

PLANNING COMMISSION

MINUTES

November 4, 2015

The Rockingham County Planning Commission met on Wednesday, November 4, 2015, in Community Development Room in the Rockingham County Administration Center. Members present were, Chairman Rodney Burkholder, Vice Chair Mr. Bill Loomis, Mr. Steven Pence, and Mr. David Rees. Staff members present were Director of Planning, Rhonda Cooper; Planner, James May; Zoning Administrator Diana Stultz; Code Compliance Officer, Kelly Getz and Secretary Amanda Thomas.

At 6:37 p.m., Chairman Burkholder called the meeting to order.

Chairman Burkholder offered the Pledge of Allegiance and Invocation.

MINUTES

On motion by Mr. Loomis, and seconded by Mr. Pence, the October 6, 2015, minutes were approved with a 4-0 vote.

REZONING REQUESTS

REZ15-246 SEGM, VA LLC, 2021 cross Beam Drive, Charlotte, NC 28217, to amend the proffered conditions on TM#125-(A)- L144, a 5.975 acre parcel located south of Reservoir Street (Route 710) and west of Fieldale Place (Rt. 895) to relocate a club house. The Comprehensive Plan identifies this area as Community Residential. It is located in Election District 3.

Mr. May presented the request.

By request of Mr. Rees, Mr. May presented the original proffered condition in question and stated that the proffered height of the Community Center would be a single story.

Chairman Burkholder questioned if any landscaping or buffers would be affected by amending these proffers. Mr. May stated that the only change would be the relocation of the two buildings.

REZ15-247 M & N Real Estate LLC, 7078 Blair Meadow Ln, Mt. Crawford, VA 22841 to amend the proffered conditions on TM#125-(A) - L20#, LE1, and LF, a total of 8.062 acres located west of Port Republic Road (Rt. 253) and south of Stone Spring Road (Rt. 280), to revise the landscaped buffer. The Comprehensive Plan identifies this area as Mixed Use Center. It is located in Election District 4.

Mr. May presented the request.

Mr. Rees questioned if the trees were owned by M & N. Ms. Cooper responded that they were.

Mr. May presented the staff recommendation of approval for both rezoning requests.

Mr. Loomis motioned for the Planning Commission to recommend approval of the proposed rezoning, REZ15-246; Mr. Rees seconded the motion.

On a vote of 4-0, the Commission recommended the approval of this rezoning.

Mr. Rees motioned for the Planning Commission to recommend approval of the proposed rezoning, REZ15-247; Mr. Pence seconded the motion

On a vote of 4-0, the Commission recommended the approval of this rezoning.

PUBLIC HEARING

ORDINANCE AMENDMENTS

OA15-256 Amendment to the Rockingham County Code, Zoning (Chapter) 17, Article 2. Definition of Terms, Section 17-201 Definitions Generally to add the definition of Farm Brewery.

OA15-257 Amendment to the Rockingham County Code, Zoning (Chapter 17), Table 17-606 Land Use and Zoning Table, Agricultural Uses to add farm brewery, farm cider mill and farm distillery as permitted uses in the A-1 and A-2 zoning districts.

Mrs. Stultz presented the requests.

Mr. Rees questioned if a farm cider mill would be producing hard cider. Mrs. Stultz responded that it would.

At 6:48 p.m., Chairman Burkholder opened the public hearing.

Mr. William Lobdell questioned if adjoining landowners would be notified of a farm brewery. Mrs. Stultz stated that under Rockingham County law, adjoining landowners do not have to be notified of any permitted uses on a property. The State of Virginia has declared farm breweries to be a permitted use on land zoned agriculture. She stated that the ABC board may have notification hearings. The applicant would have to meet all regulations through other departments, but zoning would have to allow a farm brewery so long as it is on a bonafide farm.

Mr. Lobdell questioned if this was due to the revenue the County would generate through a farm brewery. Mrs. Stultz stated that it was not, it is because it is considered a farm activity and the State of Virginia does not allow regulations on farms. Mrs. Stultz reiterated that it had to be a bonafide farm in order to apply for a farm brewery.

In response to a question by Mr. Lobdell, Mrs. Stultz stated that the requested ordinance amendment would bring the Rockingham County zoning ordinance into compliance with the State regulations.

