

Due to the national, state, and local declarations of emergency as a result of the COVID-19 virus pandemic, this meeting was conducted through electronic teleconferencing technology. All members of the commission and all participating applicants joined the meeting from remote locations. Only Planning and Code Administration staff was present at City Hall.

Douglas S. Wright, Jr., chair, opened the meeting at 7:00 p.m., on Wednesday, December 9, 2020. Also participating remotely were commission members C. Davis, S. McIntire (late), J. Stone, R. Thomas, and J. Wheeler. The following staff members were present: S. Bockmiller, Development Planner/Zoning Administrator; M. Flick, Planner; and D. Calhoun, Secretary. K. Maher, Director of Planning and Code Administration, watched the meeting remotely.

PUBLIC REVIEW MEETING

Land Management Code 2020 Package of Amendments, Case No. ZT-2020-01.

Mr. Wright reviewed the public review meeting procedure.

Staff Report: (Staff report, including the proposed amendments, is in the meeting file.) Mr. Bockmiller gave the staff presentation. This is the annual comprehensive package of Land Management Code text amendments. This year’s packet contains 15 amendments for consideration. Mr. Bockmiller entered the cover memo and the Planning Commission’s file by reference into the record and briefly went over each proposed amendment:

- Article 4, Section Z. This amendment corrects a structural error in the identification of the two charts in Section Z.
- Article 4, Section O.4. Adds back into the ordinance a parking requirement for drive-up or walk-up restaurants which at some point was inadvertently edited out of the text.
- Article 4, Section F.2.b. This amendment makes consistent the terms “adult entertainment business” and “adult business” consistent with the definition in Article 3. The term to be used will be “adult entertainment businesses.”
- Article 7, Section H.1. This proposal changes the language slightly in the Forest Conservation Ordinance to make the Maryland Department of Natural Resources language clearer. There is no content change and the Department of Natural Resources has no objections to the amendments.
- Article 3, Definitions; and Article 4, Section O.4; and Article 4, Section Z. This amendment would include provisions for small-scale breweries, distilleries, and wineries. The ordinance would be updated to allow Hagerstown to be competitive with surrounding jurisdictions which have fostered clusters of such uses in their urban areas.

- Article 4, Section Z. This amendment would add certain uses to the land use chart (mostly in the CG but in the CC-MU, CR, and IR districts as well).
- Article 4, Section O.4. This amendment lowers the parking requirements for warehouse uses, and clarifies the formula for calculating the area of a manufacturing use.
- Article 4, Section K.1.b. The proposed amendment would create an exemption to the requirement that side and rear yard fences comply with front yard fence limitations when the side street or street to the rear is a collector road or higher. This requirement would not apply if the adjoining collector or higher road is outside the municipal boundary.
- Article 4, Section D.5. This proposal would permit the reuse of existing buildings on lots in residential districts to be used for storage without complying with setback or design standards.
- Article 4, Section D.2.c. This amendment includes adjustments to recently approved provisions on new accessory buildings on larger lots to address issues discovered during implementation.
- Article 4, Section K. This amendment codifies an interpretation previously made by the Zoning Administrator that allows minor deviation to the minimum square-foot requirement for new dwelling units when retrofitting existing buildings.
- Article 4, Section D.5.h.; Article 5, Section I.4.j.; Article 4, Section K.1.c.; Article 4, Section K.; Article 4, Section M.; Article 4, Section U.; Article 4, Section U.8.a.; Article 5, Section I.4.h. These amendments consolidate all references to buffer widths into Article 5 to bring them under the purview of the Planning Commission and not the Board of Zoning Appeals (BZA). The BZA has no objection to these amendments.
- Article 5, Section C. The proposed amendment clarifies the 30-day deadline for Planning Commission review and approval and removes language that implies negotiation of use.
- Article 5, Section I.4. This amendment would set standards for paving thickness for driveway and parking lot paving.
- Article 4, Section A. This amendment updates references to comprehensive plans regarding effective dates; separates the existing single paragraph into three paragraphs; adds a fourth paragraph to improve readability; and adds a reference to the 2020 Comprehensive Rezoning Plan.

Mr. Bockmiller entered the Certificate of Advertisement and the Planning Commission's file by reference into the record.

