

**MINUTES
PLANNING COMMISSION
February 2, 2023**

The meeting of the Planning Commission began at 6:00 p.m. on Thursday, February 2, 2023 at the McFaul Activities Center, Meeting Room #4, 525 W. MacPhail Road, Bel Air, MD 21014.

MEMBERS PRESENT: Lois Kissinger-Kelly, Chair
Peter Schlehr, Vice Chair
Phil Raub
Donald Coates

NOT PRESENT: Keith Powell

IN ATTENDANCE: Kevin Small, Director of Planning
Paula Etting, Town Commissioner
Charles Keenan, Town Counsel
Elizabeth Thompson, Stark & Keenan, P.A.
Catherine Butrim, Recording Secretary

ADMINISTRATIVE MATTERS:

Approval of Minutes – January 5, 2023

Mr. Raub moved and Mr. Coates seconded the motion to approve the minutes of the January 5, 2023 meeting.

Ayes: Mr. Coates, Mr. Raub, Mr. Schlehr and Ms. Kissinger-Kelly

Nays: none

The motion carried.

NEW BUSINESS:

Recommendation on Annexation of a 2.6718-acre property at 304, 308, 310 S. Tollgate Road and P/O 615 Baltimore Pike, and designation B-3 (General Business) zoning.

Mr. Small advised that the annexation is proposed for 304, 308 and 310 Tollgate Road and another parcel on the Tollgate Marketplace property, which was not annexed into the Town in 1975. Parcel A – 304 S. Tollgate Road, Parcel 0019, TM 0049 is 0.8284 acres, Parcel B – 308 S. Tollgate Road, Parcel 0659, TM 0049 is 1.2060 acres, Parcel C – 310 S. Tollgate Road, Parcel 0381, TM 0049 is 0.5295 acres and Parcel D – P/O 615 Baltimore Pike, Parcel 250, TM 304 is 0.1079 acres. The lot/building size is 2.6718 acres with no structures.

Mr. Small advised that the applicant is requesting B-3 (Community Business) in the Town; the existing zoning in Harford County is B-2 (Community Business). The properties were

previously occupied by residential uses with 304 S. Tollgate Road converted to office prior to all the structures being removed. The Planning Commission is tasked with providing a recommendation to the Town Board based on the Comprehensive Plan and the standards found in the Land Use Article regarding zoning.

Mr. Small advised that fire and ambulance service is currently provided by Bel Air Volunteer Fire Co. The Town will provide police service, and refuse/recycling service will be privately contracted. Due to existing lines and previous service connections, sanitary sewer service will be provided by the County, and water service is anticipated from Maryland American Water Co. as part of any development of the parcels. Mr. Schlehr advised that the Annexation Plan Report states that refuse/recycling collection will become available through the Town. Mr. Small advised that refuse/recycling collection is available through the Town if there will be garbage cans. The Town will not pick up from dumpsters. It will be up to the applicant to determine. Mr. Snee advised that the proposed use will have dumpsters.

Mr. Small advised that sanitary sewer service will be provided by the County, and water service is anticipated from Maryland American Water Co. as part of any development of the parcels.

Mr. Small advised that access to the site is currently provided from S. Tollgate Road (County right-of-way) with two (2) curb cuts that formerly serviced 308 and 310 Tollgate Road and an entrance from Azalea Drive to the existing parking lot on 304 Tollgate Road. Azalea Drive provides access to Harford Senior Housing to the west and 302 Tollgate Road plus 705 Baltimore Pike to the north. The property also has frontage along Silver Spring Drive to the west with no visible access points.

Mr. Small advised that the Planning Commission's role in the annexation review process is to determine whether the annexation is consistent with the goals of the Comprehensive Plan. The Planning Commission also must determine whether the requested B-3 zoning designation is appropriate to the site.

Mr. Small advised that State law requires that the zoning designation be consistent with the Town Municipal Growth element of the 2022 Comprehensive Plan. Since the surrounding properties in the Town are zoned B-3 (General Business) and the Town Land Use Plan shows the neighborhood in the Town as Commercial, the requested B-3 zoning designation appears to follow the current Comprehensive Plan. In addition, since County zoning of the property is B-2

(Community Business) and the County Land Use element shows the property as High Intensity, the proposed zoning designation also appears to be consistent with County zoning and land use. It should be noted that self-storage facility is not permitted in the County B-2 District and is permitted by right in the Town B-3 District. Any recommendation for annexation should be based upon the findings of fact required for rezoning:

- population change;
- availability of public facilities;
- compatibility with existing and proposed development for the area; and
- relationship of requested rezoning to the Comprehensive Plan.

