

Case No.: A-9973-C-01
Woodside Village
(Amendment of Basic Plan)

Applicant: Westphalia Meadows, LLC/
Woodside Village

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND,
SITTING AS THE DISTRICT COUNCIL

ZONING ORDINANCE NO. 5 –2022

AN ORDINANCE to amend the Woodside Village Basic Plan, originally including approximately 381.95 acres of land (with multiple owners) in the R-M (Residential Medium Development) and M-I-O (Military Installation Overlay) Zones, to separate approximately 63.30-acres (consisting of Parcel 14, the A. Bean property), and create a separate Basic Plan, located on the south side of Westphalia Road and west of Ritchie Marlboro Road, in Council District 6.

WHEREAS, the entire 381.95-acre property, originally consisted of Parcel 5 (the Yergat property), Parcel 14 (the A. Bean property), Parcel 19 (the Case property), and Parcel 42 (the Suit property), Tax Map 82, was rezoned from the R-A (Residential-Agricultural) Zone to the R-M (Residential Medium Development) Zone, by the 2007 Westphalia Sector Plan and Sectional Map Amendment; and

WHEREAS, the 2007 Westphalia Sector Plan and SMA, included the District Council's approval of Zoning Map Amendment 9973, with conditions, (A-9973-C), and added the 11.65-acre Parcel 13 (the Wholley property, or identified as "Wholley" in some exhibits) as an addition to A-9973; and

WHEREAS, the approved Woodside Village Basic Plan envisioned "a residential development organized around a park/school site of approximately 56 acres within the Suit property, which would then be combined with the larger Westphalia Central Park located in the

adjacent Parkside subdivision;” and

WHEREAS, on November 15, 2021, the District Council approved another application in Zoning Ordinance No. 8-2021, which separated the Yergat and Case properties from the Basic Plan;¹ and

WHEREAS, in the instant application, the Applicant seeks an amendment of the District Council’s original approval of A-9973-C, to remove its property from the approved Basic Plan, thereby creating three Basic Plans, one containing the A. Bean property, one containing the Yergat and Case properties, and the other containing remaining properties within the original Basic Plan; and

WHEREAS, the District Council’s approval of A-9973-C, allowed the Applicant to construct between 1,422-1,497 dwellings on the adjusted gross acreage (374.14 acres, after providing approximately 116 acres of open space), which equated to approximately 3.8-4.0 dwelling units per adjusted gross acreage; and

WHEREAS, the development has proceeded in a manner different from that anticipated in 2007; and

WHEREAS, the Applicant is requesting removal of the A. Bean Property from the remainder of the original Basic Plan area of approximately 381.95 acres; and

WHEREAS, the Technical Staff of the Planning Board, after review of the application request, filed a Staff Report, which recommended approval of the application request, subject to certain conditions; and

¹ A-9973-02 was the case or application number approved in Zoning Ordinance No. 8-2021.

WHEREAS, the application request was advertised and the property was posted for the application request prior to any public hearing; and

WHEREAS, on December 1, 2021, the Zoning Hearing Examiner (Examiner) held an evidentiary hearing on the application request, (12/01/2021, Tr.); and

WHEREAS, several persons of record appeared in opposition to the application request; and

WHEREAS, on February 1, 2022, the Examiner filed a written decision with the District Council, which recommended that the application request should be approved subject to certain conditions, Decision, 2/01/2022; and

WHEREAS, on February 9, 2022, Andrea Bobby Allen (Ms. Allen), a person of record, filed written exceptions to the Examiner's decision, Appeal, 2/09/2022; and

WHEREAS, on March 22, 2022, the Applicant filed a written response in opposition to each exception filed by Ms. Allen, Response, 3/22/2022; and

WHEREAS, on March 28, 2022, the District Council held oral argument to consider the exceptions and responses, (3/28/2022, Tr.);² and

WHEREAS, as a basis for this final decision, except as otherwise stated herein, the District Council adopts and incorporates by reference the Examiner's written recommendation to approve the application request to amend the basic plan, subject to certain conditions;³ and

WHEREAS, in response to the exceptions filed by Ms. Allen, the District Council makes additional findings of material facts and conclusions as follows:

² Ms. Allen did not appear for oral argument.

³ *Templeton v. County Council of Prince George's County*, 23 Md. App. 596, 329 A.2d 428 (1974) (Where the Council has delegated the duty of making findings of fact and recommendations to the Zoning Hearing Examiner, the Council may comply with the requirement of "specific written findings of basic facts and conclusions of law" by adopting the Examiner's findings and conclusions).