Planning Commission Discussion: Mr. Wright asked staff to expand on Amendments 5 and 6. Concerning Amendment 5, Mr. Bockmiller stated that staff has begun receiving inquiries about these uses and the existing ordinance does not address small-scale breweries, wineries, and distilleries. This amendment defines these uses and adds parking requirements for tasting rooms and for the manufacturing side of the businesses. Staff went over the use chart for each proposal. With regard to Amendment 6, the proposal would add certain uses as principal-permitted uses primarily in the CG (Commercial General) zoning district, but also other districts. A new use that

**Planning Commission
MINUTES – Regular Meeting**

**December 9, 2020
City of Hagerstown, Maryland**

addresses gambling establishments was added in anticipation of changes to Maryland state law that would permit casinos, sports betting parlors, and similar facilities.

(Ms. McIntire joined the meeting at 7:16 p.m.).

Mr. Thomas suggested a correction to Amendment 3. Under “Justification,” the second sentence should read: “In order to ensure all terminology is consistent, add “entertainment” to the two places the term is *not* used.” Mr. Bockmiller agreed to make that change before it goes to the Mayor and Council.

Public Testimony: No one signed up in advance to testify in this matter; however, one person joined the Zoom meeting to offer comments on the proposed amendments.

Jim Castillo (no address provided) offered these comments:

- Amendment 5, Small-scale breweries. Add this use as a special exception use in any building in CR, CG and POM; allow outside music up to a certain decibel and during certain hours.
- Amendment 7. Instead of using “gross” floor area, he suggested “net area minus fixed equipment” areas and allow less parking if transit is available. If gross is used, he suggested that not all the paving be installed initially if it is not needed by the occupant—it could be paved when needed.
- Amendment 14. Recommended instead that the City require applicants to prepare a CBR (California Bearing Ratio) report and submit that to the City Engineer for approval.

MOTION: (Thomas/Davis) So moved (to close the public testimony portion of the public review meeting).

DISCUSSION: None.

ACTION: APPROVED (Unanimous)

MOTION: (Stone/Thomas) I make a motion that we leave the record open for 15 days.

DISCUSSION: None.

ACTION: APPROVED (Unanimous)

REGULAR MEETING

Roll Call.

Commission member C. Ploscaru did not participate in the meeting.

Approval of Minutes:

September 30, 2020.

MOTION: (Thomas/McIntire) I move that we accept the minutes as presented for September 30.

DISCUSSION: None.

ACTION: APPROVED (Unanimous)

October 6, 2020.

The minutes were not ready for approval.

November 4, 2020.

MOTION: (Thomas/Stone) I'll move that we accept the minutes of November 4.

DISCUSSION: None.

ACTION: APPROVED (Abstain - Wright)

Development Review:

Linwood Hollow Resubdivision, Final Plat, Case No. S-2020-09.

Staff Report: (Staff report and site plan are in the meeting file.) The purpose of this subdivision plat is to abandon lot lines and street rights-of-way platted to begin construction of the Linwood Hollow townhouse development, creating a single parcel; and to reconfigure the existing forest conservation plan and establish a new forest conservation plan for the anticipated future development of the site consistent with the current industrial classification of the property.

No development of the site is proposed at this time. Potential options include one large use which would use the entire property or the property could be re-subdivided, re-extending the right-of-way of Sweeney Drive into the site to create additional lots.

The proposed forest conservation plan would create a buffer to adjacent, existing residential developments by retaining and infilling existing forest areas along the property lines that adjoin Noland Village to the south and Greenberry Hills to the west. The property has been noncompliant with the previously approved forest conservation plan since mass grading of the site began and then abruptly stopped due to the "Great Recession." Staff required that forest conservation requirements for this development be calculated based on the 2005 forest conservation plan's forest stand delineation and not based on current existing forest. Significant

stands of trees depicted on that delineation were removed when mass grading began. The Forest Conservation Plan proposes the following approach to compliance:

Project area:	33.24 acres
Total forest (as it existed in 2005):	32.24 acres
Forest previously cleared or to be cleared:	25.01 acres
Forest retention and planting required:	11.05 acres
Forest to be retained:	7.23 acres
Forest planting proposed:	1.69 acres
Balance of planting due:	2.13 acres

The applicant is requesting that 2.13 acres be held in abeyance pending the submission of development plans in the future. Ultimate configuration of any development of the site would impact how that remainder could be achieved. Future compliance with that remaining 2.13-acre requirement might be met through strategic planting and expansion of existing easements depending on the design of a future development or contribution to the fee-in-lieu fund, or a combination of the two. Staff recommended approval of this approach.