Mr. Small advised that issues surrounding the question of whether the property is considered “contiguous and adjoining” to the Town boundary as outlined in the Local Government Article of the Maryland Code are more comprehensively reviewed in the Annexation Report. The Annexation Report has been forwarded to the State of Maryland, Harford County and the Baltimore Metropolitan Council for review. Review by Town staff of the supplemental information and additional research of Town annexations has not yet yielded definitive results regarding any previous instance where the Town may not have annexed a portion of County or State Road. The Planning Commission may offer an opinion regarding this requirement; however, it is not tasked by Town Code to do so.

Mr. Small advised that the proposed annexation is consistent with the Town Comprehensive Plan Goals and Objectives. The property upon annexation will be designated B-3 General Business District. This recommendation is based upon the following findings of fact:

1. Defined Neighborhood
2. Population
3. Availability of Public Facilities
4. Present and Future Transportation Patterns
5. Compatibility with the Existing and Proposed Development for the Area
6. Relationship of Rezoning to Comprehensive Plan

Mr. Small advised that based on an analysis of the existing property, the proffered use of a self-storage facility and review of the relationship to the surrounding neighborhood, the following conditions are recommended for inclusion with the Resolution based on the potential impact to neighboring properties:

- a) that the area to be annexed and the owner(s) of the property therein shall be generally subject to the provisions of the Charter of the Town of Bel Air, without special treatment as to rates of the municipal tax, or as to municipal services and facilities.
- b) that the designation of the zoning classification of the land lying within the area herein described in the Development Regulations of the Town of Bel Air and developed as a mini-storage facility. The annexed land shall be subject to all provisions and conditions of said Ordinance, which are applicable to the specified zoning district.
- c) that the property will be subject to the following conditions of annexation:
 - i. Vehicular access to any development within the subject property be from S. Tollgate Road or Azalea Drive
 - ii. A landscaped buffer be provided along Silver Spring Drive and the south property line abutting existing residential properties with planting type, size and spacing to be reviewed by the Planning Commission.

Mr. Small reviewed the exhibits in the Annexation Report. The first exhibit includes the Return on Investment (ROI) showing that the taxes being paid provide for services. Ms. Kissinger-Kelly inquired if the Town will be required to provide for the maintenance of the road. Mr. Small advised that the Town will not be required to provide for maintenance because the road is already existing. The exhibits include a letter from the Department of Planning regarding the question of “contiguous and adjoining,” an opinion regarding annexation and the meaning of the requirement that annexed land be “contiguous and adjoining,” 304, 308 & 310 S. Tollgate Road Existing Conditions, 304, 308 & 310 S. Tollgate Road Neighborhood, Land Use 2022, Harford County Land Use, Municipal Growth 2022, 2021 Potential Annexation Parcels & Yield, Town Zoning 2022 Map, Harford County Zoning Map, Harford County Master Sewer Plan, Harford County Master Water Plan, an aerial view of the Tollgate Road parcels and the Town’s Annexation Process Sheet.

Mr. Small advised that while Town staff has not found any evidence of violation of the “contiguous and adjoining” requirements in State law, Aberdeen has several instances of “jumping the road” at I-95, at CSX Railroad and at Gilbert Road.

Mr. Small advised that the Review Schedule is shown in the back of the Annexation Report, and if the Planning Commission recommends annexation, it will be received by the Town Board on February 21, 2023.

Mr. Raub inquired if there will be further clarification on the “contiguous and adjoining” requirement. Mr. Keenan advised that the Town has a different view from Aberdeen. He advised that there is no Maryland Supreme Court decision regarding jumping a State road, and because there is no precedent, the Town has always been conservative in attempting to annex the roadway that is adjacent to the properties to be annexed.

Joseph Snee of Snee, Lutche and Helmlinger, P.A. (112 S. Main Street) advised that the applicant’s request is that the Town Board annex in pursuant to State law the parcels at 304, 308 and 310 S. Tollgate Road and part of 615 Baltimore Pike and that they be incorporated at B-3 (General Business). This request is followed by an Annexation Agreement, an Annexation Plan and the enlargement of the municipal boundaries through a Resolution.

Mr. Snee advised that Parcel A – 304 S. Tollgate Road, Parcel B – 308 S. Tollgate Road, Parcel C – 310 S. Tollgate Road are directly across from Tollgate Marketplace. The parcels front on Tollgate Road and are owned by Gary Rissling. Mr. Snee advised that the strip at 615 Baltimore Pike that would need to be annexed extends from the Bank of America down to Tollgate Marketplace.

