSC zone.

Mr. Sousa stated that they are only working with seven acres of the entire parcel and they agreed to leave the entire bottom as green space. Peter Glenn verified that the two existing detention basins have already been constructed and have been engineered and designed to take care of this entire site.

John Russell, owner of Campbell County Auto Shop questioned the NSC zoning, which defines that it would allow at least three independent businesses consecutively on each lot. Since he is on the north side, he could possibly be looking at the back side of three independent businesses on each lot, consecutively. Andy Videkovich, NKAPC concurred with the NSC definition, however, that pertains more to when you get to "signage" and things like that. Even though it is Neighborhood Shopping Center zone, it does not actually require each lot to have three independent businesses within in the building. Mr. Videkovich stated that there are fifty foot side yard setbacks.

Brandon Voelker verified with the applicant that these are individual lots. This may be a strip center with multiple uses, but it would be in one building. The size requirements of NSC makes it difficult to build in this development, so when they amend the development agreement they will deal with the fact that it should be one building on every lot.

John Russell stated that this NSC zoning should ideally be changed to Neighborhood Commercial. Brandon Voelker stated that the development plan will be amended to where it basically has the requirements of Neighborhood Commercial setbacks, building and all, without calling it an NC zone. If they go through a change in zoning, then the developer could build anything they want structure-wise without the aesthetics that the city is looking for. Mr. Perry stated that they are currently zoned for the NSC and they are not asking for a zone change. They are happy with the current uses of the NSC zoning

Ken Perry stated that this particular configuration is designed for all of the access to be off of the connector / service street. There will be no other access from US 27. The proposal is not to make lot one into three lots, otherwise they would have shown this on their proposal. It has less lots than what they have already been approved for. There is also less access than what they have already been approved for by the city.

Peter Glenn questioned if the internal setbacks meet city regulations. Andy Videkovich stated that the requirement is 50 feet on all sides in the NSC zone. He referred to the setbacks for NC zone where the front yard depth is 50 feet, it does not have to have a side yard, but once provided it has to be 15 feet, and rear yard is 50 feet. Peter Glenn verified that the buildings could be constructed 15 feet from the side property line of each lot. Mr. Videkovich stated that the NC zone has different setbacks than the NSC zone. They are not actually showing any setbacks along the internal property lines but those would also have to be fifty feet, unless that is changed due to the development agreement.

Mr. Perry stated that the current setbacks and signage on their plans are what was previously approved by the city in the development plan agreement. They have not amended the actual area or the length or width of the setbacks. The area and type of signage was taken directly off of their previously approved plan.

Peter Glenn questioned the traffic study, what they used as traffic counts, and what type of businesses were they using. Mr. Perry stated that it was retail and when they did that study there were approximately 38,000 cars a day on US 27. They didn't have the right in / right out access at that time, so that is something they will have to go back and amend in he study. They might have to move the right in / right out access further back into the property and make a continuous shoulder turn lane that starts all the way before the right in / right out access, which is an engineering issue. Oxford Development already has two access points that have been approved by the city and are only asking that this Board give them the right in right out maximum. Then they will go ahead and do the traffic study and any requirements that are necessary to get the Kentucky Transportation Department's approval.

Peter Glenn referred to the detention basins since they are already installed and questioned if they will have to go back through SD1. He questioned Mr. Videkovich's recommendations on a land disturbance permit. Mr. Perry stated the basins have already been permitted and constructed and sized for surface water runoff for the entire site. They have an active permit now but anybody who might buy one of these lots which are all more than one acre would individually be required

to get their own permit before construction. Mr. Videkovich stated that the land disturbance permit comment was just an additional information comment and nothing that this body would require.

Mr. Glenn questioned if there was some kind of association for these lots to maintain the basins. Phillip Sousa stated that right now they don't know how many lots they are going to sell. Mr. Perry stated that as the broker he has already been through this situation. They will address this and if there are more than one user they will make it part of an agreement that they will have to maintain the stormwater collectively.

Alan McCullough questioned which lots would be serviced by the right in / right out access. Mr. Perry pointed out on the plan the way the lots would be accessed. Peter Glenn verified that all of the drives would have inner connectivity, and he questioned if landscaping regulations would apply. Andy Videkovich stated that there are landscaping requirements that would all be handled through a Stage II Development Plan. Part of the requirement is that they can use the existing vegetation on the site to count towards those credits.

