

**WASHINGTON COUNTY PLANNING COMMISSION
REGULAR MEETING
November 4, 2024**

The Washington County Planning Commission held its regular monthly meeting on Monday, November 4, 2024 at 6:00 p.m. at the Washington County Administrative Complex, 100 W. Washington Street, Room 2000, Hagerstown, MD.

CALL TO ORDER AND ROLL CALL

The Chairman called the meeting to order at 6:00 p.m.

Planning Commission members present were: David Kline, Jeff Semler, Denny Reeder, Terrie Shank, Jay Miller, and Ex-officio County Commissioner Randy Wagner. Staff members present were: Washington County Department of Planning & Zoning: Jill, Baker, Director; Jennifer Kinzer, Deputy Director; Travis Allen, Senior Planner; Misty Wagner-Grillo and Scott Stotelmyer, Planners; Chris Boggs, Rural Preservation Administrator; and Debra Eckard, Office Manager.

NEW BUSINESS

MINUTES

Motion and Vote: Ms. Shank made a motion to approve the minutes of the October 7, 2024 Planning Commission regular meeting as presented. The motion was seconded by Mr. Semler and unanimously approved.

PRELIMINARY PLATS

Paradise Heights, Section C [PP-24-001]

Mr. Stotelmyer presented a preliminary plat and site improvements plan for 86 single-family lots within Section C of Paradise Heights. The site is located at Parcels 432 and 1192 on Amesbury Road. The property is currently zoned RS (Residential Suburban). Both parcels will be accessed from Amesbury Road. The site will be served by public water provided by the City of Hagerstown and public sewer from Washington County. No new signage is proposed for this project. Forest Conservation will be mitigated on-site along with a payment-in-lieu of planting. All agency approvals have been received.

Mr. Allen presented a request to use the payment-in-lieu of planting to satisfy the majority of forest conservation mitigation. There is an 8.88 acre planting requirement resulting from the disturbance of 37.52 acres. Mr. Allen reviewed the preferred sequence of mitigation options from Article 10 of the Forest Conservation Ordinance noting that the payment-in-lieu of planting is the least preferred option on the list. The developer is proposing 2.2 acres of on-site mitigation. Due to the close proximity of this site to the Hagerstown Regional Airport, creating additional forest on-site would be less than optimal.

Motion and Vote: Mr. Semler made a motion to approve the preliminary plat as well as the request for payment-in-lieu of planting as presented. The motion was seconded by Mr. Reeder and unanimously approved with Commissioner Wagner abstaining from the vote.

SITE PLANS

Creekstone Landscaping [SP-23-018]

Mr. Stotelmyer presented a site plan for a proposed excavating contractor business located at 13236 National Pike in Clear Spring. Water and sewer services will be provided by a private well and septic system. There will be one access point from National Pike. Hours of operation will be 7 am to 5 pm, Monday thru Friday. There is existing building mounted lighting; additional building mounted lighting is proposed on the new buildings. There is no existing or proposed signage for the property. Parking required is 42 spaces; 50 spaces will be provided. Forest Conservation mitigation will be addressed on-site. All agency approvals have been received.

Motion and Vote: Commissioner Wagner made a motion to approve the site plan as presented. The motion was seconded by Ms. Shank and unanimously approved.

Trammel Crow – Rhoton Farm [SP-23-028]

Mr. Stotelmyer presented a site plan for a 1,023,120 sq. ft. warehouse to be located at 16545 Cargo Drive. The property is currently zoned PI (Planned Industrial). One access is proposed from Cargo Drive via Greencastle Pike. Public water service will be provided by the City of Hagerstown and public sewer service will be provided by Washington County. Hours of operation will be 24 hours per day, 7 days per week. There will be pole mounted and building mounted lighting on the site. Ground mounted signage is proposed on-site as well. A parking waiver to reduce the number of parking spaces has been approved by the Board of Zoning Appeals from 736 required parking spaces to 566 parking spaces; 572 parking spaces will be provided. Forest Conservation mitigation is being addressed on-site. The developer is seeking conditional approval contingent upon receiving final approvals from the Soil Conservation District, Forest Conservation, Washington County Dept. of Water Quality, and the Health Department.

Motion and Vote: Mr. Semler made a motion to approve the site plan contingent upon receiving final approvals from the aforementioned agencies. The motion was seconded by Mr. Reeder and unanimously approved.

