

Cold Spring Planning & Zoning July 11, 2007

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

The June 13 regular meeting minutes were reviewed by all. Roger Bay made a motion for approval and Ken Warden seconded the motion. All were in favor. Motion carried.

For continuing education requirements, Tom Freppon of the Board of Adjustments completed nine hours, Roger Bay completed one and one half hours and Ken Warden completed five and one fourth hours. Karen Stafford motioned for approval and Jim Drye seconded the motion. All were in favor. Motion carried.

A public hearing was called to order by Chairman Steve Taylor, to hear a request for a proposed Stage II Development Plan on approximately 2.0 acre area located along the east side of Ripple Creek Road between Alexandria Pike and Shabell Drive, approximately 200 feet NE of Alexandria Pike (SRM Investments). Mike Schwartz of NKAPC stated that this site is zoned SDA. The submitted development plan is for the construction of two, two story office buildings. The action taken tonight is the final action. Mr. Schwartz explained his review and recommendation to disapprove this project due to a large number of items that contained insufficient details and information, which were listed in Staff report. Should this Board decide on approval, they should do so with the conditions on pages three and four of Staff report. Mr. Schwartz corrected the wording on page three, item 1 d. of Staff report that reads "...a minimum of thirty (30) square feet of basal area be provided...." to be changed to read **"...a minimum of fifteen (15) square feet of basal area be provided...."**

Brandon Voelker provided additional background on this project. When the city annexed this property, a Development Plan Agreement was put into effect along the Annexation Agreement. The developers, who have worked diligently with the city on this project, have agreed to all of the conditions recommended by Staff.

Marshall Slagell was present on behalf of SRM Investments. Mr. Slagell agreed to meet all of the conditions and said he sent a letter to Mike Schwartz and Brandon Voelker, which specified what they will do in order to meet or correct all of the issues. Mr. Slagell stated that the roof will be slanted from front to back with about a twelve foot drop and will not be a flat or mansard. It will be shingled.

Steve Taylor confirmed that Mike Schwartz was in receipt of the letter of intent from Mr. Slagell to satisfy the required conditions.

Mike Schwartz stated that there is a slope to the roof that is not a typical slant. The regulations state that a flat or mansard roof is not permitted. It is up to this Board to determine what is not flat.

Ken Warden said that the intention of the SDA was that the roofs should match the rest of the area. The buildings should be architecturally compatible with the neighborhood. There should be a hip or gabled roof.

Joe Feinauer stated that if the roof is three and one half to a four to one slope, then looking at it from US 27, it will not look any different than a regular house but would look different from behind it, coming from Shabell.

Jim Drye requested additional information on the appearance of the building. The contractor was present and showed a picture of the building. He stated that all of the mechanical equipment will be hidden on the back of the building. They will plant trees as required. Most of the trees were leveled before this property was annexed into the city.

Marshall Slagell stated that the roof will drop one fourth of an inch from front to back. Joe Feinauer stated that the figures do not add up to a twelve foot pitch. He re-worked the math and stated that the quarter inch fall over forty four feet is only eleven inches. Mr. Feinauer stated that a quarter inch drop per ~~inch~~ foot is a flat roof, and Mr. Slagell would have to make it a three and one half or four to one pitch in order to make it be slanted.

Mr. Slagell stated that our regulations say there is not to be a flat roof, but is not specific in saying what the roof should be. Mr. Slagell stated that this design isn't a flat roof which would have internal drainage down through a pipe

system. The design presented tonight does have exterior drainage. In order to have a greater slant of the roof, they would have to change the design. He has already received approval from the Kentucky Department of Housing for the construction. There are not parapets on any of the sides.

Brandon Voelker stated that the roof issue came up during the meeting for the Development Agreement. It was a concern at that time. The developer had said it would a slanted roof, shingled or metal. Our regulations don't say what constitutes a flat versus pitched roof. The developer agreed to the SDA zone which calls for a uniform architectural plan and would have a lighter, commercial use that isn't as intense as the typical neighborhood commercial. Basically what is presented to this Board is what was presented to the City, and at that point of time, it was considered to be in compliance with the SDA. The developer relied on that decision.

Steve Taylor asked what the intent was for the front lots. Marshall Slagell stated that along with these two buildings, there would be an additional four buildings proposed, three along US 27 and one more to the right, for a total of six buildings. Those were also part of the Development Plan which was submitted at annexation. Sidewalk requirements will be met along Ripple Creek as well as the internal facilities to connect all six buildings. Mr. Slagell assumed that if he met all of the conditions of Staff, that this Development Plan would be in compliance with all of our zoning regulations. Mr. Slagell stated that a text amendment is needed to define what a flat versus slanted roof is.

