

Cafritz Oversight and Monitoring Committee Minutes
Thursday, June 20, 2013
Riverdale Park Presbyterian Church
6513 Queens Chapel Road
7:30 – 9:30 PM

Attendance:

Present: Alvarez, Christiansen, Starrett, Tabori, Thorp

Absent: Carey (arrived late due to conflict with meeting of another Town committee he chairs)

Approval of Agenda

Given the vote of the Town Council on June 17 to appeal the Detailed Site Plan decision by the Planning Board to the District (County) Council and the postponement of a decision on appeal of the Preliminary Plan of Subdivision to the court, the committee voted unanimously to alter the agenda. The committee decided to focus first on the Detailed Site Plan issues for appeal and if time allowed continue with the Secondary Amendment and Preliminary Plan issues which may merit additional appeals. The committee added certain documents to the agenda, focused on the materials that the Town submitted into the record at the May hearings beginning with the Town position letter and requested conditions submitted on May 16th as well as the Town attorney's Summary of Remarks submitted on May 23rd.

Under "New Business", the committee unanimously voted to add "A. Identifying the Grounds for an Appeal" and B. "Remedies to be sought via Appeal" as suggested by Ms. Starrett.

Old Business

A. Discussion of the appeals process for this development. (Mayor Tabori)

1. Preliminary Plan of Subdivision

a. Appeal is to the Circuit Court

b. Process – (likely to be 70 – 120 days)

1) File appeal to Clerk who gathers the material and turns it over to the court.

2) Once accepted by court (can take some time) Town attorney would have 30 days to file a brief.

3) After the brief is filed, the Cafritz attorney would have 30 days to file a response.

4) After the response is filed, the appealing attorney would have another 15 days to respond to the response.

5) After that response, the Cafritz attorney would have another 15 days to further respond.

6) Date for court hearing scheduled.

7) After court hearing the judge may call for secondary briefs or take under advisement and issue a decision. (Often the decision is not made on the day of the hearing.)

8) The Preliminary Plan is under the state's jurisdiction and it must address the issue of "Adequate Public Facilities."

9) The Transportation Management Plan is a Preliminary Plan issue but since it was discussed also at Detailed Site Plan, there is hope that it can be addressed in that appeal.

2. Detailed Site Plan

a. Different Process

1). Appeal is to District Council acting as a Zoning Board – can go into formal hearing mode.

2). Request for appeal must include all items to be addressed at the hearing.

3). Each side is usually given a set amount of time to present its case which is often no more than 30 minutes.

4). If unsatisfied with result of District Council hearing, the next stage of appeal would be to the court.

b. Status

1). To avoid an appeal on process grounds, the County Council has decided not to hold a hearing any earlier than 30 days after July 7, which is the deadline for filing an appeal.

2). The County Council is in recess the month of August. The hearing date may be September 9 or 10 if they decide to hold a special session for the hearing.

3. Status of Appeals

a. University Park has voted to appeal the Detailed Site Plan to District Council.

Town attorney will present memo of appeal to Town Council at July 1 Town Council meeting for review and approval. University Park will vote on whether to also appeal the Preliminary Plan of Subdivision at July 1 meeting.

b. Riverdale Park is not appealing either decision.

c. College Park will appeal Detailed Site Plan but will not appeal Preliminary Plan.

4. Other

a. The mayor also mentioned that the Planning Board voted to approve the special permit that was required to build town homes in the Cafritz development.

5. Discussion

a. Ms. Christiansen asked the mayor to discuss the filing of the Town Conditions as Covenants to run with the land. He stated that they may be filed if/when the Zoning appeal is turned down. At that time the covenants may be filed.

B. New Business

1. Grounds/Issues for Appeal

a. TMP, shuttle, and circulator bus (Zoning conditions 17, 18, 19)

1) The mayor explained that he is currently negotiating with the developer's attorney and believes they are close to an agreement with the differences focused on three words.

b. Buffer (width) –

1) The mayor is certain that the buffer begins outside of the State Highway Administration requirements for road improvements on Route 1 including the setting aside of an additional 10 feet for possible future right turn lanes. He has seen a drawing that shows 90 feet beyond the required total width from center line of Route 1 although he agrees that the committee and Town needs to confirm.

2) In response to a question from Ms. Christiansen, the mayor explained that the Whole Foods parking lot was adjusted to allow the buffer to extend into that area.

3) Given that this plan is not part of the resolution of the Planning Board for DSP, the committee agreed that further confirmation is needed and that the change for a buffer that is at least 90 feet wide exclusive of any required land dedication by SHA for any purpose be certified and entered into the record and an effort be made to make it binding.

Note: Also see Detailed Site condition 4 below.

c. CSX crossing

1) 25a (alignment) –

a). The mayor stated that he understands that there is now a cross section drawing showing the correct alignment of the bridge (correcting the 13 foot discrepancy) on the Cafritz property and as it crosses the tracks.

b). Confirmation is again needed and it was noted by the committee that again this material and documentation was not part of the record at either hearing.

2) 25 b (2nd part) status is same as at DSP hearing – same argument applies.

3) Also the mayor noted that the \$50,000 earnest money to the UMD has not been put down by Cafritz.

4) Ms. Christiansen received confirmation from the mayor that the \$5 million dollars that the developer must contribute to the bridge has not been required to be placed in an escrow account nor has it been placed in such an account.

5) The committee verified that Dr. Mohktari's condition (37e) was adopted by the Planning Board and is in the resolution as 37e. Although our Town condition had intended "grading" permit, 37e does state no "building" permit will be issued.

