

September 13, 2019

Mr. Bradley F. Killian, Director
Harford County Planning and Zoning
220 South Main Street
Bel Air, MD 21014

RE: Abingdon Business Park – Forest Stand Delineation and Forest Conservation Plan

Dear Director Killian:

The undersigned citizens and organizations are writing in opposition to the proposed Abingdon Business Park, located at the southeast corner of I-95 and Route 24. The undersigned have serious legal and practical concerns about the extensive deforestation proposed under the current plan and the associated negative impacts to water quality. This project proposes substantial deforestation that appears to violate local and state laws regarding forest conservation and is contrary to County policy as stated in the County's Green Infrastructure Plan.

In response, we believe the County must:

1. Retract the approval granted to the Forest Stand Delineation and require sampling and identification of all priority forest on the site;
2. Require the applicant to apply best site design practices in the Forest Conservation Plan, including a reduction in parking and building coverage; and
3. Reject the applicant's justification for specimen tree removal based on a failure to meet several criteria for a variance as defined by state courts and the County Code.

Harford County has both the authority and the legal obligation to limit deforestation under the Forest Conservation Act. We request that the County apply its broad discretionary authority to significantly reduce the proposed impacts on high-quality forest as outlined above. We also expect the County to comply with the procedure and standards under the Forest Conservation Act regarding the demonstrations necessary to justify removal of priority forests and issuance of waivers from local laws.

As detailed below, we do not believe that current proposals and efforts thus far comply with the minimum legal standards. We urge the County to reject the current proposal and require adjustments to bring the plan into conformance with best planning practices and laws. We also encourage the Department to request assistance from the Maryland Forest Service in evaluating the forest stands on this property.

1. The approved Forest Stand Delineation does not comply with minimum requirements

The Forest Stand Delineation (FSD) submitted on January 1, 2019 demonstrates significant problems with the process of evaluation and approval of this proposed project, and fails to meet requirements under state and local forest conservation laws. The FSD is created entirely around the desired, as-of-yet unapproved site design plan, which turns the planning process on its head. The Forest Conservation Act (FCA) states that a forest stand delineation “shall be used during the preliminary review process to determine the most suitable and practicable areas for forest conservation.”¹ In contrast, the Abingdon FSD uses selective sampling based on areas desired for development and fails to indicate the priority retention areas established in state law.

The FCA does not exclude certain areas from sampling, stating that a forest stand delineation is to cover “the entire site” and include information on all forest stands and vegetation.² There are very limited allowances in the FCA for a simplified FSD that does not cover an entire site, which are not met in this case. For instance, a local program can adopt a simplified process to “limit required forest sampling to areas not proposed for protection under long-term protective agreements **as long as all priority areas on the site are protected,**” and “minimizing overlapping mapping and sampling requirements for sites **where no disturbance of priority forest retention areas is contemplated.**”³ The Abingdon Business Park proposal does not qualify for the first exemption, as the project would extensively clear hundreds of acres of priority contiguous forest and dozens of specimen trees. Nor does the project qualify for the second exemption, as the FSD states that areas such as the Natural Resources District will only be protected from the “majority” of development activities and impacts will be “minimal.”⁴ This fails to meet the legal requirements for a simplified forest conservation stand that excludes sampling of certain areas.

The January 1 FSD fails to indicate the priority retention areas as established in state law. Under the FCA, forest qualifies as a priority for retention by meeting objective criteria for size, contiguity, location, and other features. It is not appropriate to compare forest stands within a property to determine the baseline conservation value of any given stand. By virtue of being over 100 acres of contiguous forest, and therefore also forest interior dwelling bird habitat, the forest on this parcel all qualifies as priority retention area. The forest on this parcel is identified in the Harford County October 2018 draft Green Infrastructure Plan as a critical “core” piece of green infrastructure. This parcel is one of only five tracts left in the County that satisfies the “core forest” criteria of a forest patch with over 100 acres of interior forest.⁵ Nevertheless, the FSD fails to identify these areas as priority forest under the statutory criteria.

¹ MD Code Natural Resources Article §5-1504(b)(1)

² MD Code NR §5-1604

³ Md Code NR §5-1604(b)(3) (emphasis added)

⁴ Abingdon FSD, p. 3

⁵ Harford County draft Green Infrastructure Plan, October 2018, p. A28

Based on these deficiencies, the County must retract any administrative approval granted to this FSD and require an FSD that properly surveys the entire site and indicates priority retention areas.