The plat was submitted for review and all agencies have approved it with the exception of the City Engineer. Planning staff recommended approval of the plat, subject to the conditional approval provided by the City Engineer, and recommended approval of the proposed forest conservation plan, including deferral of 2.13 acres of compliance to be addressed with future site plan or subdivision activity. A site plan or subdivision would be required to address this remainder.

Applicant/Commission Discussion: Ed Schreiber of Frederick, Seibert & Associates, Inc., was present virtually on behalf of the developer. Mr. Wright questioned the zoning of the property. Mr. Bockmiller stated it is currently zoned IG (Industrial General), recently rezoned from residential.

- MOTION:** (Thomas/McIntire) I move that we accept the final plat as submitted.
- DISCUSSION:** Mr. Stone noted the outstanding comments from the City Engineer. Mr. Thomas amended his motion to include the request by the City Engineer to provide more visible lines. Ms. McIntire agreed to the revised motion.
- ACTION:** APPROVED (Unanimous)

The agenda was amended to move this matter ahead of consideration of the Burhans Village Development Plan.

Minor Revisions to Forest Conservation Plans for NorthPoint Building 1 and NorthPoint Building 2.

Staff Report: NorthPoint Development owes an additional 0.14 acres of forest conservation for Building 1. This is a small fraction of the overall forest conservation for this site which has been addressed with on-site retention, street trees, and fee-in-lieu. In October the Planning Commission approved either fee-in-lieu or off-site retention for Building 2 with the method of compliance to be determined by the developer. NorthPoint has chosen off-site retention and is moving forward with an easement plat for Building 2 on woodlands along Licking Creek in Pecktonville, amounting to approximately ten acres. In addition, staff noted there was a miscalculation of the acreage for fee-in-lieu for Building 1 resulting in a shortfall of 0.1 acres. In order to meet the shortfall, the developer would like to add 2.8 acres to the easement in Pecktonville.

Mr. Thomas asked that the arrangements as discussed above are detailed in the plats that are submitted as final documents to avoid confusion in the future. Staff had no concerns with Mr. Thomas’s comment.

MOTION: (Thomas/Davis) I’ll make a motion that we accept the revisions as submitted.
DISCUSSION: None.
ACTION: APPROVED (Unanimous)

Burhans Village Development Plan with Waivers and Revision of Existing Forest Conservation Plan, Case No. P-2019-01.

Staff Report: (Staff report and site plan are in the meeting file.) Approximately 14 years ago, a developer obtained approval of an 82-unit townhouse condominium development through an approved PUD overlay. The PUD has since expired. Only tree removal and some grading occurred on the property before the development was derailed by the “Great Recession.”

The Planning Commission has reviewed concept plans in the past, including discussions on specific problematic elements of the design. Those issues were worked out to the point that the developer could move forward to the development plan stage. Given the location of the property, its topography and irregular shape, all have concluded that this is a difficult property for which an economically viable development plan could be created. The sketch plan called for a 48-unit, fee-simple townhouse development with a community center. Some adjustments were made as the development plan evolved, including removing the community center and replacing it with dwelling units, and finding a use for the remnant of land facing Carrollton Avenue.

The current proposal is for the construction of 52 fee simple townhouses in seven buildings, plus two semi-detached dwellings to be constructed along Carrollton Avenue, for a total of 54

dwelling units. No community center is proposed as part of this plan. This is a cluster subdivision so the lots are less than the typically required minimum lot size required in the district. This is being offset with dedicated, usable public open space for use by the homeowners' community—it will not be a public park. Open space areas with walkways, benches, and a tot lot are being provided.

