

At a regular meeting of the Caroline County Planning Commission, held Wednesday, November 18, 2009, in the Community Services Center, located at 17202 Richmond Turnpike, Milford, Virginia, at the hour of 7:00 p.m.

**Present**

Pete Davis, Chairman  
Milton Bush, Vice-Chairman  
Joseph Brown  
Ray Piland  
Leon Smith

**Also Present**

Michael A. Finchum, Director of Planning & Community Development  
George Wieber, Community Development Administrator  
Lisa Zech, Planning & Zoning Technician  
Angeline Pitts, Planner

**1. CALL REGULAR MEETING TO ORDER**

Chairman Davis called the regular meeting to order at 7:00 p.m. Chairman Davis asked that the agenda be amended to have Public Hearing Agenda Item #9, RZ-04-2009, Davis, Norman Lee c/o Juan Young Owner/Applicant precede Agenda Item #8, TXT-07-2009.

*Dr. Bush moved and Mr. Piland seconded to amend the agenda and have the Public Hearing for RZ-04-2009, Davis, Norman Lee c/o Juan Young precede the Public Hearing on TXT-07-2009.*

*Voting yea: Brown, Bush, Davis, Piland, Smith.*

**2. APPROVAL OF MINUTES (OCTOBER 21, 2009 AND NOVEMBER 2, 2009)**

*Dr. Bush moved and Mr. Piland seconded to approve the minutes of October 21, 2009 as presented.*

*Voting yea: Brown, Bush, Davis, Piland, Smith.*

*Dr. Bush moved and Mr. Piland seconded to approve the minutes of November 2, 2009 as presented.*

*Voting yea: Brown, Bush, Davis, Piland, Smith.*

**SUBDIVISIONS**

**3. SB-02-2009 - Ladysmith Village - Section 3-A - Preliminary Plat**

Angeline Pitts presented the following staff report:

**DISCUSSION**

The applicant is requesting Preliminary Plat approval for 15 townhouse lots within Section 3, designated at Section 3A. The lots will front an existing road built previously and a portion of Day Lily Drive will be constructed to access these lots. This road will be extended with the platting of Section 3 of Ladysmith Village.

The lots are in conformance with the overall design and plan for the community and the plats have been revised to ensure conformance with the Ordinance requirements. At this time, there have been additional agency comments on the site plans, but none of those comments impact the layout of the lots or the entrance to Day Lily Drive as shown on the plats.

**STAFF RECOMMENDATION**

Staff believes that the plats are in conformance with the requirements of the Ordinance and does not feel that there will be significant changes to the plats when the construction plans are completed. As such, staff recommends that the Planning Commission approve the Preliminary Plat for Section 3A of Ladysmith Village.

*Dr. Bush moved and Mr. Brown seconded to approve SB-02-2009, Ladysmith Village, Section 3-A, Preliminary Plat as presented.*

*Voting yea: Brown, Bush, Davis, Piland, Smith.*

**4. SB-03-2009 - Ladysmith Village - Section 3-B - Preliminary Plat**

Angeline Pitts presented the following staff report:

**DISCUSSION**

The applicant is requesting Preliminary Plat approval for 9 townhouse lots within Section 3, designated at Section 3B. The lots will front existing Camellia Drive and be accessed from existing Alley K and Alley H3, which will be constructed with these lots.

The lots are in conformance with the overall design and plan for the community and the plats have been revised to ensure conformance with the Ordinance requirements. At this time, there have been additional agency comments on the site plans, but none of those comments impact the layout of the lots or the alleyway as shown on the plats.

**STAFF RECOMMENDATION**

Staff believes that the plats are in conformance with the requirements of the Ordinance and does not feel that there will be significant changes to the plats when the construction plans are completed. As such, staff recommends that the Planning Commission approve the Preliminary Plat for Section 3B of Ladysmith Village.

*Dr. Bush moved and Mr. Brown seconded to approve SB-03-2009, Ladysmith Village, Section 3-B, Preliminary Plat as presented.*

*Voting yea: Brown, Bush, Davis, Piland, Smith.*

**5. Ladysmith Manor - Extension of Subdivision Approval**

Angeline Pitts presented the following staff report:

**DISCUSSION**

The Planning Commission approved the Ladysmith Manor subdivision plan in August, 2008 for 25 lots and three roads to serve those lots and then extended the approval for an additional 12 months in February, 2009. At this time, the applicant is requesting an additional extension to the approval of the final plats due to the market conditions. The request is for approval to extend until February, 2011.

**STAFF RECOMMENDATION**

At this time, staff recommends approval of the extension. No changes to the approved subdivision are proposed and the regulations have not changed to require any alteration of the previously approved plats.