2. The Forest Conservation Plan does not comply with required standards and demonstrations

The FCA requires the identification of certain areas, such as contiguous forests and critical habitat, and states that they "shall be left in an undisturbed condition unless the applicant has demonstrated...that reasonable efforts have been made to protect them and the plan cannot reasonably be altered."⁶ The Forest Conservation Plan (FCP) and other documents regarding the proposed Abingdon Business Park fail to make the minimum efforts and demonstrations required by the state and local forest conservation laws.

In reviewing the publicly available documents, we did not find sufficient evidence of efforts to protect contiguous high-quality priority forest areas. The site design does not appear to maximize the use of best practices in terms of reducing the impacts to priority forests, such as those listed in the state forest conservation manual: clustering buildings; preserving natural grades including the use of retaining walls to limit extent of grading; avoiding locating stormwater management in high priority retention areas; and others. As an example, we understand that there is no minimum required parking for warehouse uses and that the number of spaces shown simply reflects the desire of the applicant. To make a reasonable effort to protect priority forest, surface parking should be reduced or converted to low-profile structured parking.

Similarly, the applicant has not provided evidence that the proposed site design cannot be altered. To the contrary, the applicant appears fully intentioned to change the project before final approval. As revealed during the Community Input Meeting on January 15, 2019, the proposed Abingdon Business Park is not currently designed or required to meet any specific demonstrated need. At that meeting, Ms. Amy DiPietro confirmed that "the layout shown is purely speculative at this point. There are no tenants or other users that have been established or signed up for the project."⁷ Many of the uses permitted by the zoning code for this site could be accommodated within a smaller building footprint. Thus, the property need not be developed at the maximum permitted density or floor area to accomplish the purposes set forth in the County's Comprehensive Plan. A reduction in the building footprint is therefore justified and a reasonable accommodation under the FCA to reduce the impact on priority contiguous forest on this site.

The FCA requires reasonable efforts to preserve priority retention areas, and a demonstration of why a plan cannot reasonably be altered. Best practices to protect much of the priority forest on this site have not been applied. In the absence of these efforts, the applicant has also failed to justify why the plan could not be altered. Thus, we request that the County return the FCP and

⁶ MD Code NR §5-1607(c)(1)

⁷ Transcript of Community Input Meeting, p. 14

require the applicant to make significantly stronger efforts to retain more priority forest areas.

3. The waiver request does not adequately justify removing specimen trees.

In addition to the priority retention areas on the site, there are numerous specimen trees that rise to a higher level of scrutiny under the FCA. The FCA requires a variance for certain trees and shrubs, including "specimen trees" that have a diameter of 30 inches or 75% of the diameter of a state or locally designated champion tree of that species.⁸ Harford County has incorporated these requirements in Harford County Zoning Code §267-39, which also provides the criteria for a waiver to remove these trees. On February 6, 2019, the applicant submitted a proposal to remove 58 of the 85 specimen trees identified on the property that included a section called "Justification for Waiver Request" (Waiver Request Letter). As explained below, the applicant has failed to meet these requirements in the Waiver Request Letter, and therefore the waiver request must be denied.

As a general matter, an applicant requesting a waiver must demonstrate that the application of the law would create an unwarranted hardship. It is well established that a hardship to justify variances from zoning regulations require demonstration of a need that is "substantial and urgent and not merely for the convenience of the applicant." *Belvoir Farms Homeowners Ass'n Inc v. North*, 355 Md. 259, 734 (1999). Furthermore, to demonstrate a hardship, an applicant must show that the restriction as applied to the property "is so unreasonable as to constitute an arbitrary and capricious interference with the basic right of private ownership." *Marino v Baltimore*, 215 Md. 206, 217 (1957). This interference has been further explained as "permanent depriv[ing] the property owner of all reasonable use of his property." *Id.* At 216 (emphasis added).

The Waiver Request Letter falls short of the required demonstration of unwarranted hardship. Instead of showing how the owner would be deprived all reasonable use without the waiver, the letter simply states that the application of the law would result in a "smaller development footprint" than desired.⁹ This is not sufficient to show that the owner has been deprived all reasonable use. The Waiver Request Letter also states that the currently proposed buildings and facilities represent "a minimum area in order to accommodate the uses."¹⁰ However, as mentioned above, there are currently no specific uses proposed for this development. In reference to Lot 9 in which several specimen trees are proposed for removal in the waiver request, Ms. DiPietro states "possible uses could be a salon, restaurants, dry cleaner, offices. Again, the layout is purely speculative at this time. No tenants or users have been established."¹¹ It is therefore premature and unreasonable to state that the proposed size and configuration cannot be changed or that changing the design would deprive the owner of all reasonable use of the property.

