

**WASHINGTON COUNTY PLANNING COMMISSION  
REGULAR MEETING  
July 8, 2019**

The Washington County Planning Commission held its regular monthly meeting on Monday, July 8, 2019 at 7:00 p.m. at the Washington County Administration Building, 100 W. Washington Street, Room 2000, Hagerstown, MD.

Commission members present at the meeting were: Clint Wiley, Denny Reeder, David Kline, and Jeremiah Weddle. Staff members present were: Washington County Department of Planning & Zoning: Stephen Goodrich, Director; Jill Baker, Deputy Director; Travis Allen, Comprehensive Planner; and Debra Eckard, Administrative Assistant; Washington County Department of Plan Review & Permitting: Ashley Holloway, Director; and Lisa Kelly, Senior Planner.

**CALL TO ORDER**

The Chairman called the meeting to order at 7:00 p.m.

**-NEW BUSINESS**

**MINUTES**

**Motion and Vote:** Mr. Kline made a motion to approve the minutes of the June 3, 2019 meeting as presented. The motion was seconded by Mr. Reeder and unanimously approved.

**SITE PLANS**

**US Lawns Retail Business & Service Facility [SP019-018]**

Ms. Kelly presented for review and approval a site plan for a proposed 9,000 square foot building for a lawn care facility. Approximately 1,800 square feet of this area will be for the office with the remaining area for the shop and storage area. The property is located at 19714 Beaver Creek Road near its and is currently zoned HI (Highway Interchange). There will be one access onto Beaver Creek Road. There will be a total of 26 employees – 6 for the office and 20 field workers. Hours of operation will be Monday thru Friday, 6 a.m. to 6 p.m. Total parking required is 26 spaces; 46 spaces will be provided. Delivery will be a daily box truck and a tractor trailer 2-3 times per month. The site will be surrounded by a 6 foot chain link fence with a gate. Trash will be collected inside the facility. The property will be served by private well and septic. A sign is proposed at the entrance with additional signage on the building. Lighting will be building and pole mounted. Landscaping is proposed in front of the building. Forest Conservation requirements will be met by retaining 1.48 acres of forest on-site.

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

**Hostetter Solar [SP-19-019]**

Ms. Kelly presented for review and approval a site plan for a proposed 2 megawatt solar energy generating system (SEGS) along the south side of Lettersburg Pike at the intersection of Clopper Road. The property is currently zoned A(R) – Agricultural Rural. The solar energy generating system would occupy approximately 15 acres of the total 60 acre parcel and would consist of approximately 7,900 solar modules on a ground mounted system that will be under 10 feet in height. The entire site will be surrounded with a minimum six foot security fence. There will be no employees or customers on the site and visits will consist of repair and maintenance two times per year. Mowing will occur on a periodic and as-needed basis. A fire and vegetation management plan has been submitted for this site. There will be one access into the site from Clopper Road by way of a proposed 25 foot easement. A landscaped buffer will be planted between the subject site and neighbor Mary Spinell. Forest Conservation requirements will be met by retaining 2.09 acres of existing forest on site, which is adjacent to the Antietam Creek. A special exception to establish the solar energy generating system was approved by the Board of Appeals on December 18, 2018.

**Discussion and Comments:** Mr. Weddle expressed his concern because this system is being installed on prime agricultural land and Mr. Kline agreed with this concern. Mr. Kline expressed his fear that Washington County will become the place where everyone wants to put solar systems because land is cheaper, but the energy will go elsewhere; and therefore would be of no value to the County. He

expressed his opinion that the County should look closer at legislation to see where solar arrays should be placed, and believes the County should tighten regulations on the placement of solar arrays. Mr. Kline stated for the record that he is not opposed to solar energy generating systems and believes there should be incentives to encourage these systems, but he is opposed to losing good agricultural land to them. Mr. Weddle believes that changes are needed in regulations to keep SEGs from being placed on type I, II, and III soils. Mr. Wiley noted that this particular project has already been through the appropriate process and has received approval from the Board of Appeals. If the Commission members want changes to the regulations, it must be discussed and changes made at a later date.

Ms. Baker noted that SEGs are currently regulated by the Zoning Ordinance and are not permitted in Priority Preservation Areas (PPA) or Rural Legacy areas. Mr. Goodrich also noted they are not permitted in the Antietam Overlay zone. Ms. Baker stated that any changes that the Commission may implement could be overruled by the PSC. Mr. Goodrich stated that the PSC invites local government to attend public hearings to hear local public comment and concerns. He also noted that PPAs and Rural Legacy areas encompass a large amount of acreage where SEGs are not permitted. Mr. Goodrich reiterated that a public process is required for approval of these systems and that the County does participate in the process by determining if the proposal is consistent with the County's current Comprehensive Plan. At this time, the County's Plan does not address these systems. The Plan encourages agricultural activities in the rural areas, preservation of historic resources, and protection of open space.