Westphalia Meadows, LLC is the owner and applicant of 63.30 acres of land located on the south side of Westphalia Road in Upper Marlboro. The subject property is part of a larger assemblage of land known as Woodside Village. Woodside Village was the subject of Zoning Map Amendment A-9973, which rezoned 381.95 acres of land to the R-M Zone, a Comprehensive Design Zone.

The application was approved through the adoption of CR-2-2007, which approved the Westphalia Sector Plan and Sectional Map Amendment. At that time, although the property which constituted Woodside Village consisted of five separate properties owned by five separate individuals, the entire property was under contract to be sold to a single developer, Toll Brothers.

After Woodside Village was rezoned, the Great Recession occurred, and development of the property did not proceed and Toll Brothers' contract to purchase the property assemblage lapsed. Subsequently, two of the properties, containing approximately 160 acres of land, were purchased by the Maryland-National Capital Park and Planning Commission ("M-NCPPC"), effectively separating the land owned by Westphalia Meadows, LLC from the remainder of the land in private ownership.

This application request was filed pursuant to Section 27-197(b) of the Zoning Ordinance, which establishes a procedure for dividing a single approved Basic Plan into two or more separate Basic Plans where changes in circumstances with the approved Basic Plan create practical difficulties for the Applicant which prevent the approval of a Comprehensive Design Plan unless the Basic Plan is amended to separate a specified amount of land area. Such circumstances have occurred in this case with the acquisition of the land by M-NCPPC.

In addition to the instant application, as noted above, a second request to separate the remainder of the land not now owned by M-NCPPC was filed for the balance of the original Woodside Village, consisting of 158.11 acres. That application, A-9973-C-02, as referenced above, has already been approved by the District Council. Thus, that property has now been approved to proceed as a separate Basic Plan. By approving the instant application request, two Basic Plans will be created, one for each of the portions of the land not now in public ownership.

Ms. Allen testified at the hearing before the Examiner. Each of the items listed in the exception was raised before the Examiner. The Examiner indicated that some of the concerns raised by Ms. Allen were not legally relevant to the legal criteria applicable to the application request to amend the basic plan. Ms. Allen was also advised by the People's Zoning Council that later stages of the development review process would address her concerns and allow her an opportunity to further participate in the process. (12/01/2021, Tr., pp. 83-84).

Because the subject property is in a comprehensive design zone, development requires multiple levels of approval. A Basic Plan for the subject property has already been approved. In addition to the Basic Plan, a Comprehensive Design Plan, a Preliminary Plan of Subdivision and a Detailed Site Plan will also require approval. The District Council finds that the exceptions or concerns raised by Ms. Allen will be addressed (if still necessary) in these subsequent development applications, and dispose of the exceptions as follows:⁴

Exception 1:

I am concerned about how the new construction will impact flooding in my neighborhood (Westphalia Woods) which is adjacent to the construction site. I am concerned that construction for an area this large will cause run-off water to run into my neighborhood which has only one exit/entrance. Flooding will make it difficult to get in/out of the neighborhood, especially during a medical emergency. Many reside. My neighborhood's residents are aging and many are considered elderly and/or disabled. Metro Access comes to my neighborhood several times a day to take residents to medical and chemotherapy appointments. I also have concerns about how potential flooding will impact my home. My home at 10009 Howell Drive, sits at the bottom of a hill and is susceptible to flooding. I currently have a commercial storm drain installed at the foot of my garage/driveway to manage flooding and I am current on my flood insurance provided through FEMA.

Response:

A site development concept plan will be required to ensure that stormwater management is provided in conformance with the environmental site design standards required by the State of Maryland and as implemented in Subtitle 32 of the Prince George's County Code. While the portion of the Woodside Village development that was the subject of A-9973-C-02 is located directly across Westphalia Road from the Westphalia Woods subdivision in which Ms. Allen resides, the subject property is not located directly across from that subdivision. Rather, the property is located to the east and topographically lower than the closest part of Westphalia Woods. Thus, not only will the concerns about flooding be addressed with the site development concept plan, due to the topography of the property, water will not drain into the subdivision.