One public street (Peleton Street) will connect Mitchell Avenue with North Burhans Boulevard. Due to a variety of factors, including prolific use of double-width driveways in front of units and the horizontal and vertical geometry of the street, no on-street parking will be permitted. The four units replacing the community center will have private, assigned parking next to their building. Two additional lots will provide 24 additional parking spaces for visitors to the development. Two forest retention areas will be located in the western portion of the property. The existing platted alley right-of-way along the west edge of the property will be improved, connecting Peleton Street with Freemont Street.

Regarding the cluster requirements, the 52 townhouse and two semi-detached lots would normally require a minimum lot area of 136,000 square feet. The total proposed lot area is 106,182 square feet, leaving a requirement of 29,818 square feet (0.68 acres) of open space to be provided. Up to 25% of this can be forest retention. Usable open space in the amount of 0.51 acres is provided with the trails, benches and tot lot. Additional open space between buildings, and along the railroad right-of-way, adjacent to streets and forest retention areas brings the total open space provided to 1.36 acres, well in excess of that necessary to compensate for the reduced lot areas.

The developer has requested the following waivers of the provisions of Article 5. The Planning Commission previously discussed each of the waivers and generally agreed that they are necessary to implement a reasonable development plan for this site. Since those waiver requests have not been officially acted upon, staff included them in this review as follows:

Section	Type of Regulation	Requirement	Request
I.4.h.(1)	Parking stall length	18 feet	Permit parts of some spaces to extend into street right-of-way
I.4.h.(7)	Max. spaces in row	15 spaces	18 spaces in row in overflow parking area
I.4.h.(8)	Parking lot buffer	10 feet	0 feet in places
E.2.1	Sidewalks	Both sides	One side of street in limited areas (western portion up against Mitchell Avenue (~150ft).
I.4.i.(2)	Street trees	40 foot spacing	Reduced due to heavy use of double driveways for townhouses

The 2006 Forest Stand Delineation showed 5.11 acres of forest on this 6.21-acre tract. The site was stripped 14 years ago and has since regenerated into new forest; probably more than the

previous 5.11 acres. To be consistent with application of the Ordinance to the amount of forest when the property was originally submitted for development, the 5.11 acres described on the 2006 delineation was used. In order to comply with the requirements of the Ordinance, the applicant proposed the following:

Project area:	6.21 acres
Total forest (as it existed in 2005):	5.11 acres
Forest previously cleared or to be cleared:	unclear
Forest retention and planting required:	3.54 acres
Forest to be retained:	0.45 acres
Street tree credit (62 trees):	2.53 acres
Fee-in-lieu contribution:	0.56 acres

The development plan was routed for review and all agencies have approved it with the exception of the Water and Wastewater Divisions. In the closing days of the review of this plan, staff discussed whether the tot lot is in a safe location. A copy of the plan was submitted to the City’s Crime Prevention through Environmental Design (CPTED) officer, Mark Morris. Staff noted that this development is extremely tight. The developer’s engineer believes there is no other reasonable location for the tot lot. The open area next to the alley entrance was evaluated by the project engineer, but they concluded that it is too close to the street. There are also grading issues that would make it difficult to move the tot lot to that location. Officer Morris suggested thinning the undergrowth so pedestrians are able to see through to the property line; and that a fence be placed along the sidewalk and the overflow parking lot that would deter someone from attempting a “grab and go.” A fence would also deter pedestrians from taking a shortcut through the tot lot.

Staff recommended approval of the development plan, subject to the conditions cited above, approval of the waivers, and approval of the forest conservation plan with use of fee-in-lieu for part of the requirement. Staff pointed out that this development is a result of compromise. Significant deviation from normal expectations were necessary in order for this property to have any development potential. Otherwise, the land would remain undeveloped, essentially not producing on the tax base, and be a constant source of community health and law enforcement action. The development is very compact; there will be no usable front yards and there would be little in the way of green space between the two rows of houses that line the new subdivision street. Therefore, the quality of this development will heavily depend on the architectural treatment of the front facades of these buildings. Due to the cluster provision use, the rear yards will be very small. Space for decks will be limited or unavailable, and the ability to have garden sheds in most cases will be very unlikely. Given the peculiar nature of this development, staff recommended that the developer include in buyers’ settlement packages the unique constraints associated with the lots and the low likelihood that variances would be granted from the setbacks for decks or sheds.