⁸ MD Code NR §5-1607(c)(2)

⁹ Waiver Request Letter, p.5

¹⁰ Waiver Request Letter, p.5

¹¹ Transcript, p. 15

A review of the Waiver Request Letter reveals that specimen trees are frequently being removed because they are within a "grading zone," rather than being in the development footprint (e.g. specimen trees 3, 6, 7, 8, 12, 13, 15, 16, 17, 24, 28, 40, 43, 45, 47, 53, 56, and 57). Choosing to grade these areas may simply be a matter of convenience for the applicant (as opposed to use of retaining walls, for example), which is not a sufficient justification under established Maryland law. The waiver request also includes many specimen trees that are in or on the fringes of the extensive proposed surface parking lots or access drives (e.g. specimen trees 4, 9, 11, 20, 25, 26, 29, 30, 31, 32, 36, 37, 38, 39, 42, 44, 49, 50, 51). The applicant has made no showing of why this extensive surface parking is needed, or how efforts have been made to reduce the impervious surfaces associated with parking. Finally, the waiver proposes removing specimen trees that are within the footprint of proposed buildings. Once again, there has been no demonstration that these buildings are required to be of the proposed size or in the proposed locations in order to maintain basic economic use of the property to the owner.

In addition to the general demonstration of an unwarranted hardship, the County Code requires demonstration of a specified list of criteria. The Waiver Request Letter fails to address the first criteria, which states an applicant shall "describe the special conditions peculiar to the property which would cause the unwarranted hardship."¹² The requirement that a property be "peculiar" or "unique" has been thoroughly examined in Maryland case law, with courts finding that "variances should only be granted when the uniqueness or peculiarity of a subject property is not shared by the neighboring property *and* where the uniqueness of that property results in an extraordinary impact upon it by the operation of the statute." *Dan's Mt. Wind Force, LLC v. Allegany Cty. Bd. of Zoning Appeals*, 236 Md. App. 483, 491, 182 A.3d 252, 257 (2018) (quoting *Cromwell*, 102 Md. App. At 719). The Waiver Request Letter fails to make any mention of how the property at issue is unique or peculiar, and how any uniqueness causes an extraordinary impact.

Finally, the Waiver Request Letter fails to meet the last criteria under County Code which requires an applicant to "verify that the granting of a waiver will not adversely affect water quality."¹³ The Letter makes a conclusory statement with no supporting evidence or verification that the waivers will not adversely affect water quality. However, it is well established that the conversion of forest to developed land carries an increased pollution load and can affect in-stream temperatures, even when stormwater management regulations are applied. Residents have spotted multiple fish species in these potentially affected streams. The Letter provides no evidence or verification that the removal of hundreds of acres of high-quality mature forest that is to be converted to sprawling areas of impervious surface will not negatively impact the Ha Ha Branch or other receiving local waters and the Chesapeake Bay. This issue is amplified by the fact that at least a portion of the site may be located in the watershed of a Tier II high quality stream, Otter Point Creek 1, which has no remaining assimilative capacity. When a Tier II stream has no remaining assimilative

¹² Harford County Zoning Code §267-39(F)(1)

¹³ Harford County Zoning Code §267-39(F)(6)

capacity, there cannot be any new pollutant discharge to that stream without negatively impacting water quality.

Conclusion

Considering the above legal and procedural issues, we believe the proposed site design, forest conservation plan, and forest conservation waiver requests cannot be approved as currently submitted. We urge the County to reject the current submissions and work with the applicants and the surrounding communities to significantly alter this proposal to comply with state and local laws and reduce the very real potential for negative impacts to the environment and public welfare.

Thank you for your prompt attention to these comments. Given that Harford County's land development regulations specify an administrative review process by your office with no further requirements for public comment, we would appreciate the opportunity to meet with you directly at your earliest convenience. Please contact Ms. Tracey Waite at (443)243-3363 or by email at hcclimateaction@gmail.com to set up a meeting.

Sincerely,

Autumn Run Home Owners' Association

Philadelphia Station Home Owners' Association

Abingdon Reserve Home Owners' Association

Joppa Development and Heritage Corporation, Inc.

Douglas Bonn, Neighbor, Red Maple Drive/Van Bibber Road

Lonnie Vick, Neighbor, Cokesbury Manor Phase Two

Friends of Harford, Inc

Harford County Climate Action, Inc

Together We Will, Upper Chesapeake

Theaux Le Gardeur, Gunpowder Riverkeeper

The Chesapeake Bay Foundation