⁴ The District Council may take judicial notice of any evidence contained in the record of any earlier phase of the approval process relating to all or a portion of the same property, including the approval of a preliminary plat of subdivision. PGCC § 27-141. *See also* Rules of Procedure for the Prince George's County District Council: Rule 6(f): Oral Argument and Evidentiary Hearings: The District Council may take administrative notice of facts of general knowledge, technical or scientific facts, laws, ordinances and regulations. It shall give effect to the rules of privileges recognized by law. The District Council may exclude incompetent, irrelevant, immaterial or unduly repetitious evidence.

Exception 2:

The[re] is a family of eagles living on the property slated for construction. Their presence and home (sic) was reported Maryland Department of Natural Resources for monitoring and protection. There are a significant number of deer that graze on the site of the construction. We already have an issue with too many deer darting in the street, especially at night time. I am concerned about my safety while driving because this construction will only lead to the destruction of their home and cause them to dart into or linger in the streets more.

Response:

Environmental issues, including the existence or impact of a development on rare, threatened or endangered species is required during the review of a preliminary plan of subdivision. Thus, this issue will be addressed at a later stage of the process. Also, as noted above, the subject property is not located directly across from the Westphalia Woods subdivision and approximately 70% of the property is an open field which has been farmed for many years.

Exception 3:

The proposed decision to approve a new neighborhood with 350+ homes and residents will lead to changes in the public school system bussing. Currently, the county's centralized bus plan allows for students to walk further and alongside busy streets that are not paved with a sidewalk or guardrails, as long as the student is not walking more than 1 mile. With more residents to the area, I worry that we are creating more dangerous conditions on top of already dangerous conditions. The addition of more county students will widen the walking radius of children and force to walk further on Westphalia Road which is a street known for speedy driving and limited sidewalks. My kids' safety (sic) are at risk.

Response:

Decisions regarding bus routes and bussing policy are outside the scope of the instant application request to amend the Basic Plan. To the extent this exception relates to pedestrian safety, the development of the Woodside Village project will include a review of bicycle and pedestrian facilities and require the construction of road improvements and the installation of sidewalks and crosswalks in appropriate locations.

Exception 4:

Noise pollution is a concern. The increased traffic from the new residents and resulting noise will be an annoyance to say the least. I moved to the area because of the nature and serenity. Now, I feel like that is being stripped from me due to greedy investors/developers.

Response:

Noise pollution or impact from any proposed development will be addressed at the appropriate development review process where warranted. The concern in this case relates to noise from traffic generated by the subdivision. The Westphalia Woods subdivision does not have any through streets and none of the traffic will impact that subdivision unless visiting a home in the subdivision. The traffic will impact existing collector and major collector roads designed for the levels of traffic to be generated by the subdivision.

Exception 5:

Washington Gas Pipeline: Washington Gas is installing a huge gas line that will run from Maryland to Pennsylvania. The gas line will also run behind Westphalia Woods and through the new development. I have environmental concerns (gas leak, water contamination, toxic fumes, etc). I do not believe this developer is going to be transparent about this gas line to future homebuyers and residents. Also, what will the developers do if there is damage to a home or (sic) (gob forbid!) a fatality due to a gas leak?

Response:

The Washington Gas pipeline that is being installed in the area is not located on the subject property. But one of the five parcels originally included in the Woodside Village basic plan was purchased by Washington Gas for the purpose of installing the gas line and then subsequently transferred to the M-NCPPC. The record reflects that the Applicant is aware from meeting with the Westphalia Woods community that the gas line further extends along the eastern edge of that subdivision and understands why the proximity of the gas line would be a concern to that community.

Exception 6:

During the Zoning Hearing, the developer's attorney stated that the homes built would be comparable to the size and lots of the homes in Westphalia Woods. Westphalia Woods homes are on average 4-6 bedroom, 2-3 car garage homes on one or more acre lots. The proposed decision appears to be for attached townhouses. This does not sound comparable to me.

Response:

During the hearing, there was testimony related to Condition 3(e) of the original Basic Plan approved by CR-2-2007 and that the condition was modified by a later Revisory Petition to state that the “CDP shall demonstrate that the frontage lots along Westphalia Road opposite the frontage of the Westphalia Woods subdivision, shall be single-family detached lots in order to ensure compatibility with the character and density of the dwellings in the Westphalia Woods subdivision.” But as discussed at the hearing before the Examiner, this condition applied to the property that was the subject of A-9973-C-02, not to the subject property, as the subject property is not located across Westphalia Road from the Westphalia Woods subdivision. (12/01/2021, Tr., pp. 62-64). The development of the land across from the Westphalia Woods subdivision will be addressed in later stages of the property subject to A-9973-C-02. The development proposed for the subject property is consistent with the types of development approved by the initial Basic Plan and will not exceed the density approved by the initial Basic Plan.