*Mr. Brown moved and Dr. Bush seconded to approve Ladysmith Manor's request for extension of subdivision approval until February 2011.*

*Voting yea: Brown, Bush, Davis, Piland, Smith.*

#### **UNFINISHED BUSINESS**

6. **RZ-06-2009 – Brookwood, LLC, Owner/Applicant:** Request a Rezoning from R-1, Residential (with a density of one to four dwelling units per acre) to B-1, Business (with no specified density) on tax map #56-A-145 and on a portion of tax map #56-A-140 consisting of 2.108 acres, more or less. This property is located on the west side of Route 301 (Richmond Turnpike.), and along the west side of Route 695 (Edwards Road). Mattaponi Voting District. Proposed Use: Business. The 2006 – 2026 Comprehensive Plan identifies this area as being located within the Bowling Green/Milford Community Plan designated as Planned Commercial and Planned Development.

Angeline Pitts presented the following staff report:

#### **Discussion**

The applicant is requesting to rezone two acres of property adjacent to the existing Brookwood residential development to B-1, business. The applicant would like to develop the property for various small businesses. Due to the connection to public water and sewer, the business development will decrease the final number of residential connections available.

The applicant is proffering substantial conformance with the GDP, as revised, to exclude certain businesses that are allowed in the B-1 zone, and a landscaped buffer along the property lines that abut residential properties. At the time of this, architectural standards have been proffered.

Including a business component to the residential development is in keeping with the concept of a walkable community and a planned residential designation and is in conformance with the Comprehensive Plan. However, it is important to ensure that this parcel does not compete with the commercial center of Bowling Green. The Town of Bowling Green is designated in the Comprehensive Plan as the commercial center for the area and while business in this area is allowed, large scale business should be avoided as a means of remaining consistent with the overall plan for the area.

The Town Council for the Town of Bowling Green discussed this project at their most recent meeting and has submitted a letter, included with this staff report, expressing concern over the creation of a competing commercial center.

Glenn McDearmon, Vice-Mayor of Town of Bowling Green, stated that they felt it is most appropriate for both the Town and the County to grow and prosper as places to live, work and conduct thriving businesses. He said they fully support growth that is planned, managed and provides for the sustainability of communities. He said they believe that the Bowling Green/Milford Sub-area Planning Process has created such a growth area in Caroline County and in and around the Town and they support that process and the on-going nature of that process.

He said that they feel that the proposed rezoning would create a new commercial area that is not currently planned or permitted and this new commercial area would conflict with the intent expressed in the Sub-area Plan, which is to have a primary growth area in and around Bowling Green and to have a strong commercial center within that area. He said in addition, they note that in an era of stagnant market growth, the creation of a new commercial center would be detrimental to the sustainability of existing commercial areas in and around the Town and its environs.

He said it is their understanding that the Bowling Green/Milford Sub-area Committee did not support the type or location of development that is being proposed and, therefore, the Town expresses deep concern over the proposed rezoning.

He said the Town is attempting to encourage investment by property owners in revitalization efforts; however, with the dilution of an already limited commercial market that would be caused by the creation of a new commercial area could impact the possibility of such investment occurring and they are very concerned about the negative impact that the proposed rezoning would have on their community.

Dr. Bush expressed concerns that Brookwood would interfere with existing commercial businesses in Bowling Green.

Mr. Smith said that his concern was that this development would not be of any advantage to Bowling Green.

Chairman Davis said in this economy, there is only so much money to be spent and he also had concerns about the impact Brookwood would have on Bowling Green.

*Mr. Piland moved and Mr. Brown seconded that whereas rezoning request RZ-06-2009 for Brookwood, L.L.C., appears to be generally inconsistent with the goals and objectives of the Comprehensive Plan and Future Land Use Map, and whereas the public necessity, convenience, general welfare and good zoning practices warrants the denial of this request, and recommend that RZ-06-2009 be forwarded to the Board of Supervisors with a recommendation of denial.*

*Voting yea: Brown, Bush, Davis, Piland, Smith.*

7. **SPEX-02-2009 - Ladysmith Floor & Lumber:** Request a Special Exception Permit in accordance with Article XVII and Article X, Section 3.9, on a portion of tax map #53-A-10, consisting of 1.3958 acres, more or less, zoned M-1, Industrial. This property is located on Route 633 (Bull Church Road) approximately ¾ of a mile north of Route 639 (Ladysmith Road), Mattaponi Voting District. **Proposed Use:** Caretaker's Residence. The 2006 – 2026 Comprehensive Plan identifies this area as Rural Preservation with a density of one dwelling unit per ten acres of land.

Lisa Zech presented the following updated staff report:

#### **UPDATE**

The applicant has submitted a new floor plan for the proposed Manager's Residence and Staff believes this layout to be more in keeping with the intended use than the previously submitted plan. The applicant is proposing a reasonably sized, three bedroom, single family dwelling.

Should the Planning Commission decide to forward this request to the Board of Supervisors with a favorable recommendation, Staff suggests the following conditions:

1. The site shall be developed in substantial conformance with the Special Exception Application including, but not limited to the General Development Plan and the plans/elevations, prepared by Webb and Associates, dated August 22, 2009, as amended.
2. The applicant will record the To-Wit with the Caroline County Clerk's Office within 30-days of receipt from the Department of Planning and Community Development.
3. The occupancy of the residence is restricted to the individual employed as Manager of the facility and his immediate family.
4. The residence cannot be rented to members of the general public.

