



SPECIAL DELIVERY

Blue Ridge LEADER

& Loudoun Today

Present Standard
US Postage Paid
No. Print
Purcellville, Va
20132

Postal Patron Local

– Citizen Challenge To Vineyard Square Before BZA, July 1 – Local Business Owner Invites Public To Hear Her Side At June 27 Info Session

Long-time Purcellville businesswoman Mary Ellen Stover – owner of Mary Ellen Stover Antiques – has mounted a formal legal challenge to Zoning Administrator Patrick Sullivan's ruling that the historic downtown project known as Vineyard Square may proceed despite at least two expired Certificate of Design Approval permits.

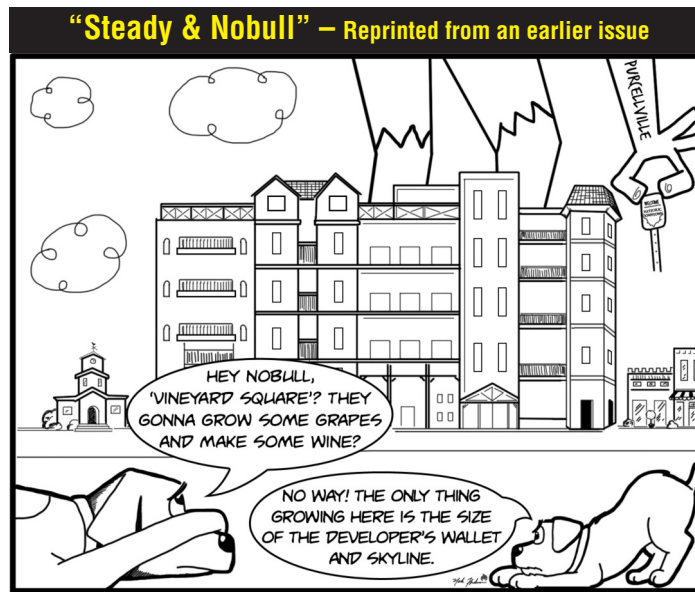
Sullivan's action is in direct conflict with a Purcellville Town Council vote in July 2014 denying a CDA extension to the Vineyard Square developers, and a reversal of policies he laid out in a 2014 memo. Stover's appeal will be heard by the Purcellville Board of Zoning Appeals on July 1, at 7 p.m. at the Purcellville Town Hall. Stover has invited the public to an open-to-all meeting for citizens and neighbors at the Purcellville Restaurant/Diner on Main Street, Saturday June 27, from 5 p.m. to 8 p.m.

Background

Vineyard Square, a 5-6 story mixed use development planned for downtown Purcellville, obtained Certificate of Design Approval permits from the Board of Architectural Review to demolish certain buildings on 21st Street, each requiring a separate CDA.

To proceed with the project, developers John Chapman and Mark Nelis had to meet time limits on each CDA. Said zoning administrator Sullivan at the time, "Each of the CDAs has a time limit of one year that is imposed by ordinance (Chapter 54 Section 54-78 (f) of the Town Code). The CDAs will expire and a new CDA will have to be applied for if the applicant does not commence construction on each CDA prior to its expiration date." The deadlines laid out in Sullivan's May 29, 2014 memo were as follows:

- **November 14, 2014**, deadline for the demolition of all the buildings along 21st Street, O Street and the other buildings in back of 21st Street (with the exception of the two brick buildings at the southern end of the project). The applicant



must begin demolition on all 10 buildings prior to November 14, 2014 or he faces having these CDAs expire.

- **December 16, 2014**, deadline for the demolition for the 2 brick buildings on 21st Street, pending an approved site plan and complete zoning permit (for the building to replace it).
- **January 14, 2015**, deadline for an approved site plan and zoning permit for the new building, along with the commencement of construction.

At the time of the May 2014 memo, staff expressed concern that the developers would not be able to meet these deadlines "... and the project would have to stop." In response, in June of 2014 the outgoing Lazaro town council planned a vote to extend the CDAs

(Continued on reverse)

Multiple Conflicts Of Interest

On June 9, the Purcellville Town Council appointed former Purcellville mayor and attorney Eric Zimmerman to the BZA. The 4-2-1 vote had Mayor Kwasi Fraser and town council member Karen Jimmerson voting no, council members Doug McCollum, Ben Packard, Joan Lehr and Patrick McConville voting yes, and John Nave abstaining.