John Russell questioned if the street would be a private drive, and also questioned the curb cut and if there were any setback regulations where you can't have a curb cut off of US 27. Ken Perry stated that the road would be a maintained city street to the cul-de-sac and a private drive to the right connecting to lot 5. The curb cuts would have to be centered, but they would have to meet the minimum requirements. Andy Videkovich stated that the setback off a local street is one hundred feet from this signalized intersection. From within, it doesn't have to be spaced one hundred feet. Mr. Perry stated that the actual access point to those lots would be governed by our current planning commission when the Phase II comes in. Brandon Voelker stated that anyone who buys a lot will come before this Board with their plan.

Mr. Perry stated that he is happy with the circulation within the site. In the next five years we are in a good position as a city to see real growth.

A Ripple Creek Road resident questioned the traffic counts of 38,000 and if new development would bring it up to 48,000 vehicles. Brandon Voelker stated the 38,000 is for the number of people traveling US 27 every day and he doesn't know how many would be predicted to go to the shopping center. Ken Perry stated that they are designated a neighborhood service commercial area, and are not actually generating trip counts. Trip counts are done by residential or regional retail. They are assuming that they will be servicing the community that is already here and the traffic impact will be negligible.

Brandon Voelker explained that, depending on how this Board handles it, council will want to revise the development plan to address concerns such as the concept of how one building per lot is accomplished and to maintain control over the aesthetics. Mr. Voelker suggested various ways that motions could be made should this Board find for approval, including the conditions as recommended by staff but incorporating wording that would agree with the approved development plan.

Vince Sticklen stated that if this is going back to council and they have already approved it, but the previous Planning and Zoning Board turned it down, he is not sure what this Board is doing. Right now they want to make adjustments on the setbacks but it will go to council anyway. Council has already approved the majority of this, including the signage. Brandon Voelker stated this Board's votes will go back to council and by agreeing with the setbacks, it does away with the horseshoe access road. Council never really approved the setbacks. If for some reason there was no discussion of the setbacks then you would have a zone change in a development plan in front of you and the concern is that if somebody goes in to change it to a different zone, you lose the ability to control aesthetics-wise what is built. This Board is deciding what the concept of the layout will look like, but neither this body nor council has the authority to say it should look a certain way. That was something that was negotiated.

Mr. Perry stated that council probably never envisioned that the planning commission would not agree with council as happened in 2007, and it puts their development in a bit of a pickle because if anybody asks them for zoning and setbacks for side yards, this turns into a nightmare for them. They are only trying to enhance the plan, and remove themselves from the pickle between city council who has already annexed them and given them a deal in good faith that they agree with, and the planning commission.

Brandon Voelker stated that council did not want to bypass the Planning and Zoning Board. By amending the development plan, we can do things that we cannot do with another developer and we would have to stay strictly to our zoning. But as it pertains to the actual layout, instead of council deciding it they would like for this Board to decide it. Council has never approved five lots. Council has approved six lots with the open areas. This Board is being asked to

approve the number of lots, the layout of the roadway system and from a practical standpoint the setbacks which are currently not physically able to be met. If unapproved, there would have to be an amendment or a zone change because you cannot physically build on this lot if it is an NSC.

Brandon Voelker verified with the developer that they have to buy and build the traffic light, and the state will maintain it. All of the turn lanes will have trip wires, as does the church exit, so the light will only operate when there is traffic.

Tami Trunick made a motion to **approve the amended Stage I development plan for Oxford Development, subject to eight conditions as follows: 1.) The setbacks meet the minimum requirements of the NSC zone with the exception of what has previously been approved, or future changes within the development agreement; 2.) the signs meet the minimum requirements of Article XIV with the exception of what has previously been approved, or future changes within the development agreement; 3.) the right in / right out curb cut as determined by the State; 4.) the addition of a second fire hydrant as appropriate; 5.) the pavement design to be based on a study prepared by the subdivider's engineer and approved by the planning commission's duly authorized representative; 6.) the installation of sidewalks; 7.) a 50 foot right-of-way to be provided but allowing for setbacks based on previously approved 40 foot right-of-way per the development agreement; and 8.) a traffic study to comply with all State mandated regulations.** Andy Videkovich questioned if it would be easier if condition 3 regarding the right in / right out just be removed, and just defer to the traffic study as to whether it is appropriate or not. Brandon Voelker stated that this Board wants to make sure the access road is a right in / right out. The State has not approved this yet, but they did not approve the horseshoe either. Right now the state has only approved the light. Donna Schmidt seconded the motion. Roll call vote showed six yeses and no noes. **Motion carried.**

Chairman Vaught stated that the Planning and Zoning Commission had one item of correspondence, regarding the action that Staff has taken on the Stage II Development plan for the Moore's Garage / Warehouse Facility, and he verified that the Board members did not have any questions to Staff regarding this item.

