

**WASHINGTON COUNTY PLANNING COMMISSION  
PUBLIC INPUT MEETING AND REGULAR MEETING  
July 10, 2023**

The Washington County Planning Commission held a public input meeting and its regular monthly meeting on Monday, July 10, 2023 at 7:00 p.m. at the Washington County Administrative Complex, 100 W. Washington Street, Room 2000, Hagerstown, MD.

Planning Commission members present were: David Kline, Vice Chairman, BJ Goetz, Denny Reeder and Jeff Semler. Staff members present were: Washington County Department of Planning & Zoning: Jill Baker, Director; Jennifer Kinzer, Deputy Director; Lisa Kelly, Senior Planner; Heather Williams, Planner; and Debra Eckard, Administrative Assistant.

**CALL TO ORDER AND ROLL CALL**

The Vice-Chairman called the meeting to order at 7:00 pm.

**PUBLIC INPUT MEETING**

**Troy and Elisabeth Jernigan [RZ-23-004 and CP-23-001]**

**Staff Presentation**

Ms. Baker presented a map amendment and comprehensive plan amendment application for Troy and Elisabeth Jernigan. The property is located at 23226 Fruit Tree Drive in Smithsburg and is currently zoned Residential Transition (RT) in a low-density residential land use policy area. The applicant is requesting a change in zoning and land use policy area to Agricultural Rural (AR). The subject parcel is 22.4 acres in size and is currently improved with a historic single-family dwelling and several outbuildings.

As part of the evaluation of the property, staff analyzed the change in population. Election District #7 (Smithsburg) has increased approximately 45.8% (1.5% per year) in population while the County has increased by 27.4% (0.91% per year) during the same period. Staff also analyzed the availability of public facilities for this site. The property is delineated in the Water and Sewerage Plan with priority service areas of W7/S-7. This designation means there are no planned public water or sewerage services to the property.

Ms. Baker noted the parcel is located approximately 1 mile from the Smithsburg Volunteer Fire Company and Smithsburg Emergency Medical Services. It is located within the Smithsburg school district. The current RT zoning designation allows a residential density of 4.02 dwelling units per acre, while the proposed change to the AR zoning district would allow one dwelling unit per five acres. Therefore, the impact to schools from residential development would be minimal.

Traffic data from MD SHA was retrieved for three major intersections along MD 64. Traffic counts over time have not increased significantly in the area. Ms. Baker noted that public transit is available for the Smithsburg area; however, it does not include this site. Compatibility with existing and proposed development was analyzed. The subject property is bounded on the north, east and south sides by agricultural properties while a small portion of the northeast boundary is located next to a parcel zoned Business General. On the west side of the property, which lies across MD 64, the zoning is residential; however, the land is undeveloped.

**Applicant's Presentation**

Mr. Ed Schreiber of Frederick, Seibert & Associates, the consultant, explained that the applicant believes a mistake was made during the 2013 comprehensive rezoning and that several factors were not taken into consideration at that time. The applicant's justification for this request is the following:

- The property is not within a State approved Priority Funding Area (PFA) which is necessary to obtain public facilities which are required under the RT zoning designation.
- The RT zoning designation requires public water facilities for development; this property is within a W7/S7 designation with no planned public services in the future.
- The designated land use policy area in the County's adopted Comprehensive Plan is not consistent with the designated policy area in the Smithsburg Comprehensive Plan.
- The property is bisected with a stream and contains environmentally sensitive areas that would limit development under the RT designation standards.
- There are considerable access limitations along MD 64 due to MD SHA controls.
- Impacts on the school district would be minimal.
- There is no public transit available to the property.

**Public Comments**

- Matthew Harsh, 13220 Edgemont Road and 23340 Fruit Tree Drive, Smithsburg – Mr. Harsh submitted two letters into the record, one from 2013 and one from 2016. He owns two properties, which he currently farms, next to the subject parcel and he is in favor of the rezoning. He expressed his opinion that the property is not suitable for residential development due to the following: streams and large power lines running through the property; no public water or sewer facilities to the site; traffic has significantly increased at the intersection with MD 64; and sight distance is minimal.

The public input meeting closed at 7:18 p.m.

**Motion and Vote:** Mr. Reeder made a motion to recommend approval of the proposed map amendment and comprehensive plan amendment as presented. The motion was seconded by Mr. Semler and unanimously approved.

**MINUTES**

**Motion and Vote:** Mr. Semler made a motion to approve the minutes of the June 5, 2023 meeting as presented. The motion was seconded by Mr. Reeder and unanimously approved with Mr. Goetz abstaining from the vote.

**OLD BUSINESS****RZ-23-003 – Text Amendment – Truck Stops – Recommendation**

**Motion and Vote:** Mr. Goetz made a motion to table the discussion and vote on the proposed truck stop text amendment because there is a lack of Commission members present at this evening's meeting. The motion was seconded by Mr. Semler and unanimously approved.

