



Howard County Council

Zoning Board of Howard County

George Howard Building
3430 Court House Drive
Ellicott City, Maryland 21043-4392

BOARD MEMBERS

Christiana Rigby, Chairperson
Deb Jung, Vice Chairperson
Opel Jones
Liz Walsh
David Yungmann

Ashley Aguilar
Administrator

Minutes (Approved)
Zoning Board Hearing
ZB1118M Erickson at Limestone Valley – Deliberation Day 3
Wednesday, October 27, 2021, 6:00 p.m.
Banneker Room and Web-based Virtual Meeting
Streamed at <https://cc.howardcountymd.gov/Online-Tools/Watch-Us>
Broadcast Channels 44 (Verizon) and 99 (Comcast)

Members Present: Christiana Mercer Rigby, Zoning Board Chairperson; Deb Jung, Zoning Board Vice Chairperson; Opel Jones, Council Member; Liz Walsh, Council Member; and David Yungmann, Council Member.

Staff Present: Ashley Aguilar, Board Administrator; Ann Nicholson, Board Assistant and David Moore, Principal Attorney.

The Chairperson called the hearing to order at **6:06 p.m.**

Discussion

Ms. Rigby asked if what was before the Board was approvable and approvable with modifications or if it was not. Ms. Walsh stated the issue was intertwined and she was not comfortable proceeding with modifications in a vacuum. Mr. Yungmann stated that he could not approve this with or without modifications. Mr. Moore doesn't know if the Board is obligated to reach a conclusion on this point right now because the Board is not deciding the case. The Zoning regulations allow provisions for modifications or additions by the Board to the development concept plan if and when the Board approves the petition. Dr. Jones stated he is looking at this from a time perspective and is comfortable to vote and have conversation if needed.

Motion and Vote

The Chairperson moved to see if before the Board the petition as presented is approvable or approvable with modifications and if there is a purpose to moving on with the deliberations of modifications. The motion was seconded by Mr. Yungmann.

The roll call vote called by the Administrator on the motion was: Yea: Council Members Jones, Rigby and Yungmann. Approvable with modifications: Zoning Board Members Jung and Walsh.

The motion passed.

Discussion

Mr. Chris Ranken, Assistant District Engineer for Maryland Department of Transportation District 7 State Highway Administration is present virtually to provide information specific to the modifications necessary to access Route 108. Ms. Jung is disappointed the County Executive has refused to make anyone available to answer further questions. Ms. Rigby disagreed. Mr. Yungmann stated the record is closed. Mr. Moore stated the Board, at its discretion, may hold additional hearings on any modifications as it deems appropriate. Mr. Yungmann confirmed that no one would be a new witness for the case. Ms. Jung asked if they would discuss Mr. Schneider's motion. Ms. Walsh recommended to proceed with Mr. Ranken and members agreed.

Mr. Ranken stated he cannot offer details. He provided an overview of the Access Management Division and how they take an application from the development team and they look at what they propose and determine if it is consistent with the guidelines. He is also concerned about the County's vision for MD 108 corridor from Clarksville past River Hill High School and provisions for proper pedestrian and bicycle mobility.

Ms. Rigby asked what is required for access to Route 108. Mr. Ranken stated access needed to the new development must be done without degrading the level of service and there is no way to determine that specifically. Historically the determination is made after completion of the project.

Ms. Jung asked about transportation enhancements in the TSR and whether they are actually enhancements or if the State requires these roads to be reworked in the manner the petitioner suggested. Mr. Ranken said MD 108 and Sheppard Lane are his responsibility. He doesn't have a current completed application from Erickson so he couldn't speak to the rest of the enhancements, but he is aware of the issues and they may be required from the developer to be granted for access.

Mr. Yungmann asked what on the list of enhancements has State Highway determined are needed now but probably not funded. Mr. Ranken replied they would like to do a lot of those items but wouldn't call any of them high priority.

Ms. Walsh asked what kind of inputs does SHA need in order to assess whether improvements are required for a given development. Mr. Ranken replied he would need a Traffic Impact Study (TIS) from the development team and what mitigations are being proposed. Ms. Walsh asked if the TIS was part of the pre- or post-development and Mr. Ranken replied it was both. Ms. Walsh asked if road improvements to a State highway were not determined until after the project was done and Mr. Ranken said no, that is what the TIS is for. Ms. Walsh asked if SHA could revisit a TIS if not enough work was done and Mr. Ranken stated that typically is not part of the process. Ms. Walsh asked if SHA has received any TIS for this project from Erickson or other developers for this site. Mr. Ranken replied there was one originally, but it would be obsolete now with the development of River Hill Square and new traffic patterns. Ms. Walsh asked if there would be any reason why SHA wouldn't consider a TIS now. Mr. Ranken replied the pandemic would affect an evaluation, but they are simply waiting for an updated proposal from Erickson. Ms. Walsh asked for a sense of what a SHA requirement would be along a State road like MD 108. Mr. Ranken replied there is nothing specific he can say but that there is an awareness of it, such as bicycle mobility.