Mr. Snee advised that the current zoning in the County is B-2 and the applicant is requesting rezoning to B-3 (General Business) in the Town. Mr. Raub inquired what potential would there be for the property in the County’s B-2 District. Mr. Snee advised that the B-2 zoning allows almost all uses except for outside storage. Mr. Snee advised that Mr. Rissling is proposing a ministorage facility on the site, which is principally permitted in the Town.

Mr. Snee presented renderings of ministorage facilities in Harford County. He advised that the facility proposed by the applicant will be much more aesthetically pleasing, climate controlled and fenced off with private security and private dumpsters. Mr. Snee advised that ministorage facilities are low traffic generators.

Mr. Snee displayed the original plat of the Town of Bel Air, which is germane because roads needed to be jumped in order to expand Bel Air.

Mr. Snee presented a slide provided by Aberdeen of successful annexations in that municipality with crossings of a public road or highway and utilizing the existing CSX rail line. Those annexations include lands of Clarence D. Long (crossing I-95), the Bonnett property (using the existing CSX rail line) and the lands of Carsins Run (using Gilbert Road and Long Drive).

Mr. Raub inquired if a convenience store could go on the site under the County B-2 zoning. Mr. Snee advised that any use that does not require outside storage would be allowed on the site under the County B-2 zoning. Mr. Small confirmed that convenience stores are permitted under the County B-2 zoning.

Mr. Coates inquired if outside storage would be permitted under the Town's B-2 zoning. Mr. Small advised that it would be allowed, but they would not recommend that because B-2 zoning is urban and B-3 zoning is highway-oriented commercial.

Mr. Coates inquired what the buffering would be on the residential side if the zoning is changed to B-3. Mr. Small advised that a 10' residential-to-commercial buffer would be required with a certain number of planting units provided as well.

Mr. Coates inquired about the topography and if the hill would be dug in to build the ministorage facility on the site. Mr. Snee advised that the site should balance, but that remains to be seen. Mr. Snee advised that Mr. Rissling has an outstanding relationship with his neighbors and will work with them to mitigate any impact to their properties. Mr. Coates advised that cutting in will make the topography lower than sitting on top of the hill.

Gary Rissling (705 Belair Road), the owner of 304, 308 & 310 S. Tollgate Road, advised that the site does have a hill and it would be cut by about 5 feet at least. Mr. Small advised that typically an engineer will look at the balance, so they would go down in the back and up in the front so as not to haul away dirt.

Mr. Rissling advised that many of the neighboring houses are being rented, and he advised that the whole block will change eventually because it went in for rezoning.

Mr. Coates inquired how 615 Baltimore Pike will be annexed. Mr. Small advised that 615 Baltimore Pike is part of this application and the owner of this strip has consented.

Mr. Schlehr advised that his concern is that the road jumping associated with this annexation will set a precedent, and he questioned if that is desirable for the Town. Mr. Raub advised that the Town does not receive that many requests for annexation and that he feels that opportunities to expand the Town's borders would be welcome. Ms. Kissinger-Kelly advised that she is concerned about the surrounding residents as the neighborhood has changed already due to the businesses existing across the road. She advised that she hopes to hear from the residents as to whether this proposed development will impact them enough that they will move out. Mr. Rissling advised that the houses behind his property have been rented as long as he has been

there. Ms. Kissinger-Kelly inquired if the neighbors have been notified. Mr. Small advised that the Town is not required to notify during this phase as it is a recommendation, but the Town will be required to notify neighboring properties prior to Town Board review. Mr. Small advised that the property was posted, even though this was not required, and it has been advertised in the paper.

Mr. Schlehr expressed the concern that allowing this annexation could set a precedent, and the next annexation request could be massive. Mr. Raub advised that the Town has a wide swathe as to permitting annexations and under what conditions they would be permitted.

Mr. Coates advised that Azalea Drive is narrow, and adjustments would need to be made for the proposed ministorage facility. Mr. Small advised that the County will be notified when the applicant comes in for Site Plan approval, and the County will decide what happens to Azalea Drive and on Tollgate Road.

Mr. Schlehr advised that the schedule for the Annexation Plan states that the annexation will become effective 45 days after approval unless a petition for referendum is initiated and accepted. Mr. Schlehr advised that it should be explained where those who want to initiate a petition for referendum should go and what they should do. Mr. Small advised that he will revise the Annexation Report based on County, State and Baltimore Metropolitan Council (BMC) comments and based on the Planning Commission's comments.

