

Greenville County Planning Commission Minutes
June 28, 2023 at 4:30 p.m.
Conference Room D at County Square

Commissioners Present: S. Bichel, Chair; J. Bailey, Vice Chair; J. Rogers (zoom); F. Hammond; M. Looper; M. Shockley (zoom); J. Howard; J. Barbare; J. Wood

Commissioners Absent: None.

County Councilors Present: None.

Staff Present: T. Coker; R. Jeffers-Campbell; T. Stone; J. Henderson; M. Staton; K. Mulherin; T. Baxley; IS Staff

1. Call to Order

Chairman Bichel called the meeting to order at 4:30 p.m.

2. Invocation

Mr. Barbare provided the invocation.

3. Approval of the Minutes of the May 24, 2023 Commission Meeting

Motion: by Mr. Howard, seconded by Mr. Looper, to approve the minutes of the May 24, 2023 Commission meeting, as presented. The motion carried by voice vote.

4. Rezoning Requests

CZ-2023-038

Mr. Henderson introduced the staff report and presentation into the record as background information for Rezoning Docket CZ-2023-038.

The subject parcel zoned C-1, Commercial District is located along White Horse Road, a six to seven-lane State-maintained arterial road. Staff is of the opinion that a successful rezoning to C-2, Commercial District would not have an adverse impact on the surrounding area. Additionally, a successful rezoning would be consistent with the Berea Community Plan which designates this parcel as Commercial/Office and the Plan Greenville County Comprehensive Plan which primarily designates the parcel as Transitional Corridor.

Based on these reasons, staff recommends approval of the requested rezoning to C-2, Commercial District.

Discussion: Mr. Barbare asked for clarification on mid-block zoning changes. Mr. Henderson explained there are no regulations in the Zoning Ordinance to restrict spot zoning, however, the staff looks at proposed uses and the surrounding area to make their determination.

Motion: by Mr. Looper, seconded by Mr. Wood, to approve CZ-2023-038. The motion carried by voice vote with eight in favor (S. Bichel; J. Bailey; J. Rogers; F. Hammond; M. Looper; M. Shockley; J. Howard; J. Wood) and one in opposition (J. Barbare).

CZ-2023-041

Mr. Henderson introduced the staff report and presentation into the record as background information for Rezoning Docket CZ-2023-041.

The subject portion of a parcel, zoned C-2, Commercial District is located on White Horse Road, a six-lane State-maintained arterial road and Eastbourne Road, a two to three-lane State-maintained residential road. Staff is of the opinion that a successful rezoning to C-1, Commercial District aligns with the Greenville County Comprehensive Plan which designates the parcel as Transitional Corridor and Suburban Edge. Additionally, a successful rezoning to C-1, Commercial District aligns with the Berea Community Plan which designates the parcel as Commercial/Office.

Based on these reasons, Staff recommends approval of the requested rezoning to C-1, Commercial District.

Discussion: None.

Motion: by Mr. Looper, seconded by Mr. Howard, to approve CZ-2023-041. The motion carried unanimously by voice vote.

CZ-2023-042

Mr. Henderson introduced the staff report and presentation into the record as background information for Rezoning Docket CZ-2023-042.

The subject parcels zoned R-S, Residential Suburban District are located on Lee Vaughn Road (HWY 417), a two-lane State-maintained arterial road and Woodruff Road (HWY 146), a two to eight-lane State-maintained arterial road. Staff is of the opinion that the proposed development includes uses which are consistent with the Five Forks Area Plan. Additionally, the proposed uses for the requested rezoning to FRD, Flexible Review District could support a growing residential area and could potentially alleviate some traffic going towards the Five Forks area by having similar uses available.

The development would have to meet the following condition:

1. Submit a Final Development Plan for review and approval prior to the issuance of any land development or building permits.

Based on these reasons, Staff recommends approval of the requested rezoning to FRD, Flexible Review District with the aforementioned condition.