Note: Also see Detailed Site condition 3 below.

d. Secondary Amendments

1) J serpentine sidewalk – further confirmation is needed to confirm that there will be a serpentine sidewalk in the buffer

as well as the sidewalk along Route 1 that is part of the resolution. There was discussion as to whether or not the public will be guaranteed use of the serpentine sidewalk if it is privately owned.

2) Lighted sign for Whole Foods – continue to argue against lighted signage in appeal. University Park homes on Route 1 and on Van Buren will face that lighted sign. Ms. Thorp expressed concern that it could set a precedent.

3) Fence – would still prefer brick wall and hedge of dense evergreen shrubs rather than the current status in resolution for hedge and metal fence or a brick wall. Recalling the discussion at the hearing that led to the decision, the sense is that a conclusion was precipitously reached just after a brick wall solution for parking lot drainage had been suggested.

4) There was a discussion regarding the process for appealing the Secondary Amendments. The mayor assumes that the Town Council intent in appealing the DSP was to also appeal the Secondary Amendments. Ms. Starrett stated that she believes that the Planning Board can recommend a zoning change which is what the Secondary Amendment does, however the County/District Council must approve the Planning Board recommendation. If that happens, the old Ordinance will be amended/superseded with the new language. Thus any conflicts should be resolved at that stage, one way or another. However, neither the PPS nor the DSP can conflict with any duly enacted Ordinance; such a conflict would render the PPS/DSP illegal.

e. Detailed Site Plan Conditions

1) College Park conditions 1, 3, 5

a) #1 – the mayor believes that this has been addressed in the DSP resolution.

b) #3 – the Mayor believes that this issue (height of buildings in feet) has been addressed in the DSP resolution.

c) #5 – LEED – Mr. Alvarez noted that the Planning Board attorney had stated that the requirement suggested by College Park and University Park for a LEED manager could not legally be imposed by the Planning Board. Discussion continued with questions as to whether it might then be addressed to the District Council. (legal issue)

2) phasing of stormwater and grading plan –a condition regarding this issue was included as part of the resolution approving the DSP. However, Ms. Starrett suggested that the Town ask for new phased stormwater and grading plans based on the developer's last minute decision to defer the plans to build buildings K, L, and M (and the proposed hotel) which will now require a new round of detailed site plan approvals at some future time if/when the developer should ever decide to develop that area of the property.

Since the current Storm Water Management plan includes that area of the land, Ms. Starrett suggested that alterations might be required to allow that portion of the land to remain wooded in part or in full until detailed site plans are approved for those parcels and further grading and building permits for those parcels are granted in the future.

3) Prior to first “grading” permit condition regarding the J bridge CSX crossing.

a) Town would prefer this condition to the “building” permit condition suggested by Dr. Mohktari that is currently in the resolution.

4) As previously discussed the Mayor believes the developer now has put the 90 feet into the plan however the committee recognizes it was not part of the DSP resolution. The committee would seek absolute certainty that this condition has been secured and that the developer agrees to at least 90 feet beyond the full SHA required road dedication for the buffer to meet the Town condition as well as make it binding.

f. Additional Conditions

1) Draft easement for protection and maintenance of buffer:

The Town Council approved this condition in January but it has never been adopted. The developer has indicated a desire to assess businesses and homeowners for maintenance of the property where it is privately owned. The Town of Riverdale Park has laws/regulations to address property that is not adequately maintained. The Town Council will need to decide whether to continue to push for this condition in appeal.

2) Prior to approval of final plat, fully executed easement for protection and maintenance to RP and UP:
as in number 1) above.

2. Grounds for Appeal

a. Although the meeting time ran out before the committee could even completely review the issues for appeal, there was limited discussion about grounds for appeal regarding the process during and throughout the meeting and entered into the minutes.

1) Process issues –

a) Request for postponement – although the Planning Board verbally agreed to the Town’s request to postpone the DSP hearing for one week, it also chose to continue the May 16 hearing for 3 hours including the presentation by the Planning Staff and take testimony from the Town of College Park (Terry Schum) and three other individuals.

- b) Inclusion in the staff report of materials/documents submitted past deadline in the staff report (notably the changes involving the J.300 bridge).
- c) The confusion created by amended materials such as the J bridge mixed with the originally submitted plan and the staff reports that supposedly only addressed the originally submitted materials.
- d) The lack of conformance between the Preliminary Plan and the Detailed Site Plan since the PPS resolution was not available at time of DSP hearing and/or the parties had insufficient time to review and compare both documents.
- e) Approving a Detailed Site Plan for a large development that lacks so many details (many examples). For example, consideration of a bridge without any decisions relating to the alignment on the eastern side of the CSX crossing.
- f) Issues from almost overlapping DSP review with PPS review in a case of a large development that has added complexity with three towns involved, numerous conditions, as well as Secondary Amendments.

The committee meeting was the final meeting for Ellen Thorp who has contributed to the work of this committee with numerous hours of dedication and commitment to our Town (not to mention that unlike other members she usually had to pay for babysitting in order to participate). Before the meeting's conclusion the Chair thanked her for service on the committee. Ellen thanked Len Carey for asking her to serve on the committee. She expressed her love for our community that led her to devote the time and effort to this first experience in public engagement and noted that even during times when committee members disagreed, the devotion and dedication of others on the committee has been inspiring. In the future she intends to continue her public involvement in her new community somewhere in the Denver, Colorado area. Both on the committee and in our Town she will be missed. Thank you Ellen.

Note: No votes were taken during the meeting except to approve the agenda (unanimous).

Adjournment – 9:30