The back yards of the duplexes will face Peleton Street. Each lot has a privacy fence along the street frontages. A ten-foot privacy fence will be constructed along the back portions of the three “sticks” of houses that back up to the railroad.

Applicant/Commission Discussion: Gordon Poffenberger of Fox & Associates, Inc., engineer for the project, was present via Zoom. This development plan is based on a sketch plan that was approved approximately nine months ago. Not much has changed except for the removal of the community center. Mr. Wright asked if the curbing in front of the houses will be a soft curb. Mr. Poffenberger said it will. Concerning the retaining walls, Mr. Poffenberger noted that the grading was revised that eliminated “retaining wall 2.” The only retaining wall will be in the stormwater management pond along the railroad right-of-way.

Concerning the fence at the location of the tot lot, Mr. Wright suggested a vertical picket fence along the parking lot and along the sidewalk on the north side with a four- or five-foot opening on one end. It could be closed in on the forest conservation side with chain link. The developer, Adam Shaool, stated that he had no objection to the opening in the fence. Staff suggested a five- to six-foot tall aluminum, vertical picket fence. Mr. Wright suggested some kind of lighting in the tot lot; however, Mr. Poffenberger pointed out that there are three street lights along the back of the sidewalk in that area. It was suggested that a note be added to the site plan and the forest conservation plan that the area of the tot lot should be kept open.

Commission members discussed the advantages and disadvantages of a cross walk since there was concern about requiring one. Since the community center was eliminated from the plan, Mr. Poffenberger stated his client no longer saw a need for the cross walk. The City’s requirements for a crosswalk are prohibitive. Jim Bender, Assistant City Engineer, (participating via Zoom) stated that mid-block crosswalks are seen as a safety hazard since drivers do not expect to stop in the middle of a block. The City has a policy for them but requires they meet certain criteria (beacons, warning lights, speed humps) to slow vehicles down to make them aware that pedestrians may be attempting to cross. Mid-block crosswalks also force walkers to go farther to cross at the cross walk. In this instance walkers would be forced the whole way up the sidewalk to the crosswalk at Mitchell and then have to come back down if they wanted to access the tot lot. There could be a benefit to a midblock crosswalk, but it will add costs. The layout of the development is not great for accessing the tot lot. In the end, people will cross wherever is most convenient.

Mr. Bockmiller pointed out a pedestrian easement that will be located behind Lots 1-8 that will give residents that ability to get off their property in the rear without having to trespass. Also signage will be placed on each end of Peleton Street informing people not to park across sidewalks; if they ignore these warnings, their vehicle will be towed.

**Planning Commission
MINUTES – Regular Meeting**

**December 9, 2020
City of Hagerstown, Maryland**

Waiver Requests:

- MOTION:** (Stone/Thomas) I make the motion that we approve the five waiver requests requested by the developer as outlined on page 2 of the staff memo.
DISCUSSION: None.
ACTION: APPROVED (Unanimous)

Forest conservation:

- MOTION:** (Stone/Thomas) I make a motion that we approve the forest conservation plan.
DISCUSSION: Mr. Stone amended his motion to include fee-in-lieu for the balance that cannot be met on site. Mr. Thomas agreed to the amendment.
ACTION: APPROVED (Unanimous)

Development Plan:

- MOTION:** (Stone/Thomas) I make a motion that we approve the site plan with the following stipulations: that there be a six-foot tall fence that goes along the western boundary of the tot lot that separates it from the parking area and that it be built out of some sort of material that allows one to see through it; that there be a chain link fence along the forest conservation area between it and the tot lot; and subject to outstanding comments by Water and Sewer.
DISCUSSION: None.
ACTION: APPROVED (Unanimous)

Planning Commission Business:

2021 Meeting Schedule.

- MOTION:** (Davis/Thomas) So moved (to approve the 2021 meeting schedule).
DISCUSSION: None.
ACTION: APPROVED (Unanimous)

Announcements.

None.

**Planning Commission
MINUTES – Regular Meeting**

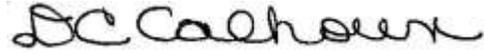
**December 9, 2020
City of Hagerstown, Maryland**

Adjourn.

It was moved and seconded that the meeting adjourn (8:44 p.m.)

1/13/2021

Approved



Debra C. Calhoun - Secretary