Sheetz – Spielman Road [SP-24-003]

Ms. Wagner-Grillo presented a site plan for a proposed Sheetz convenience store and gas station to be located at 15919 Spielman Road. The property is currently zoned HI (Highway Interchange). In 2022, the Board of Zoning Appeals approved a special exception request to allow a truck stop at this location. The proposed convenience store is 6,789 sq. ft. Total parking required is 35 spaces; 47 vehicular spaces and 34 tractor trailer spaces are proposed. Fueling stations will include five vehicular pumps and five tractor trailer pumps. Two access points are proposed from Spielman Road; one access for vehicular traffic and one for tractor trailer traffic. A signal improvement at the intersection of Spielman and Lappans Roads is proposed. Hours of operation will be 24 hours per day, 7 days per week. There will be five to six employees per shift. There will be building and pole mounted lighting; a photometric plan has been completed. There will be building mounted signage as well as free-standing signs. Public water service will be provided by the City of Hagerstown and public sewer service will be provided by Washington County. Landscaping is proposed along Spielman and Lappans Road around the parking areas. Storm water management requirements have been met using the existing pond on-site. Forest Conservation mitigation was previously approved in 2017. Approval should be contingent upon approvals from Environmental Health; all other agency approvals have been received.

Motion and Vote: Mr. Reeder made a motion to approve the site plan contingent upon approval from the Department of Environmental Health. The motion was seconded by Mr. Semler and unanimously approved.

FOREST CONSERVATION**Adna Fulton Forest Bank [FBK-24-001]**

Mr. Allen presented a request to establish a new forest mitigation bank containing 65.47 acres across three properties located on Alternate 40 near Roxbury Road. The purpose of forest mitigation banks is to provide off-site mitigation options for development projects. Mr. Allen briefly described how and when forest mitigation banks can be used by developers. Article 20 of the Forest Conservation Ordinance describes specific characteristics that are targeted in the establishment of new banks. This particular forest bank would retain a forested buffer along the Antietam Creek. There is also the potential for rare, threatened or endangered species in this area.

Mr. Jason Divelbiss, speaking on behalf of the applicant, stated this forest mitigation bank will be used for development projects of the Fulton's family-related businesses.

Motion and Vote: Mr. Reeder made a motion to recommend approval of the forest mitigation bank to the Board of County Commissioners. The motion was seconded by Ms. Shank and unanimously approved with Commissioner Wagner abstaining from the vote.

Battlefield Estates [FP-24-006]

Mr. Allen presented a payment in-lieu of planting request for a 48-lot townhouse development on Orchard Drive in Boonsboro. There is a 4.42 acre planting requirement resulting from the disturbance of 10 acres. Fifty-nine street trees are proposed within the development. Mr. Allen explained that the County is the Forest Conservation approving authority for all municipalities in the County except for the City of Hagerstown. It is the intent of the Forest Conservation Ordinance to

provide mitigation on-site to the greatest extent possible if remotely feasible to ensure the impacts of development are mitigated where they actually occur. It is staff's opinion that the current Forest Conservation Plan for this development does not meet the intent of the preferred sequence of mitigation outlined in the Ordinance. Mr. Allen presented the following facts to justify Staff's objection to the request.

- The site contains 3 ½ acres of existing forest; none of which is being proposed for retention.
- There is little forest cover in the vicinity of the neighboring residential areas to absorb the loss of the forest stand on this property.
- It is not clear why no mitigation, beyond the 59 street trees proposed, can be accomplished on-site. The current plan contains unessential design elements, such as a pavilion and a parking lot, that could be removed to make room for forest mitigation on-site. There is also an open space area between Lots 20 and 21 which already shows intended landscaping plantings that could be added to provide additional forest mitigation on-site.
- The applicant has provided substantial information about the history of this project, which has seen a lot of iterations over the years. Of the various iterations of this plan, the 2007 version had a higher density of lots and a smaller land area than the current plan and it was able to provide .40 acres of retention in addition to the payment-in-lieu of planting that was requested at that time; therefore, being able to provide more on-site mitigation than what is being proposed currently.

