



TOWN OF BURKITTVILLE

P.O. Box 485
Burkittsville, MD 21718

TO: Planning and Zoning Commission
FROM: Paul Goldstein, Zoning Administrator
DATE: 4/13/2022
RE: Guyton Farm Subdivision Application: 22-01

Recommendation

The Guyton Farm Preliminary Plat of Subdivision should be **approved, subject to the following conditions**, as further described in this report. These conditions must be addressed prior to final plat approval:

- If SMC Real Estate, LLC's (the "Applicant") proposed dedication of land along E. Main Street is accepted and/or required by the Burkittsville Planning and Zoning Commission ("P&Z"), the Applicant must furnish an analysis of the existing right-of-way street infrastructure (such as curb, gutter, sidewalk, and driveway apron) in the area to be dedicated, provide an improvement plan to make this infrastructure compliant with applicable codes, and offer any necessary commitments to the Town related to maintenance and liability.
- Unless the Applicant can demonstrate that unfettered access is critical to the farm operation, the Applicant must update the note on any final plat to further limit the scope of the access easement across the proposed residential lot (the "Lot"), such as prohibiting heavy farm machinery or heavy truck use related to the farming operation. If an associated deed of easement has been or is anticipated to be recorded, it should be updated to reflect any limitations.

Additionally, as further discussed in the report, the Applicant should furnish additional information for P&Z consideration either prior to or at the P&Z hearing on the preliminary plat:

- The intent of retaining the 50-foot-wide span between the Farm and E. Main Street and how this is consistent with the Comprehensive Plan.
- The purpose and consequence of the proposed land dedication for public use along E. Main Street.
- The current and anticipated use of the access across the Lot as it relates to the easement shown on the Plat.

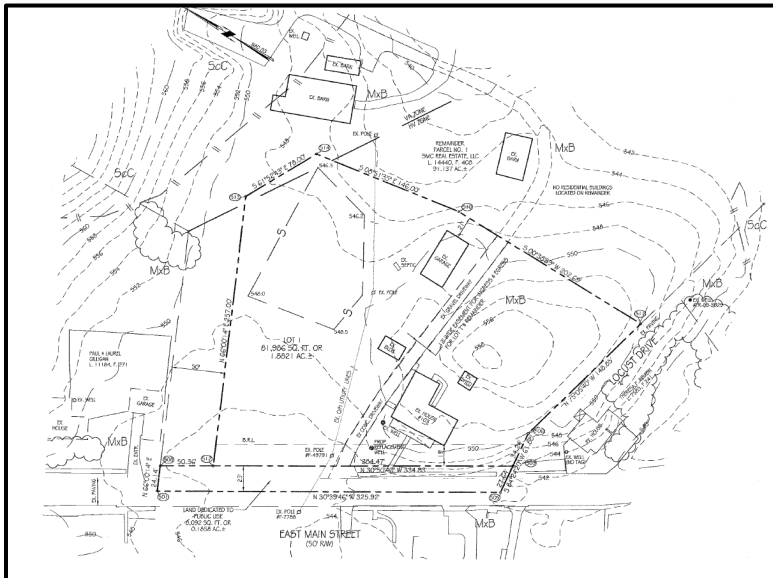
I. Proposal

The Applicant proposes to separate a single lot from an existing approximately 93.2-acre farm. The Lot would contain an existing historic home, located at 103 E. Main Street, and outbuildings. A dairy barn and bank barn would remain with the Farm. The new property would be 1.88 acres in size, or 81,986

square feet. The proposal also would dedicate about 1.86 acres, or 8,092 square feet, of Right-of-Way (ROW) to the Town for public use along E. Main Street. A 50-foot strip of land along the Lot's northwestern boundary extends from E. Main Street to the Farm. No change in use, improvements, or modifications are proposed as part of the subdivision application for the Lot or Farm.



(Image from Google Streetview; Image capture from 2013)



Application Plat

II. Procedure

A subdivision review in Burkittsville is generally composed of two principal steps. First, the Applicant has submitted a preliminary plat for review by P&Z.¹ At a public hearing, P&Z shall approve or disapprove the preliminary plat, or may approve it subject to specific conditions, changes, or modifications. Second, if approved, the Applicant must prepare and submit to P&Z a final plat that

¹ Note that the submitted plat is inaccurately labeled “Combined Preliminary/Final Plat.”

substantially conforms to the preliminary plat (subject to any conditions of approval). Since the possibility remains that the Frederick County Health Department could have feedback that is relevant to the subdivision as proposed, it may be more efficient to receive the agency's analysis prior to scheduling a hearing on a final plat.