Mr. Raub moved and Mr. Coates seconded the motion that the petition for annexation designated Resolution 136-23 be recommended to the Board of Town Commissioners for approval based on the following:

It is consistent with the Bel Air Comprehensive Plan Goals and Objectives, and the B-3 General Business District designation is appropriate for the neighborhood. This recommendation is based on the following findings of fact:

1. Defined Neighborhood. For purposes of this evaluation, the neighborhood is generally defined as the area bounded on the west by Harford Senior Housing (300 Sunflower Drive), on the south by MacPhail Road, on the east by Tollgate Marketplace shopping center, and on the north by Baltimore Pike;
2. Population. There has been limited change to the neighborhood over the past 20 years. The residences on the subject properties were razed and the area ...

3. Availability of Public Facilities. All public facilities will be available to the site upon annexation;
4. Present and Future Transportation Patterns. Access to the parcel would be provided from Tollgate Road. Due to the proposed use stipulated by the applicant and the low anticipated vehicle trips generated by the use, no significant traffic impact is expected;
5. Compatibility with the Existing and Proposed Development for the Area. The parcel is adjacent to the single-family detached housing on the south and west. Landscape buffering as required in Article VIII of the development regulations will mitigate potential impacts from the proposed use; and,
6. Relationship of Zoning to Comprehensive Plan. The requested zoning designation as B3, General Business, is consistent with the land use designation as indicated on the 2022 Comprehensive Plan, Town of Bel Air, Maryland.

In addition, based on an analysis of the existing property, the proffered use of a self-storage facility and review of the relationship to the surrounding neighborhood, the following conditions are recommended for inclusion with the Resolution to mitigate the potential impact to neighboring properties:

- a) that the area to be annexed and the owner(s) of the property therein shall be generally subject to the provisions of the Charter of the Town of Bel Air, without special treatment as to rates of the municipal tax, or as to municipal services and facilities.
- b) that the designation of the zoning classification of the land lying within the area herein described and hereby annexed shall be designated B3 General Business District as described in the Development Regulations of the Town of Bel Air and developed as a Ministorage facility. The annexed land shall be subject to all provisions and conditions of said Ordinance which are applicable to the specified zoning district.
- c) that the property will be subject to the following conditions of annexation:
 - i. Vehicular access to any development within the subject property be from S. Tollgate Road or Azalea Drive
 - ii. A landscaped buffer be provided along Silver Spring Drive and the south property line abutting existing residential properties with planting type, size and spacing to be reviewed by the Planning Commission

Ayes: Mr. Coates, Mr. Raub and Ms. Kissinger-Kelly

Nays: Mr. Schlehr

The motion carried.

Revision of approved Special Development for a Drive-Thru use at Shops at Harford Mall

Mr. Small advised that the Planning Commission previously approved a Drive-Thru Special Development for a restaurant use to be located in the Shops at Harford Mall. Mr. Small advised that he believes there was a miscommunication between the user and the owner as to how the drive-through will be operated. He advised that this drive-through does not have an ordering kiosk; it is for pick up only after the customer orders online or through a telephone call. The applicant is asking that the drive-through queuing of five (5) cars be reduced, and they provided a synopsis from a traffic engineer stating that this request is appropriate. Mr. Small advised that the Town staff does not object to the reduction. He advised that the Town staff does not feel there is a need for more than three (3) spaces in the queuing of the drive-through. Mr. Small advised that Town staff recommended a couple of designated spaces for people to pull in and wait for their order if it is not ready. Mr. Small advised that, if approved, the Planning Commission will be giving the applicant a waiver to reduce the queuing from five (5) spaces to three (3) spaces.

Ms. Kissinger-Kelly inquired why the pick-up window is so close and not further down. Mr. Small advised that having the pick-up window further down would put it where people are sitting inside the restaurant.

Mr. Coates advised that the applicant should remove the island in the back to allow for a more direct route in. Mr. Small showed the applicant an option to remove the island, but they opted to keep it. He advised that he is fine with keeping the island because it acts as a buffer to the drive-through.

Mr. Schlehr inquired how the customer will pick up their food if it is not ready. Mr. Small advised that the restaurant would notify the customer by text or some other means when it is ready.

Mr. Raub moved and Mr. Schlehr seconded the motion that the revised Drive-Thru layout of the restaurant within Shops at Harford Mall, dated January 31, 2023, be approved based on the operation of the service as pick-up only and without an ordering kiosk or window. This approval is conditioned on the designation of two (2) waiting spaces for patrons not in the drive-through queue.

Ayes: Mr. Coates, Mr. Raub, Mr. Schlehr and Ms. Kissinger-Kelly

Nays: none

The motion carried.