Ms. Rigby swore Mr. Ranken in.

Dr. Jones asked if when looking at the enhancements (turn lanes, lanes increasing) if it was based on schematics only or if a TSR or community input factored in. Mr. Ranken replied it is a technical review process and they look at the data provided by the developer. They don't try to evaluate the public sentiment.

Mr. Sang Oh, Council to the Petitioner asked Mr. Ranken if he or someone from SHA reviewed the TIS submitted by the petitioner on July 28, 2017. Mr. Ranken didn't work there at that time, but he would assume it was reviewed by his Access Management Team. Mr. Oh said it was approved from an SHA reviewer with comments. Mr. Ranken was not aware of this. Mr. Oh showed a print out from the petitioner's power point presentation of the scope of the improvements being proposed. The petitioner is taking land owned on MD 108 and widening the stretch from Linden-Linthicum to Sheppard Lane. Mr. Oh asked if it was typical that SHA would require the developer to provide two lanes of widening for over 1300 feet. Mr. Ranken replied he could not make a judgement. Mr. Oh asked if the extension of the queuing of cars from 8 to 45 affected critical lane volume and Mr. Ranken said he did not know the specifics.

Mr. Alan Schneider asked Mr. Ranken if he knew when the traffic studies were provided and whether they had been reflective of current State highway requirements. Mr. Ranken said requirements change over time. Mr. Schneider asked if they would look at current needs and Mr. Ranken said yes. Mr. Schneider asked if a TIS considers the growth of Howard County and Mr. Ranken said yes. Mr. Schneider asked what metrics are used and Mr. Ranken said a consultant would provide an estimate of traffic growth and that he wasn't sure of the methodology. Mr. Schneider asked if there were records of increased traffic on MD 108 by River Hill and if they were available and Mr. Ranken replied yes. Mr. Schneider asked if records of new development differed in this County compared to other counties and Mr. Ranken replied he did not know. Mr. Schneider asked if Howard County, with regard to a specific development on Route 108 needed something, would that be taken into consideration of what was usually required. Mr. Ranken replied he wasn't sure legally how the process worked but that the Howard County Complete Streets Manual would be an advisory recommendation. Mr. Schneider asked if Citizen Advisory Groups worked with SHA. Mr. Ranken replied crash reports were looked at. Public input was not a part of the process, but SHA is responsive to the public.

Mr. Stu Kohn asked who will direct the petitioner to require an updated TIS study. Mr. Ranken replied that he thought it would come from SHA for the developer to submit an updated report. Mr. Kohn asked if they planned to do that and Mr. Ranken replied they were waiting for an update.

Mr. Yungmann asked Mr. Ranken if the application was incomplete or if too much time had passed. Mr. Ranken replied he never said it was incomplete.

Mr. Joel Hurewitz asked Mr. Ranken if he was aware there was a motor vehicle fueling station on that property and Mr. Ranken said he believed there was. Mr. Hurewitz asked if Mr. Ranken was on at the beginning of the meeting and he replied that he was. Mr. Hurewitz asked if he noticed the Chair didn't read some of the technical title of the case regarding this and Mr. Ranken said he did not notice. Mr. Hurewitz asked if this fueling station would affect the status of the TIS and Mr. Ranken said it would not. A number of things could cause a change in the new TIS. Mr. Hurewitz asked the Chair for the page Mr. Oh was referring to and the Chair clarified.

Mr. David Elsaesser was concerned with Mr. Ranken 's testimony regarding his objective of maintaining level of service. Does this mean that throughput on MD 108 is important and does SHA consider this. Mr. Ranken replied no, level of service implies the traffic is flowing. Mr. Elsaesser is concerned if State Highway considers chokepoint situations. Mr. Ranken said they do consider it and it depends what the TIS states. Mr. Elsaesser asked where the left turn would be so it wouldn't be treated as a through lane. Mr. Ranken couldn't answer where the left turn lane would be. Mr. Elsaesser asked if there was data on a retirement community and how many trips are taken compared to what the developer states. Mr. Ranken said there is a publication that is used, and they use analysis to predict. Mr. Elsaesser asked if they change or move a road, does SHA take safety into concern. Mr. Ranken replied safety is a top priority, but other factors are taken into consideration. Mr. Elsaesser said the developer wants credit for moving Sheppard Lane but there was a safer way to align it and SHA weighed the interest over the developer over the interest of community. Ms. Rigby interjected that

Mr. Ranken was available to discuss specific modifications and requirements for access. Mr. Elsaesser stated he was testifying that this wasn't an enhancement but a reduction in the level of service.