Exception 7:

Traffic is a major concern, especially because there is only one way into my neighborhood. Additional vehicle traffic will make exiting the neighborhood a longer ordeal. Conversely, entering into the neighborhood is anxiety provoking because my neighborhood's entrance is positioned at a bend in the road. Other motorists often speed like race cars on Westphalia Road. It is hard to see around the bend and I am always scared that a speedy driver will rear end me while I am stopped on the street waiting for oncoming traffic to pass me so I can safely make a left turn.

Response:

Two traffic reports were included in the record addressing the requirements related to traffic applicable to approval of a Basic Plan. Exhibits 21 and 35. Expert testimony was also provided from Mr. Michael Lenhart. (12/01/2021, Tr., pp. 22-37). Mr. Lenhart testified that the application satisfies the requirements of Section 27-195(b)(1)(C) of the Zoning Ordinance applicable to transportation. Testimony indicated that Westphalia Road would be improved as part of the frontage improvements required in conjunction with the development of the subject property. Testimony from Mr. Lenhart also indicated that there are horizontal alignment issues with Westphalia Road that will be addressed with the development of the properties fronting it. Finally, Mr. Lenhart testified that an additional full traffic study would be prepared and reviewed at the time of the approval of the preliminary plan of subdivision. There is substantial evidence in the record that the requirements of Section 27-195(b)(1)(C) have been satisfied and that the additional concerns raised by Ms. Allen regarding transportation issues will be addressed at future stages of the development review process.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED:

SECTION 1. The application request to amend the Woodside Village Basic Plan, originally including approximately 381.95 acres of land (with multiple owners) in the R-M (Residential Medium Development) and M-I-O (Military Installation Overlay) Zones, to separate approximately 63.30-acres (consisting of Parcel 14, the A. Bean property), and create a separate Basic Plan, pursuant to Section 27-197(b) of the Zoning Ordinance, located on the south side of Westphalia Road and west of Ritchie Marlboro Road, in Council District 6, is APPROVED.

Approval of this amendment, A-9973-C-01, to the Basic Plan, is subject to the following conditions:

1. The following development data and conditions of approval serve as limitations on the land use types, densities, and intensities, and shall become a part of the approved Basic Plan:

Total Area	63.30 acres
Land in the 100-year floodplain*	0.0 acres
Adjusted gross area: (63.3 acres less half the floodplain)	63.30 acres
Density permitted under the Residential Medium Zone	3.6–5.8 dwelling units/acre
Base residential density (3.6 du/ac)	228 dwelling units
Maximum residential density (5.7 du/ac)	367 dwelling units

Proposed Land Use Types and Quantities	
Residential: 63.30 gross acres @ 3.6-5.6 du/ac	228- 354 dwelling units
Number of the units above the base density:	126 dwelling units
Density proposed in the Residential Medium Zone	5.6 dwelling units/acre
Permanent open space: (33 percent of original site area) (Includes environmental, recreational, and HOA areas)	20.52 acres

2. Prior to certification of the Basic Plan, add bearings and distances for the boundaries of the Subject Property (on Sheet 2) and for the A-9973 Basic Plan area (on Sheet 1).

3. Internal streets and shared-use paths are to follow the 2009 *Approved Countywide Master Plan of Transportation* Complete Streets Policies and Principles and provide multimodal transportation.
4. The following shall be required as part of the Comprehensive Design Plan (CDP) submittal package:
 - a. Provide a description of the type, amount, and general location of any recreational facilities on the site, including provision of private open space and recreational facilities to serve development on all portions of the Subject Property.
 - b. The Transportation Planning staff shall review the list of significant internal access points as proposed by the applicant along master plan roadways, including intersections of those roadways within the site. This list of intersections shall receive a detailed adequacy study at the time of Preliminary Plan of Subdivision. The adequacy study shall consider appropriate traffic control, as well as the need for exclusive turn lanes at each location.
 - c. The applicant, and the applicant's heirs, successors and/or assignees shall agree to make a monetary contribution or provide in-kind services for the development, operation, and maintenance of the central park. The recreational facilities packages shall be reviewed and approved by the Prince George's County Department of Parks and Recreation (DPR) prior to CDP approval. The total value of the monetary contribution (or in-kind services) for development, operation, and maintenance of the central park shall be \$3,500 per dwelling unit in 2006 dollars. The Applicant may make a contribution into the Park Club or provide an equivalent amount of recreational facilities. The value of the recreational facilities shall be reviewed and approved by DPR staff. Monetary contributions may be used for the design, construction, operation, and maintenance of the recreational facilities in the central park and/or the other parks that will serve the Westphalia study area. The Park Club shall be established and administered by DPR.
 - d. Submit a signed Natural Resources Inventory (NRI) with the CDP. All subsequent Plan submittals shall clearly show the Patuxent River Primary Management Area, as defined in Section 24-101(b)(10) of the Prince George's County Subdivision Regulations, and as shown on the signed NRI.