#### **SUMMARY**

The applicant, Ladysmith Floor and Lumber, is requesting a special exception to allow for a Manager's Residence at their timber/wood manufacturing facility on Bull Church Road (Route 633).

The residence would be located on the north end of the property behind the existing manufacturing facility. A private well and septic system as shown on the plan would serve the residence.

The 2006 – 2026 Land Use Plan designates this area as Rural Preservation, however, this parcel is zoned M-1 and a Manager's / Caretaker's Residence is allowed by Special Exception in that zoning district.

Staff understands that this dwelling is to be the primary residence for the manager of the facility and his family. Historically, Special Exceptions approved for a caretaker's residence have been limited to one person occupancy. If the Planning Commission decides to approve this Special Exception as presented, Staff suggests a condition limiting the square footage and number of bedrooms to accommodate only the manager and his immediate family.

The applicant has submitted a floor plan for the proposed residence and Staff believes the square footage is excessive and the layout is not in keeping with the intended use. It appears to be more conducive to guest quarters than a manager's residence. The residence is shown to be a two story structure over 6,400 square feet in size containing six bedrooms. Of particular concern is the fact that four of the six bedrooms on the second level along with a laundry / storage room do not have direct access to the remainder of the second floor. Access to these bedrooms, all with full baths, is achieved from the ground floor by stairway or elevator. The stairway and elevator can be accessed by an exterior door without entering the main portion of the first floor living area.

To allow this use the Planning Commission must determine that all standards can be met or met with conditions as per Article XVII, Section 13.D. The Standards are as follows:

#### Special Exception Standards

All use permits shall satisfy the following general standards:

1. The use shall not adversely affect the character and established pattern of development of the area in which it wishes to locate.
2. The use shall be in harmony with the uses permitted by right under a zoning permit in the zoning districts and shall not affect adversely the use of neighboring properties.
3. The location and height of buildings, the location, nature and height of walls and fences, and the nature and extent of landscaping on the site shall be such that the use will not hinder or discourage the appropriate development and use of adjacent or nearby land and buildings or impair the value thereof.
4. The use shall not adversely affect the health or safety of persons residing or working in the neighborhood of the proposed use.
5. The use shall not be detrimental to the public health, safety or welfare or injurious to property or improvements in the neighborhood.
6. The use shall be in accordance with the purposes of the zoning regulations contained in this Ordinance and the Comprehensive Plan of Caroline County.
7. Adequate utility, drainage, parking, loading and other necessary facilities to serve the proposed use shall be provided.
8. The use shall be such that air quality, surface and groundwater quality and quantity, are not degraded or depleted to an extent that would hinder or discourage the appropriate development and/or use of adjacent or nearby land and/or buildings or impair the value thereof.

9. The use shall be such that pedestrian and vehicular traffic generated will not be hazardous or conflict with the existing and anticipated traffic in the neighborhood and on roads serving the site.

Zoning Conditions:

The Board of Supervisors may specify conditions in granting use permits as it deems necessary in the public interest to assure compliance with the general and specific standards and that it will continue to do so. Conditions may include, but are not limited to the following:

1. The hours of operations.
2. Provisions for adequate parking and ingress and egress to public streets and roads.
3. The protection of surface and groundwater.
4. Limitations on site lighting including intensity and shielding, so as not to adversely affect adjacent or nearby property owners.
5. The provision of adequate sewer and water facilities.
6. Noise abatement measures.
7. The location, size, height, design of buildings, walls, fences, landscaping and buffers.
8. Underground utilities.
9. Abatement measures for smoke, dust, odor, noise or other elements.
10. Performance bonding to ensure standards are met and plans are implemented.
11. Setbacks and yard requirements necessary for orderly expansion and to prevent traffic congestion.

**STAFF RECOMMENDATION:**

Should the Planning Commission decide to forward this request to the Board of Supervisors with a favorable recommendation, Staff suggests the following conditions:

1. The site shall be developed in substantial conformance with the Special Exception Application including, but not limited to the General Development Plan and the plans/elevations, prepared by Webb and Associates, dated August 12, 2009, as amended.
2. The applicant will record the To-Wit with the Caroline County Clerk's Office within 30-days of receipt from the Department of Planning and Community Development.
3. The residence shall be of a size to reasonably accommodate the individual employed as Manager of the facility and his immediate family.
4. The occupancy of the residence is restricted to a single family as defined in Article II of the Zoning Ordinance at least one of whom is an employee of Ladysmith Floor and Lumber.
5. The residence cannot be rented to members of the general public.

Ms. Zech said that the applicant has now submitted plans for a single family dwelling of 3,200 sq. ft. and instead of six bedrooms; it will now be three bedrooms. She said that now it is a single family dwelling as opposed to guest quarters.

Chairman Davis stated for clarification that the original plan was for 6,400 sq. ft. and now it is approximately 3,200; the original plan was for six bedrooms and now it is three bedrooms; and the original plan clearly had dedicated access to the extra bedrooms and now there is only one means of access into the entire facility.

Ms. Zech said that was correct.