Recess

Discussion

Ms. Rigby laid out the order of enhancements for discussion: roads, streetscapes and the park. Ms. Jung wanted to discuss development of the land as well. Ms. Rigby referred to the TSR and was willing to accept the portions within the TSR that are considered the enhancements. Ms. Jung stated she couldn't agree that anything was an enhancement in the TSR list without an updated TIS report. Ms. Walsh stated a letter was sent to the Board Administrator saying no further testimony would be provided from specific County departments and asked if that would be discussed. Ms. Rigby responded they needed to be ready to make decisions with information available and that they will proceed. Ms. Walsh disagreed and asked if the Zoning Board had subpoena of power. Ms. Rigby replied no.

Motion

Ms. Walsh moved to subpoena those persons who were asked by the Administration to be provided voluntarily and who were not made available pursuant to a letter received. The motion was seconded by Ms. Jung.

Discussion

Dr. Jones stated he didn't believe the Zoning Board members could have a valid motion that was outside their scope of powers. Mr. Moore stated the Zoning Board does not have subpoena power as the rules are written. Ms. Walsh asked where this provision in the code was and Mr. Moore said he would have to locate that. Ms. Rigby stated she would like to proceed with the case. Mr. Yungmann doesn't know why they are bending over backward to make the petitioner's case for them. Dr. Jones agreed and reiterated that they don't have subpoena power.

Ms. Rigby moved on to discuss transportation road improvements. She asked Mr. Yungmann if he had any thoughts or comments or believed if modifications were needed. He replied no. When asked the same question by Ms. Rigby, Dr. Jones replied no. When asked the same question by Ms. Rigby, Ms. Jung stated she doesn't believe they are enhancements and that this was set forth by the Office of Transportation. Ms. Jung stated that Mr. Cookson requested an implementation order be put in place as well as to have the petitioner determine the cost of the enhancements. Dr. Jones is not aware of the petitioner being required to give forth this information.

Ms. Rigby discussed the road enhancements in the TSR. Ms. Walsh does not believe there is evidence that these are enhancements based on an obsolete traffic study. She said there is no evidence on the cost of the Sheppard Lane improvements. She continued that it isn't clear that the bike and pedestrian pathways are an actual enhancement. Ms. Rigby showed information in the record that provided evidence. Mr. Yungmann didn't recall any discussion about the actual road improvements not having proper easements. Ms. Jung referred to David Cookson's memo to Geoff Goins regarding roadways. She doesn't think they have the information that they need. Dr. Jones says this memo is several years old. Ms. Jung revised the wording. Dr. Jones asked if they should be requiring an amount and to be careful if this was a requirement. Mr. Yungmann said at this time it was impossible to set a number. Ms. Rigby said she would go with an amount set by Department of Public Works and Office of Transportation given the changing cost of construction, but even

that amount of cost could change. Mr. Yungmann thinks something must already exist. Ms. Walsh doesn't think they should delegate their authority. Ms. Jung stated this is a critical part of this petition.

Motion

Dr. Jones moved to accept the transportation enhancements as written. The motion was seconded by Mr. Yungmann.

Discussion

Mr. Yungmann would like to discuss amending that any enhancement that cannot be done after good faith efforts has to have a payment to approximate the cost of creating the improvement. Ms. Walsh recommends amending the modification that the petitioners would provide information as described in the Cookson memo in the form of cost estimates for the proposed transportation enhancements and ending with information on how the petitioner would, if the proposed enhancement wasn't built, continue to be proportionate to the scale of the CEF development. Ms. Rigby clarified that they were protecting the County, not risk to a private developer. Ms. Jung wants language to include that the developer would bear increased costs depending on when enhancements were put in place.

Motion and Vote

Ms. Jung motioned an amendment that the petitioners will provide cost estimates for the proposed transportation enhancements, an implementation schedule for the proposed transportation enhancements, and information on how the petitioner would, in the event one or more of the proposed transportation enhancements cannot be built in the manner proposed in the submission would ensure any revised or new transportation enhancements would continue to be proportionate to the scale of the CEF development. She also added at whatever enhanced cost was necessary at the time of the construction of the enhancement. The motion was seconded by Ms. Walsh.