III. Background

The Applicant purchased the property in January, 2021. The existing home is identified as a contributing building to the National Register of Historic Places, and certain outbuildings and the farm more generally are referenced in the nomination form.²

A rural legacy easement signed between Wayne and Patricia Guyton and the County Commissioners of Frederick County, completed in 2009, applies to a larger expanse of property, inclusive of the Farm, totaling 210.665 acres. By letter dated October 11, 2021, Administrator Ann Bradley wrote that the Frederick County Agricultural Preservation Advisory Board and Maryland Rural Legacy staff determined that the proposed subdivision was consistent with the terms of the easement. She further wrote that the Deed of Easements "states that the lots should not exceed two (2) acres, or the minimum lot size allowed by zoning and other applicable development regulations at the time of the subdivision. Because the proposed lot is located within the Town of Burkittsville, the Rural Legacy program defers to the Town as to the requirements for the final acreage of the lot."

IV. Property Description

The farm property is located north of E. Main Street, straddles Burkittsville's Historic Village (HV) and Agricultural (Ag) Districts, as well as both Burkittsville and Frederick County jurisdictions. The proposed Lot holding the existing historic home would be located entirely within Burkittsville and mostly contained within the HV District. In a northern corner of the Lot, the property extends slightly into the Ag District to incorporate certain infrastructure within the boundaries of the Lot.

According to a nomination application to the National Register of Historic Places, the historic home is the onetime Burkitt House built in 1807. To the northwest of the house is a one and a half story milkhouse, and an old stone slave quarters is located to the east of the house, both of which would be located on the Lot. The home is currently occupied by a tenant. There is an existing driveway that is in part paved and other parts gravel. The driveway extends from E. Main Street and passes alongside the home and onto the Farm.

V. Analysis

The Town Ordinance requires P&Z to conduct the following analysis in a subdivision review:

18.13: The preliminary plat will be reviewed for conformity with the Comprehensive Plan, the Town zoning ordinance, and other applicable provisions, and the principles, standards, and requirements hereinafter set forth.

1) *Comprehensive Plan*

The Burkittsville Comprehensive Plan 2015-2035 (the "Plan") provides a "framework for making consistent decisions" and expresses values observed in the public planning process. It is not a

² <https://mht.maryland.gov/nr/NRDetail.aspx?NRID=350>.

“development ordinance”, but provides “direction and guidance for public policy and decision making for the Town over the next 20 years.”

The Plan contains several key principals directed to maintaining the Town’s character as a Rural Historic Village, agricultural uses, and scenic viewsheds.

Goal 1: Preserve Burkittsville's Integrity as a Rural Historic Village.

Objective 1: Maintain the Town's view shed of surrounding farmland and mountain ridge.

Policy: Coordinate with County and State authorities to make maximum use of existing programs to purchase agricultural, conservation, and scenic easements, and to actively encourage other voluntary measures by local land owners to conserve open space and preserve nearby agricultural resources both within and outside the Corporate Limits of the Town. (Page 9).

Goal 2: Preserve Burkittsville's Quiet Rural Character and Quality of Life.

Objective 1: Minimize changes in current land use.

Policy: Support land use initiatives and conservation processes to preserve the Town's traditional rural character.

Policy: Maintain subdivision and zoning ordinances that assist in maintaining the Town's traditional rural character.

Policy: Establish an agricultural zoning district within the Town to preserve Burkittsville’s agricultural heritage. (Page 10).

Resource Conservation: Scenic Views & View Sheds

Scenic views of South Mountain and the adjacent agricultural lands are an asset to the Town of Burkittsville; in fact, many citizens would designate the scenic views and view sheds as Burkittsville’s most important asset. In instances where development greatly alters or eliminates the existing view sheds, development will not be permitted by the Town. Development within the Historic Village (HV) district should not be constructed in a manner where existing views to the adjacent agricultural lands and South Mountain are obstructed. Within the Village Agricultural (VA) district, development that greatly alters or eliminates the existing scenic views or view sheds from the HV district will not be permitted by the Town. (Page 15).