Ms. Kim Sandum questioned if it had to be a bonafide farm as defined by Rockingham County. Mrs. Stultz responded that that was correct. Ms. Sandum questioned if it would be in violation if a farm brewery existed on a farm that was not considered bonafide.

Mrs. Stultz stated that the ABC Boards have asked applicants to confirm that they would comply with the zoning regulations, before they would issue any permits.

At 6:57 p.m., Chairman Burkholder closed the public hearing.

Mrs. Stultz presented the staff recommendation of approval.

Mr. Loomis questioned if there were currently any farm breweries in Rockingham County. Mrs. Stultz replied there were none at the time, but there has been some interest.

Mr. Pence motioned for the Planning Commission to recommend approval of the proposed ordinance amendments; Mr. Loomis seconded the motion.

On a vote of 4 -0, the Commission recommended the approval of these amendments.

OA15-264 Amendment to the Rockingham County Code, Zoning Ordinance (Chapter 17), Article 2, Definition of Terms, Section 17-201 Definitions Generally to remove the definition Amusement, indoor and to add Recreation or entertainment, inside (and not otherwise listed) and to add Recreation or entertainment, outside a building (and not otherwise listed).

OA15-265 Amendment to the Rockingham County Code, Zoning Ordinance (Chapter 17), Table 17-606 Land Use and Zoning Table, Recreational Uses to remove the term Amusement, indoor; and to add the term Recreation or entertainment, inside a building and not otherwise listed in the A-1 and A-2 zoning districts by special use permit (SU) and in the R-4, R-5, MXU, B-1, PCD, and PID districts as permitted (P). This amendment also adds the term Recreation or entertainment, outside a building and not otherwise listed in the A-1, A-2, and B-1 zoning district by special use permit (P) and in the R-4, R-5, MXU, PCD, and PID as permitted (P).

Mrs. Stultz presented the requests.

At 6:58 p.m., Chairman Burkholder opened the public hearing.

Mr. Doug Harper questioned if these amendments pertained to only commercial applications. Mrs. Stultz responded that that would be something that would be determined when an applicant came in to speak with staff. If it would have enough impact, it could be considered commercial. Mr. Harper commented that many years ago he had built a playground area on his property that had been utilized by neighborhood children. He questioned if this would be something that would require a special use permit. Mrs. Stultz responded that those questions would have to be addressed on a case to case basis; she could not say yes or no either way. Mr. Harper stated that this could make property owners nervous about requesting any type of outdoor activity. Mrs. Stultz mentioned that until October, the zoning ordinance required a special use permit for entertainment outside a building.

Chairman Burkholder added that he feels the ordinance amendments broaden the scope of uses allowed. He stated that as density increases the need for neighbors working together on these types of situations increases.

Mr. Harper reiterated that this amendment is intimidating. He also stated that the wording of the amendment seems to imply commercial to him. Chairman Burkholder stated that there is a lot of flexibility built into the special use permit process for such conversations. Mrs. Stultz agreed.

Mr. William Lobdell questioned the cost of a special use permit. Mrs. Stultz responded it was \$550.00. Mr. Lobdell asked who was responsible for granting the special use permits. Mrs. Stultz replied that the Board of Supervisors made the decision. Mr. Lobdell questioned if the \$550.00 fee would be refunded if the request was denied. Mrs. Stultz explained that the application fee covered the work that would be done in order to prepare for the hearing, but the fee is a one-time fee. Chairman Burkholder added that a special use permit protects the applicant from future complaints of uses of his/her property.

Mr. Lobdell questioned if every application is going to have a fair trial, or will they side with a group of neighbors who are against the proposed use. Mrs. Stultz responded that the Board of Supervisors looks at each application on its own merit and considers the concerns of neighbors as well as the land use issue to determine if it is an appropriate location for the proposed activity. The special use permit allows the Board of Supervisors to determine if a specific use is suitable for an individual property.

Mr. Lobdell stated that he feels this amendment is too broad. Chairman Burkholder stated that those issues are resolved in the special use process.

Ms. Sandum asked if there was any consideration to having supplemental standards, particularly for A-1 and A-2. Ms. Cooper responded that there was, and the determination was made that it needed to be done on a case to case basis rather than having a set of standards that applied to anything, anywhere. Ms. Sandum questioned if supplemental standards could be written for a particular use. Ms. Cooper responded that they could be written and they would be considered conditions.