The roll call vote called by the Administrator on the amendment to the motion was: Yea: Board Members Jones, Jung, Rigby, Walsh and Yungmann.

The motion to approve the amendment passed.

Motion and Vote

Dr. Jones revised his motion and moved to accept the transportation enhancements as written in the TSR and petition. The motion was seconded by Mr. Yungmann.

The roll call vote called by the Administrator on the motion as amended was: Yea: Board Members Jones, Jung, Rigby and Yungmann. Nay: Board Member Walsh.

The motion as amended passed.

Discussion

Ms. Rigby continued the discussion to streetscapes. Brandon Rowe's presentation was referred to. Mr. Cookson's memo was referred to. Ms. Rigby noted the cemetery limits a pathway to the school building and that the size of dog park would be increased.

Motion and Vote

Dr. Jones moved to accept the streetscape enhancements in the TSR and the petition with the wording from Mr. Cookson's memo which deals with rights of way constructability, pathway maintenance and access to school buildings. Ms. Jung added that this would provide the cost estimates for the proposed streetscape enhancements and implementation schedule for the proposed streetscape enhancements and information on how the petitioner would, in the event one or more of the proposed streetscape enhancements could not be built in the manner proposed in the submission, and would ensure any revised or new streetscape enhancements would continue to be proportionate to the scale of the CEF development. She added any increased cost in the streetscape enhancements would continue to be born by the petitioner and weighed against the scale of the CEF development. The motion was seconded by Ms. Rigby.

The roll call vote called by the Administrator on the motion was: Yea: Board Members Jones, Jung, Rigby and Yungmann. Nay: Board Member Walsh.

The motion passed.

Discussion

Ms. Walsh would like to discuss the paratransit issue. She didn't hear evidence that this was a cost that would be borne by someone other than the petitioner if this wasn't addressed.

Motion

Ms. Walsh moved that the petitioner would contribute the extent of paratransit costs as a result of its facility being place there along Route 108 and that potential line. The motion was seconded by Ms. Jung.

Discussion

Ms. Rigby asked if this would be yearly or one time, and who sets that amount. Ms. Jung referenced Mr. Cookson's memo which stated the cost would be \$680,000 a year to provide the enhanced paratransit service, according to the RTA, who estimated there would be a need for an additional 1134 new trips per month. Erickson stated the number of monthly trips would be far less and that the estimate would be \$142,000. Ms. Jung believes the amount should be the difference in cost and that an agreement should be made with RTA for reimbursement. Mr. Yungmann said \$40 per trip seemed substantial. Mr. Yungmann and Ms. Rigby assumed that people moving into Erickson would use the service.

Motion

Ms. Jung moved that anything above the cost of \$142,000 in paratransit services, the cost would have to be borne by Erickson. The motion was seconded by Ms. Walsh.

Ms. Walsh withdrew her motion that the petitioner would contribute the extent of paratransit costs as a result of its facility being place there along Route 108 and that potential line. The motion to withdraw was seconded by Ms. Jung.

Discussion

Dr. Jones questioned what determines how the reimbursement cost is passed on over time and if they have the authority. Mr. Yungmann said they could deem this not an enhancement. Ms. Walsh said it would stay more constant if they reverted to trips rather than cost. Ms. Jung assumed Erickson based this on trips. Mr. Yungmann said that Erickson's numbers could be correct and there could be a disconnect in how the numbers were looked at. Ms. Jung offered that perhaps they cover 75% of trips instead. Ms. Walsh stated this enhancement wouldn't necessarily activate. Ms. Rigby agreed with the reimbursement discussed. Ms. Jung read excerpts from Mr. Cookson's memo and referred back to her motion.

Motion and Vote

Ms. Jung moved that Erickson would reimburse RTA for paratransit trips over the amount of \$142,000 in paratransit services per year. The motion was seconded by Ms. Rigby.

The roll call vote called by the Administrator on the motion was: Yea: Board Members Jones, Jung, Rigby, Walsh and Yungmann.

The motion passed.