Fraser and Jimmerson's no votes focused on Zimmerman's potential conflict of interest regarding Mary Ellen Stover's challenge to the Vineyard Square project.

A week after his appointment, it was disclosed that Zimmerman is the attorney for one of the parties that has a substantial financial interest in Vineyard Square – something he did not reveal at the time. This means that Zimmerman will, in effect, serve as the attorney for a Vineyard Square investor and a member of the BZA as it hears citizen Mary Ellen Stover's legal challenge to Zoning Administrator Patrick Sullivan's ruling that the project may proceed despite at least two expired Certificate of Design Approval permits. Three other individuals were interviewed for the Zimmerman's seat – Purcellville residents Kelli Grim, Dan Shaughnessy and Bill Lynch.

Stover attorney Frank Bredimus has requested that Zimmerman and a second BZA member – planning commissioner Chip Paciulli – recuse themselves due to a conflict of interest. Paciulli has been a client of Mark Nelis's, a principal investor in the Vineyard Square project, and Nelis currently acts as counsel for Paciulli on other matters. Paciulli, likewise, did not disclose this prior to going into closed session with the attorney hired by the town for the BZA appeal.

– Citizens To Get Their Day In Zoning Court, July 7, 8, 9 – Public To Weigh In On Developer Demands For Sweeping Zoning Changes

Expanded Big Box Stores, By-Right Drive-Thrus, Data Centers And More On Agenda

Purcellville Planning Commission Chairman Gilbert Paist – under significant pressure from Mayor Kwasi Fraser, Town Council member Karen Jimmerson, Planning Commissioner Nedim Ogelman and others – is asking for public input on a long and increasingly aggressive list of developer demands for sweeping changes to town zoning regulations.

Paist, serving on the Planning Commission since 2011 and as chairman since 2014, is viewed by the preservation community as decidedly pro-developer, as are many long-standing members of both the Planning Commission and the Purcellville Town Council.

Open public input sessions are scheduled for July 7, 8 and 9. Defenders of the citizen-driven Comprehensive Plan want the town to slow down and first complete a legally required 5-year review.

Developers are urging Paist to move forward with the zoning changes immediately, with a Comp Plan review to follow.

The Remapping Of Purcellville

Purcellville's zoning controversy is twofold. Developers seek major zoning use changes, and, at the same time want a much more limited application, review and appeals process – one that drastically limits public input and puts a much greater burden on taxpayers for the public infrastructure and other costs associated with development.

Developers want a zoning map that has a distinctly suburban flavor to it, with mixed use residential/commercial complexes, high density residential developments, and big box stores and restaurants.

"Developers are asking for a zoning map that has a distinctly suburban flavor to it, with dense mixed use residential/commercial complexes, high density residential developments, and big box stores and restaurants."

Some of the large structures would be limited to Purcellville's Light Industrial Districts. However, as in places such as Ashburn, Reston, Chantilly and other suburban areas, the impact of large commercial structures extends beyond the border of their zoning district into

(Continued on reverse)

Total Proposed Zoning Changes = Approximately 229

Zoning District	Unchanged Uses	Added Uses	Removed Uses	Converted Uses	Total Changes
CM-1	22	29	12	19	60
C-1	29	27	9	5	41
M-1	29	34	15	6	55
PDH	15	53	9	11	73

Public Input Schedule

Tuesday, July 7 – 7 p.m.: Residential Districts and Planned Development and Housing Districts (PDH)

Wednesday, July 8 – 7 p.m.: Commercial and Mixed-Use Commercial Districts: C-1, MC, C-4 and AC

Thursday, July 9, 2015 – 7 p.m.: Commercial, Industrial and other Districts: CM-, M-1, X and IP

– Citizen Challenge To Vineyard Square Before BZA, July 1 – Local Business Owner Invites Public To Hear Her Side At June 27 Info Session

(Continued from front)

for a year. This effort failed due to community outcry over special treatment being afforded to the Vineyard Square developers.