Chairman Davis agreed that he thought this was still a little large; however, he thinks all of the issues have been cleared up as far as multiple residents because it is now clearly a single residence.

Ms. Zech said the applicant has been upfront with staff all along that this is not just a night watchman's residence. She said from what she understands, the manager will live on site and this will be his home for the operation as long as he is in business.

Mr. Smith expressed concern and stated that the home was still large for a single family home.

Ms. Zech responded that the Planning Commission could set a condition regarding the size of the home.

Chairman Davis asked staff if they saw any conflict regarding the ordinance.

Ms. Zech said there is no definition in the ordinance of what a caretaker's or manager's residence should be. She said all she could say again is that what has been approved in the past, this is different. She said in the past, a manager's or caretaker's residence has been for a single individual such as a night watchman and she believes that one of the conditions did limit it to one individual.

Mr. Piland said he did not believe that 3,200 sq. ft. single family dwelling was unusual for today's homes.

Mr. Brown said that he felt this home was very much upscale for a single family dwelling.

Chairman Davis said that clearly it was a single family dwelling. He asked Ms. Zech to again speak to the conditions.

Ms. Zech said the conditions staff suggested were that if the Commission decided to recommend approval, that the occupancy be restricted to the individual employed as manager in the facility and his immediate family; and that it cannot be rented to members of the general public. She said it may be possible as to whether the Commission can limit the square footage of this dwelling; however, she would defer to the County Attorney.

Ann Neil Cosby, County Attorney, said she believed as a condition to the special exception that the Commission could limit the square footage; however, she has some other general concerns with regard to what has been done in the past concerning caretaker's residences. She said she would ask that the Commission defer action to the next worksession so they can have the opportunity to review prior actions.

Chairman Davis asked about the language and if it said caretaker or manager.

Ms. Zech responded she believes it says caretaker or night watchman's residence.

***Dr. Bush moved and Mr. Brown seconded to defer SPEX-02-2009, Ladysmith Floor & Lumber to the November 30, 2009 Planning Commission worksession.***

***Voting yea: Brown, Bush, Davis, Piland, Smith.***

**PUBLIC HEARINGS**

9. **RZ-04-2009 – Davis, Norman Lee c/o Juan Young Owner/Applicant:** Request a Rezoning from B-1, Business, Conditional (no specified density) to B-1, Business, Conditional (with no specified density) on tax map #67-A-69 (portion of) consisting of 10 acres, more or less. This property is located at the intersection of Route 1 (Jefferson Davis Highway) and Route 601 (Cedar Fork Road), Madison Voting District. **Proposed Use:** To amend proffers associated with RZ-18-98 by amending Item #4 to add Hotel, Motel and Restaurant as permitted uses; and add Item #6 stating the applicant will connect to County water and sewer. The 2006 – 2026 Comprehensive Plan identifies this area as Rural Preservation with a density of one dwelling unit per ten acres of land.

George Wieber, Community Development Administrator, gave a PowerPoint presentation and explained that this is an application from Juan D. Young and Norman Davis to basically modify the original proffers of a rezoning that was granted in February of 1999 when this property was rezoned to B-1. He said this property is located at Golansville Road and Route 1. He said the original proffers that were established have been met. He said the intended use would be for a hotel facility. He said as the Commission can see, the cemetery as originally proffered, is in fact remaining where it is and now has an access road. He said there is no access on Route 1 at this time and it comes off of Cedar Fork to the hotel and the parking lot. He said there is an ample amount of landscaping at this time based on the recommendations of the Planning Commission at the worksession; however, it will still have to go through a site plan review.

He said what the applicant is looking for is to include in the use category: hotel, motel and restaurant. He said staff feels this application is consistent with the overall program; however, if approved, the applicant should add an additional condition as follows: The applicant will, at its own expense, connect to Caroline County water and sewer prior to the issuance of a Certificate of Occupancy.

Mr. Piland asked what the land was between the proposed hotel and the cemetery.

Mr. Wieber said that was all woods now and the entire site, other than the cut through for the power lines, was in a total vegetative state. He said based on the original proffers, it was agreed that an access would be put to the cemetery in a permanent condition. He said during the original proffers, there was discussion of whether the foundation was or was not a Quaker Meeting House. He said the applicant at that time proffered to give the family and the Historic Society one year to confirm whether or not it was a Quaker Meeting House. He said it was never determined whether it was or was not a Quaker Meeting House; however, there is a street monument on Route 1 that says this was the Golansville Quaker Meeting House. He said at this particular time there are no plans to disturb this area.

Mr. Smith asked if anyone has contacted staff about this property.

Mr. Wieber responded no, this is now a B-1 zone and during the rezoning all of those discussions took place. He said they were satisfied after those discussions and that was why the Board of Supervisors approved the rezoning at that time. He said as the proffers are written on the application, it was agreed that this cemetery would stay in the same location where it is now and it would be consistent with State Cemetery Policies. He said again, the families were given an entire year back in 1999 to do a complete investigation and there was nothing found to establish that it was in fact, a Quaker Meeting House.

