

Planning Commission Meeting  
October 22, 2014  
Verbatim Excerpt

SE 2014-SU-010 – CSH ARTISAN FAIRFAX, LLC

Decision Only During Commission Matters  
(Public Hearing held on September 18, 2014)

Commissioner Litzenberger: I have a decision only tonight, Mr. Chairman. It has to do with the Artisan Elderly facility proposed in Chantilly. I'd like for Ms. Abrahamson to give us an update on the research on this on this.

Kris Abrahamson, Zoning Evaluation Division, Department of Planning and Zoning: How much of an update do you want? I can go through – we've – I'll give you the short version and if you want me to expand, I can give you more. The concerns of the Commission, primarily, were with the status of the service station, which is on the same service drive as the proposed use. We have been out to the site. The service station is indeed in violation as we – I think, Billy – had mentioned to you before. We have at this point elected not to file a notice of violation with him because they have hired an attorney who has requested a pre-application meeting, which Billy and I are trying to set up with him as we speak, and we anticipate that you will be seeing that Special Exception application shortly. We think that is the better way to proceed at this point. The issue of the service drive will be addressed through that application, which is where it should be addressed because that is the property that currently owns it. This particular property is not dependent on that particular service drive and therefore we are comfortable with where we are on this case at this time.

Commissioner Litzenberger: Ms. Abrahamson, how long will it take to go through that whole process and get the service drive accepted?

Ms. Abrahamson: Let me get out my crystal ball. I mean, we're trying to set up a meeting with them as soon possible, within the next week to two weeks, depending on mutual schedules. I'm reasonably comfortable we can do that. We'll talk to them about what our concerns are. There was a previous Special Exception on this that expired. He never implemented it and it just expired. So we have a pretty good idea of what the issues were, although that's an old SE and – you know, times have changed. We have a pretty good idea where we're going. My guess is we would do as much as we could as staff to expedite it. My second guess would be the supervisor would also be in favor of probably expediting it, but I – that's a guess. In the best case scenario right now, it would be on staff probably about seven months, if they filed immediately, before we would get it to Board. If it's expedited by the Board member, we could probably do a little better than that – maybe five to six, but that's probably about what we would be looking at. If they proceed with it on a, you know, an expeditious basis. I think if they don't proceed with on an expeditious basis, we would issue the notice of violation and take action through the courts, which would take a lot longer than the SE, probably, to resolve.

Commissioner Litzenberger: About how long would that take? Ballpark.

Ms. Abrahamson: By the time it goes through – you know, and again, there’s so many things that can happen. Usually what happens is they file an appeal immediately on something and then it goes through an appeal process at the Board of Zoning Appeals. If they do that route, you know, I would say at least a year by the time we’ve worked through an appeal; and the courts, it could be longer. Depending on the court’s calendar, you know, things can take a very long time. Our goal is to not have court cases and generally what we try to do is work with applicants on violation situations to resolve them and we’re usually pretty successful in that. We have a very small percentage that we actually have to take to court.

Commissioner Litzenberger: One point that Commissioner Hall made last time was the – the access drives from route 50 to the service road and maybe a necessity of possibly some stop signs or something to that effect. Would that be addressed during that process also?

Ms. Abrahamson: Well, yes.

Commissioner Litzenberger: Okay.

Ms. Abrahamson: If – if it becomes a public service drive in the public system, it will be subject to VDOT and VDOT’s warrants. If it remains a private road in the interim, then it would be up to whatever the applicant wants to do because we don’t control it as a private. So, you know, most likely what will happen is it will be in the VDOT system because we are – you know, we would seek dedication of that and – you know, that’s what was previously conditioned as well. And if, you know, any signage or anything is necessary with that, as long as it meets VDOT warrants – and there are warrants for stop signs and other, you know, notices as well as signals.

Commissioner Litzenberger: So all of that would take place during the process, the SE process.