Mr. Goodrich discussed the tax revenues that could be realized on these systems because at some point they will be considered a commercial endeavor which will change the assessment on the property. He expressed his opinion that the PSC is not ignoring local government opinion and takes its concerns into account when regulating SEGs.

There was a brief discussion regarding the history of the regulations currently in place. Mr. Weddle stated that he is not opposed to solar energy systems; however, he believes there are a lot of areas in the County with poor soils where solar systems could be placed without taking away valuable agricultural land.

Mr. Goodrich suggested that staff prepare the following information to present to members for further discussion: maps showing where SEGs are not permitted, text to show how the SEGs are regulated after approval by the BZA, and the section of the Comp Plan that discusses the creation of PPAs.

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

#### **FOREST CONSERVATION**

##### **Discussion of procedures for non-compliance fees**

Mr. Allen presented for review and approval a request to formally delegate staff the authority to levy the initial non-compliance fee for forest conservation violations. This action would expedite the resolution of forest conservation issues that necessitate prompt action to ensure that community welfare is not allowed to deteriorate.

Mr. Allen began with a brief presentation of procedures that are currently followed when issues arise. When staff becomes aware of a violation, a field correction notice is sent to the property owner or developer. This notice is in the form of a written letter that contains a time deadline for resolving the issue. If a response to the first letter is not received within a reasonable amount of time, a second letter is sent with a return receipt requested to ensure the letter has been received by the intended party. The tone of the second letter takes on a greater urgency as well as mentioning the possibility of monetary penalties. If no response is received, a FINAL written notice is sent and the property owner/developer is given 10 to 14 days to respond with a detailed plan to resolve the issue.

Mr. Allen noted that penalties range from non-compliance fees, violation fees or, in cases where a bond/surety was collected, moving to claim the bond/surety and contracting the required work ourselves. He also noted there would be very few instances when this type of action would be necessary. The non-compliance fee rate of \$.30 per square foot for the disturbed area was established by County Resolution RS-2013-20.

Staff would use this authority only when all avenues of reasonable accommodation and compromise have been exhausted. Some examples would be: failure to respond to the field correction notice, failure to develop a remediation plan within a reasonable timeframe, or failure to implement an agreed upon remediation plan within a reasonable timeframe.

if after levying the initial non-compliance fee, the offender fails to correct the issue, staff would bring the matter before the Planning Commission to determine whether violation penalties are warranted. Violation penalties can be assessed at \$1,000 per day with each day considered a separate violation under Article 16.2 of the Forest Conservation Ordinance. If the Planning Commission determines that a penalty was warranted, a civil action would be brought against the offender in District Court.

**Discussion and Comments:** Mr. Kline asked what the oversight procedures would be for the person who would be in control of levying fines. Mr. Goodrich reiterated there are several steps in place that would be followed prior to issuing a fee for non-compliance. Ms. Baker stated that the Director would make the decision to levy the non-compliance fee. It was also noted that any fees collected are placed in a special account and reported to the Department of Natural Resources.

**Motion and Vote:** Mr. Kline made a motion to delegate staff the authority to levy the initial non-compliance fee for forest conservation violations. The motion was seconded by Mr. Weddle and unanimously approved.

## **OTHER BUSINESS**

### **Annual Report**

Mr. Goodrich presented for review and approval the Annual Report, which is required by State law to be submitted to the Maryland Department of Planning each year. He briefly reviewed the document with Commission members. For calendar year 2018, the report shows 175 new residential permits issued within Priority Funding Areas (PFA) [75%] and 61 new residential permits issued in non-priority funding areas [25%]. The County's goal each year is 80% in the PFAs and 20% in the non-PFAs.

Mr. Goodrich explained that the County's Development Capacity Analysis information has not been summarized because the analysis is being completed in conjunction with the Comprehensive Plan update. Next, Mr. Goodrich reviewed the locally funded agricultural land preservation and local land use goals. He noted there are no general fund dollars for land preservation; however, local transfer taxes and grants from DNR are used for these efforts. A total of 1,258 acres were preserved in 2018 using approximately \$4 million dollars of program funds.

Members reviewed the Measures and Indicators shown in the report. Mr. Goodrich noted there were only 4 minor subdivisions and 7 major subdivisions in the priority funding areas for calendar year 2018. This equates to 95% of development [both residential and commercial] in the PFAs and 5% in the non-PFAs.