**NEW BUSINESS****PRELIMINARY CONSULTATION****PC-23-004 – Heffner Property**

Ms. Williams presented for review and comment a concept plan for a proposed retail store on 3.078 acres located at 19112 Keep Tryst Road near the Guide House Grill. The property is currently zoned Rural Village (RV). The concept plan shows a small retail building with drive-thru for a baked goods store. A preliminary consultation was held on May 10, 2023 and a copy of the summary was provided to Commission members. The site plan will be expected to meet the requirements of all applicable County ordinances.

**ORDINANCE MODIFICATIONS****Cascade Town Centre Lot 2 [OM-23-006]**

Ms. Baker presented an ordinance modification request to allow 22 individual lots to be created without public road frontage. The property is located at 14203 Cushman Avenue and is currently zoned SED (Special Economic Development). An ordinance modification was previously approved to create Lot 2 without public road frontage. The developer is now requesting a modification to subdivide each townhome lot (22) for individual sale. This request was sent to the County's Engineering Department; a copy of their comments was provided to Commission members. Both the Engineering Department and Planning staff have expressed grave concerns about allowing this many lots without public road frontage. Ms. Baker noted that it would be very costly for the homeowners to maintain the private road leading into their homes. Typically, developers are required to upgrade the roads to County standards and then convey the roads to the County. Ms. Baker pointed out there would not be a Homeowner's Association or any type of entity to oversee the maintenance of the roadways until they are upgraded and turned over to the County.

**Discussion and Comments:** Mr. Gordon Poffenberger of Fox & Associates, Inc. as well as the property owner, Mr. Joe Lee, were present at the meeting. Mr. Poffenberger clarified that the dwelling units are duplexes, not townhomes. He explained that the owner would upgrade the roads and convey them to the County; however, the cost is prohibitive at this time and the developer would like to sell the duplexes in order to acquire the funds for the upgrades. Mr. Kline asked why the developer would not be responsible for the maintenance of the roads until the time they are upgraded and turned over to the County. Mr. Poffenberger stated the developer would be responsible for the maintenance and snow removal until the

roads are upgraded and the County has accepted them. Language to that effect would be included in the contracts with buyers.

There was a brief discussion regarding a road bond. Mr. Poffenberger stated that the developer is willing to provide a road bond; however, there is a lot of investigative work that needs to be done to determine what is needed to bring the roads up to County standards.

**Motion and Vote:** Mr. Semler made a motion to table this agenda item until the property owner provides a copy of the contract (approved by the County Attorney's Office) that will be presented to home buyers regarding the maintenance of the roads. The motion was seconded by Mr. Reeder and unanimously approved.

#### **Codee and Kaylie Reese [OM-23-008]**

Ms. Baker presented an ordinance modification request from Section 15.1.A of the Forest Conservation Ordinance to vacate an existing forest conservation easement without replacement mitigation. The property is located at 21695 Jefferson Boulevard and is part of a six-lot subdivision (Overdale Estates) that was approved in 2015. Ms. Baker provided a brief timeline of events beginning with the approval of the subdivision plat and Forest Conservation Easement Plan for Overdale Estates in 2015. As part of the subdivision process, the developer was required to mitigate for forest conservation resources in accordance with the State Forest Conservation Act and the County's Forest Conservation Ordinance. The developer chose to mitigate 4.04 acres of forest on-site with an easement established on Lots 1 and 3 thru 6. In 2017, the developer was notified that the forest conservation mitigation had not been met and they must work with the County to resolve this issue. In the Spring of 2018, the developer implemented the approved Forest Conservation Plan by completing the initial planting. The property remained under the required three-year maintenance period to ensure the plantings met the milestones for survivability. In June of 2021, several months after Mr. and Mrs. Reese had purchased Lot 1, the final inspection was completed and was found to meet the requirements of the Forest Conservation Plan for survivability rates; therefore, the bond was released back to the developer.

Multiple e-mails and telephone conversations began in August of 2021 with the new owners (Codee & Kaylie Reese) regarding the easement. They were notified that the easement was permanent, that the area should be maintained and left to grow as a natural forest area. In November of 2022, the Department of Planning & Zoning was notified that the trees, tree tubes and protective fencing had been removed from the easement area. A notice was sent to the property owners that the easement area had been violated. Included in the compliance notice were deadlines for the property owners to re-establish the easement to bring the property back into compliance with the Forest Conservation Ordinance. In February of 2023, a meeting was held with the Mr. and Mrs. Reese and their attorney at which time they were made aware of opportunities to either move the easement or make a payment-in-lieu of planting to satisfy the Forest Conservation Ordinance requirements.

