

Board Agenda Item
July 12, 2004

3:30 p.m.

Public Hearing on SE 2004-DR-004 (Shoreh H. Armani) to Permit Office Use in a Residential District, Located on Approximately 19,500 Square Feet Zoned R-3, CRD and SC, Dranesville District

The application property is located at 1580 Chain Bridge Rd. Tax Map 30-4 ((2)) (6) 46.

ENCLOSED DOCUMENTS:

None. Staff Report previously furnished.

On Thursday, June 24, 2004, the Planning Commission voted 7-0-3 (Commissioners Byers, Hall and Koch abstaining; Commissioners Harsel and Murphy absent from the meeting) to recommend that the Board of Supervisors approve SE-2004-DR-004, subject to the proposed Development Conditions dated June 23, 2004, as modified by the deletion of Condition 9 and renumbering of remaining Conditions.

The Commission voted unanimously to recommend the following actions to the Board:

- Modification of the transitional screening yard requirements and barrier requirements as shown on the Special Exception Plat;
- Waiver of the loading space requirement, pursuant to the provisions of Sect. 11-202; and
- Modification of the travel lane requirement to allow a 15-foot wide travel lane as shown on the SE Plat.

The Commission then voted 7-0-3 (Commissioners Alcorn, Hall and Koch abstaining; Commissioners Harsel and Murphy absent from the meeting) to recommend that the Board of Supervisors direct the Director of the Department of Public Works and Environmental Services to waive the frontage improvements, including curb and gutter and right-of-way improvements, along Pathfinder Lane.

STAFF:

Barbara A. Byron, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)

Peter Braham, Senior Staff Coordinator, Zoning Evaluation Division, DPZ

Planning Commission Meeting
June 24, 2004
Verbatim Excerpt

SE 2004-DR-004 - SHOREH H. ARMANI

After Close of the Public Hearing

Vice Chairman Byers: Close the public hearing. Recognize Ms. Hopkins.

Commissioner Hopkins: Mr. Chairman, this is a fairly straightforward application. The applicant proposes to renovate an existing single family detached dwelling unit and turn it into an office. As staff stated, the Comprehensive Plan for this area states that the area should develop in medium density residential townhomes, five to eight dwelling units per acre to serve as a buffer between the CBC commercial uses and single family residential uses in West McLean. The Comprehensive Plan for Sub-area 3 of the McLean Central Business District states that special exceptions in buffer areas should be limited to interim uses. We've addressed that in Condition Number 4 to retain a residential appearance. The applicant has agreed to that in Condition Number 10 regarding lighting, a dustless service in 13, and in 15 she agreed to retain the residential nature of the home. It also requires it to be adequately screened. The applicant agrees to screening in Numbers 16 and 17. Any application for the use cannot create a negative traffic impact. The applicant has surely limited the number of patients to an average of 13. The hours of operation have been voluntarily limited and the applicant will only have one employee, so there's hardly going to be a traffic impact here. The applicant is also seeking waiver of a barrier. The applicant agrees to remove a rusted fence and replace it with landscaping -- something the neighborhood really was looking forward to -- also barrier of the loading space. And given the number of deliveries that are going to be at this location, that waiver is certainly reasonable. The applicant has agreed to all of the development conditions in the draft dated June 23, 2004. Staff has concluded that the application meets the applicable standards of the Zoning Ordinance and is in harmony with the Comprehensive Plan. I agree. Therefore, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS APPROVE SE 2004-DR-004, SUBJECT TO THE PROPOSED DEVELOPMENT CONDITIONS DATED JUNE 23, 2004, AS DISTRIBUTED TONIGHT.

Commissioners Hall and Lawrence: Second.

Vice Chairman Byers: Seconded by Ms. Hall and Mr. Lawrence.

Commissioner Wilson: Mr. Chairman, I would like to ask Commissioner Hopkins if she would accept a modification as a friendly amendment to her motion as follows: by striking out in its entirety Development Condition Number 9 that deals with the reservation of right-of-way as set forth in the development conditions dated June 23, 2004 and renumbering the remaining conditions accordingly on the grounds that any dedication of right-of-way or reservation of right-of-way is not needed for this applicant's proposed special exception use -- that it should be done or taken when the property is being proposed for redevelopment and especially considering the fact that staff has insisted on inclusion of a time limit on this special exception use so the

property eventually can be consolidated and redeveloped for townhouses. When the redevelopment is undertaken is the appropriate and logical time when the right-of-way requirements should be considered and agreed to.

Vice Chairman Byers: Is that all of the amendment you want to put on?

Commissioner Wilson: The amendment itself is -- the modification itself is just to STRIKE OUT DEVELOPMENT CONDITION NUMBER 9 AND RENUMBER THE REMAINING CONDITIONS ACCORDINGLY.

