

Cold Spring Planning & Zoning

January 9, 2008

The regular meeting of Cold Spring Planning and Zoning Commission was called to order by Vice-Chairman Jim Drye. Pledge to the flag was recited. The roll call showed the following present – Jim Drye, Joe Feinauer, Ken Sharp, and Ken Warden, excused – Steve Taylor, Roger Bay, and Karen Stafford. Also present were Mike Schwartz, Rita Seger and Abby Voelker.

Jim Drye pointed out the exits from Council Chambers, per Fire Department regulations.

The December 12th regular meeting minutes were reviewed by all. Ken Warden made a motion for approval and Joe Feinauer seconded the motion. All were in favor. Motion carried.

There were no subdivision items, or public facilities.

Vice-Chairman Jim Drye opened the public hearing, for a proposed Stage II Development Plan on approximate 1.3 acre area located along the east side of Alexandria Pike, approximately 400 feet north of Ripple Creek Road, Ken Perry's property. Mike Schwartz reviewed Staff report and history, and stated that this development is zoned HC* (county zoning). Staff has recommended disapproval because it has not met all of the requirements of the Cold Spring Zoning Ordinance, including Appendix B which is the HC*, as listed in Staff report. Mike Schwartz stated that in May of 2007, this Board approved this addition as a minor adjustment to the development plan, based on it being for a storage facility for construction equipment and a small office. This development plan indicates the use for the addition is for a four bay, auto service facility with an office. Staff feels that that change constitutes a major change from what was determined in May of 2007. The existing free standing pole sign was allowed to be there at the time the existing facility was constructed. In March of 2005, the zoning ordinance was amended to prohibit pole signs for individual uses in the HC zone of the city, however a Class 8 ground sign would be allowed. Since the existing sign would not be allowed today it would be considered a non-conforming structure. As such, it would be allowed if it remained where it is in its current stage, however, this development plan indicates that that sign is to be re-located to a proposed purchased right-of-way. Once it is taken out of the ground, it would be a violation of the non-conforming status of the sign. The plan also contains some deficiencies dealing with storm water.

Mike Schwartz summarized a memorandum which the Board received from Attorney Brandon Voelker. The statute refers to how land can be annexed into a city and has two options. The first option is to apply zoning to the annexed property as part of the annexation ordinance, so when it is brought into the city it automatically has city zoning. The second method, which is part of the issue tonight, is that the city can bring that land into the city from another jurisdiction and if they do that, it shall remain subject to the same land use restrictions as applied to it prior to the annexation. Staff places an asterisk next to those areas as an indication that this is an annexed area where the city did not apply zoning to the annexation ordinance. Staff has taken the zoning district from the county ordinance as an Appendix to the city ordinance so that they can apply those zoning regulations to that property prior or at the time it was annexed. There are also land use restrictions which are contained in the county zoning ordinance. Everything else that applied to the county ordinance when it was annexed applies to it today.

Mike Schwartz stated that Staff review has taken the zone district itself and applied the permitted uses, additional uses, accessory uses, setbacks and other development controls of the Campbell County zoning district, and has taken everything else that applies such as landscaping, parking, hillside, and signage as regulated by the city zoning ordinance. This Board can decide how they want to interpret and administer this statute, either the way staff has done it, or by using all of one ordinance under Campbell County zoning, or by using all Cold Spring Zoning Ordinance and disregard the Campbell County ordinance (Appendix B). Brandon Voelker did not find any case law history of anybody doing it any particular way. Staff has reviewed this way dozens of times since the statute was enacted in 2002 with Cold Spring and other cities and has never received any challenges. The Campbell County ordinance has no landscape regulations and different signage. The setbacks would be okay under Cold Spring ordinance and the landscape and signage as well as other city regulations could be applied. Another option is to table this and apply for a map amendment application to rezone this property as well as the car wash property, from HC* to HC (city). This would clean it up and there would be no interpretation problems.

Joe Feinauer questioned if we can ask for a map amendment on less than five acres. Also, it was his understanding when something is regulated by two things, you use the one with the strictest part. Mike Schwartz stated that you can have less than five acres as long as the zone change is in compliance with the comprehensive plan. He also stated that we do not have two conflicting requirements. The statute says that you use the land use restrictions as applied to the land prior to the annexation until those restrictions are changed by the zoning map amendment or other regulations. There are no competing regulations.

Mike Schwartz replied that in Staff report, items 1 a., 1 b., 1 c., 1 d., 1 e., are all from the city zoning ordinance; 1 f. and 1 g. are from county HC* zone, which is in Appendix B of the HC zone. Item 1 f. is the same, regardless of whether you use the county or the city zoning ordinance. Item 1 g. in the county requires 50 ft. rear yard setback because it is adjacent to a residential zone, however, HC (city) requires a 20 ft rear yard setback because of the landscape area.

Jim Drye verified that there were no sidewalk requirements, and that the retaining wall and possible rail would be part of the building permit. He questioned the basal requirements. Mike Schwartz stated that there were no basal requirements submitted, which is in 1 c. of Staff report.

Ken Warden questioned what allowed Staff to do this blending of county and city zoning, and if the law allows them to do that. He doesn't recall this Board giving them this authority. Other projects since that time were probably reviewed the same way and we were never told that they were using both county and city zoning in their review. Mike Schwartz stated that there has never been any case law that states what way is the definitive right way, and nobody ever questioned it before. They deliberated very strongly on where they would put the county ordinance and what book goes where.