Ms. Colleen Grattan questioned the definition of "disturbing" and gave the example that neighbor children playing outside could be considered disturbing. She said that the children have a right to play outside and no one can tell them they cannot. She stated that she feels that the wording leaves it open and says that if it is disturbing it is by special use permit. Mrs. Stultz stated that it is by special use permit either way. The Board of Supervisors will determine if the use is a proper fit for a particular property. Ms. Grattan questioned if the text stated if a particular use was disturbing to someone who made a complaint, a special use permit would be required. Mrs. Stultz responded that if the Board of Supervisors, after receiving all information, found a use to be disturbing then they could put conditions on the activity such as hours of operations. This amendment would give the Board of Supervisors the opportunity to look at each application on a case by case basis and make decisions as to the conditions that should be placed on a special use permit, if approved. Ms. Grattan stated that she does not disagree with the activities listed but there should be a line drawn as to what is considered commercial and what is considered private. She feels it allows the County to be able to control more by making it too broad. She wanted to know at what point she has the freedom to enjoy recreation in the pursuit of happiness on her own private land that she pays taxes on and just doing activities that her, her family and friends can enjoy without having constraints imposed on them by the government. Ordinances like this do not exist in neighboring counties. Chairman Burkholder mentioned that the most important piece is neighbors getting along. Ms. Grattan stated that she understands that, but she sees all the commercial things, but she doesn't understand how this amendment will allow for neighbors getting along especially when the word "disturbing" is placed in the amendment. Chairman Burkholder stated that the special use permit allows for the opportunity to work what is considered to be disturbing out with your neighbors. Ms. Grattan stated that she looked at the special use permit application on the County website and thought that she would have to reapply every one or two years. She said that it scares her to think that something that she is doing in her own back yard can be limited by the County.

She thinks it is too broad and there should be a distinguishing factor between commercial and private uses. Mr. Pence clarified that a special use permit has to be used within a certain amount of time, but as long as it is being used the conditions are ongoing. Mrs. Stultz added that you would have two years to either start construction or start utilizing the approved use. An applicant does not have to meet with neighbors or get their signatures, but the applicant does have to provide the County with all adjoining landowner's names and addresses. Chairman Burkholder stated that it is an attempt for the Board of Supervisors to provide opportunities for citizens to enjoy themselves and work together. Mrs. Stultz added that the word "disturbing" is in the amendment to say that the Board of Supervisors may put conditions on activities that are much noisier or extends into the night.

Mr. Kolten Windsor questioned if swimming pools were by special use permit. Mrs. Stultz replied that by law swimming pools are considered an accessory use to a residence and that a public pool is listed separately. The items that would fall under this ordinance amendment are uses that are not otherwise defined in the zoning ordinance. Mr. Windsor stated that he is confused because in order to have an inground pool you have to manipulate the land and that is one of the biggest concerns with motocross. Chairman Burkholder replied that the two activities are not comparable. Mr. Windsor stated that swimming pools are more dangerous. He wants to know why a swimming pool does not require a special use permit when you have to change your land but motocross tracks and things such as that do require one. Chairman Burkholder responded that it was because of the nature of the activity. Mrs. Stultz reiterated that swimming pools are an accessory use, a motocross track is not found to be a customary use. This amendment would allow staff to determine if a particular use was just for a family or if it would be a larger operation. Mrs. Stultz reminded the Planning Commission that they were not looking just at motocross but for all uses. Mr. Windsor stated that it was stated that there aren't as many motocross tracks as there are swimming pools, but to him swimming pools would be a bigger problem because there is more.

Mr. Eddie Grattan questioned at what point will the line be drawn on someone's private property and their rights to exercise what they want to do on their own property. This amendment opens a lot of grey area that allows the County to charge property owners \$550.00 to do something on their own property.

At 7:29 p.m., Chairman Burkholder closed the public hearing.

Mrs. Stultz presented the staff recommendation of approval.

Mr. Pence gave an example of neighborhood children getting together to play sports and questioned if that would be allowed. Mrs. Stultz responded that the County has never looked as those types of uses as needing a special use permit. If it were to go beyond a few children playing and become organized with times and other teams, then yes, it would require a special use permit. Mrs. Stultz reiterated that each application would be looked at on a case to case basis. This amendment gives people the opportunity to do things that, as of now, they do not have the option to do. This amendment is very similar to what was in the old zoning ordinance, which has worked for the County for the last 35 years. This will allow protection for both property owners and their neighbors.

