

**Board Agenda Item
December 9, 2002**

**5:30 p.m. Item – RZ-2001-BR-022 - Rocky Gorge Homes Inc.
Braddock District**

On Thursday, November 21, 2002, the Planning Commission voted 7-0-3 (Commissioners Kelso, Smyth and Wilson abstaining; Commissioners Alcorn and Hall absent from the meeting) to recommend the following actions to the Board of Supervisors:

- **Approval of RZ-2001-BR-022, subject to execution of proffers consistent with those dated November 21, 2002, revised to include the following sentence in condition #22: "Furthermore, the applicant shall direct its agents and employees involved in marketing and/or home sales for the property to adhere to this proffer".**
- **Modification of the transitional screening yard and barrier requirements along the western boundary in favor of that shown on the CDP/FDP;**
- **Waiver of the 600-foot limitation on the length of private streets;**
- **Waiver of the service drive requirement along Route 123;**
- **Modification of the trail requirement along Route 123 in favor of the existing seven-foot wide walkway;**
- **Approval of a variance, pursuant to the provisions of Paragraph 8 of Section 16-401 of the Zoning Ordinance, to allow the decorative fence along Route 123 to exceed four feet in height.**

The Commission also voted 7-0-3 (Commissioners Kelso, Smyth and Wilson abstaining; Commissioners Alcorn and Hall absent from the meeting) to approve FDP-2001-BR-022, subject to Board approval of RZ-2001-BR-022 and the conceptual development plan.

Planning Commission Meeting
November 21, 2002
Verbatim Excerpt

RZ-2001-BR-022 - ROCKY GORGE HOMES, LLC

Decision Only During Commission Matters
(Public Hearing was held on November 7, 2002)

Commissioner Harsel: This evening we are scheduled for decision only on rezoning 2001-BR-022. We have before us -- last night we received proffers. This evening we have new proffers and the reason we have new proffers is when I read the old -- the proffers we received last night, my comment was, "Oh, dear, we are missing a few things" to which I e-mailed Mr. Braham. He went to the applicant and the applicant has complied so the underlines that are in here tonight are underlines that the Planning Commissioner requested. Therefore, I -- if anyone has questions on the changes, I'll let Mr. Braham answer, otherwise, I'm ready to move. I know we like to wait and read them all, but these were not generated by the applicant. I am going to ask the applicant on Number 22 -- she had said when we were off the record -- on temporary signs -- Ms. Wilson gave me the language she likes and the only difference is there is an added sentence in proffer language that Ms. Wilson, who we call "popsicle sign queen," is recommending that was left off of this one and that's sentence says: "Furthermore, the applicant shall direct its agents and employees involved in marketing and/or home sales for the property to adhere to this proffer." Ms. Baker, do you have any objection to that?

Ms. Elizabeth Baker: No, that's fine. We will be happy to do that.

Commissioner Harsel: Okay. And you agree to all the other proffers that I requested?

Ms. Baker: Yes, I do.

Commissioner Harsel: Okay. Does anyone need an explanation? Therefore, Mr. Chairman, I have six motions on this case. Before I start I would like to say that this is a piece of property owned by the Housing Authority since the 80s. We have tried several things. We think now we have a buyer for it. I know we don't deal with money. I know we deal with land use, but when you stop and think, we have an agency in the County that has been paying mortgages and interest since the 80s on this. It is with pleasure that I MOVE THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF REZONING 2001-BR-022, SUBJECT TO THE PROFFERS DATED -- received tonight -- NOVEMBER 21, 2002.

Commissioner Byers: Second.

Chairman Murphy: Seconded by Mr. Byers. Is there a discussion of the motion?

Commissioner Harsel: Oh, AS AMENDED, with the last sentence for the sign proffer, Number 22.

Chairman Murphy: Is there a discussion?

Commissioner Kelso: Mr. Chairman?

Chairman Murphy: Mr. Kelso.

Commissioner Kelso: Regrettably, I was absent for the Braddock case, so I will have to abstain from all six motions.

Commissioner Wilson: Mr. Chairman?

Chairman Murphy: Yes.