- e. Demonstrate that the Primary Management Area (PMA) has been preserved to the fullest extent possible. Impacts to the PMA shall be minimized by making all necessary road crossings perpendicular to the streams and by using existing road crossings to the extent possible.
 - f. Submit a required Type I Tree Conservation Plan (TCPI). The TCPI shall:
 - (1) Focus on the creation and/or conservation/preservation of contiguous woodland.
 - (2) Mitigate woodland cleared within the Primary Management Area's preservation area on-site at a ratio of 1:1, with the exception of impacts caused by Master Pan roads, which shall be mitigated 1:25. This Note shall also be placed on all TCPs.
 - (3) Focus afforestation in currently open areas within the Primary Management Area and areas adjacent to them. Tree planting should be concentrated in areas of wetland buffers and stream buffers, which are priority areas for afforestation and the creation of contiguous woodland.
 - (4) Prohibit woodland conservation on all residential lots.
 - g. Submit an exhibit showing areas where Marlboro Clay occurs on-site.
5. The following Comprehensive Design Plan (CDP) considerations shall be addressed and incorporated into the CDP guidelines:
- a. Traffic calming measures are to be provided within the internal roadway network, including but not limited to, curb extension, mini traffic circles, chicanes, neckdowns and narrow traffic lanes, speed tables, elevated pedestrian crossings, and roadway striping and markings;
 - b. Shared-use paths, consistent with the 2012 AASHTO Guide for the Development of Bicycle Facilities (or later edition), provided to extend beyond the termini of internal culs-de-sac;
 - c. Shared-lane roadway markings (sharrows) provided along internal streets to create a neighborhood bicycle boulevard.

6. At the time of Preliminary Plan of Subdivision, and/or prior to the first Plat of Subdivision, the Applicant shall:
 - a. Submit a Hydraulic Planning Analysis to WSSC to address access to adequate water storage facilities and water service to be approved by the WSSC to support the fire flow demands required to serve all site development.
 - b. Submit a letter of justification for all proposed Primary Management Area impacts, in the event disturbances are unavoidable.
 - c. Submit three original, executed agreements for participation in the Park Club to the Prince George's County Department of Parks and Recreation (DPR) for their review and approval, eight weeks prior to a submission of a final Plat of Subdivision. Upon approval by DPR, the agreement shall be recorded among the Prince George's County Land Records, Upper Marlboro, Maryland.

SECTION 2. Use of the subject property shall be subject to all requirements in the applicable zones and to the requirements in the conditions herein.

SECTION 3. Failure to comply with any stated condition of the Basic Plan, as amended, shall constitute a zoning violation and shall constitute sufficient grounds for the District Council to annul the Basic Plan, as amended and conditionally approved or to revoke use and occupancy permits or to institute appropriate civil or criminal proceedings, and/or to take any other action deemed necessary to obtain compliance.

SECTION 4. The Ordinance shall become effective upon enactment.

ENACTED on April 11, 2022, by the following vote:

In Favor: Council Members Burroughs, Davis, Dernoga, Franklin, Glaros, Harrison, Ivey, Streeter, Taveras, and Turner.

Opposed:

Abstained:

Absent: Council Member Hawkins.

Vote: 10-0.

COUNTY COUNCIL OF PRINCE GEORGE'S
COUNTY, MARYLAND, SITTING AS THE
DISTRICT COUNCIL FOR THAT PART OF THE
MARYLAND-WASHINGTON REGIONAL
DISTRICT IN PRINCE GEORGE'S COUNTY,
MARYLAND

By: _____
Calvin S. Hawkins, II, Chair

ATTEST:

Donna J. Brown
Clerk of the Council