

Submitted March 27, 2024
Approved April 24, 2024

**MINUTES OF THE ROCKVILLE PLANNING COMMISSION
MEETING NO. 1-2024
Wednesday, January 10, 2024**

The City of Rockville Planning Commission convened in regular session at City Hall
and virtually via WebEx at 7:00 p.m.
Wednesday, January 10, 2024

PRESENT

Shayan Salahuddin - Chair

Jaime Espinosa
Eric Fulton

Sam Pearson
Suzan Pitman

Present: Nicholas Dumais, Senior Assistant City Attorney
Jim Wasilak, Chief of Zoning
Li Alligood, Deputy Zoning Manager
John Foreman, Development Services Manager
Faramarz Mokhtari, Senior Transportation Planner

Chair Salahuddin opened the meeting at 7:00 p.m. and introduced the members of the Planning Commission. He also outlined the agenda for the meeting.

I. RECOMMENDATION TO THE MAYOR AND COUNCIL

A. Project Plan PJT2023-00016, for an Amendment to the Existing Planned Development to Permit Up to 4,400 Square Feet of Retail Uses in the PD-CB (Planned Development - Champion Billiards) Zone at 900 Rockville Pike

Mr. Wasilak swore in Deputy Zoning Manager Li Alligood, who stated that she would testify truthfully. She presented an overview of the project, which proposes an amendment to the approved Planned Development, and outlined the staff recommendation of approval. Ms. Alligood also presented revised conditions of approval, recommending deletion of Condition No. 2 regarding loading spaces as unnecessary and the addition of a new Condition No. 9 regarding limitations of the size of trucks accessing the site.

Commissioner Fulton asked how Condition No. 9 would be enforced, and Ms. Alligood responded that it would be enforced the same as noncompliance with other conditions of approval, as a zoning violation. Faramarz Mokhtari of Traffic and Transportation concurred.

Commissioner Fulton asked what obligation the applicant is to maintain access to the sidewalk on Rockville Pike. Jim Lapping responded that this requirement would be enforced by the State Highway Administration and the closing would be sufficiently marked as such should that occur. Commissioner Fulton expressed concern about closing off the pedestrian crosswalk of Rockville

Pike, given that there are not many crossings in this area and pedestrians might be tempted to cross anyway, and asked for additional clarification on what the regulations are. Mr. Mokhtari stated that he thought that the pedestrian improvements could be constructed first to minimize the potential disruption.

Commissioner Espinosa asked when the City was informed about the claim by the owner of the adjacent property that there is private property between the public access easement and the Rockville Pike right-of-way. Ms. Alligood responded that the first instance of the claim came in materials submitted in April 2021 by the adjacent property owner. Commissioner Espinosa asked how curb cuts are approved, and Mr. Dumais noted that there are three curb cuts on the adjacent property, with varying distances into the property for each. He noted that the access easement was granted but is not delineated in a clear form on the plat.

Commissioner Espinosa asked how a curb cut could be closed, and Mr. Dumais responded that because the easement and right-of-way do not abut at the northern curb cut, that curb cut could be closed. However, he noted that the approved site plan for the property shows all three access points, and the property owner would be in violation of the Zoning Ordinance if an action is taken that is not shown on the approved site plan. Commissioner Espinosa asked when the northern curb cut was created, and Mr. Wasilak responded that he is not positive but certainly as of 1971 when the site plan was approved.

Jody Kline of the law firm of Miller, Miller & Canby, was sworn in by Mr. Wasilak and spoke on behalf of the applicant. He noted that the staff report provides a thorough analysis of the access easements. Mr. Kline explained that the additional right-of-way needed to implement the Bus Rapid Transit has driven why the project has been reduced in size from prior proposals. He explained that the delivery trucks to the site will be smaller, and during specific hours.

Commissioner Pitman asked if the building will be empty once it is completed, given the state of retail use. Mr. Kline responded that the owner is confident that the space will be leased once the project is approved, and is actively marketing the property.