Commissioner Koch: Could I ask staff if they have any comments on that amendment?

Commissioner Wilson: I'd like to find out first if Ms. Hopkins will accept that so that we know if it is a friendly amendment or not.

Commissioner Hopkins: Yes, Mr. Chairman, I'm willing to accept that as a friendly amendment. I agree with Commissioner Frost.

Vice Chairman Byers: Staff, do you want to comment on Mr. Koch's question?

Peter Braham: Actually, the result may very well be that as the applicant goes through the site plan process, the dedication will be required as part of the requirements that are there. This development condition, however, would give notice to Public Works that the dedication is not being asked for as part of the special exception, that it need be only a reservation.

Commissioner Wilson: Mr. Chairman?

Vice Chairman Byers: Ms. Wilson.

Commissioner Wilson: My only response to that is VDOT has no money to do any road improvements anyway, so the likelihood that anything would be done with this right-of-way in the foreseeable future is relatively nil and when the townhouse development comes in, if and when it does, 11 feet may not be enough. There might actually be more or it might be needed in a different area or something else. I think it's an unacceptable burden to impose it on a special exception user who is limited to a term of years on this land and doesn't propose to modify any buildings or structures other than adding a couple extra parking spaces on the site. The patients are limited, the number of staff -- employees -- are limited. This dedication is not needed for her use.

Vice Chairman Byers: All right. Ms. Hopkins, your decision.

Commissioner Hopkins: Mr. Chairman, I'm willing to accept Ms. Frost's motion to delete Development Condition Number 9.

Vice Chairman Byers: All right. All in favor of the motion to recommend the Board of Supervisors approve SE 2004-DR-004, subject to the proposed development conditions less Condition Number 9, say aye.

Commissioners: Aye.

Vice Chairman Byers: Opposed?

Commissioners Hall and Koch: Abstain.

Vice Chairman Byers: The Chair abstains. Ms. Hall, Mr. Koch, and the Chair abstain. Motion passes. Ms. Hopkins.

Commissioner Hopkins: Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND THAT THE TRANSITIONAL SCREENING YARD REQUIREMENTS AND THE BARRIER REQUIREMENTS BE MODIFIED AS SHOWN ON THE SPECIAL EXCEPTION PLAT.

Commissioners Hall and Lawrence: Second.

Vice Chairman Byers: Seconded by Ms. Hall and Mr. Lawrence. Any discussion? All in favor of the motion, say aye.

Commissioners: Aye.

Vice Chairman Byers: Opposed? Motion carried. Ms. Hopkins.

Commissioner Hopkins: Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS DIRECT THE DIRECTOR OF THE DEPARTMENT OF PUBLIC WORKS AND ENVIRONMENTAL SERVICES, DPWES, TO WAIVE THE REQUIREMENT FOR THE LOADING SPACE PURSUANT TO THE PROVISIONS OF SECTION 11-202.

Commissioners Hall and Lawrence: Second.

Vice Chairman Byers: Seconded by Ms. Hall and Mr. Lawrence. Any discussion? All in favor of that motion, say aye.

Commissioners: Aye.

Vice Chairman Byers: Motion carried. Ms. Hopkins.

Commissioner Hopkins: Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS DIRECT THE DIRECTOR OF DPWES TO MODIFY THE TRAVEL LANE REQUIREMENT TO ALLOW A 15-FOOT WIDE TRAVEL LANE AS SHOWN ON THE SE PLAT.

Commissioners Hall and Wilson: Second.

Vice Chairman Byers: Seconded by Ms. Hall and Ms. Wilson. Any discussion? All in favor of that motion, say aye.

Commissioners: Aye.

Vice Chairman Byers: Opposed? Motion carried. Thank you very much.

Commissioner Hopkins: Mr. Chairman, I have one remaining motion.

Vice Chairman Byers: You do?

Commissioner Hopkins: I believe. And given we've deleted Development Condition Number 9, I guess I would not need a motion to waive the right-of-way requirements then. Is that correct?

Commissioner de la Fe: Is it frontage improvements?

Commissioner Hopkins: But I have the frontage improvements still.

Mr. Braham: Well, it's now frontage improvements.

Commissioner Hopkins: Frontage improvements. Okay.

Mr. Braham: Frontage improvements are a different thing.

Commissioner Hopkins: Okay. I have one more motion.

Mr. Braham: It may be --

Vice Chairman Byers: All right. Go ahead, Ms. Hopkins.

Commissioners Hopkins: Mr. Chairman, I move that the Planning Commission recommend that the Board of Supervisors direct the Director of DPWES to waive the frontage improvements including curb and gutter along Pathfinder Lane.

Commissioner Lawrence: Second.

Vice Chairman Byers: Seconded by Mr. Lawrence. Any discussion?

