



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

February 1, 2012

Lynne J. Strobel
Walsh, Colucci, Lubeley, Emrich & Walsh PC
2200 Clarendon Boulevard, Thirteenth Floor
Arlington, VA 22201-3359

Re: Interpretation for RZ 74-8-125 & 126 / Kaslow-Warner Property: Permitted Density

Dear Ms. Strobel:

This is in response to your letters dated November 17, 2011, and October 7, 2011, requesting a determination of the process required to develop the subject property identified as tax map number 98-3 ((14)) B (Parcel B), which is subject to proffers accepted by the Board of Supervisors with the approval of RZ 74-8-125 & 126, and the Final Development Plan approved by the Planning Commission. This determination is based on your letters and the attached exhibits, minutes from the Planning Commission meeting held on December 11, 1975, the staff report for RZ 74-8-125 & 126, and the staff report for FDP 74-8-125 & 126. A copy of the Planning Commission meeting minutes and the approved plan for FDP 74-8-125 & 126 and development conditions are enclosed for your reference.

On December 11, 1975, the Planning Commission held a public hearing and made a recommendation to the Board of Supervisors that it approve RZ 74-8-125 & 126 (heard as one case). During the public hearing, the applicant agreed to include a proffer limiting the density to 2.5 du/ac.

On March 8, 1976, the Board of Supervisors approved RZ 74-8-125 & 126 (heard as one case), which rezoned 84.6 acres from the RE-1 District to the PDH-3 District, subject to proffers, including the proffered maximum density of 2.5 dwelling units per acre. On June 18, 1981, the Planning Commission approved FDP 74-8-125 & 126 (FDP dated June 11, 1981), subject to conditions dated June 18, 1981. The FDP shows a total of 212 townhouse units on the 84.6 acre site at a density of 2.5 du/ac. The issue of the dedication of land in the northwest portion of the site is discussed in the staff report. The Park Authority requested dedication of this land, and the applicant indicated that the dedication of this area, except for the portion north of the existing VEPCO easement, to the Park Authority was acceptable. A note on the FDP states, "Common Open Space, Convey to Fairfax County Park Authority and/or HOA for park use."

Department of Planning and Zoning
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Lynne Strobel
Page 2

Your letter states that a maximum of 254 dwelling units were shown on the submitted CDP, 212 have been constructed, and the 20% open space requirement is exceeded without inclusion of the Subject Property. However, while the approved CDP showed a maximum of 254 units, the proffered density restricts the maximum number of units allowed. With a proffered density of 2.5 du/ac maximum, the 84.6 acre property meets the maximum allowable development potential with 212 units, as approved with FDP 74-8-125 & 126. The development of any additional dwelling units on the site would increase the density over the proffered 2.5 du/ac.

Therefore, it is my determination that the development of the Subject Property is not permitted under the proffered density and the approved Final Development Plan. In order to develop the Subject Property, a Proffered Condition Amendment or Rezoning to allow an increase in density and a Final Development Plan are required. The applications require the inclusion of the entire subdivision in the application and the consent of all property owners.

This determination has been made in my capacity as the duly authorized agent of the Zoning Administrator. If you have any questions regarding this interpretation, please feel free to contact Suzie Zottl at (703) 324-1290.

Sincerely,



Barbara C. Berlin, AICP, Director
Zoning Evaluation Division, DPZ

O:\SBATT\ACTION ASSIGNMENTS\PI - RZ 74-8-126 NEWINGTON COMMONS\PI- NEWINGTON COMMONS.DOC

Attachments: A/S

Cc: Gerald W. Hyland, Supervisor, Mount Vernon District
Earl Flanagan, Planning Commissioner, Mount Vernon District
Diane Johnson-Quinn, Deputy Zoning Administrator, Permit Review Branch, ZAD, DPZ
Ken Williams, Plan Control, Land Development Services, DPWES
Angela Rodeheaver, Section Chief for Site Analysis, DOT
Kevin Guinaw, Chief, Applications Acceptance and Special Projects Branch
File: RZ 74-8-125, RZ 74-8-126, PI 1101 122, Imaging, Reading