Mr. Pence questioned if there was a complaint, would the property owner need to come speak with staff. Mrs. Stultz stated that they would come talk to staff and it would be handled on a case to case basis as to whether a special use permit would be needed.

Chairman Burkholder questioned if individuals who have gone through the special use permit process realize the value once they are granted the permit. Mrs. Stultz agreed and stated that many times when there is a complaint on a property, the property owners will go through the application process and once given the special use permit, complaints have stopped.

Chairman Burkholder stated that he has spoken with many individuals in his district and stated that many of them liked the special use permit and that some of the issues is that those individuals who have

not gone through the special use permit process don't have a grasp on the idea of it. He also noted that it sounds like there are added regulations with the proposed amendment, but also many added freedoms.

Mr. Loomis asked for clarification on the process of an individual coming in to talk to staff about the special use permit. Mrs. Stultz responded that in most cases, but not always, the need for a special use permit is brought about by a complaint. The property owner will then speak with staff to let them know what they plan to do with their property and from there the County can work with the individual to find the best solution.

Mr. Pence stated that since the amendment is so broad he is considering all the things that it could possibly involve. Mr. Getz mentioned that Mrs. Stultz talked about accessory uses and that many activities would fall under that. Mrs. Stultz stated that it is not possible to state if something will or will not require a special use permit. She added that with the current zoning ordinance, none of these activities would be allowed to happen. The ordinance will have to be amended to allow it. There is not a way to list every possible use. This general statement opens the ability to add conditions to different scenarios.

Chairman Burkholder stated that allowing everyone to do everything, everywhere is not an option. This amendment is a valid attempt by staff to create a way to address the many proposed activities that come into the office.

Mr. Rees stated that he does not think the amendment is talking about children playing in the yard or kids playing football. That is something that Rockingham County would not try to regulate. This amendment is to give the County the tool to protect both property owners and their neighbors.

Mr. Rees motioned for the Planning Commission to recommend approval of the proposed ordinance amendments; Mr. Pence seconded the motion.

Mr. Pence stated that he understands the commercial uses can be very invasive but is concerned about the amendment seems to be too broad.

Mr. Loomis concurred and believes the proposed amendment is applicable to a commercial situation but questioned what the line is between commercial use and non-commercial use.

Mr. Getz stated that one thing that zoning does is it addresses the impact of a use on adjoining property. Whether a use is commercial or not does not necessarily affect that. From a zoning standpoint money does not have to exchange hands in order for an activity to be disturbing to neighbors. Mrs. Stultz gave an example of this.

Chairman Burkholder stated that the Commission's vote was only a recommendation, and that it will receive another chance for discussion. He added that staff has worked very diligently.

Mr. Pence stated that commercial is not the right place to draw the line. In general, he is reassured by this ordinance amendment but he still feels there is a grey area.

Mr. Loomis stated that he understands how the amendment could be useful, but questions if the amendment is too controlling. He stated that there can be a lot of grey area, especially when using the term "organized". Mr. Loomis does not know that having just a discussion with an applicant could constitute the need for a special use permit.

Mr. Rees stated that he looks at the amendment as another tool that could be used for the protection of both the applicant and his/her neighbors.

On a vote of 2-2 (Mr. Rees and Chairman Burkholder in favor- Mr. Loomis and Mr. Pence in opposition), the Commission sends these amendments, with a tied vote, to the Board of Supervisors.

UNFINISHED BUSINESS

There was no unfinished business

MISCELLANEOUS

There were no miscellaneous items

CITY PLANNING COMMISSION LIAISON REPORT

Upcoming Harrisonburg City Planning Commission Meeting

The Liaison for the November 11, 2015 Harrisonburg City Planning Commission Meeting is Mr. Rees.

SITE VISIT

The site visit for the December meeting would be decided at a later time.

STAFF REPORT OVERVIEW

Ms. Cooper reviewed the staff report.

ADJOURNMENT

At 8: 18 p.m., having no further business, the Commission adjourned

Rodney Burkholder, Chair

Amanda Thomas, Secretary