Commissioner Wilson: Mr. Chairman? Yes, Mr. Chairman, I just wanted to clarify -- I'm not sure that staff answered the question. If we take out Development Condition Number 9, which we have, does the right-of-way actually need a specific waiver to be included with the waiver of the frontage improvements and the waiver of the curb and gutter requirements? I believe we have done that before. We've actually included a waiver of it to make it consistent.

Mr. Braham: That is my understanding of past practice.

Commissioner Alcorn: Mr. Chairman?

Vice Chairman Byers: Mr. Alcorn.

Commissioner Alcorn: I guess the way it was described to me, I was comfortable with. That's why I supported the motion that, you know, you take out Development Condition Number 9 and then it's up to DPWES. That's basically the way it's written right now. Is that right, Mr. Braham?

Mr. Braham: If Number 9 is out of there, it would be up to the Department of Public Works to determine whether or not the right-of-way is required.

Commissioner Alcorn: Right. I think that's fair. I guess I have some policy concerns if we all of a sudden are going to start changing course on asking for, you know, right-of-way or dedication. I need to know a little bit more about that before supporting that motion to just waive it.

Commissioner Wilson: Mr. Chairman? The waiver would be included only for this special exception use which as staff stated, it is in the development conditions. It's limited to a term of years. So whenever the use turns over or the land is redeveloped for townhouses as contemplated by the Comprehensive Plan, that waiver would no longer apply -- it would not apply to any other user, just this specific user.

Commissioner Alcorn: So you are talking about basically time limiting the dedication or the reservation?

Commissioner Wilson: Waiver. Waiver of the right-of-way requirement. Correct.

Commissioner Alcorn: Mr. Braham?

Mr. Braham: Mr. Alcorn, I believe Mr. Dudley could provide some more light on this. He is more involved with the process of getting the site plan approved than I am.

Commissioner Alcorn: A lot more than I am. Come on up, please.

Reid Dudley: My name is Reid Dudley, with Runyon Dudley and Associates, civil engineer. Under the site plan Ordinance, when we look at Article 17, there are certain requirements that DPW requires of the site plan. And one of them is dedication in accordance with the Comprehensive Plan. So in this case, when we have to process a site plan, we would be required to do the dedication and at that time then we have the setback issues that we've talked about before, so a waiver, I think, would be appropriate. And in addition to that, most likely, if we are going to dedicate now and future aspects of this under the consolidation -- would be townhouses and then we would be involved in asking for density credits from the Board to be saved for the future time because at this point they are using up their density, as small as it is, it certainly might be appropriate for the future. So I think that either the reservation works and/or the waiver of the dedication works, but I don't think not addressing the problem works. It changes the whole complexity of the approval of this due to the fact of the location of the existing house to the property line and taking that area away, if that makes sense.

Commissioner Wilson: Mr. Chairman? I would suggest that if Ms. Hopkins is amenable just to modify once again her motion to include the waiver of the frontage improvements, the curb and gutter, and the right-of-way for this special exception use on Pathfinder Lane and that will take care of it.

Vice Chairman Byers: Mr. de la Fe, do you --

Commissioner de la Fe: Mr. Chairman, I'm getting confused. I supported the original --

Vice Chairman Byers: Join the crowd.

Commissioner de la Fe: I supported the original motion for removal of the reservation because I thought it would make it easier for the applicant to, you know, go ahead with this. However, if we leave it up to DPWES, they have no choice but to require the dedication at that time. So having voted for the reservation, you know, to remove the reservation, is it within *Roberts Rules of Order* to request that we reconsider that motion?

Commissioner Wilson: Well, I know I don't see any reason to reconsider it. I mean --

Commissioner de la Fe: I think we're making it extreme -- much more probable that DPWES will actually require the dedication.

Commissioner Hopkins: We don't want that.

Commissioner de la Fe: And we don't want that.

Commissioner Wilson: That's why I suggested the modification to Ms. Hopkins' last motion because it ties a loop. It's just a technical requirement as Mr. Dudley mentioned. We take out the requirement to reserve the right-of-way so we also direct the Director of DPWES to waive

the right-of-way requirements just for this applicant. It doesn't affect any future land use or future redevelopment of this property.

Commissioner de la Fe: I think we are confusing it.

Mr. Dudley: This reminds me of an application that I had a couple of years ago out in Great Falls with the L'Auberge Chez Francois Restaurant where we modified the dedication requirements as it met with the existing features and the application of where the parking lot dedication issues there. It's a little bit different, certainly, because of the problems, but I think that it was very much similar.

Vice Chairman Byers: Okay. Mr. Hart.