Lynne J. Strobel
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WALSH COLUCCI
LUBELEY EMRICH
& WALSH PC

November 17, 2011

RECEIVED
Department of Planning & Zoning
NOV 18 2011
Zoning Evaluation Division

Via Scheduled Express

Kevin Guinaw
Zoning Evaluation Division
Fairfax County Department of Planning & Zoning
12055 Government Center Parkway, Suite 800
Fairfax, Virginia 22035-5505

Re: Proposed Development of a Portion of Newington Commons
Fairfax County Tax Map Reference: 98-3 ((14)) B (the "Subject Property")

Dear Mr. Guinaw:

On September 15, 2011, I met with Kris Abrahamson, Suzie Zottl and Miriam Bader to discuss the development potential of the Subject Property that is part of Newington Commons. Prior to the submission of a formal request for a determination, Ms. Abrahamson suggested submitting the research that had been assembled by this office regarding the prior zoning approvals applicable to the Subject Property. Pursuant to that request, I submitted the attached letter dated October 7, 2011 with a number of exhibits.

Based on an initial review, Ms. Abrahamson believes that it is now appropriate to submit a request for a determination. Therefore, I would ask for your acceptance of the enclosed letter and attached exhibits as a request for the issuance of a formal zoning determination describing the process required to develop the Subject Property. In accordance with the requirements of the Fairfax County Zoning Ordinance, I have enclosed a check in the amount \$520.00 payable to Fairfax County that represents the filing fee for interpretations associated with previously approved rezonings. I have also enclosed two (2) copies of my letter dated October 7, 2011 with the enclosures pursuant to your policy.

Should you have any questions regarding this request, please do not hesitate to contact me. As always, I appreciate your assistance.

Very truly yours,

WALSH, COLUCCI, LUBELEY, EMRICH & WALSH, P.C.

Lynne J. Strobel

LJS/kae
Enclosure

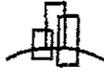
cc: John Cowles
Dennis Couture
Martin D. Walsh

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ATTORNEYS AT LAW



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WALSH COLUCCI
LUBELEY EMRICH
& WALSH PC

October 7, 2011

RECEIVED
Department of Planning & Zoning
NOV 18 2011
Zoning Evaluation Division

Via U.S. Mail

Kris Abrahamson
Zoning Evaluation Division
Fairfax County Department of Planning & Zoning
12055 Government Center Parkway, Suite 801
Fairfax, Virginia 22035

Re: Proposed Development of a Portion of Newington Commons
Fairfax County Tax Map Reference: 98-3 ((14)) B (the "Subject Property")

Dear Ms. Abrahamson:

Thank you for the opportunity to meet to discuss the development potential of the Subject Property that is part of Newington Commons. As we discussed, the Subject Property is owned by Second Carr Properties, Inc., that has been paying real estate taxes yearly to Fairfax County since its acquisition. The Subject Property is comprised of approximately 2.6 acres and is located in the southeastern quadrant of the intersection of Hooes Road and Southern Oaks Place. I have attached a copy of zoning section sheet 98-3 with the Subject Property highlighted for convenient reference (Exhibit 1).

The following is a brief summary of information that this office has assembled regarding the zoning approvals applicable to the Subject Property. The files that were available for review may not have been complete due to their age.

- On March 8, 1976, a total of 84.605 acres, known as the Kaslow-Warner property, was rezoned from the RE-1 District to the PDH-3 District pursuant to RZ 74-8-125 and RZ 74-8-126. The rezonings were approved to permit an overall density of 2.5 dwelling units per acre on the entirety of the approximately 84 acres. The two (2) rezonings were approved concurrently subject to six (6) proffered conditions. These proffered conditions are listed in a letter submitted to the Board of Supervisors dated March 8, 1976 signed by Clifford C. Kaslow (Exhibit 2).
- The approved conceptual development plan (CDP), dated November 20, 1975, depicts a maximum of 254 dwelling units comprised of approximately 120 townhouses and 134 detached or patio type homes (Exhibit 3). Approximately 43.6 acres of open space are depicted on the CDP, along with proposed trail and ballfield locations. The CDP designates areas for each housing type with arrows while also generally noting the locations of proposed ballfields. The Subject Property is adjacent to an area that is shown as a ballfield and no specific housing type is identified on the Subject Property.