At this time, Mr. and Mrs. Reese do not intend to comply with the Forest Conservation Ordinance and are seeking a variance to waive all requirements. They acknowledge in their correspondence that they saw the plat showing the Forest Conservation Easement area and were fully aware there was an encumbrance on the property. Staff believes they were given ample time to complete their due diligence with regard to the easement area. Staff strongly recommends that the Planning Commission deny the request to vacate the easement without replacement mitigation. It is Staff's opinion if this modification is granted, it will set a precedence for future property owners who do not wish to maintain a forest conservation easement.

**Discussion and Comments:** Mr. Reeder expressed his opinion that new property owners should be given direction on how to care for a forest conservation easement area. There was a brief discussion using various scenarios if the trees are removed or if they die several years later. Ms. Baker stated it is the property owners' responsibility to replace the trees or to allow natural regeneration to occur in the conservation easement area. Mr. Kline stated he is a big proponent of natural regeneration.

**Applicant's Response:** Ms. Kaylie Reese explained that the property was purchased during the COVID pandemic in 2020 and all correspondence was handled electronically. She stated that a letter was received from Weed Control (in 2020) pertaining to the Johnson grass growing in the area. Mr. Reese contacted Mr. Allen with the Dept. of Planning & Zoning who informed him to contact the developer, Mr. Shaool, who should take care of the problem. Ms. Reese expressed her opinion that less than half the trees were surviving and most of the area was covered in shrubs, not trees.

**Motion and Vote:** Mr. Reeder made a motion to approve the modification request to allow the property owners to vacate the easement without replacement mitigation due to extenuating circumstances and lack of communication during the Pandemic. The motion was seconded by Mr. Semler and unanimously approved.

**SITE PLANS****Paramount Cell [SP-23-012]**

Ms. Kelly presented a site plan for a proposed fenced compound with a 140-foot monopole style wireless telecommunications facility at 19224 Longmeadow Road. Setback variances were approved by the Board of Appeals (AP-2023-005). The site will use an existing entrance on Longmeadow Road. No water or sewer services will be required. Lighting and signage will not be present on the site. The site is exempt from Forest Conservation requirements due to the site having less than 20,000 sq. ft. of disturbed area. All agency approvals have been received.

**Motion and Vote:** Mr. Goetz made a motion to approve the site plan as presented. The motion was seconded by Mr. Semler and unanimously approved.

**Dual Highway Sheetz [SP-22-044]**

Ms. Kelly presented for review and approval a proposed 6,139 sq. ft. Sheetz store and gas station located at 1333 Dual Highway, at the corner of Dual Highway and Mt. Aetna Road. A variance of state highway setbacks was granted by the Board of Appeals (AP2023-023) on June 23, 2023. There will be two access points, one from Dual Highway and one from Mt. Aetna Road. Water will be provided by the City of Hagerstown and sewer will be provided by Washington County. Lighting will be pole mounted and building mounted. Signage will be building mounted, awning mounted and freestanding. Forty-three parking spaces are proposed; 42 spaces are required. Hours of operation will be 24 hours per day, 7 days per week. Forest Conservation Ordinance requirements will be met using the payment-in-lieu of planting method. All agency approvals have been received.

**Motion and Vote:** Mr. Reeder made a motion to approve the proposed site plan as presented. The motion was seconded by Mr. Semler and approved by Mr. Semler, Mr. Reeder and Mr. Kline with Mr. Goetz abstaining from the vote.

**OTHER BUSINESS****Update of Projects Initialized**

Ms. Kinzer provided a written report for the land development plan review projects initialized during the month of May including 4 site plans, 4 forest stand delineations, and 3 preliminary-final plats. She noted that activity has remained consistent and there has been more non-residential activity than residential activity.

Ms. Kinzer noted that since the County has moved to electronic plan review, staff is ready to begin distributing electronic agenda packets as well. After a brief discussion with Commission members who were in favor of the electronic agenda packets, it was decided that we will begin this process with the August agenda. Members will no longer receive paper packets through the mail.

**Comprehensive Plan Update**

Ms. Baker stated that the final three chapters were distributed to members this evening. She will e-mail a copy of the Land Use Map and Septic Tiers Map. She announced that the drop day to the public will be July 25<sup>th</sup>. The Public Relations Department is working on finalizing the document. PR will use constant contact (e-mail blast) to announce the release of the draft document. The document will be posted on the internet as well as hard copies in the libraries and the Planning office. There was a brief discussion about having a virtual input meeting; members were not interested in a virtual meeting. Comments can be received in our offices by e-mail or mail. Staff will begin working on dates for the public input meetings which we should begin holding in early September. We briefly discussed areas around the County where meetings will be held and the format to be used during these meetings. Members agreed that meetings should start at 6 pm.

**UPCOMING MEETINGS**

1. Washington County Planning Commission regular meeting, August 7, 2023 at 7:00 p.m.

**ADJOURNMENT**

Mr. Reeder made a motion to adjourn the meeting at 8:50 p.m. The motion was seconded by Mr. Semler and so ordered by the Vice Chairman.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "David Kline", written over a horizontal line.

David Kline, Vice-Chairman