Mr. Allen explained that approved Forest Conservation mitigation is not binding until it appears on a recorded final plat or until a PIL fee is collected. Neither of these have occurred with past iterations of this project. Past approvals of this project were never implemented and have since expired. Mr. Allen reiterated that the County is the approving authority for Forest Conservation, not the Town of Boonsboro. It is the Department of Planning & Zoning's responsibility to make sure the intent of the Forest Conservation Ordinance is met. In this case, staff does not believe the intent of the Ordinance has been met; and therefore, is recommending denial of this plan.

Mr. Steve Cvijanovich of Fox & Associates, Inc. provided a brief history of the property. He noted that this project consists of two parcels of land, one of which was the former London Fog facility. In 2007, the developer submitted a plan for 35 townhouses on his five acre parcel of land (which did not include the London Fog property). Due to economic concerns, the project did not move forward and has since expired. The developer later purchased the London Fog facility, which was in disrepair and the Town of Boonsboro encouraged the developer to demolish the building. The building was ultimately demolished several years ago. In October 2014, Fox & Associates began design efforts on this project for 48 townhomes on 10 acres. Preliminary plat approval was received from the Town of Boonsboro in 2016 including the payment in lieu of planting into the Town of Boonsboro's Forest Mitigation program. Mr. Allen again reiterated that the Town did not have the authority to approve this mitigation. The developer believed that the mitigation had been approved; however, no payment was made to the mitigation program. These approvals subsequently expired in 2019 because the project again did not move forward. In 2022, the developer decided to pursue re-approval of the project. The Town of Boonsboro is in favor of the project moving forward at this time and provided a letter of support. The Town also offered an option for the developer to plant trees in one of the Town's parks to help meet mitigation efforts.

Discussion and Comments: Commissioner Wagner asked what hardship would be created if part of the mitigation were done on site. Mr. Cvijanovich stated extensive work had to be done to the storm water management facility which is larger than normal and noted it is the intent of the developer to make this a 55+ community. Part of the amenities for the residents would be a small parking area and a pavilion. If mitigation were to be accomplished on-site, most of the common areas/open space would have to be eliminated.

Motion and Vote: Commissioner Wagner made a motion to approve the payment-in-lieu of planting request and to use street trees to meet Forest Conservation Ordinance requirements. The motion was seconded by Mr. Reeder and unanimously approved.

Pemberton Lots D6 and D8 Reallocation [S-24-031]

Mr. Allen presented a payment-in-lieu of planting (PIL) request for a reallocation in Pemberton, Section D on Pembroke Drive. Lots D6 thru D8 are being combined from three lots to two lots. The existing forest easement in Section D was created by a 16 lot subdivision in 2004 and was successfully planted by the developer in 2007. The new property owner wishes to convert an approximate .58 acre portion of the total 1.14 acre planted forest easement into a PIL payment. The applicant's justification letter describes the steepness of the slope in the front versus the rear yard. The applicant wants to use the rear yard forested area as a recreational space and contends that the narrowness of the forest easement limits its effectiveness.

Mr. Allen stated that forest easements are intended to be permanent in the location where they are designated unless there are very special circumstances that exist, such as matters of health and safety issues that must be accommodated. Even in these special circumstances, it is not usually necessary to relocate the entire existing forest easement, only the portion that is being displaced by the disturbance. Because these are permanent easements, it is the burden of the applicant to prove that the current forest conservation plan and easement can no longer be maintained to the standards of the Ordinance. The owner's preference is not grounds for moving a permanent easement nor should a new purchaser of a lot with a permanent easement expect that the easement can be discarded at any time. Mr. Allen explained that he made a field visit to the property to investigate claims made in the justification letter. It is staff's professional opinion that these lots are not unusable with the forested easement in its current configuration. There is an ample flat area on top of the hill on Lot D8 that would provide enough space to accomplish what the owner wants to do on the site. Lot D6 is hilly but not as steep as Lot D8. The letter by the qualified professional specifically states that the easement areas are in good condition, which was confirmed by staff during the field visit. Staff also noted that the trees are acting as a buffer to adjacent residential and agricultural uses in close proximity. The reallocation plat noted no significant impacts to the easement area and none are mentioned in the justification letter. The removal of the easement area on these lots would reduce the total easement area for Section D to a notable degree significantly devaluing the easement area that would remain on the other lots. Mr. Allen explained that we typically discourage easement areas on the backs of lots; however, it can still work in some circumstances. There are less problems with these easements where the easement does not encumber the entire backyard.