Per House Bill 55, P & Z member Vince Sticklen received 2 hours of continuing education credit hours. Donna Schmidt made a motion for approval, and Alan McCullough seconded the motion. All were in favor. Motion carried.

Andrew Videkovich stated that the city has decided to go with Campbell County Planning and Zoning as their Staff, effective September 1, 2012. He stated that he has enjoyed working with the Board and he wishes the best to all. Christopher Vaught formally recognized Mr. Videkovich and thanked him for his service to the city of Cold Spring, and stated that we appreciate everything he has done for us. A round of applause followed.

Ken Perry addressed the Board. He wants to add on a steel deck to the building that he owns at 4135 Alexandria Pike for the purpose of outdoor dining at Aladdin's. They do meet all of the requirements, parking and all of the necessary issues have been taken care of and are on the plan, which he showed to the Board members. It will be made out of steel and not a wood deck. He is requesting guidance from the Planning Commission, and if they feel like this is a minor change then he will ask Staff to approve his plan, before they no longer serve the city at the end of the month. If otherwise, then he will have to wait and come back to this Board.

Andy Videkovich reminded everyone of the Jehovah's Witnesses issue coming before this Board last month for a determination of a major or minor changes to their amended plans and this is basically what Mr. Perry is asking for tonight. It is the Planning Commission's charge to determine whether these amended plans which Mr. Perry has presented is a major or minor change to those development plans. Stage II Development Plans would normally come back through P & Z for approval. If it is found to be a minor change, then Staff would do the administrative review and approval. If this Board does not authorize Staff to do this, then there would have to be an application made to the Campbell County Planning and Zoning Commission.

Mr. Perry pointed out that the deck will be on left hand side of the building, and behind it is a detention basin and to the left of it is the firehouse, so there are really no adjoining neighbors. The area where the deck will be is currently a drop off, and you have the parking, a retaining wall, a black railing which is going to be maintained, six steel columns, steel decking, steel trecks on top and around it with a matching iron railing. It is a 25,000 square foot building and this is only a ten foot by thirty foot deck, approximately three hundred square feet, very small. You exit onto the sidewalk that is connected to the handicap ramp.

Mr. Perry stated that if this Board will be so kind to tell him that it is a minor change, then he can go ahead and have it reviewed by NKAPC Staff. Mr. Videkovich stated that his main concern would be the off-street parking with their increase in capacity of the restaurant, however a quick glance shows that it appears that they have calculated the off-street parking and they have enough there. Mr. Perry stated that he read the ordinance and had an engineer do the parking calculations, and it is on the plan. Mr. Videkovich said that Staff would have to verify that, and also look at the setbacks, however in the SDA zone the setbacks are approved on the plan except where adjacent to residential. It would only affect the side property line. Parking spaces, landscaping requirements and general building codes would have to be looked at.

Vince Sticklen questioned the hours of operation. Mr. Perry thought perhaps it was one o'clock, but if they city has another ordinance regarding the hours of operation they will certainly follow them. Mr. Voelker will check further, but stated that our noise ordinance would apply, between 10:30 pm to 7:00 am.

Andy Videkovich stated that outdoor dining is a permitted as an accessory use in the SDA zone. Christopher Vaught verified that the main tenant on the end would be utilizing this. Mr. Perry stated but it will be constructed in a manner that anybody in the building could use it.

Donna Schmidt verified that they will have no music or that type of thing. Vince Sticklen verified that Aladdin's does not serve alcohol, and it is more of a restaurant. Andy Videkovich stated the zoning ordinance says that "no use producing unreasonable or objectionable noise shall be allowed within five hundred feet of the boundary of any residential zone". The problem is that it is so subjective that the city's noise ordinance probably has more teeth. Brandon Voelker stated that our noise ordinance would be enforced by our Police Department.

Christopher Vaught made a motion that we **accept this outdoor dining as a minor change to the development plan, and to authorize NKAPC Staff at their discretion for acceptance of the Stage II Development Plan, as long as it meets the requirements of the Cold Spring planning and zoning regulations.** Vince Sticklen seconded the motion. All were in favor. **Motion carried.** Andy Videkovich stated that there may be an unusual situation where the plans are approved by NKAPC, but the permits may have to come through the Campbell County Planning and Zoning Commission.

Donna Schmidt made a motion to adjourn the August 8, 2012 Planning and Zoning meeting, and Vince Sticklen seconded the motion. All were in favor. Motion carried.

Respectfully submitted,

Rita Seger, City Clerk