Juan D. Young, Owner/Applicant, gave a PowerPoint presentation as follows:

**Summary:**

Caroline Hospitality, LLC was founded in 2009 with the intentions to open a new hotel in the midst of a thriving and rapidly growing community located in a strategic and progressive county. Caroline Hospitality, LLC members are entrepreneurs who have over 40 years of experience between them.

The main market sectors Caroline Hospitality, LLC will penetrate are government personnel, business travelers, families of sports events and people in the local area within a 30 mile radius.

The product they chose is Microtel by the Wyndham Group and has been rated as the "highest in guest satisfaction among economy/budget hotel chains eight years in a row" by J. D. Powers and Associates.

The marketing target is the following:

- Government personnel training at Fort A. P. Hill
- Business people visiting the local offices of local companies and business complexes
- Families of local baseball training facility (VA Sports Complex)
- Families of local State Fair of Virginia
- Families of local NASCAR International Raceway

We would offer a new hotel with high quality of consistency throughout the continental US that supersedes the local competitors of conversion hotels.

Revenues forecasting for the first year of operation are \$1.2 million with this increasing by 6 to 7% for the subsequent two years as occupancy increases. Net profits are forecast to be approximately 35%.

Caroline Hospitality, LLC is a new company set up to run by J. D. Young and Grace Young who have over 40 years of experience. They will hire an experienced Hotel Management Company to manage the daily operations of the hotel for at least one year while staff will be trained to continue the operation. The directors will invest approximately \$300,000 into the business at the beginning and repay these loans by the end of the second year.

He said the demand for a hotel on Route 1 in Golansville was established based on a series of feasibility and market studies conducted by Caroline Hospitality, LLC, with contribution from the County's Economic Director. He said the studies indicate that the success of the hotel would be significantly enhanced by the need for an executive hotel to support the growing population of TDY travelers from Fort A. P. Hill. He said as reported in a letter from the Department of the Army, Fort A. P. Hill has no military lodging. He said the letter further stated that based on average nights stayed during temporary duty, an estimated 11,300 room nights are generated via A. P. Hill TDY's.

He said next door to the proposed site is the Virginia Sports Complex where youth trains to play baseball and they host over 200,000 individuals annually. He said that the small, aged motel facilities located within the area are unsuitable for official government travelers.

He said in addition, the study showed that visitors are attracted to Virginia to enjoy the state's rich, natural, cultural and historic resources. He said Virginia is one of the top ten travel destinations in the United States and is ranked 10<sup>th</sup> in visitor spending nationwide. He said Virginia has held this designation for more than half a decade.

He said the potential customers of the proposed hotel are:

- Ft. A. P. Hill
- VA Sports Complex
- Kings Dominion
- Virginia State Fair
- Caroline County Fair
- Richmond Raceway
- Caroline Tourism
- Executives and Employees of local businesses
- Interstate travelers
- Family and Friends of Caroline residents

- Reservations from Wyndham

Mr. Young further showed and explained how the rooms would be set up and what conveniences the facility would offer.

Dr. Bush asked how many jobs this project would create.

Mr. Young responded 17 jobs now; however, that would grow.

Dr. Bush said that Mr. Young gave a good presentation.

Mr. Brown said he believed this would be good for Caroline County.

Chairman Davis asked if there were any plans for residual property development.

Mr. Young said at this time they have not developed a plan for long term residual property development. He said they would have to see as they go; however, they would like to see additional businesses come on line that would be consistent with the planning of that area.

Chairman Davis asked if there were any requirements for road improvements to Cedar Fork Road.

Mr. Young said there are no requirements for road improvements at this time other than a wide entrance to the facility. He said where the cemetery road actually comes in; it would circle around the cemetery and then go down to the hotel.

Mr. Wieber said that would be taken care of during the site plan application.

Chairman Davis agreed with Dr. Bush and said it was a good presentation and that it would be a nice addition to the County.

Chairman Davis declared the public hearing open, after hearing no comments, the public hearing was declared closed.

*Mr. Brown moved and Dr. Bush seconded that whereas rezoning request RZ-04-2009 for Juan Young, Owner/Applicant, appears to be generally consistent with the goals and objectives of the Comprehensive Plan and Future Land Use Map, and whereas the public necessity, convenience, general welfare and good zoning practices warrants the approval of this request, and recommended that RZ-04-2009 be forwarded to the Board of Supervisors with a recommendation of approval subject to proffers dated November 18, 2009.*

*Voting yea: Brown, Bush, Davis, Piland, Smith.*

8. **TXT-07-2009: AN ORDINANCE TO AMEND THE ZONING ORDINANCE OF CAROLINE COUNTY BY AMENDING ARTICLE XIX, AMENDMENTS, SECTION 7, ESTABLISHMENT OF CONDITIONS AT THE TIME OF ZONING MAP AMENDMENTS (CONDITIONAL ZONING), BY AMENDING PARAGRAPH 7.1, ADMINISTRATION, FILING AND ACCEPTANCE OF CONDITIONS AT THE TIME OF ZONING MAP AMENDMENTS.** The purpose of this text amendment is to allow the acceptance of proffers once a public hearing has begun, and to allow proffers provided the amended proffers do not materially affect the overall proposal and to allow proffers to be modified without a public hearing, if the Board of Supervisors waives the public hearing requirement. The Board of Supervisors must determine that the amendment does not affect conditions of use or density in order to waive the public hearing requirement.