Ken Warden confirmed that the size of the gutter is six inches. If there is a heavy rain going to a six inch gutter, then that may be a problem. The developer said that the six inch gutter which runs the whole length of the building should be adequate.

Roger Bay questioned if they could do a design in the front of the buildings to build them up and allow for more pitch to the roof. Marshall Slagell stated that they have already had the state approval and it would be very difficult for them to redesign.

Steve Taylor questioned if it were possible to pass this as a one time use only, until we can clarify the regulations without setting a precedent in the city. Mike Schwartz suggested some wording that could be used as conditions for approval.

Steve Taylor asked, if these two buildings were approved with the roof as is, how significant would the architectural difference be to change the roofs to a greater slant on the remaining four buildings, and how would they stand out from these two buildings. Marshall Slagell stated that they do have a lot of flexibility and could work this out.

There was further discussion on how having two roofs differ from the others would look. Brandon Voelker suggested that five of the two story buildings could be kept consistent, and call for the pitch on the one out building that is only one story. Joe Feinauer felt that this would be more consistent from the architectural standpoint. Mike Schwartz stated that with the pitch added to the one story building it would add to height to match the height of the two story buildings.

Steve Taylor made a motion to **approve the Stage II Development Plan for SRM Development, subject to twelve conditions outlined by staff on pages three and four of their report, items 1 a thru 1 g and 1 i thru 1 m, and to modify condition 1 h to say that the proposed one story building shall have a minimum roof slope of three and one half to one.** Joe Feinauer seconded the motion. Roll call vote showed fives yeses and one no – Ken Warden. **Motion carried.**

Chairman Steve Taylor called the second public hearing to order. This is for a proposed Stage I Development Plan on an approximate 3.8 acre area located along the NE side of Alexandria Pike, directly across from Buning Lane (Peter Forbes). Mike Schwartz stated that should this go to the next step, this Board will see a Stage II which is a detailed drawing. The decision tonight is final. Mike Schwartz gave the review per NKAPC Staff report. This site is zoned SDA, and consists of the construction of sixteen detached single family residential dwellings on 3.88 acre area, which is a density of 5.4 dwelling units per net acre. They propose an extension to Buning Lane, and another internal street called Forbes Lane, both with sidewalks on one side of the street. Staff is recommending approval subject to seven conditions as listed on NKAPC Staff report.

Mike Schwartz stated that the Development Plan identifies the roadway being an extension of Buning Lane, following to the right and coming up the left to Downing. This property does not have an immediate adjacency to Downing Street. There is a strip of land, one to two feet in depth, which is owned by London Acres South and is between the Downing

right-of-way and their property. The applicant cannot legally make a connection from Buning to Downing, The City would have to work with London Acres South to facilitate that connection which will provide those living on Downing with the ability to come out through the Buning Lane extension to a four way intersection with Alexandria Pike, which in the future will have a traffic signal.

Jim Drye questioned the recommendation in Staff report that the City could require the developer to include an access to the adjacent Erschell property. Mike Schwartz stated that part of the subdivision regulations is the intent to get rid of duplicative and excessive curb cuts along arterial streets.

Steve Taylor questioned setbacks. Mike Schwartz stated that the SDA zone does not have setbacks. It is whatever is submitted and this Board approves. Though the SDA zone regulations, Section G do state that the minimum lot width is one hundred (100) ft., with a minimum lot area of one half (1/2) acre, that is the width, not the setback. The regulations go on to say that setback regulations shall be as approved in the plan except where any front, side or rear yard of any use abuts a residential zone. These are residential uses abutting residential zones. There is a provision in the regulations, Section 9.11 that says that in any subdivision proposed in any multi family or commercial zones, which includes the SDA, the minimum lot area and the minimum setbacks can be less than required by the zoning district provided that certain things are met, that every dwelling unit has clear access to a public right-of-way, that common areas are taken care of by a responsible entity like a Homeowners Association, and that the density of the zone is not exceeded. That is one of the sticking points. There is no density in the SDA zone for residential dwelling units, which are a permitted use. Mike Schwartz stated that it is not the intent of the SDA zone to have every dwelling unit occupy one half acre of land, otherwise you would never get dwelling units on a second story of a building. By virtue of Section 9.11, you can have whatever setbacks they submit that this Board deems appropriate.

