

Minutes of the August 17, 2004 Public Hearing  
on the proposed Zoning amendments

The hearing was called to order at 7:00 p.m. by Chairman Waybright. Present were Supervisors Shealer, Weikert and Gregor, Flo McLeish, Carol Merryman, Attorney Heiser, Deb Zepp - stenographer and approximately 60 township residents. The meeting was tape and stenographically recorded. Note - see transcript for comments in their entirety.

Chairman Waybright welcomed everyone to the hearing and turned the hearing over to Mr. Heiser.

Mr. Heiser stated that this hearing has been continued from June 22, 2004. He added that at that hearing, exhibits had been entered into the record including proof that the hearing had been duly advertised as required by law and the properties in question, because of the map changes, had been duly posted. He stated that the hearing had to be continued at that time because the township did not have the comments from the Adams County Office of Planning and Development and those comments have now been received and were added as an exhibit.

Mr. Heiser stated that the purpose of the hearing is to take testimony and/or comments in regards to proposed changes in the Cumberland Township Zoning Ordinance which was enacted last November. Mr. Heiser reported that the Board will make a decision on whether to move ahead with the changes after they have received the transcript from the stenographer and have had a chance to review it. If there are changes made to the proposed amendments, there will have to be another hearing. If the Supervisors decide to move ahead with adoption of the changes, as advertised, the intent to adopt the changes will be published in the Gettysburg Times, not less than seven, nor more than sixty days prior to the proposed adoption. Mr. Heiser explained that there are two proposed amendments that involve additions to the text of the ordinance as opposed to changes. One addition relates to adding a section with regard to conditional uses for historic resources and this is an overlay that will be permitted in any district and the intent is to authorize special uses for historical resources in order to encourage their retention and facilitate adoptive reuse. The second is an addition of setbacks from a local street in the Mixed-Use District. The third change involves four proposed map changes and they were explained by Ms. McLeish, Manager and Mrs. Merryman, Secretary. The first change is located on Taneytown Road and involves removing a boundary line to include a property in the VMX District that currently has no zoning attached to it. The second change is near the intersection of Rt. 116 and Windbriar Lane and the proposed change is to move the boundary line that currently bisects a lot to include the entire lot in the MX District along with the property next to it which is currently improved with the Gettysburg Church of the Nazarene. The third change is on Biglerville Road and the zoning boundary bisects two properties and the proposal is to move the line to encompass both of the lots into the R District. The fourth change is on Herr's Ridge Road and will add a zoning boundary down the road to separate the MX from the R District at the Carl Woerner farm.

Mr. Heiser asked that anyone who wishes to testify be sworn in by Mrs. Zepp. Mr. Robert A. Sharrah stated that he wished to testify on behalf of Realty Leasing and Management Co., Inc, and he was sworn in. Mr. Charles Suhr introduced himself as counsel for Mr. Dave Sites, Realty Leasing and Management Co., Inc. and they requested to show an exhibit that shows the property in question for proposed change #2 and they entered the exhibit as RLM#1. Mr. Sharrah stated that the "sliver" of land behind the houses on Windbriar land is a residual piece of land that was left after the subdivision and development of the property and this piece of land has been purchased by RLM. He added that the bulk of this sliver of land is currently zoned MX and the proposed change has nothing to do with that portion of the land. The proposed zoning boundary change would have the MX boundary line follow the lot line of the RLM property and include the church property into the MX district. Mr. Suhr also entered a copy of an approved subdivision plan, prepared by Mr. Sharrah in April 2003, at the time the property was purchased by RLM, as an exhibit. Mr. Sharrah stated that there have been numerous conceptual development plans for both residential and commercial uses on this property. Mr. Sharrah stated that

no plans have been formally submitted for the front portion of the RLM property. Mr. Sharrah testified that the RLM property will be used as a buffer between existing and proposed dwellings and no access to Windbriar Lane is proposed. Mr. Sharrah stated that the change would make the zoning boundary consistent with the property lines for the RLM property and would make the church a permitted use in the MX District, rather than a non-conforming use in the R District. Mr. Suhr submitted an exhibit RLM#3, a copy of a letter dated 1992, from the church to the township's Planning Commission expressing their approval of the church being re-zoned Commercial. He added that the township's Planning Commission did recommend in favor of the proposed amendments.