Mr. Allen explained that the County has ample PIL funds currently available (\$458,748.20); the overuse of this mitigation technique puts notable pressure on the Soil Conservation District to expend the funds within a two year period as mandated by the Ordinance. In the applicant's justification letter, it is noted that the PIL monies would be better used in other sensitive areas; however, Mr. Allen stated that these lots are located within 1/3 mile of Beaver Creek, the County's highest value watershed. This would be an area where the Soil Conservation District would be looking to spend money to establish a forest easement, which has already been established in the current Forest Conservation Plan. Mr. Allen noted that the applicant does not discuss reconfiguring the easement anywhere on-site. Staff believes that by combining the three lots into two lots, there would be enough space to accomplish what the applicant wants without removing the forest easement.

Mr. Allen stated that the payment in lieu program was never intended to be a buy-out program. Allowing this request, will set a dangerous precedent moving forward. The Department of Planning & Zoning strongly opposes the conversion of this easement into a PIL payment.

Mr. Ed Schreiber of Frederick, Seibert & Associates, representing Mr. Brock Twigg, the applicant, stated that the property has many steep slopes and required several perc tests to find an appropriate septic area. The septic areas are very long and narrow and take up considerable space on the property. The houses have been pushed a considerable distance back on the property to allow for grading. There will be a distance of approximately 30 feet from the top of the hill to the bottom of the hill. The property owner wants to achieve a larger back yard for recreational space; therefore, the forest easement needs to be removed and planted in another area of the County.

Commissioner Wagner asked if there is forest behind all of the houses in this section of the development. Mr. Schreiber expressed his opinion that the easement is more like a dense fence row with farm fields to the east and north and residential properties to the northwest.

Mr. Miller asked if this is a well-established easement. Mr. Allen stated it is a well-established easement with hardwoods such as oak and maple.

Ms. Baker asked if the applicant has considered moving the easement to another area on the property. Mr. Schreiber stated that the applicant does not want to entertain that idea.

Commissioner Wagner expressed his opinion that that many PILs have been accepted for warehouses, car washes, etc. and this applicant is trying to build his "forever" home. He does not believe that the Commission would be setting a precedent because the next request may be viewed differently. He believes it would be hypocritical to have approved several other payments-in-lieu prior to this request and to deny this request now.

Motion and Vote: Commissioner Wagner made a motion to approve the payment-in-lieu of request. The motion was seconded by Mr. Reeder and unanimously approved.

OTHER BUSINESS

MDP/MALPF Recertification Report

Mr. Boggs presented the five-year recertification report for the Maryland Department of Planning and the Maryland Agricultural Land Preservation Foundation. He explained that MALPF is the cornerstone of the County's land preservation program. It constitutes 39% or 16,000 acres of the total 41,000 acres currently preserved in the County. A big part of being able to accrue that much preserved land thru the program is the 60/40 match mechanism that certified counties can use. The State will match the County's funding up to \$3 million per year; however, the County must remain certified. Additionally, being certified allows the County to retain 75% of the State Ag Transfer taxes that also go toward land preservation programs. Interim recertification reports are submitted to the State annually. Every five years the recertification report must be reviewed and signed by the Ag Advisory Board, the Planning Commission, and the Board of County Commissioners.

Motion and Vote: Mr. Reeder made a motion to approve the Recertification Report as presented. The motion was seconded by Mr. Semler and unanimously approved with Commissioners Wagner abstaining from the vote.

Update of Projects Initialized

Ms. Kinzer provided a written report for land development plan review projects initialized during the month of September which included three forest stand delineations and four site plans.

Comp Plan Update

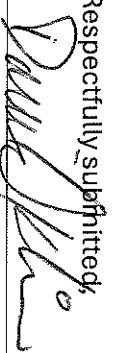
Ms. Baker announced that the final draft was released for public comment last week and a few comments have already been received. The Commission discussed dates for a public hearing to be held in January at the Public Safety Training Center off of Sharpsburg Pike. The public hearing is a time to take public comment; we will not be answering questions or addressing the public. Commission members decided on Monday, January 13, 2025 at 6:00 p.m.

UPCOMING MEETINGS

- 1. December 2, 2024, 6:00 p.m. – Washington County Planning Commission regular meeting

ADJOURNMENT

Mr. Reeder made a motion to adjourn the meeting at 7:15 p.m. The motion was seconded by Mr. Semler and so ordered by the Chairman.

Respectfully submitted,


David Kline, Chairman