Commissioner Wilson: I was not here either for the public hearing, so I will be abstaining, but I do want to thank Ms. Harsel for her comments on the sign proffer.

Commissioner Smyth: Mr. Chairman?

Commissioner Murphy: Ms. Smyth.

Commissioner Smyth: I think I am going to be abstaining also. But it is because I have a couple of concerns that I think extend beyond this case even. In the process of this, I have talked to Mr. Braham about the stormwater management situation and have found that we didn't exactly have all the information we thought we had about some of these innovative BMPs, and I am still concerned that the County is going about this sort of one case here, one case there, and not really looking at the policy of maintenance. I have found some information that has been around apparently for a year now that we haven't received. And it's in terms of how we expect homeowners' associations to maintain some of these innovative things. I had no idea that the HOAs will be expected to provide an annual report of inspections and maintenance activities, including a fiscal summary of budgeted and actual expenditures, to the County's Maintenance Stormwater Management Division within 45 days of the end of the calendar year. There are a few other things here too. And this also goes for rain gardens which I had no idea about. We also had not been told that they expect someone to put up -- or to provide for future maintenance on these things, for about 20 years. I suppose that should be the developer, but there's --

Commissioner Harsel: I think -- isn't it in the one statement? I know that it's in the one thing I had -- in the County -- that the developer has to provide a maintenance fund.

Commissioner Smyth: I know, but we're not proffering those things.

Commissioner Harsel: I know we are not because I was told that the developer -- well, let's have Mr. Braham -- Mr. Braham, would you comment on that?

Mr. Peter Braham: Yes, with regard to the maintenance fund, if you will, the policy of the Department of Public Works and Environmental Services is when an innovative BMP is proposed, is to request that the developer put up funds to allow for the future maintenance and

also replacement of the facility. So this is a requirement of getting an innovative BMP approved. I would note, however, in this instance, we have also included that in the attachment to the proffers -- to reiterate it.

Commissioner Smyth: Right, although I didn't see in the attachment to the proffers anything specifically saying that at some point those trenches are going to have to be dug up.

Commissioner Harsel: If they use trenches.

Commissioner Smyth: That's if they use trenches, but that's what the appendix is on that.

Commissioner Harsel: Yes.

Commissioner Smyth: And, I mean it talks about how high the grass is supposed to be, although in one place it says three to six inches and in the other place it says six to twelve -- so what's --

Mr. Braham: One of the things that was fixed in the proffers that were handed out tonight -- I had passed the applicant a collection of a couple of different things to meld together. They have been melded in this revised set. So that discrepancy is now gone.

Commissioner Smyth: Thank you. Anyway --

Chairman Murphy: Further discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it approve RZ-2001-BR-022, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed?

Commissioners Kelso, Wilson, Smyth: Abstain.

Chairman Murphy: Mr. Kelso, Ms. Wilson and Ms. Smyth abstain. Ms. Harsel.

Commissioner Harsel: Mr. Chairman, I move the Planning Commission recommend to the Board of Supervisors -- no, I don't -- I move the Planning Commission approval Final Development Plan FDP-2001-BR-022, subject to the proposed development conditions in Appendix 2 of the staff report --

Mr. Braham: Excuse me, Ms. Harsel. Those have been incorporated into the proffers, so we don't need the development conditions.

Commissioner Harsel: We're doing an FDP without development conditions?

Mr. Braham: Yes, that's correct.

Commissioner Harsel: I noticed the trees.

Mr. Braham: Yes, I did pass out, well --

Commissioner Harsel: Okay, so we don't need -- we just approve the FDP period.

Mr. Braham: You just approve the FDP, subject to the Board's approval of the --

Commissioner Harsel: Of the CDP and the proffers.

Mr. Braham: That's correct.

Commissioner Harsel: All right. So let me start again. Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION APPROVE FINAL DEVELOPMENT PLAN 2001-BR-022, SUBJECT TO THE BOARD OF SUPERVISORS APPROVING REZONING 2001-BR-022 IN ACCORDANCE WITH THE PROFFERS, AS AMENDED.

Commissioner Byers: Second.