Mr. Richard Thrasher verified that Mr. Sharrah has no firsthand information of what the church's plans are, and they may, in fact, have commercial uses in mind for the property. Mr. Thrasher asked if the property makes a better buffer zoned R. Mr. Sharrah stated that there are numerous buffering requirements in the new Zoning Ordinance that they will comply with and he really did not know how to answer beyond that. Mr. Thrasher asked if the proposed change will affect the use of the RLM property. Mr. Sharrah stated that he feels that it will affect it because the zoning boundary now goes "cross country" and does not follow the property boundaries. Mr. Thrasher asked how close the development would be to Windbriar Lane. Mr. Sharrah stated that he was not sure, but there are numerous setback requirements that they will comply with. He added that none of the concept plans propose access to Windbriar Lane, and the concept plans show an employee parking area on the RLM property in question.

Mr. William J. Little, 55 Windbriar Lane, asked who wants this change and he asked that this be clarified.

Mr. Paul Burkholder asked Mr. Sharrah if he conceptualizes any entrance onto Windbriar Lane. Mr. Sharrah stated that he does not.

Mr. Ed Diephaus, 160 Windbriar Lane, asked if it is physically possible to have exits onto Windbriar Lane. Mr. Sharrah stated that it is physically possible for vehicular access, at least two locations could be used, but more likely they could be used for pedestrian access. He also noted that he did see a conceptual design, yet Mr. Sharrah stated that no plans have been submitted. Mr. Sharrah stated that there are several conceptual designs floating around that are within the confines of the MX district, but nothing was formally submitted to the township for approval.

Mr. Bill Arrington, 180 Windbriar Lane, clarified which two accesses could be used for vehicles. Mr. Sharrah stated that the one at the end of Windbriar Lane beside Mr. Burkholder's property and out near where the zoning line does follow the property line. Mr. Sharrah explained that the subdivision plan that was shown earlier divided the RLM property and the rear of the property was joined to become part of a condominium development that already has approval, so nothing will change in the rear of the property.

Mrs. Martha Jones, 75 Windbriar Lane, asked Mr. Sharrah if there is anything to prohibit a gas station, fast food restaurant, convenience store or other uses of the land. Mr. Sharrah stated that based on the Zoning Ordinance, those types of uses are permitted in the MX District. Mr. Suhr clarified that the property in question is less than ½ acre so there is not enough room for those uses on the property in question.

Mr. Joe Donolli asked Mr. Sharrah if he was aware of the zoning when he purchased the property. Mr. Sharrah stated that he is the consultant, and not the purchaser of the property.

Mr. Steve Niebler, 110 Windbriar Lane, asked Mr. Sharrah why it makes sense to re-zone the property to MX when it is not going to be used for anything other than parking and wouldn't it make more sense to change the property to Residential since there are residences on both sides of the property. Mr. Sharrah stated that the property that adjoins Deatrick Village is not in question, this change is an attempt to get rid of a zoning boundary line that goes "cross country" so buffering can be done properly, the zoning line can follow property

lines, which is the preferable way and good planning practice and to bring a non-conformity into conformity with the ordinance in terms of use. Mr. Suhr stated that the bulk of the RLM property is zoned MX, so to be consistent, the request is to make the property all MX. He agreed that an argument could be made to make it all Residential, but that is not what is currently proposed.

Mr. Kent Yager, 145 Windbriar Lane, asked if he were to sell his property to RLM, it would be appropriate to change his property to MX too. Mr. Suhr stated that may not be appropriate. Mr. Sharrah also pointed out that the property had already been purchased prior to the new Zoning being adopted and this is an effort to correct an oversight.

Mr. Ed Diephaus asked why Mr. Sites and Mr. Sharrah are taking on the re-zoning of the church property. Mr. Sharrah stated that it is good planning practice and is consistent.

Mr. Pat Alston, 150 Confederate Drive, asked why the property was bought knowing that it was a residential area. Mr. Sharrah again stated that he was not the purchaser of the property. Mr. Alston also asked who sold the property and what she was told at the time. Mr. Sharrah stated that the property was purchased from Mildred Leader in 2003, and at that time there were no plans for the property.

Mrs. Lisa Byrd, 145 Old Mill Road, asked if they did or did not know what the zoning was of the property when it was purchased. Mr. Sharrah stated that he was not aware and he does not believe that the new zoning was even pending at that time.