Land Use: Agricultural

The land surrounding the Historic Village (HV) district within the Town predominantly consists of agricultural uses. Three (3) residential structures are located within this area, which directly support existing agricultural uses. These agricultural lands are almost exclusively observed within the Town’s Village Agricultural (VA) district, formerly the Rural Residential (RR) district. Agricultural land uses encompass approximately 236.2 acres of land within the Town, or about 81.6% of the land within the Town. The zoning district’s naming designation was changed to specify use for agricultural purposes and emphasize the Town’s commitment to preserving agricultural land within and directly adjacent to the Town. (Page 17).

Historic preservation, and the Town’s historic recognition by the National Register of Historic Places, is valued in the Plan:

Resource Conservation: Historic Resources

The entire Town of Burkittsville was listed as a historic place by the National Register of Historic Places on November 20, 1975. The Town holds historic value for its role in the American Civil War, as well as the layers of architecture preserved within this historic community, as outlined in Section 2 of this document. Development that disrupts the historic character of the community-at-large will not be permitted by the Town, especially within the Historic Village (HV) district. The

Town must establish restrictions on the types of development permitted, as well as the materials used for construction and renovation of primary and accessory structures within the Town. Preservation of the Town's historic character has always been a priority set forth by the Town. This tradition must continue in order for Burkittsville to preserve the Town's identity and value as a historic community. (Pages 15-16).

Lastly, the Plan also notes concerns regarding the operation of Main Street:

Transportation: Main Street

The Town of Burkittsville is a "crossroads community", where two (2) main roads intersect. Main Street, an approximately one (1) mile stretch of Town-maintained road, provides an east-west connection across Town, connecting eastern and western portions of Gapland Road, maintained by Frederick County outside of the corporate limits of the Town. Main Street is a collector road within the Town. Gapland Road, and subsequently Main Street, is used as a connection by many commuters to travel between areas of Frederick County and Washington County. Heavy use of Main Street by vehicle traffic carried by Gapland Road over the years has resulted in a great deal of degradation to the roadway. There are dozens of instances of severe asphalt cracking, pot holes, and even sinkholes caused by storm drain malfunctions along Main Street. Main Street will need milling and repaving in the foreseeable future, and should be planned as part of any plans for overall streetscape project for Main Street. (Page 23).

Based on a review of the application, the proposal generally conforms with the Plan's priorities, subject to the need for additional information identified below.

The subdivision should result in little impact on the Town's historic or rural character. The proposal would divide an existing historic home from the Farm. No changes to the residential nature of the home or to the operations of the Farm are identified in the application, nor does the application directly suggest new construction. The Lot would be one of the larger sized residential properties in the HV District. Nonetheless, the 1.8-acre size would be compliant with the Ordinance's minimum lot size requirement (one acre in the HV District), continue to front on E. Main Street, and has existing driveway providing access to the home.

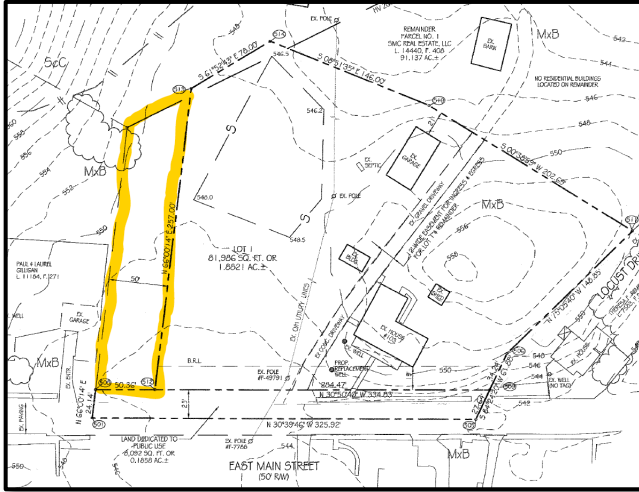
The rural legacy easement would continue to require certain land use proposals for the Farm (and the Lot) to proceed before the Frederick County Agricultural Preservation Advisory Board and the Maryland Rural Legacy staff. Whether any new residential construction can occur on the Farm pursuant to the Deed of Easement with the County is outside the scope of this review. Development within the Town's jurisdiction would still remain subject to local ordinances.

Based on guidance from the County's Historic Preservation Planner, the proposed subdivision should have no impact on the National Register for Historic Designation since no new construction, additions, or modifications to historic structures is proposed.