Commissioner Hart: Thank you, Mr. Chairman. I didn't say anything before because of the late hour. I did go along -- and I did support Commissioner Wilson's suggestion maybe for a little different reason. Some of the Commissioners may remember a case, it's called the Cupp case in the Virginia Supreme Court. It had to do with a development condition requiring an SE applicant to dedicate, maybe construct even, a third lane on Route 7. And everyone conceded that the reason for the third lane was because there is a lot of traffic on Route 7. It really had nothing to do with the underlying nursery use or the request. What the Supreme Court said was that the County cannot require dedication for something like a third lane on Route 7 unless there is a direct nexus between the third lane and the particular use. In this case the contributing traffic from this use to Route 7 is infinitesimal. You wouldn't ever have any -- it didn't change anything. And in a situation like this where the reason for the 11 feet had to do with some unknown, unfunded future project rather than a very quiet doctor's office that isn't going to do anything. I think it's the same thing as Cupp and the Supreme Court would say you can't do that. You can't make an owner give up land for something that's got nothing to do with what he is doing, not -- maybe if it was a proffer, but as a development condition where we are affirmatively requiring them to do it. That's fine and we've done that and maybe we are going to reconsider that in a minute or not, I don't know. But that's all okay. The second part of this, I thought we got off the track somehow. I thought it had to do with curb and gutter rather than the right-of-way itself and I thought at some point staff was okay with making or not making them do curb and gutter or frontage improvements like construction as opposed to dedication along that particular street. If that's not -- maybe I'm misunderstanding this, but I thought staff was okay with the concept that under this situation with this interim use in this kind of neighborhood -- I say interim use, it's seven years or maybe whatever it is, but the property is going to redevelop some day, that they don't have to build the curb and gutter and staff was okay with that for the time being.

Mr. Braham: That is correct, we were okay with that. The timing, just to clarify, is seven years plus extensions for two years without limitation on the number of extensions.

Vice Chairman Byers: Let's have a motion then to waive the curb and gutter requirements and get on with this.

Commissioner Hart: Yes, that's my point. It doesn't seem to me it involves the right-of-way. It was curb and gutter.

Vice Chairman Byers: Besides, if they take all that land, that's essentially going to be a taking anyway and VDOT would have to buy the whole lot.

Commissioner Wilson: Mr. Chairman? The only reason for that modification is, as Mr. Dudley says, we've taken out the development condition that requires the reservation, but the Director of the Department of Public Works can still come back at site plan and oppose it again.

Vice Chairman Byers: I'm trying to get a motion.

Commissioner Wilson: I'm just saying that you've got to include the right-of-way with the frontage and the curb and gutter waivers or else they are going to be stuck in the mud.

Vice Chairman Byers: Go ahead, Ms. Hopkins.

Commissioner Hopkins: This is a motion, Mr. Chairman, for curb and gutter only? To waive that?

Vice Chairman Byers: We've already waived the dedication.

Commissioner Hopkins: Okay, Mr. Chairman.

Commissioner Hart: We haven't waived the dedication.

Commissioner Wilson: We haven't waived the dedication.

Commissioner Hart: Oh, we didn't do the reservation. I see what --

Commissioner Wilson: You have not waived --

Vice Chairman Byers: The Chair will entertain a motion to waive any dedication and curb and gutter improvements.

Commissioner Hopkins: To frontage improvements including curb and gutter. Okay. Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS DIRECT THE DIRECTOR OF DPWES TO WAIVE THE FRONTAGE IMPROVEMENTS, INCLUDING CURB AND GUTTER AND RIGHT-OF-WAY IMPROVEMENTS (sic) ALONG --

Vice Chairman Byers: RIGHT-OF-WAY DEDICATION.

Commissioner Wilson: Dedication.

Commissioner Hopkins: ALONG PATHFINDER DRIVE (sic).

Vice Chairman Byers: Good.

Commissioner Hart: Second.

Vice Chairman Byers: Seconded by Mr. Hart. Any discussion? All in favor of that motion, say aye.

Commissioners: Aye.

Vice Chairman Byers: Opposed?

Commissioners Koch, Hall, and Alcorn: Abstain.

Vice Chairman Byers: You abstained?

Commissioner Koch: Yes. I abstained.

Vice Chairman Byers: Mr. Koch abstained. So did Ms. Hall. Are we through with this thing now?

Commissioner Hall: And Walter's abstaining.

Vice Chairman Byers: Mr. Alcorn abstains. The rest of us vote to approve it.

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(The first motion, as amended, carried by a vote of 7-0-3 with Commissioners Byers, Hall, and Koch abstaining; Commissioners Harsel and Murphy absent from the meeting.)

(The second, third, and fourth motions carried unanimously with Commissioners Harsel and Murphy absent from the meeting.)

(The fifth motion carried by a vote of 7-0-3 with Commissioners Alcorn, Hall, and Koch abstaining; Commissioners Harsel and Murphy absent from the meeting.)

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