Chairman Murphy: Seconded by Mr. Byers. Is there a discussion of the motion? All those in favor of the motion to approve FDP-2001-BR-022, subject to the Board's approval of the rezoning and the conceptual development plan, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed?

Commissioners Kelso, Wilson and Smyth: Abstain.

Chairman Murphy: Motion carries. Same abstentions. Ms. Harsel.

Commissioner Harsel: Mr. Chairman, we are on number 3. I MOVE THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT THE TRANSITIONAL SCREENING YARD REQUIREMENT AND BARRIER BE MODIFIED ALONG THE WESTERN BOUNDARY IN FAVOR OF THAT SHOWN ON THE CDP/FDP.

Commissioner Byers: Second.

Chairman Murphy: Seconded by Mr. Byers. Discussion? All those in favor, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed?

Commissioners Kelso, Wilson and Smyth: Abstain.

Chairman Murphy: Motion carries. Same abstentions.

Commissioner Harsel: Mr. Chairman, I MOVE THAT THE PLANNING RECOMMEND TO THE BOARD OF SUPERVISORS THAT THE LIMITATION ON THE LENGTH OF THE PRIVATE STREETS BE WAIVED.

Commissioner Byers: Second.

Chairman Murphy: Seconded by Mr. Byers. Discussion? All those in favor of the motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed?

Commissioners Kelso, Wilson and Smyth: Abstain.

Chairman Murphy: Motion carries. Same abstentions.

Commissioner Harsel: Mr. Chairman, I MOVE THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT THEY WAIVE THE SERVICE DRIVE REQUIREMENT ALONG ROUTE 123.

Commissioner Byers: Second.

Chairman Murphy: Seconded by Mr. Byers. Discussion? All those in favor of the motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed?

Commissioners Kelso, Wilson and Smyth: Abstain.

Chairman Murphy: Motion carries. Same abstentions.

Commissioner Harsel: And finally, Mr. Chairman, this is a motion -- I have a comment afterwards. I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT THEY ALLOW THE TRAIL REQUIREMENT ALONG 123 TO BE MODIFIED IN FAVOR OF THE EXISTING SEVEN-FOOT WIDE WALKWAY.

Commissioner Byers: Second.

Chairman Murphy: Seconded by Mr. Byers. Is there a discussion?

Commissioner Harsel: I've got seven motions. I'm sorry.

Chairman Murphy: No discussion?

Commissioner Harsel: No.

Chairman Murphy: Okay. All those in favor, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed?

Commissioners Kelso, Wilson and Smyth: Abstain.

Chairman Murphy: Motion carries. Same abstentions.

Commissioner Harsel: Mr. Chairman, I finally MOVE THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS APPROVE A VARIANCE PURSUANT TO THE PROVISIONS OF PARAGRAPH 8, SECTION 16-401, TO ALLOW THE DECORATIVE FENCE ALONG 123 TO EXCEED FOUR FEET IN HEIGHT. This is a wrought iron fence.

Commissioner Byers: I'll second that, but that's a BZA action, isn't it?

Commissioner Harsel: No.

Commissioner Byers: A variance?

Mr. Braham: Excuse me, Mr. Byers. The regulations with regard to P-Districts expressly allow the Board of Supervisors, in adopting a P-District, to approve a variance to the provisions in the Ordinance, in that paragraph that's cited.

Commissioner Byers: Okay.

Chairman Murphy: Further discussion? All those in favor of the motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed?

Commissioners Kelso, Wilson and Smyth: Abstain.

Chairman Murphy: Motion carries.

Commissioner Harsel: I would like to thank Mr. Braham, as usual. He did an outstanding professional job. I also want to thank Ms. Baker because at times I thought -- she probably thought it was going to be a lot easier and it was, up until the time we went to public hearing and I said, "No, this is not quite the cakewalk we wanted." I'm happy though to say that the City of Fairfax Planning Commission approved this rezoning. That's why we held it up. Now both Planning Commissions have approved it and it goes on to the Board and the Council. It's in their hands. We've done our job.

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(The motions carried by a vote of 7-0-3 with Commissioners Kelso, Wilson and Smyth abstaining; Commissioners Alcorn and Hall absent from the meeting.)

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