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ATTORNEYS AT LAW

- Although the CDP does designate areas for either townhouses or detached patio homes, there is a determination dated February 16, 1982 from Sidney Steele, Chief of the Zoning Evaluation Branch, concluding that the submission of townhouses for patio houses is acceptable because the CDP did not show the precise location of units (Exhibit 4).
- Section 1 of Newington Commons was ultimately developed by Second Carr Properties, Inc. in the early 1980's. The development was constructed in accordance with the CDP and an approved site plan and record plats. The cover sheet of the approved site plan identifies the Subject Property as Parcel B containing 2.6526 acres (Exhibit 5). Please note that the site tabulation does not include the Subject Property in the open space calculation and there is a note in both the open space and density references stating that the calculation "Does not include Parcel B," which is the Subject Property. The record plat for Section 1 identifies the Subject Property as Parcel B and references Note 3 on the Plat (Exhibit 6). Note 3 states "Parcel B is subject to future sections." The plat included the conveyance of Parcels A and D to the homeowners association and Parcel C to the Fairfax County Park Authority. The Subject Property was not included in either conveyance. Further, under the density tabulation for Section 1, an asterisk notes that "Parcel B not included in density tabulation."

As we discussed, Dennis Couture of Dewberry & Davis has prepared calculations of all three (3) sections of Newington Commons to ensure that the total number of dwelling units constructed and the open space calculations are consistent with the CDP if the Subject Property is developed. I have enclosed a tabulation (Exhibit 7) prepared by Mr. Couture that evidences that 212 lots were constructed at Newington Commons, whereas 254 units were approved. In addition, the open space required was 20% and approximately 83% is provided without inclusion of the Subject Property.

The owner of the Subject Property recalls that during the development of Section 1, the Subject Property was excluded based on a possible future assemblage with an adjacent property to the north. An assemblage did not occur and the property to the north was subsequently developed with townhomes that are known as Southern Oaks. The development of Southern Oaks did result in the construction of Southern Oaks Drive, a new road that now provides dedicated road frontage adjacent to the Subject Property. As shown on Exhibit 7 prepared by Mr. Couture, the owner of the Subject Property proposes to construct single family detached patio homes. Open space would be provided, especially around the perimeter of the Subject Property, and access would be to Southern Oaks Drive.

I would appreciate your review of the enclosed materials and your concurrence that the Subject Property may be developed with residential use. The owner of the property anticipates the filing of a final development plan on the Subject Property. Given the limited nature of the previously approved proffers, I do not believe that a proffered condition amendment is required, especially as a development plan was not proffered.

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I look forward to further discussions of the Subject Property, and, as always, I appreciate your assistance.

Very truly yours,

WALSH, COLUCCI, LUBELEY, EMRICH & WALSH, P.C.



Lynne J. Strobel

LJS/kae

Enclosures

cc: Miriam Bader (w/encl.)
Suzie Zottl (w/encl.)
John Cowles
Dennis Couture
Martin D. Walsh

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PLANNING COMMISSION MEETING

MINUTES OF

December 11, 1975

PRESENT: Mr. Gurski, Mr. Roehrs, Mr. Merrell, Mrs. Becker, Mrs. Shands, Mrs. Fasteau, Mr. Lockwood, Dr. Kershenstein, Mr. Brinitzer, Mr. Zanfagna.

ABSENT: Mr. Maxwell.

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Meeting called to order at 8:20 P. M.

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Mr. Gurski announced the agenda for the night.

Mr. Merrell stated that on January 21, the Commission had on its schedule five development plan amendments in Centreville plus hearing on the Reston Community Center. He stated that Staff had advised that the Board Room and Robinson High School would not be available and suggested that this meeting be held in the School Board Room if it is available. Mr. Gurski stated that the Commission would adopt that suggestion.