Michael A. Finchum, Director of Planning & Community Development, presented the following staff report:

At its September 22, 2009 meeting, the Board of Supervisors referred to the Planning Commission, proposed amendments to Article XIX Section 7 of the Caroline County Zoning Ordinance which provide greater flexibility to the Board of Supervisors in negotiating and modifying proffers during the

conditional zoning process. The current regulations were adopted by the Board in 1990, when conditional zoning authority was first granted to the County. The last two sessions of the General Assembly generated changes in legislative authority that give local government greater flexibility in the administration of conditional zoning. A highlighted copy of the applicable provisions of the State Code was provided in the Planning Commission packet.

These changes provide the County additional flexibility in two ways: 1) the Board may negotiate proffers at a public hearing without the need to re-advertise the hearing (subject to limitations); and 2) the ability to amend previously accepted proffers without the need to go back to public hearing, provided such amendments do not affect the use or density of the zoning. Incorporating these changes into the ordinance allows the Board the opportunity to negotiate, without the additional time and money of the current process. For example, where the Board would like to consider amending the timing of the acceptance of a cash proffer (with no change to the amount), consistent with the collection of the utility availability fee, it could be accomplished without the need for a public hearing.

The suggested amended language is as follows:

#### **N. Administration of Proffers**

The proffering and acceptance of conditions shall be made as follows:

1. The proffer of conditions shall be submitted in writing to the Director at the time the rezoning application is filed.
2. Voluntary amendments to or modification of proffers shall be submitted to the Director, at least 15-days prior to any public hearing. ~~This does not prevent additional proffers being offered by the applicant at or during any public hearing provided that if the proffers are substantially amended during the public hearing, and additional public hearing must be held. The amendment or modification shall be submitted to the Planning Department.~~ *The Board of Supervisors may also accept amended proffers once the public hearing has begun if the amended proffers do not materially affect the overall proposal.*
3. *Where an amendment to proffered conditions previously approved by the Board of Supervisors is requested by the profferrer, and where such amendment does not affect conditions of use or density, the Board of Supervisors may, upon the profferrer's request, waive the requirement for a public hearing before the Planning Commission, the Board of Supervisors, or both. Once amended, the proffered conditions shall remain an amendment to the zoning ordinance.*
4. Enforcement of conditions accepted and imposed by the rezoning shall be the responsibility of the Zoning Administrator subject to provisions of Section 15.2-2299 through 15.2-2303.3 of the Code of Virginia, as amended.

It is important to understand the process and limitations of the proposed amendments:

- *Under Subparagraph 3, the BOS would have the authority to waive the public hearing before the BOS, and/or the Planning Commission.* The Planning Commission is still required to review the request and make a recommendation to the BOS. Thus, deliberation of the request must still be in a public setting at both the Planning Commission and Board of Supervisors. Since it is a zoning amendment, notices to abutting property owners must be sent in accordance with the applicable provisions of the code.
- *The applicant must request relief of the public hearing requirement from the Board.* The Board must take action to grant a request to waive the public hearing requirement. The property owner would have to clearly identify the requested change in order for staff and the County Attorney to determine that the request meets the standards contained in the enabling legislation. The Board is under no obligation to grant such relief.

Depending on the specifics of the amendments, the Board may not want to waive the public hearing before either the PC or the BOS, so as not to give the general public the wrong perception.

- ***These amendments do not obligate the Board to accept any proffer amendments that it does not believe to be appropriate.*** For example, an applicant can presently file a proffer amendment asking to be relieved of paying cash proffers. The Board is under no obligation to approve or grant such an amendment.

Staff is aware that there are concerns that the process could be used in a manner to circumvent the public hearing requirement, thereby allowing a property owner to make substantive changes to an approved zoning application without the benefit of public input. Public perception is important and cannot be ignored, and proper administration of these regulations is necessary to maintain the public trust. To address such concerns, it may be appropriate to develop a policy or incorporate standards into Section 12.N outlining the process for administration of a waiver request, including the review and recommendations to the Board. For example, the County may wish to provide a public review period (15-30 days), after which if there is no written opposition by an abutting property owner, then no public hearing will be required, provided all other standards are deemed to have been met.

Mr. Finchum said that staff really does not have a position on this. He said they simply prepared this item for the consideration of the Board. He said he does not know that the Board has any position one way or the other on this; however, they did refer it back to the Planning Commission and asked that the Planning Commission hold a Public Hearing and make a recommendation to them as to whether the Planning Commission believed it was appropriate or not.

Mr. Piland asked how this issue came up.

Mr. Finchum said they were asked by the Board of Supervisors to review what other localities were doing in terms of local options to assist primarily the residential building industry. He said as part of that, they keep track of modifications to the State Code. He said in the last couple of years the State Code has been amended and in fact, last year the General Assembly vested previously approved subdivisions for another five year period. He said the General Assembly sometimes makes changes to the code that allow local governments the opportunity to look at things like this and these were a couple of amendments they have adopted over the last couple of years.