Nevertheless, there are outstanding issues that the Applicant should address as part of either a supplemental filing or at the time of the hearing. These items largely relate to the use of E. Main Street, which the Plan has identified as a stressed roadway:

- 1) *The 50-foot-wide strip of land to the northwest of the Lot connecting the Farm to E. Main Street. The proposal would retain a 50-foot-wide strip of land to the Farm from E. Main Street. The area is currently green space and there is no existing vehicular infrastructure. The Ordinance provides that the minimum right of way for a new street, alley, or easements for a single-family home is 50*

feet in width, although additional width could be deemed necessary. There is no specific standard in the Ordinance for roads widths serving farm operations. The application does not propose to create a new vehicular access, but the retention of this space leads to speculation that such a proposal could be contemplated in the future.



Creating a new vehicular access to E. Main Street implicates policy concerns found in the Plan, including accommodating additional intensity on the existing road, impact on the Town’s Rural Historic Village character, and the effect on the quality of life for neighboring properties. The Ordinance addresses street connections as part of subdivision review:

20.10(b): Because of the existing narrow streets in the Historic Village District and the fact that homes encroach upon right-of-way normally required for new streets, the Planning and Zoning Commission shall have the authority to determine whether a proposed subdivision in the HV District can utilize a particular street for access and to what degree improvements must be made to the existing street that is proposed for such use.

While no new vehicular access points are proposed as part of the subdivision proposal, the application intentionally creates a subdivision Lot shape that retains a 50-foot-wide span connecting E. Main Street to the Farm. There is no requirement that the shape of the Lot must be as proposed in the plat. As a result, P&Z could further engage the Applicant on altering the Lot shape or placing limitations on the creation of any future vehicular access from E. Main Street as conditions of subdivision approval. It is also important to better understand the Applicant’s intent in retaining this connection for the Farm.

But in the absence of such measures, it is worth noting that any future street or driveway or curb cut request would at a minimum still require a Town permit.³ In this case, a permit request would need both an administrative review (of a designated Town Inspector) and would be subject, to some degree, to Mayor and Council approval⁴:

Section 7.02 Permit Required

³ A curb cut is a ramp graded down from the sidewalk’s top level to the surface of the adjoining street.

⁴ If a new access was proposed as part of a future subdivision on the Farm property, P&Z would review any such proposal.

It shall be unlawful for any person to begin to construct, reconstruct, repair, alter, grade, dig up, cut, break, destroy or grade any sidewalk, curb, curb-cut, driveway, pavement, culvert, or drain pipe, ditch, tree, traffic control device, street light, utility pole, or other facility or area within the public streets without obtaining a permit from the inspector as provided in this Article.

...

Section 7.06 Standards for Issuance of Permit

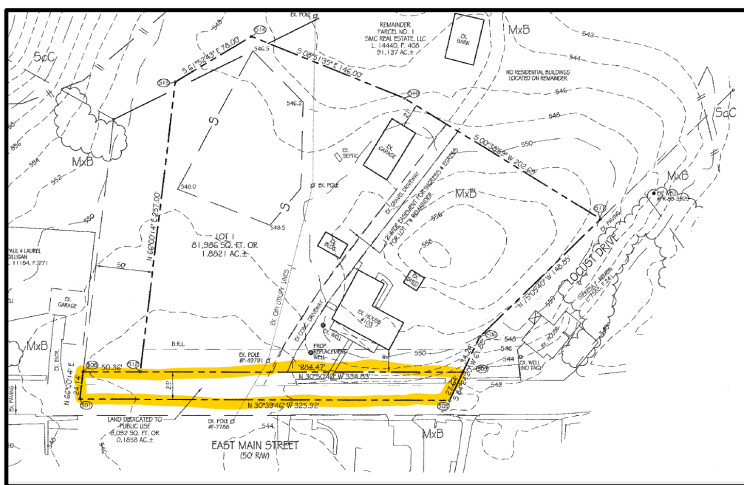
The Inspector shall issue a permit hereunder when he finds:

- a. That the work shall be done according to the standard specifications of the Town, as may be established from time to time by the Mayor and Council, for public work of like character.*
- b. That the operation will not unreasonably interfere with vehicular and pedestrian traffic, the demand and necessity for parking spaces, and the means of egress to and from the property affected and adjacent properties.*
- c. That the health, welfare, and safety of the public will not be unreasonably impaired.*
- d. That the plans for the proposed operation have been approved by the Mayor and Council to whom they shall be forwarded by the Inspector within a reasonable time after receipt thereof.*

While the requirement for a permit may provide some comfort to residents concerned about the possibility of a new vehicular access, the Applicant should directly address the purpose of retaining the 50-foot-wide span while acknowledging the concerns that it raises.