Mr. Merrell stated that the Commission had received a document labeled Proposed Planning Commission 456 Guidelines along with a memorandum and suggested that the Commission review this material carefully and thoroughly so that the Commission could have a discussion on these proposed changes.

Mr. Zanfagna stated that the Commission had received 52 sets of minutes and that they would be receiving the other minutes in the next week. He stated he had spoken to last year's secretary, Mrs. Becker, and she thought it would be appropriate to make one motion covering all the meetings for the year. Mr. Zanfagna asked the Commission to be ready for that on December 23.

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74-8-125 - Clifford C. Kaslow - to rezone approx. 61.231 ac. located N side Silverbrook Rd. approx. 750 ft. E. of Hoes Road from RE-1 to PDH-3 for PDH-3 uses. Springfield District.

and

74-8-126 - Clifford C. Kaslow - to rezone approx. 23.374 ac. located NE quadrant Silverbrook Rd. & Hoes Rd. from RE-1 to PDH-3 for PDH-3 uses. Springfield District.

PUBLIC HEARING.

Mr. Gurski stated that the applicant has indicated that he wishes the two cases to be treated as one and that the Staff report does that. He also stated he had spoken with Mr. Tremaine from the County Attorney's office and he had said that if the properties are to be heard jointly, a single motion would be proper as long as they are clearly identified.

Staff report given by Mr. Faubion. Mr. Faubion stated that Staff recommends approval of the PDH-3 District and with respect to the development plan, Staff recommends that the development plan be approved subject to the modifications which are indicated on Page 13 of the Staff report.

Dr. Kershenstein asked questions of Mr. Faubion concerning the power lines.

Mr. Gurski announced that case 74-8-004 had been withdrawn.

Mr. Fagelson, representing the applicant, stated that they are prepared to proffer a density of 2.5. He discussed the recommendations on page 13 of the Staff report concerning the development plan and stated that they are prepared to cooperate with Staff and Design Review and hope to come back to the Commission with a plan that everyone is happy with.

Mr. Bunly Davis, 8903 Hooes Road, stated he was opposed to this rezoning because he had insufficient time to contact any concerned citizens. He asked what are patio type houses and also wanted to know who would control and maintain the vacant land around easements.

There was some discussion concerning patio type houses.

Manuel Pablo, 8739 Cuttermill Place, stated he felt the Commission was wise to express a preference for PDH type development, and asked that the Commission approve the lower end of that range.

Paul Oswald, 6919 Spellman Drive, representing West Springfield Civic Assn., stated that they would prefer a park in this area, but if that is not possible, they recommended that the density be kept at the lower limit 2 DU's per acre and not to exceed 169 dwelling units for the entire site.

Mike Walker, 9008 Silverbrook Rd., expressed concern about the effect this type of rezoning would have on property owners who have horses in this area and effect on day-to-day travel on Silverbrook Road.

Mr. Fagelson, in rebuttal, stated that they had been in touch with owners of the easements and that hopefully they would do something about the condition of the land around the easements. If not, he stated that the applicant would have to do something about them. He discussed the possibility of using the half acre lots suggested by Mr. Davis, and the zero lot lines.

Mr. Merrell asked some questions of Mr. Fagelson concerning impact on traffic.

Mrs. Shands asked Mr. Tremaine whose responsibility it was to maintain easements. Mr. Tremaine stated it was his understanding that the owner of the easement is responsible for the maintenance of the utility itself and keeping a certain area cleared for the purpose of being able to get to and from the utility for maintenance, etc., but that beyond that the responsibility for maintenance would be on the owner of the parcel of property.

Mr. Gurski closed the public hearing.

Mr. Kershenstein commented on a similar case at the Planning Commission meeting the night before and compared that case with the case presently being considered. He then MOVED THAT THE ZONING ORDINANCE AS IT APPLIES TO THE SUBJECT PROPERTIES, INCLUDED IN 74-8-125 and 126, BE AMENDED TO THE PDH DISTRICT SUBJECT TO THE APPLICANT'S PROFFER OF A DENSITY OF 2.5 UNITS PER ACRE.