Dr. Bush said he did not like this at all. He said he feels personally, that when they are dealing with proffers they are dealing with money. He said when you deal with money with these developers and builders coming in, that is money that goes into the County. He said if they allow something like this to go through and give these people installments and postponements, et cetera, this may affect the amount of taxes being paid by citizens of the County to meet the needs of County Government and everything else in the County. He said he believes that if a person in business cannot afford to pay proffers, they do not need to be in business and affecting his taxes or anyone else's. He said again, he was against this and he would vote against it.

Chairman Davis said he was very concerned about this too; however, he did note Mr. Finchum's suggestion at the end. He asked Mr. Finchum to speak more about the public review period and how that process would work.

Mr. Finchum said he shares the concern the Commission has about perception. He said he thinks that the process can work, but there needs to be some review criteria there as to whether a request qualifies for or meets the standards contained in the State Code. He said this does not eliminate the opportunity for public input. He said by ordinance, since it is a zoning amendment, they still have to send notices to the abutting property owners, so abutting property owners and homeowner associations, et cetera would still get notice of a requested proffer amendment.

Chairman Davis asked if it would still be advertised just like a Public Hearing.

Mr. Finchum said he believed they would still need to advertise the request; however, it is not a Public Hearing and he doesn't know that if this is approved they would advertise it as a Public Hearing. He said he thinks this is one of those things, and he and the County Attorney have not fully discussed all of the options available to the Planning Commission and the Board of Supervisors, but he thinks in some manner staff would recommend that there needs to be some advertisement of the request in order to insure that the public notice requirement has been adequately addressed.

Chairman Davis said the language that has been provided in the public review period section may fix this issue, because it reads: Provide a public review period, 15 to 30 days, after which if there is no written opposition then no Public Hearing will be required. He said this could be written to say that it would be advertised and there would be 30 days for anyone to object and if anyone objects, then a Public Hearing would be required.

Mr. Finchum said that this does not have to be acted upon by the Commission tonight. He said he believes they have some opportunity to review this further. He said even if the Commission's recommendation is a recommendation of denial back to the Board of Supervisors, he believes it is appropriate to make recommendations as to how it could be made to work or how you could improve the process in the event that the Board did approve it, at least there are some recommended guidelines and standards for them to consider. He said he would not recommend the Planning Commission take any action tonight. He said he would recommend that the Planning Commission hold the Public Hearing and then staff can vet some of the options that are available for consideration and they can be included in the Planning Commission's recommendations in one way or another.

Dr. Bush said if they were going to advertise it, it should be more reader friendly so the person reading it would have a better understanding of what this is about because this is about money.

Mr. Finchum said he wanted to make sure there is no misconception. He explained that right now, today, say a developer has proffered \$5,000 per dwelling unit, that proffer has been accepted and is a matter of record. He said that developer comes in and wants to request the County to either reduce that proffer or eliminate it altogether, he can do that right now. He said the developer could come in and make application for a proffer amendment and make that same request and it has to go through as an amendment to an approved zoning. He said it would go to Public Hearing before the Planning Commission and the Board of Supervisors. He said neither the Planning Commission nor the Board of Supervisors is under any obligation to approve it. He said again, without this amendment a developer could still make that same request today, but he would argue even under this language the developer would still have to have a Public Hearing because it materially affects the zoning.

Dr. Bush asked why they have to get into this because they have not had to deal with a proffer reduction since he has been on the Planning Commission.

Mr. Finchum said he wanted to make clear, there is nothing that prohibits a developer from making that request to the Planning Commission; however, the Planning Commission is not obligated to approve it.

Mr. Smith asked what reason the developer could have to request a reduced proffer or elimination of a proffer.

Dr. Bush again expressed his opposition to TXT-07-2009.

Mr. Finchum said this text amendment would not affect the developer's ability to make an application for a reduction or elimination of a proffer, because they can do that right now.

Chairman Davis said he was very concerned about the public perception with regard to this; however, Mr. Finchum has said someone can apply right now and go through the whole process that includes a Public Hearing and it can be denied or approved. He said he wanted to make a clarification that this was just simply saying that the process stays the same as it is now, except the

Public Hearing goes away and some other vehicle is put in place of it. He said the proffer amendment could be financial or non-financial and the developer could say the project is not viable and I don't want to pay that much money or he could say I'm proffered to put in a 12 foot sidewalk on the east side of my property and I want to change the proffer to put the sidewalk on the north side because there is a high tension line in the way. He said a proffer amendment is just a change in the developer's conditions. He said he is concerned about the word "minor", because that is subjective.