Joe Feinauer stated that they have found a uniform way to do this for all of the cities. Even if Cold Spring didn't agree, it would be better than dealing with fifteen different ways to do things. If this Board wants to change it, we need to tell him. Mike Schwartz stated that this Board took a text amendment with an HC* in Appendix B to add car wash, so we had to have known.

Ken Perry was present and handed out geotechnical exploration report. They have addressed most of the issues on the Staff report, and he handed out a new updated plan and stated that most of the staff comments have been addressed. Ken Perry agrees to comply with 1 a., 1 b., 1 c., 1 d., and 1 e. of Staff report. They plan on limiting the structure under 40 ft. On 1 f. they have added a sign to the building and left the sign where it is currently located for now. Going down to 1 g., they easily meet the city setback requirements of 15 ft. The county setback is 50 ft., they are at 24 ½ ft. on the proposal. If he meets city requirements and volunteered on all of the others, he asks that we work with him and grant him the 24 ½ ft. setbacks.

Jim Drye questioned the use of the building. Ken Perry stated that he changed that and plans on using it for storage and his office at this time. In the May review, he mentioned that if he didn't plan on building anything in the future, they may want to rent it to someone else. Ken Warden verified that there would be no outdoor storage of equipment and that there would be no underground or aboveground storage tanks or fuel tanks. Ken Perry said the original plan was for a 5,000 sq. ft. building, but now it is a 2,600 sq. ft. building. It is half the original proposal. Eighty percent of this building will be over the top of pavement so they are not disturbing much ground.

Joe Feinauer questioned Mike Schwartz about his comments that this change in use consists of a major change from the existing Stage I Development Plan. Mike Schwartz replied that if it is used as an automotive service facility than it would be, but not if it is used for storage. Any subsequent change in use or occupancy of that structure would have to come back as an amended Stage II or as a major change.

Joe Feinauer stated his concern with not going by the county HC* and he would rather get a map amendment to clear it up and have all city zoning instead of having it partially county and city. The people living adjacent to this property would not be aware of the setback differences from the county to city.

Jim Drye questioned the notification. Mike Schwartz stated there was legal ad in the Campbell County Recorder, and written notification the Planning and Zoning and the City. Stage II does not require notification to the adjacent neighbors, nor does it require posting of signs. The only way a neighbor would know is by the posting in the paper.

Jim Drye questioned when this Board could act as a Board of Adjustment. Mike Schwartz stated that this is only on a map amendment application.

There was no public comment.

Jim Drye reviewed the options, to approve, disapprove, or table, but, if on the bases of the approval, it should be addressed based on full county or city ordinance or the hybrid NKAPC interpretation, or table and clean it up with a map amendment.

Mike Schwartz said the map amendment would clean things up, but is not the most expedient. Ken Warden stated that in May the Board said it was a minor change, and if we now stop it to do a map amendment, it would not be fair to put the applicant on hold for two or three months. Ken Warden suggested that the Board approve it tonight and also do a map amendment.

Ken Perry would agree to that except he wants to make sure that it doesn't make him a non-conforming use. Mike Schwartz stated he doesn't feel that there is anything here that would be non-conforming.

Joe Feinauer questioned the two building signs which are on the new plan. Mike Schwartz stated that they are only allowed one sign on the building.

Joe Feinauer questioned what would happen if the property owner is against the map amendment. Mike Schwartz stated that the property owners have the right to appear before the Board during the public hearing and voice their objections, but it is up to this body and the City to make the amendment.

Joe Feinauer made a **motion to approve this Stage II Development Plan, based on the recommendations in Staff report, "if approved", and which includes the condition 1.) that the development plan would meet the Cold Spring zoning ordinance and Cold Spring subdivision regulations, and; condition 2.) that prior to the issuance of a certificate of occupancy, that for a certificate of occupancy to be issued documentation would be submitted that all work was conducted in general conformity with the submitted geotechnical exploration report dated September 15, 2007. This is on the bases that the property was annexed in 1993 and in 1996 a new zoning ordinance was adopted for the entire City, in accordance with KRS 100, and that this Stage II Development Plan is subject to all of the land use regulations of the city's zoning ordinance and subdivision regulations rather than applying the county's regulations for the HC zone.** Ken Warden seconded the motion. Roll call vote showed all in favor. **Motion carried.**

There was no report on the status of annexations in the city.

Jim Drye questioned the actions taken as listed in the November 12th special Council meeting minutes regarding the Oxford Development. Councilman Dave Guidugli, P & Z liaison, was present and stated that everything has been dealt with by City Council and this now out of the control of the Planning & Zoning Commission.

Mike Schwartz stated that there will be an APA Audio Conference at the NKAPC office on January 30th for 1 ½ hours, on "Complete Streets" for continuing education.

Joe Feinauer made a **motion to hold a public hearing to apply for a map amendment for the Car Wash / Perry property, to change the zoning from HC* to HC.** Ken Sharp seconded the motion. Roll call showed all in favor. **Motion carried.**

Joe Feinauer reported that nominations from the **Nominating Committee** are as follows: **Stephen Taylor as Chairman, Jim Drye as Vice Chair and Roger Bay as Secretary / Treasurer**, with the Secretary's responsibilities delegated to the city clerk's office. There were no other nominations from the floor. Joe Feinauer made a **motion to approve this slate of officers as presented, for 2008.** Ken Sharp seconded the motion. Roll call showed all were in favor. Motion carried.

Joe Feinauer motioned that the meeting be adjourned. Ken Warden seconded the motion. All were in favor. Motion carried.

Respectfully submitted,

Rita Seger, City Clerk

NEXT MEETING --- FEBRUARY 13TH