The issue came back to the newly elected town council in July 2014, at the request of council member Joan Lehr. But the majority voted 4-3 not to extend the CDAs – with Mayor Fraser and council members Karen Jimmerson, John Nave and Ben Packard voting no, and Joan Lehr, Patrick McConville and Doug McCollum voting to extend.

What Changed

Today, over a year since the whole process began, developer John Chapman is again challenging the permit deadlines. In a March 9, 2015 letter to Purcellville Town Manager Rob Lohr, Chapman asserted that even though the final deadline for the CDAs was January 14, 2015, the notice letter wasn't mailed by staff until March 19, 2014, making his permit expiration date March 19, 2015 (the original vote on the project took place in December 2013).

Setting up a completely different argument, Chapman now also asserts that the project "... is well under way," since on November 17,

2014 the Chapman Group, LLC demolished three buildings under CDAs 13-13 and 13-14, making the CDAs, "in compliance and ... valid as long as we continue to work diligently to move our project forward."

March 2015 Zoning Administrator Patrick Sullivan's Final Word – Reversal

Despite his earlier memos clearly stating that "The CDA's will expire and a new CDA will have to be applied for if the applicant does not commence construction on each CDA prior to its expiration date ... " Zoning Administrator Sullivan is now in agreement with and in fact lobbying for Chapman's position.

Using Chapman's own language now, Sullivan says that if "diligently" pursued the project would be considered "commenced," adding that he defined the word "commence" based on dictionary.com – to "start or begin." He continued, "What is the project? Is it the individual request of each CDA to demolish a building or is it the totality of all the CDAs." To that question Sullivan turned to the intent of the applicant, staff, the BAR, and the

town council (Lazaro town council). He added that he must consider the concept of diligent pursuit. Sullivan continued that the meaning of the word project referred to the development of the site as "an integrated whole." Confusing things further, in conclusion Sullivan stated that all "CDAs en masse do not have to meet each validity deadline." All CDAs are valid despite expiration dates "as long as diligent pursuit occurs."

Additional Permitting Problems

A Purcellville resident discovered and reported to Loudoun County Building inspectors that the Vineyard Square developers violated the Virginia State Code and county requirements when they tore down the first buildings because they did not have an asbestos inspection. Buildings built before 1985 cannot be torn down without an asbestos inspection, which must be conducted before a demolition permit is given. An asbestos test was done just in the last two weeks, and, while it showed no contamination, the county was forced to issue a stop work order – 7 months after the buildings were demolished.

– Citizens To Get Their Day In Zoning Court, July 7, 8, 9 – Public To Weigh In On Developer Demands For Sweeping Zoning Changes

Expanded Big Box Stores, By-Right Drive-Thrus, Data Centers And More On Agenda

(Continued from front)

adjoining residential neighborhoods, open space areas and Purcellville's still rural features.

Pushing Forward With Sky's The Limit Proposals

Arguing in favor of eliminating the size limits current zoning puts on commercial buildings such as big box stores, at the June 18 planning commission meeting senior town planner Daniel Galindo said that Purcellville did not have any limits on the size of commercial buildings.

He then correct himself indicating that there were limits, but only in a few areas. The Blue Ridge Leader reporter present at the meeting reminded him of the town-wide big box ordinance limiting building size to 10,000 square feet. Galindo then backtracked further, indicating that there are indeed commercial building size limits throughout the town.

Despite the sweeping nature of the zoning changes sought by developers, however – and the recent public outcry that accompanied developer proposals for project such as, for example, Catocin Creek Town Center – the majority of the planning commission agreed to Galindo's suggestion that there be no size limitations to commercial buildings in light industrial areas.

Town-Wide Impact

The elimination of limits on the size of commercial buildings and other developer proposals would have town-wide impact, affecting the undeveloped properties along part of Hirst Road, and almost two dozen acres of undeveloped land in the Autumn Hill/Mayfair development – zoned both residential (for 262 units) and light industrial.

If the size limits are eliminated, a developer could put up any size commercial building – by-right, without public input and without paying anything towards infrastructure, for example. Citizen groups reject what they call this suburbanization of Purcellville.