Discussion: Mr. Barbare asked what made the property unique and unable to be traditionally zoned. Mr. Barbare stated he doesn't believe this property meets the qualifications of an FRD.

Mr. Rogers stated he was in support of this application because he sees the benefits of utilizing FRD in this case.

Mr. Bailey stated he made a motion to deny due to FRD zoning not being applicable.

Motion: by Mr. Bailey, seconded by Mr. Looper, to deny CZ-2023-042. The motion carried by hand vote with six in favor (S. Bichel; J. Bailey; M. Looper; J. Howard; J. Barbare; J. Wood) and three in opposition (F. Hammond; J. Rogers; M. Shockley)

CZ-2023-043

Mr. Henderson introduced the staff report and presentation into the record as background information for Rezoning Docket CZ-2023-043.

The subject property, zoned R-S, Residential Suburban District, and R-12, Single-Family Residential District, is located along Adams Mill Road, a two-lane State-maintained residential road and Five Forks Road, a two to three-lane State-maintained collector road. Staff is of the opinion that the proposed development does not meet the intent of the Flexible Review District zoning classification. A townhome development would already be allowed under the R-12 zoning classification for part of the property, and allowed with greater density by rezoning to another standard zoning district. Upon review of the submitted Statement of Intent and Preliminary Development Plan staff finds no unique elements, extraordinary circumstances, or public improvements which would warrant the rezoning to a Flexible Review District.

Based on these reasons, staff recommends denial of the requested rezoning to FRD, Flexible Review District.

Discussion: Mr. Bailey stated the area does not have the infrastructure.

Motion: by Mr. Bailey, seconded by Mr. Howard, to deny CZ-2023-043. The motion carried unanimously by hand vote.

CZ-2023-044

Mr. Henderson introduced the staff report and presentation into the record as background information for Comprehensive Plan Amendment CZ-2023-044.

The proposed text amendment includes the following changes:

1. To remove Uses Permitted, Uses by Special Exception, Conditional Uses and Prohibited Uses from Section 8:10.1-3 and add them to Table 6.1; Uses Permitted, Uses by Special Exception, and Conditional uses
2. Add new Signage Design Standards to Section 8:10.8 Signs
3. Add additional language to Section 8:10.9 Landscaping, Buffers, and Screening
4. Revise and add additional standards for Section 8:10.11 Architectural Form

Staff is of the opinion that the proposed text amendments would establish better criteria for guiding developers and reviewing projects within the BTB District to ensure a higher quality product which matches the original intent of the district.

Based on these reasons, staff recommends approval of the proposed Text Amendment.

Discussion: Mr. Hammond asked for clarification on the “higher quality” aspect. Mr. Henderson explained the “higher quality” aspect is to provide a park atmosphere. Mr. Coker explained this was brought to staff’s attention by Greenville Area Development Organization (GADC) and worked on by Greenville County Staff, County Council member Ennis Fant, County Council member Butch Kirven and GADC. Mr. Coker stated certain standards for previously rezoned BTB districts were not completed, staff is now trying to ensure they capture the original requirements in a way that integrates the requirements as the properties get developed.

Motion: by Mr. Howard, seconded by Mr. Looper, to approve CZ-2023-044. The motion carried unanimously by voice vote.

CZ-2023-045

Mr. Henderson introduced the staff report and presentation into the record as background information for Rezoning Docket CZ-2023-045.

Current zoning regulations require a swimming pool on a residential lot to be located in the rear yard only. Staff often reviews pool applications for properties that are peculiar in shape, topography, easement placement, or have some other unique circumstance which would not allow a pool to be located entirely within a rear yard. The homeowners have no choice but to seek a variance from the Board of Zoning Appeals. The frequency with which this happens leads to a large number of these cases being reviewed by the BZA. The Board members with input from staff have drafted a revised set of ordinances which would give staff the ability to approve pools that encroach into a side yard in the event of a demonstrable hardship.

As part of these text amendments, a definition for “Swimming Pool” would be added to Article 4: Definitions.