74-8-125 and 74-8-126 - Clifford C. Kaslow

December 11, 1975

Mr. Merrell seconded the motion.

Mr. Faubion asked Mr. Kershenstein to specify which PDH district and whether he meant PDH-3 with density limited to 2.5 D U's per acre.

Mr. Zanfagna stated he was going to oppose the motion because of the inadequate public facilities in this area.

Mrs. Becker stated she would like to associate herself with Mr. Zanfagna's comments.

Mr. Roehrs stated he was going to oppose the motion because he felt the parcel does not lend itself to that type of density and that he felt it would be a better development at a density range of 2.

There was some discussion about the development plan.

Motion passed 7-3 with Commissioners Roehrs, Becker and Zanfagna voting No.

Dr. Kershenstein MOVED THAT THE DEVELOPMENT PLAN BE ACCEPTED SUBJECT TO THOSE CONDITIONS WHICH THE APPLICANT HAS OUTLINED IN HIS TESTIMONY.

Motion seconded by Mrs. Shands.

Mrs. Becker asked to be recorded as abstaining.

There was a discussion about where the Commission would be if it did not recommend approval of the development plan.

Mr. Tremaine, County Attorney's Office, stated he thought that the Commission would be without a recommendation to the Board to amend the zoning map if the development plan was not approved.

There was more lengthy discussion on this.

Motion passed 6-2-2 with Commissioners Zanfagna and Becker abstaining and Commissioners Roehrs and Lockwood voting No.

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75-1-025 - Jack Zirkle & Ravensworth Road Associates - to rezone approx. 9.98 ac. located W. side Ravensworth Rd. approx. 200 ft. S. of McWhorter Place from R-10 to RTC-10 for townhouses. Annandale District. PUBLIC HEARING.

Staff report given by Cherry Maurer. Ms. Maurer stated that the option of the park has been considered by the Fairfax County Park Authority and they have instead been pursuing acquisition of another tract, which she pointed out on the map. She stated that the Staff recommends that the zoning ordinance as it applies to the subject property be amended from the R-10 District to the RTC-10 District, and further, approval of the development plan subject to the Staff modifications listed in the Staff report under Staff Recommendations on the Development Plan.

Mrs. Becker asked several questions of Ms. Maurer concerning the application. Mr. Merrell asked several questions concerning possible park use.

FINAL DEVELOPMENT PLAN CONDITIONS
Rezoning Application 74-8-125 and 126
John E. Cowles, Trustee
June 18, 1981

1. On Hoes Road, Route #636, and Silverbrook Road, Route #600, dedicate right-of-way to 45 feet from center line except where the right-of-way should be realigned to meet current horizontal alignment standards.
2. Provide additional right-of-way or easements where needed for grading. The exact amount of right-of-way or easement required is to be determined at the time of site plan review.
3. No private driveway entrances for individual units shall be constructed to Hoes Road or Silverbrook Road.
4. Applicant hereby covenants and agrees to deliver to the County of Fairfax or to an Assignee at its direction the sum of \$100 for each building permit requested for construction on the captioned premises, at the time the said building permit is issued, for the purpose of assisting in the construction of roads contiguous or serving the said property.
5. Configuration of trails and location of playing fields and multi-purpose courts will be in substantial compliance with the Final Development Plan.
6. The trail system, substantially as shown, three multi-purpose courts and one playing field will be provided in satisfaction of the recreation facility requirements of the Zoning Ordinance.
7. Stormwater management measures will incorporate Best Management Practices by design of the three stormwater detention basins as prescribed by Section 1-20A of the Public Facilities Manual.
8. Extent of dedication to the Park Authority of the northwest open space area of the site will be determined at the time of site plan review in consultation with DEM and FCPA.
9. Reductions in the widths of units shall not require an amendment to the Final Development Plan.