Steve Taylor questioned the thirty foot screen that the SDA zone is supposed to supply to the residential section if it abuts up against it. Mike Schwartz stated that this is an adjustable dimension authorized by Section 9.11.

Steve Taylor stated that architecturally the SDA zone is a mix of retail and apartments, not all dwellings. The intent of the SDA is that it should not all be one thing, but a mixture. Mike Schwartz stated that as long as they don't exceed forty feet in heights and do not have a mansard roof, this is a permitted.

Joe Feinauer stated that the minimum size of any lot in the city is 6,000 square feet. Based on Section 9.11, we should then have a right to say how small these lots are allowed to be.

Brandon Voelker stated that while the SDA regulations Section G 1. spells out one half acre lots, Section G 5. states that you may have multiple dwellings on that lot. It is at this Board's discretion to determine to allow a deviation from the minimum lot size of half an acre with multiple units, and apply Section 9.11, to determine the appropriate lot size. This is a SDA zone which allows for residential, but it does not change it to a residential zone.

Ken Warden verified that this is a commercial zone abutting a residential zone and stated that a thirty foot screen in the back would then come into play. Mike Schwartz replied that by using Section 9.11 a thirty foot buffer could be required to go between Lots 1 thru 5. The regulations say there are to be no fences in front yards which would apply to the buildings facing US 27. No fences are allowed between the house and any street right of way, but a couple of these buildings facing Downing do not abut a right of way because of the strip of land owned by London Acres South. The Board could make a condition not to allow the other lots to have a fence in their backyard.

Roger Bay questioned whether they would have to place sidewalks on Downing. Mike Schwartz replied that because of the strip of land owned by London Acres South they would not have to do so.

Steve Taylor had concerns with the new Buning Lane extension less than fifty yards away to the intersection of Downing, which would be a safety issue. Mike Schwartz stated that with the potential connection to Downing Street of this Buning Lane extension, there would be a four way intersection at Alexandria Pike. The city would have to work this out. To make a left turn at a controlled intersection is far safer than what we have now. The best place for a curb cut on Alexandria Pike is directly across from Buning Lane, otherwise it will not meet any other of the access control regulations. Steve Taylor replied that they have to consider the issues that exist today, not what may happen in the future.

Joe Kramer of Cardinal Engineering was present on behalf of applicant Peter Forbes. They do concur with all of the conditions of staff with the exception of the access road to the Erschell property. While they understand the reasoning for this, they would not gain any advantage. They would have to drop one of the single family lots to provide this connector.

These are single family lots, which will be geared to retired people. They have discussed the traffic light at US 27 with the Highway Department and they do not have the traffic counts currently to install the traffic light. If the connection is made

with Downing Street, then the counts would be met and the light installed which would be a traffic relief for left hand turns heading south on US 27. This would be a twenty-five foot wide subdivision street so the width would be able to handle that type of traffic. Parking would be restricted on one side of all of the streets in this development.

Steve Taylor questioned what the architecture would be like for this development, and if there was a possibility that they could redesign the orientation of Lot 11 and 12 so that the side of the house would not be facing US 27. Jay Forbes was present and said they buildings will look similar to the Fischer patio homes with the biggest difference being that they will be about ninety percent brick. They will be ranch style single story with two car garages in front. They have no plans for fences or outbuildings. The homes will be approximately 1,800 square feet excluding the garage. If they were to reorient the houses facing Downing Street, they might have to lose another building and that would not be feasible for them. The goal is to put in a berm in front of the development at US 27 which would hide it. It would also eliminate a lot of the traffic noise for the people living there.

Mr. Forbes stated that in the past, he had tried to meet with the London Acres Homeowners Association concerning the small strip of land, but they were not interested and he dropped the issue. The Granite Spring development has opened up the opportunity for a traffic light and he hopes this issue might now be resolved to facilitate a better flow of traffic for London Acres.

Jim Drye questioned the underground detention. Jay Forbes stated that it will require maintenance and they will work out the agreements with the Sanitation District.

Larry Grause, who is owner of 101, 102, 103,104, 202, 203, 301 and 302 Kingsway Court, and also 603, 606 and 701 Queensway Court addressed the Board. He felt incumbent to become knowledgeable and familiar with the issues when he became aware of the rumors which were circulating around London Acres. He did obtain a copy of the Forbes Subdivision from Mike Schwartz. Mr. Forbes stated that the SDA zone has restrictions and on the plan it specifically says minimum lots are one half acre with a width of one hundred feet. Mr. Grause said that the language in the SDA regulations is clear and we should not have to look behind it for what is interpreted or what is the intent. Mr. Grause stated the density is a major concern. These buildings would be crammed next to each other with only fifteen feet distance from the next building and it would not look good. Also, the water runoff is a legitimate concern. There is a problem with runoff of water to London Acres Building 4 during heaving rains and at times the lake has overflowed. Mr. Grause stated that the developer should perhaps stake the layout so the London Acres residents could get an idea of the perimeters of the development which may allay some of their concerns. The London Acres residents are also concerned about the traffic conundrums.