Discussion

Ms. Rigby continued the discussion to the park. Ms. Rigby and Ms. Jung would rather have Rec and Parks design this. Ms. Jung recommends Erickson pay for the park if they want Rec and Parks to run it. Ms. Rigby and Ms. Jung want this to be a public park. Dr. Jones stated he was unsure of they have the authority over money and fees and making someone pay. Mr. Moore stated the Board can't impose the obligation to pay for just anything, but the Board could impose the condition to pay and if a petitioner disagreed, they would have a right to a hearing on the matter. Dr. Jones asked how it would be enforced and Mr. Moore replied enforcement can be problematic.

Mr. Yungmann is concerned about a private entity operating something intended for the public. He prefers that Rec and Park run it. Ms. Walsh stated she does not agree. She said the real dollar value is the cost of maintenance. Ms. Jung added the public is able to use the community center, which is privately owned. Ms. Rigby said Erickson might want to run the park differently from Rec and Parks. Ms. Jung said county taxpayers would be shouldering a greater burden of cost and we shouldn't add this one. Ms. Rigby said there would be a greater tax benefit and a gain of a County park. Ms. Walsh said there is no testimony on the value of the provision of the land and how can a decision be made without an evaluation. The budget was discussed and whether Rec and Parks would accept the park. Mr. Yungmann said the park is small and cost of maintenance might not be that large. Ms. Rigby said maintenance for the first few years would be minimal.

Motion and Vote

The Chairperson moved for Erickson to build and construct the park with the amenities as proposed to the specifications and standards of Howard County Recreation and Parks to provide the finished complete park to Rec and Parks. She added they would want the park built prior to the first building permits being issued for the residential units. The motion was seconded by Mr. Yungmann.

The roll call vote called by the Administrator on the motion was: Yea: Board Members Jones, Rigby and Yungmann. Nay: Board Members Jung and Walsh.

The motion passed.

Discussion

Ms. Jung asked about the amphitheater and whether that was part of the park. She said there isn't enough information about the park and what is included.

Motion and Vote

The Chairperson moved that by park and recreation enhancements of the prior motion, that means: public use recreation area park and playground, public use outdoor amphitheater adjacent to Route 108, public use pavilion, public dog park, public pickle ball courts and public use of a 48-space parking lot to Recreation and Parks specifications and standards and that the meeting space in the welcome center would have a public process outlined for the public to reserve it. This clarifies the previous motion. The motion was seconded by Mr. Yungmann.

The roll call vote called by the Administrator on the motion was: Yea: Board Members Jones, Rigby and Yungmann. Nay: Board Members Jung and Walsh.

The motion passed.

Discussion

Ms. Jung continued the discussion to development of the land. She referred to a memo attached to the TSR from Kent Sheubrooks. She would add to the list that the petitioner must avoid any disturbance to the headwaters of the Patuxent that is located on this land. She recommends a wide berth, no tree removal and restoration of stream with the highest of standards. Mr. Yungmann said this is holding the developer to too high of a standard. Ms. Rigby said she wanted people to live with the land and this is a trade-off she isn't willing to make. Ms. Walsh said DPZ never enforces these laws and waivers are minimized but some of these recommendations could be done. Ms. Rigby asked how. Ms. Jung said to go through them one by one and to make this an enhancement. The property and trees were discussed. Ms. Walsh said one enhancement should be an increase in the stream buffers and forest conservation by a certain percentage.

Motion

Ms. Walsh moved to exceed setbacks from streams and wetlands by 25% from existing regulations and exceed forest conservation obligations by 25% with a preference that any required new plantings be placed first among those expanded buffers from streams and wetlands. The motion was seconded by Ms. Rigby.

Discussion

Mr. Yungmann asked if after the petitioner would confirm what works and what doesn't, and Ms. Rigby said yes. They would be asked if they accept the modifications or if they would request a hearing. Dr. Jones asked what this would look like on the map. Ms. Walsh said buffers would cover streams and wetlands and she would not support anything related to retaining walls. Dr. Jones could see the streams and wetlands pushing outwards and if buildings and paths would be wiping out that would create a different map. Ms. Rigby would prefer flexibility in the site design to allow for the enhanced stream buffer.

Vote

The roll call vote called by the Administrator on the motion was: Yea: Board Members Jones, Jung, Rigby, Walsh and Yungmann.

The motion passed.

Discussion

Ms. Rigby asked if there were further enhancements or modifications to propose. Ms. Jung said she had some but couldn't propose them in the time allotted. Dr. Jones stated he didn't want too much time to pass before the next hearing. Ms. Rigby said deliberations for this case would continue on November 10th at 6 p.m. Ms. Walsh asked Ms. Jung what her additional enhancements would be. Ms. Jung replied that one would be the payment of taxes.

Adjourned: 10:26 p.m.