Additionally, the following amendments would be made to Condition 18-B: Swimming Pool Requirements under Article 6, Section 6:2: Use Conditions:

1. Establish criteria by which the Zoning Administrator or their agent may grant permission for a pool to encroach into a side yard.
2. Set limits on how much of the side yard a pool could occupy.
3. Update setback requirements for swimming pools.
4. Establish screening requirements for pools which extend into a side yard.
5. Add detail to the restrictions on swimming pool lighting.

Staff is of the opinion that the proposed text amendments would provide better flexibility for reviewing pool construction projects on lots with unique circumstances. This flexibility would reduce the number of homeowners forced to seek variances which can be a hindrance for those who have unconventional lots.

Based on these reasons, staff recommends approval of the proposed Text Amendment.

Discussion: Mr. Henderson stated any pool existing before the amendment would be considered legal non-conforming.

Motion: by Mr. Bailey, seconded by Mr. Howard, to approve CZ-2023-045. The motion carried unanimously by voice vote.

5. Preliminary Subdivision Applications

VA-2023-069 Cottage Corners Buffer Variance

Meagan Staton presented an application for a variance from LDR 8.21, Forested Natural Vegetative and/or Landscaped Buffer, which requires a 20-foot undisturbed buffer along all sides of the property adjoining residential and commercial development. The applicant states that a variance is needed due to difficulty achieving the buffer in several areas along the perimeter of the site. Site constraints include

the following: inability to provide flexibility with the location of the proposed road per SCDOT request, substantial amounts of runoff that must be captured on site, wetlands that have formed on the site, and the need to provide stormwater and utility access to future developments

Staff is of the opinion that the buffer can be provided and that the ordinance requirements should be met. For this reason, staff recommend denial of the variance as requested.

Added Planning Commission condition:

Submit a landscape plan to be approved by staff.

Discussion: Chairman Bichel asked why the Planning Commission didn't see this application. Ms. Staton stated the application came in as a group development and according to the Ordinance if no new lots were created it does not go to Planning Commission.

Paul Harrison, the project engineer, explained they are not doing away with the buffer but there are certain areas that will need to be disturbed to provide certain property features. Mr. Harrison stated if they disturb any of the buffer or vegetation and trees they will provide a sound buffer around the community.

Chairman Bichel asked Mr. Harrison if they would landscape the berm. Mr. Harrison stated absolutely.

Motion: by Mr. Hammond, seconded by Mr. Shockley, to approve with condition VA-2023-069. The motion carried unanimously by voice vote.

6. Other Business

Review and Comply with Court Order for Bruce Lake Subdivision 2022-CP-23-02876

Meagan Staton provided background information on 2022-CP-23-02876. Ms. Staton explained that On April 27, 2022, the Commission denied Application PP-2022-049 and Bruce Lake Development, LLC and Larry E. McNair appealed the Commission's denial to the Greenville County Circuit Court. The appeal is designated Civil Action Number 2022-CP-23-02876. In an Order entered on June 2, 2023, the Circuit Court remanded the matter to the Commission without affirming or reversing the Commission's denial. In this remand, the Court is requiring that the Commission clarify its findings and decision process that led to the Commission's denial of the Bruce Lake Subdivision application. Because the Court has not addressed the merits of the appeal, the Commission's denial is still in force. Ms. Staton provided the Planning Commission with a copy of the approved minutes for the April 27, 2022 meeting, a copy of the Court's Order, and a copy of the Data Sheet for the subdivision. Ms. Staton reminded the Commission they are speaking specifically about the April 27, 2022 items and no new items should be considered.

Discussion: Chairman Bichel explained the Court had remanded the Bruce Lake matter for clarification of the grounds for denial. The Court had not made a ruling on the merits of the appeal, and presently, the Commission's denial of the Bruce Lake subdivision application still stands. As Ms. Staton stated, the only role of the Planning Commission is to respond to the Court's order. The Planning Commission is not voting on whether to approve or deny the subdivision application. Voting already happened on April 27, 2022. Chairman Bichel asked, since the order presents the first time the Commission had been ordered to do something like this, would anyone like to seek advice from the County attorney's office?