Mr. Goodrich explained that the State of Maryland is concerned that the lack of adequate public facilities throughout the State will stop development. He noted that is not really an issue in Washington County with the exception of public schools, which are frequently over-capacity. Several years ago the County adopted an Alternate Mitigation Contribution program, which is a financial contribution that can remove the limitation on development by paying a per unit fee. This fee goes into a special fund which is directed to school improvements.

**Motion and Vote:** Mr. Weddle made a motion to approve the Annual Report as presented. The motion was seconded by Mr. Kline and unanimously approved.

### **Discussion of Alcohol Manufacturing Facilities**

Ms. Baker reminded members that during a previous meeting, public comments were received regarding a proposed text amendment for alcohol manufacturing facilities. That amendment was withdrawn and staff has drafted a new amendment based on comments received and discussions with the Commission. Staff has streamlined proposed definitions by generalizing alcohol production facilities which could simplify administration of the Ordinance and would remain consistent with County land use policies. The proposed text amendment would allow alcohol production facilities by special exception in the rural areas and as a permitted use in the Rural Business districts. Farm-based facilities would be permitted in the rural areas and by special exception in the Rural Village district. A special exception request would allow public comment as part of the review process. Alcohol production facilities would be a special exception use in the Business Local district and a permitted use in the Business General, Industrial Restricted and Industrial General districts. All definitions specific to a winery/brewery will be removed and new definitions for production and farm-based facilities will be added.

Ms. Baker noted that the required minimum area for growing an ingredient used in the manufacture of the alcoholic product is being eliminated. Instead the requirement will be an establishment located on

agriculturally assessed land. She also noted that the area used for the accessory use may not exceed 25% of the area of the structures located on-site and being used for the manufacturing process.

During the last public meeting, Mr. Jason Divelbiss expressed his opinion that alcohol manufacturing facilities should be permitted in residential area. Comments were received from Mr. Kevin Atticks, Founder and CEO of Grow & Fortify, also promoting this idea. However, Ms. Baker stated that staff does not believe these uses would be a good fit for the County's residential districts. Staff does not view a production facility as an accessory use, but rather a primary use of property.

Ms. Baker briefly discussed other public comments received and staff's opinion on these comments.

**Discussion and Comments:** Mr. Kline expressed his opinion that alcohol production facilities should not be permitted in residential areas. Other Commission members agreed.

Members are opposed to the 25% limitation for accessory uses.

Mr. Richard Seibert of Knob Hall Winery is opposed to the 25% limitation. He believes it is too restrictive and would inhibit growth. He noted that the State of Maryland has new regulations that control the amount of ingredients produced on site or within the State to be used in the manufacture of wine. Mr. Seibert believes that selling products made only on-site is also too restrictive. Mr. Wiley believes that issue would be regulated by the State.

Mr. Divelbiss explained that agricultural uses are permitted in residential areas so it is likely that agriculturally based facilities could be located in a residential zone thus the recommendation to allow these facilities as an accessory use. There was a brief discussion regarding this issue. Mr. Divelbiss also suggested that the definition for an alcohol production facility needs further clarification.

Mr. Weddle reiterated his belief that there should be setbacks for properties situated next to crop land due to the dangers of killing grapes when crops are sprayed.

Ms. Baker stated the proposed text amendment will be heard at a public information meeting at the August Planning Commission meeting.

#### Update of Staff Approvals

Mr. Holloway presented the following update for June: Land Development – 6 inspection and maintenance agreements; 1 site plans, 1 town storm water management concept plans, 2 standard grading plans; 2 preliminary/final plats, Permits – 15 grading permits and 12 entrance permits.

Mr. Reeder made a motion move into Closed Session at 9:00 p.m. The motion was seconded by Mr. Kline and so ordered by the Chairman.

#### - CLOSED SESSION

(To discuss personnel matters)

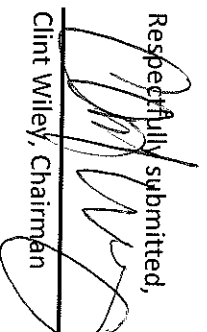
#### -ADJOURNMENT

Mr. Kline made a motion to adjourn the meeting at 9:10 p.m. The motion was seconded by Mr. Weddle and so ordered by the Chairman.

#### -UPCOMING MEETINGS

1. Monday, August 5, 2019, 7:00 p.m., Washington County Planning Commission regular meeting, Washington County Administration Building, 100 W. Washington Street, Room 2000, Hagerstown, MD 21740

Respectfully submitted,

  
 Clint Wiley, Chairman