

To: City Council

From: Planning Commission

Re: PC Findings on O-26-23, Forest Conservation Plan Appeals

Factual Background:

On December 7, 2023 and April 4, 2024, the Planning Commission received documents and heard testimony on O-26-23: Forest Conservation Plan Appeals. The Commission deliberated and voted to recommend general approval to City Council of the Ordinance as First Amended by the Sponsor. However, the Commission had several important reservations and recommendations.

Key elements of the Ordinance include:

Section 21.71.060 Forest Stand Delineation –

- Eliminates automatic approval if the Department fails to notify the applicant of their decision in writing within 30 days.
- Changes approval criteria from “complete and correct” to “approved by the Department.”
- Appeals from a preliminary FSD go to the Zoning Board of Appeals

Section 21.71.070 Forest Conservation Plan-

- Clarifies that a preliminary Forest Conservation Plan can be appealed to the Circuit Court as part of the appeal from a decision from the Planning Commission or Planning Director.
- Clarifies that pending appeals, no forest clearing may take place.
- Removes automatic approval if the decision takes longer than 45 days.
- Removes ability to request an extension under “extenuating circumstances.”
- Clarifies that the Zoning Board of Appeals review appeals of a determination on the Final Forest Conservation Plan.

Recommendations by the Planning Commission:

Because it is important to keep applications on clear and simple tracks, the Commission recommends that all decisions – whether forest stand delineations, preliminary forest conservation plans, or final forest conservation plans – be kept to the Board of Appeals or the Planning Commission depending on which body is the final

decision-maker. Specifically, any appeals of the delineation should go to whichever body will make the final decision; likewise for the preliminary and final conservation plans. The Commission noted that the decision-maker should have knowledge from the beginning of controversies surrounding the proposed project.

Therefore, the proposed amendment should itself be amended to reflect those recommendations.

On another note, the Commission discussed at some length the advisability of allowing appeals by the applicant or by aggrieved members of the community to the forest stand delineation. On the one hand, the delineation is essentially a natural resources inventory prepared by qualified experts. Allowing an appeal from both the delineation and then, later, from the preliminary conservation plan could very well lead to multiple appeals of what may be the same issues. On the other hand, it is important to get the delineation right, for it is from there the whole project proceeds.

The Commission felt that this is a policy issue best resolved by the Council.

As to appeals from the preliminary forest conservation plan, the situation is different. The preliminary plan generally does not change in significant degree from the final plan. Details and specifics might change, but not the basic plan. The site design and the preliminary plan go hand-in-hand; the Commission or the Board of Appeals decides them at the same juncture and each makes a final, appealable decision.

Hence, the Council might make a policy decision that “significant” changes between the preliminary and final should permit an appeal. That appeal should go before the Commission or the Board, as the case may be, and then on to the Circuit Court if necessary. This would force both applicant and community to assess their chances on court appeal and, possibly, into negotiating their differences. Again, this is a policy decision for the Council.

Finally, the ordinance grants standing to “local environmental group” to appeal to the Circuit Court. (“Standing” is the legal term for who is sufficiently affected by the government action to appear in court as a party.) The Commission expressed concern over the definition of “local environmental group.” Does it grant standing to some well-financed regional, state or even national “group” to erect a local proxy to take the matter to court? Either to overwhelm the applicant or the community? What is “local”? The Council may look elsewhere in the Code for other grants of standing to receive guidance.

Conclusion:

The Commission voted 4-0 to approve the ordinance because the Forest Conservation Act does need improving and recommends the Council take the above undere advisement as it deliberates.

May 2, 2024

Robert H. Waldman, Chair

Diane Butler

Quentin Cummings

Thomas Sfakiyanudis