Mr. Wasilak noted that Commissioner Pearson had joined the meeting online.

Commissioner Fulton asked about the pedestrian improvements along Edmonston Drive. Mr. Wasilak then swore in Brian Donnelly of Macris, Hendricks & Glascock, civil engineers for the project. Mr. Donnelly responded that the sidewalk along Edmonston Drive would be increased in width from 4 to 6 feet.

Mr. Wasilak swore in Jim Whalen of Investment Properties, long-time owners of the adjacent property. He testified that the owners were left out of the process to use entrance closest to the subject property, and he further noted that the issue regarding the gap of private property between the right-of-way and the access easement has been raised previously. He further stated that Investment Properties had lost in court due to errors by their previous legal team during the appeal of the prior approval for the subject site.

Mr. Whalen stated that there were several meetings with City staff when the suggestion of using the other entrances for access was raised, which was not viewed favorably by Investment Properties. He added that nobody can say what types of delivery vehicles will access the property, even with signage or restrictions, based on their experience. Mr. Whalen added that Greg Cook of The Traffic Group analyzed the northern entrance to the site, which noted that there are conflicting movements of the traffic accessing and exiting the site. He stated that there is an approved use permit for their property, but that the proposal for a vehicular connection does not agree with the use permit approval.

Commissioner Espinosa asked Mr. Whalen when the claim was made about the private property, and Mr. Whalen responded that he thought it was in 2006. Commissioner Espinosa expressed surprise that the claim was not raised as part of the appeal of the original approval. Mr. Whalen answered that the court did not consider it as the issue was not raised as part of their brief. Mr. Whalen noted that the entrance has existed in its current form since the 1960s, prior to creation of the easement.

Erin Girard of the law firm of Miles & Stockbridge and representing the adjacent property owners, noted that she is online to answer questions but does not have additional testimony.

Commissioner Fulton asked staff to what extent the Commission should consider the validity of the legal claims before them, or should the Commission conclude that there are no easement issues, as the staff report indicates. Mr. Dumais responded that the code obligates the Commission to hold a public meeting and to discuss the application, but not necessarily to weigh in on any particular issue of an application or to make a recommendation on the application. Ultimately, the Commission may apply its expertise to matters relevant to the application and transmit any comments as the Commission sees fit. He further explained that the staff recommendation that there are sufficient access points on the adjacent property to provide a connection to the access easement regardless of the gap between the easement and the right-of-way is part of the information to be considered by the Commission in making its recommendation.

Commissioner Espinosa summarized Mr. Dumais' testimony to be that the Commission may discuss what it wants to discuss related to an application. He stated that he thought that the Commission should discuss the easement issue as a potential major risk because of the testimony but that he did not consider it to be such a risk that the Commission's recommendation should include discussion about it.

Commissioner Fulton expressed concerns about truck access to the site, and that the Commission should recommend to the Mayor and Council that they pay attention to that issue, but that it should not be a reason not to recommend approval.

Commissioner Pitman stated her concern about the viability of retail space, given the retail vacancies in existing retail space, and which she would not have if the project included housing. She wondered whether the empty lot will become an empty building when developed, which would not occur if the project was residential, and that this concern should be expressed to the

Mayor and Council. Commissioner Espinosa stated that tenants would be more likely to locate here with a building to move into rather than an empty lot. Chair Salahuddin noted that there is no entity more in agreement with this concern than the developer.

Commissioner Espinosa moved, seconded by Commissioner Fulton, to recommend approval based on the recommended findings and conditions recommended by staff, and to add comments regarding concerns about truck movements on the site and the ability of the developer to find retail tenants. The motion passed 5-0.

II. BRIEFING

A. Zoning Ordinance Rewrite Project

Li Alligood noted that the Commission received an Executive Summary of the Diagnostic Report in the brief book, and that the full report will be posted on the city web site shortly.