OLD BUSINESS:

Development Regulations Amendments

1. Recommendations of previously reviewed Part II (Articles VII, VIII, IX, X, XI, XII, XIV along with Permitted Uses Tables and Lot Requirements

Mr. Raub moved to approve the recommended changes to Article VII – Development and Performance Standards.

Ayes: Mr. Coates, Mr. Raub, Mr. Schlehr and Ms. Kissinger-Kelly

Nays: none

The motion carried.

Mr. Raub moved to approve the recommended changes to Article VIII – Landscaping Standards.

Ayes: Mr. Coates, Mr. Raub, Mr. Schlehr and Ms. Kissinger-Kelly

Nays: none

The motion carried.

Mr. Raub moved to approve the recommended changes to Article IX – Special Provisions and Modifications.

Ayes: Mr. Coates, Mr. Raub, Mr. Schlehr and Ms. Kissinger-Kelly

Nays: none

The motion carried.

Mr. Raub moved to approve the recommended changes to Article X – Accessory and Temporary Uses.

Ayes: Mr. Coates, Mr. Raub, Mr. Schlehr and Ms. Kissinger-Kelly

Nays: none

The motion carried.

Mr. Raub moved to approve the recommended changes to Article XI – Permits and Procedures.

Ayes: Mr. Coates, Mr. Raub, Mr. Schlehr and Ms. Kissinger-Kelly

Nays: none

The motion carried.

Mr. Raub moved to approve the recommended changes to Article XII – Appeals, Variances, Special Exceptions and Special Developments.

Ayes: Mr. Coates, Mr. Raub, Mr. Schlehr and Ms. Kissinger-Kelly

Nays: none

The motion carried.

Mr. Raub moved to approve the recommended changes to Article XIV – Definitions.

Ayes: Mr. Coates, Mr. Raub, Mr. Schlehr and Ms. Kissinger-Kelly

Nays: none

The motion carried.

Mr. Raub moved to approve the recommended change to the Table of Lot Requirements.

Ayes: Mr. Coates, Mr. Raub, Mr. Schlehr and Ms. Kissinger-Kelly

Nays: none

The motion carried.

Mr. Raub moved to approve the recommended changes to the Permitted Use Tables.

Ayes: Mr. Coates, Mr. Raub, Mr. Schlehr and Ms. Kissinger-Kelly

Nays: none

The motion carried.

2. Review of Part III (Signs and Subdivision and Site Development)

Mr. Small reviewed the recommended changes to **Article XV – Sign Regulations**. He advised that these changes are in reaction to case law, and the Town Code is overly restrictive.

§165-106 Standards by zoning district.

A.(5)(a) – The Planning Commission members agreed that “with a setback of 10 feet” should be stricken from this item.

B.(2)(b)[1] – Mr. Small advised that he will look into what track-oriented signs are.

B.(2)(b)[4][a] – The Planning Commission members agreed that “with a setback of 10 feet” should be stricken from this item.

B.(3)(b)[4][a] – The Planning Commission members agreed that “with a setback of 10 feet” should be stricken from this item.

§165-110 Prohibited Signs

G.- Mr. Small advised that he can add the wording “without permit” to this item.

Mr. Small reviewed the recommended changes to **Article XVI – Subdivision and Site Development.**

§165-117 Application procedure.

Mr. Small requested that Ms. Thompson send him the proper wording regarding equitable ownership interest.

§165-118 Design standards.

E.(b)[1] – The Planning Commission members agreed that funds should be rebated to the property owner if not used within 10 years.

MISCELLANEOUS:

Other

Mr. Small advised that Taco Bell has submitted for review for the March Planning Commission meeting. He advised that they propose to demolish their existing building and plan to construct a new building.

Mr. Small advised that the proposed apartments at Harford Mall will include 250 units that will be serviced mostly by structured parking. He advised that most of the area between the Mall and Boulton Street will be occupied by this apartment complex.

Mr. Coates advised that Article X – Accessory and Temporary Uses - should specify how establishments should clean the sidewalks on page 9 of 9.

The members present agreed to schedule the March Planning Commission meeting on March 9, 2023 at 6:00 p.m.

Mr. Small advised that the consultant conducting the Parking Study will present his final results to the Town Board at their Work Session meeting on February 14, 2023 at 4:00 p.m. He advised that the Planning Commission members are invited to attend this Work Session. Mr. Small advised that this consultant is subbing to the consultants who are conducting the Market Study, and the consultant has looked at three (3) locations with potential for development: the four corners (Harford Mall, Bel Air Plaza, Tollgate Marketplace and Bel Air Town Center), downtown (consisting mostly of Bond Street) and the Industrial District.

ADJOURNMENT:

The meeting was adjourned at 8:07 p.m.