Mr. Heiser asked if there were any further questions of Mr. Sharrah or if anyone else wished to give sworn testimony. There being no response, Mr. Heiser opened the floor for comments.

Mr. Steve Annis, Pastor of the Gettysburg Church of the Nazarene, located on the corner of Rt. 116 and Windbriar Lane, and a property under consideration to go from R to MX, stated that he believed that the church's position was established in 1993, by Ordinance 83, when the zoning was changed from R to C (commercial). Pastor Annis stated that the Church wishes to remain zoned C and realizes now that the zoning has been downgraded. He also expressed his dismay about the position the Church has been placed in between Mr. Sites and the community and they do not want to be a part of it. He stated that he feels that there has been a mistake made in where the line has been drawn making the Church a non-conforming use in the R district. Pastor Annis stated that they are not being bought out by Mr. Sites nor has this even been discussed, and they wish to stay in the community and grow. He reiterated that they do not want to be in the middle of this battle and they wish to stay zoned commercial.

Mr. Richard Thrasher, resident of Cumberland Township and representative for the Joneses and Nieblers, stated that the residents present are very firmly opposed to the zoning map change #2. He stated that the Supervisors are supposed to look out for the needs of the township as a whole, not just one property owner and they strongly disagree that this proposed change is simply correcting an error that was made on the map. He added that it is not illegal to have a property in two different zones and in this case, feels that the zoning boundary should stay the way it is currently shown on the map. He stated that they have a petition to submit from adjoining property owners and others living close by, and they are invoking Section 2000.07 of the Zoning Ordinance requiring 4 of the 5 Supervisors to vote in favor of the amendment for the amendment to be adopted.

Mrs. Gail Jones, 70 Windbriar Lane, expressed her concerns about a decrease in property values and the negative impact on their quality of life with commercial development occurring close by.

Mrs. Judith Kartz, 40 Windbriar Lane, expressed her concerns about the parking lot becoming a "hang out" and a safety concern and the possibility of the proposed convenience store obtaining a liquor license.

Mrs. Margaret Galbraith, 30 Windbriar Lane, expressed her concern about the proposed parking lot and garbage dumpster and associated dusk to dawn lights and the impact on her quality of life and property values.

Mr. Steve Niebler, 110 Windbriar Lane, stated that he serves on the Cumberland Township Authority Board and represented the Authority as a member of the Committee that updated the Zoning Ordinance. He stated that he remembers the discussion very clearly and the church and the property next to it was placed in the R zoning because that is where the committee felt that they belonged, not by a mistake. He also stated that he understands that a parking lot is proposed for the vacant lot and he is concerned about the dumpster that will also be located there and the lighting. He stated that dumpsters stink, attract vermin and usually are not very well maintained. Mr. Niebler stated that placing the church in the MX zone will make it more attractive and enticing to developers and at some time the church may give in and sell for the money. Mr. Niebler stated that the church does not want to be a non-conforming use and he suggested that churches could be changed to be permitted uses in the R zone. He stated that there are currently many churches located in the R zones and that many churches do become residences when they are no longer used as churches.

Mr. Bill Arrington, 180 Windbriar Lane, stated that his neighborhood is very quiet and peaceful now. His concern is about roads joining Windbriar Lane from Deatrick Village and the proposed commercial development. He added that there is a lot of pedestrian traffic on Windbriar Lane with people walking and biking and he is concerned about safety, noise, property values, light pollution and he does not want Rt. 116 to look like Rt. 30 East.

Mr. Ron Montroy, 30 Redding Lane, asked if the Park Service has been advised of the amendment and how it will impact them. Mr. Heiser stated that he believes that the Park Service did come into the Township building to look at the maps so they are aware of the proposed amendments.

Mrs. Ann Orndorff, Redding Lane, tearfully asked the Supervisors to consider the needs of many, over the needs of a few, and to think about the children.

Mrs. Lisa Byrd, 145 Old Mill Road, stated that if the property stays R, the residents will know what they are going to get, but if the property is zoned to MX, then the residents will not know what they are going to get.

Mrs. Carol Detweiller, 46 Redding Lane, stated that it is very easy to get away from their homes, but it is hard to get back because of the one-way roads and this will place more traffic on the back roads too.

There being no further comments, Mr. Heiser closed the hearing at 8:30 p.m. and stated that the Supervisors will accept written legal memoranda for the next thirty days. The petition that was mentioned earlier by Mr. Thrasher was submitted as an exhibit.