Jocelyn Gibson of ZoneCo, the consultant team working on the rewrite of the Zoning Ordinance, presented an overview of the current state of the project. She reviewed the rewrite process, which consists of the Diagnose, Calibrate and Codify phases, bookended by the kickoff and adoption phases.

The Diagnose phase is the comprehensive review of the context of Rockville's plan, built environment, economics and other factors with respect to zoning which provides an understanding for all who have an interest in the project.

The Calibrate phase involves how to develop solutions to the issues from the Diagnose phase, and allows for vetting of the base standards of the code, prior to writing the code language.

The Diagnostic Report involves a comprehensive plan comparison with the current code to ensure that the new code reflects the Comprehensive Plan recommendations. The consultants also reviewed past plans, past and current zoning text amendments, and accomplished a map-based assessment. The report also includes an equity audit and an analysis of the organization and consistency of the code.

Some of the land use recommendations in the report include housing diversity, provision of open space and neighborhood amenities, standards for community entities as well as coordination of land use and transit, among others.

Commissioner Fulton congratulated the staff and consultant team on achieving the first phase of a lengthy process. He noted that consistency and organization is the key to the rewrite. He asked if the adopted Pedestrian Master Plan was included in the documents that were reviewed, and Ms. Gibson answered that it was. Commissioner Fulton stated that he thought that parking will also be important to the new code. He asked if the design standards element can effectively prohibit the type of missing middle housing advocated in the plan, and Ms. Alligood responded that they

would not, as the existing and proposed design guidelines documents only apply to single unit detached homes.

Commissioner Espinosa asked about the public outreach strategy, and Mr. Wasilak responded that the zoning update implements the Comprehensive Plan, which recommends zoning and land use changes, so the initial outreach will be to neighborhoods with such recommended changes, and also to focus groups that have certain interests, as was done with the Town Center Master Plan.

Chair Salahuddin asked if the next outreach will include the lessons learned from prior outreach efforts that did not achieve a diversity of attendees that reflect the population. Mr. Wasilak responded that the outreach plan will do that.

Commissioner Espinosa suggested that at some of the meetings should be virtual to allow persons who may only be able to attend that type of forum, and Chair Salahuddin stated that the city's social media should be used to disseminate information to persons who follow the city in that way.

Sean Suder, lead principal of ZoneCo, introduced himself to the Commission, stating that he looks forward to working with the City and Commission.

III. COMMISSION ITEMS

- A. Staff Liaison Report** – Mr. Wasilak noted that the next Planning Commission meeting would be on January 24, but there are no agenda items scheduled. The following meeting is on February 7, which includes final record plats for the Potomac Woods project, as well as a briefing on the first Floating Zone Map Amendment and Project Plan applications for 5906 Halpine Road. He also noted for the Commission that the Mayor and Council have authorized the filing of a zoning text amendment that would add language to the code to allow for amendments to conservation districts, which the Commission will review for a recommendation.

The Commission agreed to cancel the January 24 meeting. Commissioner Fulton noted that he will be unavailable for the March 27 meeting due to Spring Break.

- B. Old Business** – None.

- C. New Business** – Commissioner Fulton asked if staff could keep the Commission apprised of any changes to state legislation that would impact the Commission's work.

- D. Minutes Approval** – Meeting No. 17-2023, December 13, 2023: Commissioner Espinosa moved approval of the minutes for the December 13, 2023 meeting as written, and the motion was seconded by Commissioner Pitman. The minutes were approved by a vote of 5-0.

- E. FYI/Correspondence** – Mr. Wasilak stated that the only correspondence received was related to the agenda.

IV. ADJOURN

There being no further business to come before the Planning Commission, Commissioner Fulton moved, seconded by Commissioner Pitman, that the meeting be adjourned at 8:41 p.m. The motion was approved unanimously.

Respectfully Submitted,

A handwritten signature in blue ink that reads "R. James Wasilak". The signature is written in a cursive, flowing style.

Commission Liaison