Dennis Griffin of Griffin Industries was present and requested an explanation of the lot areas and building placement on the plans. Mr. Griffin asked for clarification on the access road to the Erschell property. Mike Schwartz replied that this is to eliminate access curb cuts onto US 27 should it be developed in the future, in order to avoid transportation and capacity problems along US 27. Mr. Griffin questioned the underground retention. Joe Kramer stated that it is burying pipes to a vault to store water and it would have a small release to let the water go out and flow to the lake. Mr. Griffin was concerned about the sanitary sewer and if Griffin Industries would be affected by the Forbes development. Mr. Kramer said they would not be affected and their system would not be shut down at any time.

Don Stickling of Buckingham Court stated there are concerns with the traffic situation, especially turning left coming out of Downing onto US 27. Having a Buning Lane extension would cure that problem. The storm water problem has been an issue with London Acres for quite some time, with muddy water coming down from US 27 into both lakes. The more dense this development is, the more water runoff there will be. If the developer has to fill the steep pitch of the ground in this area, it will cause even more water runoff issues. Mr. Sticking also feels that the parking in the area does not seem adequate, and perhaps they should plan for an off lot area for parking. Ken Warden asked Mr. Stickling if he would be in favor of connecting the new Buning to Downing. Mr. Stickling thinks it would be a good idea.

Sandy Ross, resident of Springside thanks all for serving the city. She hears a lot of focus about zoning and the letter of the law, but what she sees is appearances. This development should perhaps be downsized. The SDA appears to have loopholes that you can do residential development but do not have to pay attention to residential guidelines that apply to the rest of the city. She hopes that the approval of this development is not a thinly veiled way to get a four way traffic light to help Granite Spring. Ms. Ross stated that this development should be in character with what is along US 27. She hopes that

in consideration of this development the city does not take property if there cannot be a resolution between the developer and the London Acre property that they have the right to.

Lawrence Grause stated that the water runoff problem is so critical that there is a twenty-four inch culver in the rear property line. Once construction begins, that will just exacerbate the problem.

Joe Kramer stated that it is an expensive process to do underground detention. He spoke about various ways that they could work in conjunction with London Acres to improve the lake. Regarding the density issue, his client felt that this development would be a less intense use. Generally commercial projects are eighty percent impervious. The zoning limits are seventy five percent impervious. This single family development is only about forty percent impervious. It is a much better alternative. They cannot build this development on less units, because the money would not be there.

Ken Warden asked if the lakes were retention or detention. Joe Kramer stated that they are technically retention, though they were probably really designed as a water feature. They are probably silted in by now since this development is twenty-two years old, but they were originally fourteen feet deep.

Dee Williams of 703 Queensway Court spoke about the time engineer from the Sanitation District came took a look at the lakes and stated that they had investigated the water runoff and everything would be okay. Recent torrential rains have caused mud, and even red streaks of oil, from the Perry Building to run across Downing to the ponds. They have never been in the bad shape as they are now. Ms. Williams stated that the drainage is terrible.

At this point, Chair Steve Taylor closed the public hearing. Further discussion followed.

Steve Taylor asked for further clarification on what was heard tonight regarding the lot size. Mike Schwartz gave examples of office condominiums which would be subdivided into office spaces and each office space would not have to have a one half acre lot. From that one half acre you can create smaller pieces as long as the maximum density is not exceeded, and there is no maximum density.

Brandon Voelker stated that the issue this Board has to decide upon is to apply the exception on 9.11, and make a finding going against subsection G in the SDA regulations on the minimum lot size. You have to make an exception to that finding if you use Staff recommendations, but the minimum lot size of that ordinance says one half acre.

Discussions continued on definitions and interpretations of the zoning regulations.

Chair Steve Taylor stated that the time was 10:00 pm and since there appeared to be much more discussion needed before a vote could be made, he asked the Board if they would like to continue or motion to delay the vote. They can do this up to ninety days. Karen Stafford stated that there were many issues that could not be accomplished in a short time and the Board needs to give this more consideration. Karen Stafford made a motion to table this discussion for a future meeting. Joe Feinauer seconded the motion. Roll call vote showed three yeses and three noes. Due to the tie vote the motion failed. Jim Drye suggested the discussion continue until 10:30 pm and decide at that time.