Motion: by Mr. Rogers, seconded by Mr. Shockley to go into executive session to obtain advice from Greenville County attorneys. The motion carried unanimously by voice vote.

Planning Commission returns from executive session.

Mr. Rogers made a motion for the Planning Commission to provide the following response to the Court's Order based on his review of the minutes. Mr. Rogers explained the Bruce Lake Subdivision was denied on several grounds, which independently and collectively support a denial. The grounds for denial are as follows:

1. The subdivision was rezoned 17 years prior to the meeting in April 2022, and since that time, County Council had reviewed and adopted two Comprehensive Plans in which designated the Bruce Lake area as Suburban Edge which can be found on page 99 of the County's 2020 Comprehensive Plan. The Comprehensive Plan defines Suburban Edge as "low-density residential areas" with a gross density of zero to one dwellings per acre and Bruce Lake was proposed to have a density of 3.9 dwellings per acre. That density was inconsistent with and contrary to the Council's intention for the area. As previously discussed, the area was developed over 17 years since Bruce Lake was rezoned as a Planned Development. The S.C. Code 6-29-510(A) and 6-29-390 gave the Commission the discretion to use the Comprehensive Plan as a guide for making Commission decisions. In addition, the Land Development Regulations article 1.2(E) establishes the intent of the Commission decisions was to ensure development of property was made in harmony with the Comprehensive Plan.
2. There was an ongoing dispute concerning the interpretation and effect of the Restrictive Covenants applicable to the Bruce Lake property and its rights to use the pond in the manner proposed for water runoff. S.C. Code Ann. § 6-29-1145 prohibits the County from issuing permits when a restrictive covenant on a parcel is contrary to, conflicts with, or prohibits permitted activity unless the parcel has been released from the covenants by consent or by a court order. Since approval of a subdivision application is what opens the door to the issuance of permits and because the parties made the Commission aware of the unsettled impact of the restrictive covenants, that issue served as an additional ground for denial.
3. A representative from DHEC spoke at the meeting and confirmed that the dam was in an unsatisfactory condition and is at risk of failure and the development of the Bruce Lake Subdivision will increase the quantity of surface water runoff that reached the pond and, thus, will affect a dam that is already in distress. No evaluation was provided about what the quality of water would be when it reached the pond both during construction and after completion. No professional assessment of the dam was provided to the Commission. No plan for a proposed repair of the dam was provided in the event the Commission approved the subdivision application. LDR article 1.2 provides that the public health and safety are core elements of the Land Development Regulations. Given that and the severe health and safety issues proposed by adding water to a pond with a dam that is already at risk of failing, a majority of commissioners concluded that the Commission would be failing to perform its responsibility to address public health and safety if it approved the application given the issues with the dam.

Mr. Rogers explained he understood the vote to deny this application was not unanimous but the Commission should be able to agree these were the grounds, at the time, for denial of the application. Mr. Rogers submitted the motion to the Commission, asking the Commission to approve the motion, clarifying the grounds for denial as required by Judge Gravely.

Motion: by Mr. Rogers, seconded by Mr. Bailey, to approve the motion set forth by Mr. Rogers clarifying the reasons for Denial of Bruce Lake Subdivision 2022-CP-23-02876. The motion carried by voice vote with eight in favor (S. Bichel; J. Bailey; J. Rogers; F. Hammond; M. Looper; J. Howard;

J. Barbare; J. Wood) and one in opposition (M. Shockley).

7. Planning Report

Ms. Jeffers-Campbell presented the June Planning Report.

8. Old Business

None.

9. New Business

None.

10. Adjourn

Without objection, Chairman Bichel adjourned the meeting at 5:59 p.m.

Respectfully submitted,

Nicole Miglionico

Nicole Miglionico

Recording Secretary