- 2) *Dedication of 25 feet of right-of-way to the Town, including the gutter, curb, and sidewalk.*

The Applicant proposes to dedicate ROW of 8.092 square feet, or .1858 acres, along E. Main Street for public use. A commonly held understanding is that property ownership in Burkittsville extends to the middle of the street right-of-way, notwithstanding how the Town of Burkittsville has control of all public ways (including all streets, avenues, roads, highways, public thoroughfares, lanes and alleys) per the Town Charter. Based on guidance from a Planning Director of a neighboring municipality, it is typical for Applicants to dedicate half of the right-of-way as part of subdivision proposals, as well as to provide any improvements to street infrastructure as part of the dedication. Such infrastructure includes curb, gutter, sidewalk, and driveway apron.



The Applicant should provide additional information on the current state of the infrastructure, including information concerning the missing sidewalk to the northwest of the driveway apron along E. Main Street. Concerning the sidewalk, the Ordinance provides that:

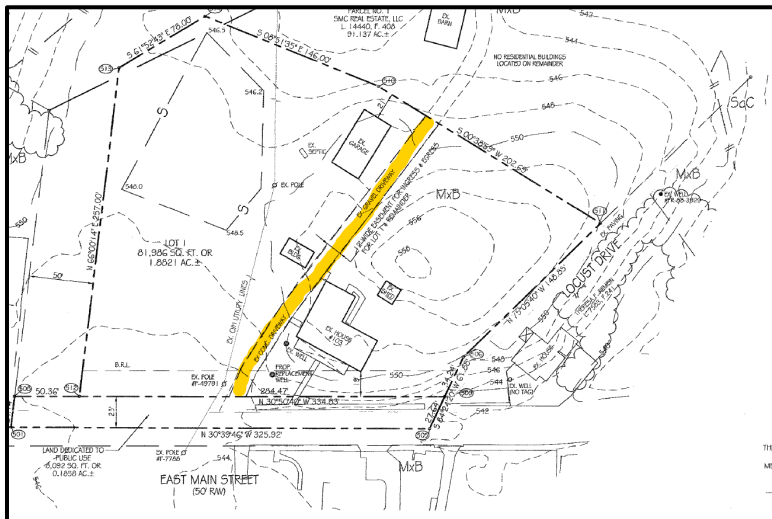
14.20(c) Nothing in this article or section shall compel a property owner to erect or construct a sidewalk where one does not exist at the effective date of this ordinance unless such sidewalk improvements are made part of any future public works agreements entered into between the property owner and the Mayor and Council or as part of a site plan approval, final plat approval or as a condition of approval for a zoning certificate.

In other words, this could be an opportunity for the Town to require the installation of a sidewalk extension if desired.

If P&Z accepts or requires the land dedication, the Applicant should provide an improvement plan for any substandard infrastructure as necessary. Such a plan should also coordinate, if possible, with any applicable guidance provided in the Town of Burkittsville Green Streets and Stormwater Master Plan or any other streetscape projects. The Applicant should also address issues such as future maintenance and liability for the infrastructure to provide a clear understanding of the responsibilities that result from the dedication.

3) Easement across the residential lot

The proposal shows an easement crossing the Lot. A note on the plat indicates that it is a “12’ wide easement for ingress and egress for Lot 1 & Remainder.”



The Applicant should describe the current use of the driveway and how much vehicular traffic servicing the Farm is anticipated in the future. To date, it is not clear if an easement exists in any recorded deed or if this is a newly proposed easement shown in the plat as part of the subdivision. On the plat, the easement could be further clarified to limit, for example, any heavy farm equipment or heavy truck passage to/from E. Main Street. Such a restriction could further conserve E. Main Street while also benefiting the use and enjoyment of the Lot by future owners. The Applicant should address the consequence of any such restrictions on farm operations.

2) Zoning Ordinance

The application appears to be generally compliant with the Zoning Ordinance, although the Applicant is encouraged to supply any missing information noted in this report. The following chart provides an analysis of the zoning compliance:

Ordinance	Standard	Proposal	Compliance
<i>HV District Lot Standards⁵</i>			
9.3(a)	Minimum lot width must be at least 60 feet	Approximately 284 feet width	Complies
9.3(b)	Minimum front setback	No change proposed to current building footprint (the plat indicates the home is 19 feet from the E. Main Street right of way and is located consistent with a building restriction line). The home is at least as near to the E. Main Street as the home on the adjacent property to the northwest.	Not applicable/complies
9.3(c)	Minimum of 1 acre for each dwelling unit	Approximately 1.88 acres	Complies
9.3(d)	Minimum side yard of zero feet	No change proposed to current building footprint, which has existing side yards exceeding zero feet	Not applicable/complies
9.3(e)	Minimum rear yard of 20 feet	No change proposed to current building footprint. The dwelling is approximately 150 feet from the rear property line. The Plat shows the most distant accessory building as 21 feet from the rear property line. Note that the Ordinance provides additional allowances for accessory buildings to locate in yards.	Not applicable/complies
<i>Design Standards</i>			
19.01	50-year flood	A review of the FEMA 100-year floodplain map shows the Lot outside any 100-year flood area (although it is unclear if there could be a flood area within the Farm)	Complies
19.10(a)-(m)	Street design standards	No new streets are proposed	Not applicable/complies

⁵ A small portion of the Lot is located in the Ag District to capture certain infrastructure within the boundaries of the Lot, and therefore is being reviewed as a de minimis amount not relevant to meeting the lot requirements.

19.20	Building lines shall be shown on the plat	The plat shows a building restriction line along E. Main Street	Complies
19.30	Easements shall be provided for utilities on all lot lines other than those abutting a street right of way line and shall be centered on rear or side lot lines.	The plat provides the following note: "A 6-foot drainage and utility easement is reserved along all lot lines."	Complies
19.40	Lot Design Standards	Guidance is provided	Complies
<i>Street Improvements</i>			
20.20	Water facilities. Every lot in a subdivision shall be provided with an individual private water supply.	The Lot has an existing well, and the plat reflects the possibility of drilling a new well location. Wells will be reviewed the County's Health Department. It appears that there is also an existing well on the Farm, and presumably the County will also examine its adequacy.	Complies in part, not enough information in part. The County will review the adequacy of existing wells.
20.21	Septic/Waste Facilities Every lot in a subdivision shall be provided with a complete sanitary septic system for disposal of waste. Sand mound septic systems shall not be permitted.	The Lot has an existing septic facility. It is not clear if there is an additional septic facility to service the Farm following the creation of the Lot.	Complies in part, not enough information in part. The Applicant should clarify the septic condition for the Farm. Any new construction, development, or change of use on the Farm (such as repurposing existing outbuildings for a different use) could require the installation of a septic system and will require County Health Department review.
20.22-20.24	Drainage, Topsoil, Street Signs	No changes proposed	Not applicable/complies
20.25	Monuments and Pipes	The plat shows iron pin sets in strategic locations on the property.	The Applicant should address whether any concrete monuments marking subdivision boundaries are required.
20.26	Street lighting	The Applicant proposes no changes to existing conditions	Not applicable/complies

20.27	Utility Lines. All utility lines and cables must be installed and buried below grade. No overhead or above ground utility lines, cables, wires or poles shall be permitted.	The Applicant proposes no changes to existing conditions.	Not applicable/complies Burying existing utility lines would be onerous.
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If the Town accepts or requires the Applicant to upgrade any existing infrastructure as part of the dedication of ROW, the following procedures should guide the acceptance:

20.30 Improvement Plans: Plans for improvements shall be prepared by a registered licensed professional engineer for review by the appropriate public authorities prior to construction. Such plans shall be sufficient to show the proposed location, sizes, type, grades, and design features of each facility ...

20.40(3) Procedure: Prior to the filing of a final plat which shows thereon any new streets, or whose area is served by public improvements required to be supplied by the developer, a certification of the cost of such streets and/or improvements shall be filed by an authorized agent of the Town with the Town Council after his notification of the intent of the developer. Such cost estimate shall be transmitted to the developer in person, mail, or by agent with instructions on procedure for filing such bond. Upon receipt of a bond, it shall be approved by Legal Counsel to the Town Council and thereafter the Planning and Zoning Commission shall be notified in writing of the acceptance and filing of the bond or guarantee.

Lastly, the Plat meets the requirements of Section 9.21.

3) *Other Applicable Provisions (and agency review)*

The Applicant’s request for an exception to the Forest Resource Ordinance was approved by Frederick County on April 11, 2022.

The Frederick County Health Department has received the Applicant’s subdivision proposal and will conduct a review in the next several weeks related to the adequacy and compliance of the existing wells and septic systems. The plat identifies a possible replacement well location on the Lot. The department must sign the final plat prior to recordation.

VI. Neighbor Outreach

The Applicant has been encouraged to discuss the proposal with neighboring property owners.