Ken Warden voiced his concerned with requiring access to the Erschell property, however additional curb cuts there disturb him even more. He would like the developer to look at how they can get access to the Erschell property and also give them more time to look at the detention pond and see how they can solve that problem. The city needs some time to get with the London Acres Homeowners Association about the strip of ground along Downing and try to eliminate some of this traffic getting out onto US 27. That might also solve the problem of the traffic from Mr. Perry's property.

Joe Feinauer calculated that the Erschell property is less and three fourths of an acre. Though he agrees with the assessment of Staff on the one half acre, one hundred foot minimum, he feels that it is too dense. It is not in the city's best interest to have lots smaller than any other in the city. In order to look like it belongs in the city it ought to at least meet what we are now using as a minimum allowed in an RID, which may not make the project feasible.

Jim Drye stated that the SDA gives us more flexibility for newer designs and the needs of retired people and we could ignore the lot lines and think of it as a development like Springside. We have a lot of unique places in Cold Spring and because of the proximity to US 27 and the density there, it gives us all of the green initiatives and pedestrian movement. It certainly is less dense than what it is in a condo development. The hang up is the lot line ownership.

Steve Taylor stated that mixed uses within the development is an intent of the SDA use of land. Everything here is all dwelling, all of the same use. Because we can only consider what exists today, the traffic flow becomes an issue. He agrees that "if" we had a light, "if" we had a four way intersection, "if" we had attachment to Downing, this would be a better solution, but we don't have that and don't know for sure if we will get it. This is a sticking point.

Brandon Voelker stated that our code specifically says a half acre lot, but 9.11 provides for an exception. This Board has to make the finding and apply that exception. This is an SDA and not a residential zone. It is a hybrid zone.

Chariman Steve Taylor asked if the Board would like to continue discussion, since the time was 10:26 pm He does not see a quick resolution. Joe Feinauer made a motion to postpone the meeting. Discussion followed on what date and time to continue the discussion. Roger Bay asked if the issue of Buning Lane going into Downing should be settled prior to further discussion. Steve Taylor stated that we cannot control this situation but we can only suggest it to City. Brandon Voelker said that if the HOA were in agreement to tie this in and deed the property to the City, then we could require the developer to connect to Buning.

After further discussions Joe Feinauer **amended his motion to postpone and continue the discussion of this hearing for the August 8th meeting under Old Business and placed before the scheduled public hearings.** Jim Drye seconded the motion. All were in favor. Motion carried.

Steve Taylor stated that we have not heard from Hiland Pancake on the release of the bond and that remains an open issue. We still do not have clarification on what portion has been paved.

Mike Schwartz stated that he needs action for the Board to authorize a text amendment application for flood plain regulations, which will be on next month's agenda. Staff has been working with the Division of Water to insure the flood plain regulations in Cold Spring meet the requirements of the State and FEMA. The model that the city, and Kenton County use do not currently meet the State and therefore the FEMA regulations. The City is now participating in the National Flood Insurance Program. We need to authorize the text amendment to the Cold Spring zoning ordinance to adopt the new Flood Plain regulations. It was adopted by the city under Home Rule but is not in our zoning regulations. Steve Taylor made a **motion that we become the applicant for a text amendment in order to satisfy the Flood Plain Requirements** and Karen Stafford seconded the motion. Roll call vote showed all were in favor. **Motion carried.**

Ken Warden asked that we look into changing the SDA on the roof issue. Mike Schwartz stated that it is the responsibility of the zoning administrator to interpret the zoning ordinance, and if they don't like that interpretation, they can argue it before the Board of Adjustments who can look at it and make a decision. They have an avenue of appeal. Ken Warden stated that we should still look at it. That type of roof is not architecturally compatible. He feels that we should specify the slope and not have to go through this again. Mike Schwartz will put together some language to study this at the next meeting.

Karen Stafford questioned the Asian Wok's van. It was supposed to have been removed but the van with lettering is back. Brandon Voelker stated that instead of draping a sign on the van, it is now a newer van with decals so it is now legitimate. He is no longer putting signs in the right of way.

Ken Warden made a motion to adjourn the meeting. Roger Bay seconded the motion. All were in favor. Motion carried.

Respectfully submitted,

Rita Seger, City Clerk

NEXT MEETING --- AUGUST 8th