The By-Right Debate

Investors with ready-to-be-developed properties want the majority of the zoning for the proposed 200+ new/changed uses to be by-right – avoiding the time, hassle, and expense of applying for Special Use Permits, and sidestepping the public input process designed to vet a project's impact on neighboring communities, the environment and community welfare.

The 5–6 story Vineyard Square development fit into the by-right category. As planning proponents noted, once the property owner had secured an upgrade to by-right zoning in 2008 – at the developer's urging – the public was helpless to do anything about the size and scope of the project.

This is in contrast to the Catocin Creek Town Center project,

"My clients do not want to have to get a special use permit ... a comprehensive plan amendment ... zoning amendments. They want uses by-right."

– Developer Representative Mark Nelis

where the public outcry during the SUP process prevented developers from locating a new 187-unit apartment/retail/entertainment complex in the back yard of an established residential neighborhood. However, some of the proposed zoning changes would add entertainment centers and data centers (a new use completely) in this area by-right.

Town Center-Style Dreams

Developers have a substantial amount of support for the quick, sweeping changes that will be the subject of three public input sessions in July. Changes include:

- **Adding 54 new by-right uses to the Planned Development and Housing District and allowing these high-density residential/commercial developments on as little as 10 acres.** Similar in scope to the original Reston Town Center, these complexes will give developers the option of building two floors of commercial topped with residential, complete with firing ranges, theaters, data centers, stacked parking decks, indoor/outdoor commercial recreational facilities, drive through facilities, convenience stores, hotels and other uses. PDH Districts are currently strictly residential, and zoned as such. Under new proposals these would be "floating" zoning districts that could be located anywhere.
- **Eliminating restrictions on where commuter bus shelters can be located.** Currently, bus shelters require a special use permit, allowing neighbors and others input on where they are located.
- **Eliminating the size limitations on restaurants.** Currently, anything structure over 4,000 square feet requires a Special Use Permit and public input.
- **Eliminating SUPs for drive thrus.** Proposed zoning changes convert this to a by-right use, preventing even a project's immediate neighbors from commenting. Drive thrus, due to their late hours, noise and traffic are now subject to special public scrutiny. No more.
- **Eliminating all limits on big box store size in the office/light industrial areas.** Currently limited to 10,000 square feet – unless, again, the developer had successfully completed the Special Use Permit process – under new proposals a developer could build a big box store of any size. No public input required.
- **Adding indoor live entertainment, parking structures, retail and food trucks as by-right uses in IP Districts.** No size limitations.

The SUP Process Explained

Special Use Permits are, essentially, an additional step a developer is required to take to get approval for certain projects or portions of a project. The developer must pay a fee to offset costs, and, planning officials must hold formal public hearings sessions so that neighbors of the project and other interested parties can comment on what is being ask for.

As detailed in Purcellville's zoning code, "The purpose of the special use permit procedure is to provide for certain uses which cannot be well adjusted to their environment in particular locations ... uses [which] either have unusual characteristics, or have characteristics which are different from those of their immediate surroundings ... [uses which could impact] not only on neighboring properties, but ... a large section of the town."

For example, a commercial developer building next to a residential neighborhood wants to put in a 6,000 sq. ft. restaurant with multiple drive-thru windows, and, also wants outdoor entertainment. Per Purcellville's current zoning ordinance, a restaurant can be built by-right when the zoning is in place. But, if the developer wants to build an unusually large structure (more than 4,000 sq. ft.), with drive thrus and outdoor entertainment, he or she will need to show that this will not negatively impact the quiet neighborhood that backs up to the property, or the general welfare of the citizens in town.

Special Use Permits are a simple, common sense way to make sure that the rights of all are protected.

Within the Added Uses and Converted Uses categories, 142 of the 184 zoning changes, if implemented, would allow a particular use

By-Right (no public hearing required).

Only 42 would require a developer to, for

example, get a Special Use Permit,

triggering a public hearing.

The Decisionmakers: Contact Information, Planning Commission, Mayor & Purcellville Town Council

Let The People Speak ...

The planning commissioners are on record saying they will listen to public input and make zoning changes accordingly.

PURCELLVILLE MAYOR AND TOWN COUNCIL

purcellvilleTC@purcellvilleva.gov

PLANNING COMMISSION

planningcommission@purcellvilleva.gov