Mr. Finchum said that he believes that is one of the problems with the legislation because it is probably not the most well crafted piece of legislation he has ever seen and it is very subjective and open to a lot of interpretation. He said in answer to Mr. Smith's question regarding a reason that a developer would have a reduction or elimination of a proffer, he could see a developer coming in and saying you know what, the market is not doing anything and this \$4,000 per dwelling is keeping him from having any activity at all and want to reduce or eliminate the proffers. He said he agreed with Dr. Bush, that the proffer was negotiated in the first place to mitigate the impact on the County. He said if you reduce the proffer, there will be additional cost to the County down the road; however, the developer can still make that request and this amendment does not affect that.

Mr. Finchum suggested that even if the Commission ultimately recommends no, that they send some suggested guidance back to the Board of Supervisors as to how they might handle this instead of just sending a recommendation for denial without any guidance whatsoever.

Chairman Davis said he would suggest that staff also come back to the Commission with their opinion at the next worksession. He said the system works now and they do not get many requests and he thinks they would be better off just to leave it as it is currently; however, he also thinks they should discuss this at the worksession before taking action.

Mr. Smith asked if they denied a request for a reduction or elimination of a proffer, would the Commission have to give a reason for such denial.

Mr. Finchum said he did not know that they necessarily have to justify their reason because they have already accepted proffers and they have already agreed to do something. He said the applicant is the one coming back to the Commission regardless of whether they are going through the public hearing process or going through this process, and the burden of proof is still on the applicant to justify his request for a proffer amendment.

He said this was discussed at the last worksession and he thinks that they all agree that there were problems with it then; however, the fact that the Board of Supervisors did refer this to the Planning Commission requires the Commission to have a Public Hearing and to make a recommendation back to the Board of Supervisors. He said staff has heard the Commission's concerns again and he believes they can articulate something in writing for the Commission.

Chairman Davis agreed that they need to have the Public Hearing and they need to make a decision. He said they have the choice to either accept it with no conditions or deny it or postpone it to the worksession. He said just so everyone understands: #1, a person wants to amend his proffer; and #2, under both scenarios, it has to come back to the Planning Commission for a decision. He said under the present ordinance, you have to have a Public Hearing and under the proposed, there would be no public hearing but it will still be a Planning Commission decision.

Mr. Finchum said it might not be a Public Hearing and that is not definite.

Chairman Davis said it still is presented to the Planning Commission for their recommendation and it still goes to the Board of Supervisors for their recommendation and it is still a public meeting, but there is no Public Hearing.

Mr. Finchum said it was still a public process, but it may not involve a Public Hearing.

Dr. Bush said it could still go to the Board of Supervisors and they could approve it because it could end up being political and they will still end up in a bad situation. He said he would rather leave it alone.

Chairman Davis said they have to do it. He said under this proposal, the process is the same except there is no Public Hearing and that is the only difference.

Dr. Bush again expressed his concerns about the long range effects on the County.

Mr. Finchum suggested that the Commission go ahead and have the Public Hearing and dispose of that aspect and then he could give better examples of how this might work. He said to forget the reduction in the proffer, because he believes that requires a Public Hearing regardless and this does not affect that.

Chairman Davis declared the public hearing open, after hearing no comments, the public hearing was declared closed.

Mr. Finchum said he would give better examples and also work on some language for the Commission to consider.

Chairman Davis said he did believe that the financial aspect was a big concern.

Mr. Piland said that both the financial and density aspect was a concern.

Chairman Davis said right now this is something that can be imposed on them and it is something that they have to decide. He said again, they will still have a meeting and they still make a decision, but the only difference is they don't strike the gavel and they don't allow public comment.

Mr. Finchum asked if the Commission would like to defer this matter to the worksession or the next meeting.

Chairman Davis said his recommendation would be to defer it to the next worksession and allow staff to bring the Commission recommendations.

*Mr. Piland moved and Mr. Brown seconded to defer TXT07-2009 to the Planning Commission's November 30, 2009 worksession.*

*Voting yea: Brown, Bush, Davis, Piland, Smith.*

**ANY & ALL MATTERS**

Chairman Davis said the next worksession would be November 30<sup>th</sup> and they are going to discuss the Comprehensive Plan, look at Ladysmith Floor & Lumber again, review TXT-07-2009 and staff recommendations.

• **CONTINUE DISCUSSIONS OF 2030 COMPREHENSIVE PLAN**

Mr. Finchum said in the Commission's packet is a list of all of the changes that staff has made to clean up the Comprehensive Plan. He said they included the language about the rural areas. He said that he and Mr. Piland have talked about the conservation development and design standards for the rural areas. He said Mr. Piland would still like to see some more specific language about preservation of the rural areas and development options, including the conservation development. He said what he would like to do is get together with Mr. Piland and iron out his specific concerns and get as close as possible to where the Board of Supervisors is on this issue. He said the Board of Supervisors would like to hold this Public Hearing at their December 1<sup>st</sup> meeting which is why he would ask the Commission to have the worksession on November 30<sup>th</sup>.

- **STATUS REPORT ON REZONING AND SPECIAL EXCEPTION REQUESTS**

This was provided to the Planning Commission for informational purposes only.

**ADJOURNMENT**

There being no further business Chairman Davis adjourned the meeting at 8:40 p.m.

Respectfully Submitted,

Michael A. Finchum  
Director of Planning & Community Development

MAF:pfa