Ms. Abrahamson: It would – yes, it would, you know – what we would do – we’d look at it, we’d see what we can do. If we think it has any hope of making the warrants or if it’s even close, we usually have them do at least a warrant analysis, if it’s close. If it’s, you know, if there’s six of the seven or eight – I think there’s eight; I’m not sure anymore – criteria it doesn’t meet, then we wouldn’t tell them to do a warrant analysis. But if they’re really close, we’d have them do that analysis and as a condition of the SE we would ask them to put any kind of materials necessary in place. But right now I can’t tell you what that is because I’d have to run the numbers in today’s time.

Commissioner Litzenberger: Okay. Will Mr. Adams please come down?

Scott Adams, Esquire, Applicant’s Agent, McGuireWoods LLP: Good evening.

Commissioner Litzenberger: Give us your name and –

Mr. Adams: Scott Adams with McGuireWoods. I represent the applicant.

Commissioner Litzenberger: Thank you. I know you've told us this at Supervisor Frey's office, but I don't recall. Once, say, if the Board of Supervisors does in fact support this, which I think your Board dates to December, how long before the facility would be operational?

Mr. Adams: To go through site plan, building permit, construction, occupancy, probably around two years would be my guess.

Commissioner Litzenberger: Okay, thank you.

Commissioner Hart: Mr. Chairman?

Chairman Murphy: Mr. Hart.

Commissioner Hart: Yes, can I ask one question of staff?

Ms. Abrahamson: Sure.

Commissioner Hart: We have other SE uses that have been approved, subject to an applicant demonstrating or obtaining offsite easements. This one doesn't have that and we got new conditions that, I guess, didn't require that either. It seemed to me that the – the application would have been stronger with at least the service drive being available with a public easement, or dedication, or something; and that the current – in the absence of that, the fallback position which, I guess, staff is comfortable with, is basically the U-turns on 50 at the stop lights and dealing with it that way. What I wondered and what Commissioner Litzenberger had – we had discussed a little bit yesterday was, is there any point in putting a condition in requiring this applicant to diligently pursue something? It seemed to me that they – whether there's enforcement or not against the service station is somewhat extraneous and it's nothing, really, this applicant is going to be involved in directly. But is there's something for this applicant to diligently pursue, whether or not the service station follows through on its – on its own application – something to either obtain – the offsite easement or do something with that?

Ms. Abrahamson: And that's a difficult question to answer. I'll do my best. The problem that we have with this application is we have to have a nexus, a determination, with the use that is being requested and the conditions we're proposing. There has been no determination from staff, from VDOT, or the transportation staff looking at the numbers generated by this actual use that would support that type of condition, frankly. You know, it – the trip generation on this use – I've said for, you know – this is, like, the dream use on that property when it comes to trip generation because it's so low and the impacts are – are so minimal. That doesn't mean that it's not going to generate any trips and it doesn't mean that some people – I've used that service drive, ok, illegally. I'm getting – but, you know, I – I understand the attraction. I understand the Commission's concern, but when you look at the numbers, which is what we have to look at, and we have done due diligence, and we have gone back twice to look again and make sure we didn't miss something, there isn't any reason why staff would make that recommendation to you because we couldn't support that nexus here with this use. I don't like U-turns either, but the

level of U-turns that are anticipated to be generated is acceptable in VDOT's system, so the answer is, you know, we could put a condition on here that says that they'll diligently pursue a public access easement on that service road. I don't know how we will enforce it. "Diligently pursue" is one of those phrases that, as – in my job, I hate because I don't know what it means, okay. I don't know how to demonstrate it. I don't know how to make sure it happens, you know. Somebody, you know – Scott's a good guy. He'll go out and he'll try real hard but, you know, some other applicant might just say, "well, you know, I talked to the guy and he said, 'no dice. I'm through.'" Okay, he said, "I diligently pursued it." You know, we've had people file letters. But the bottom line is if he doesn't want to do it, then he should decide to take umbrage with it. I don't know that I could defend it, I don't know that the county attorney would suggest defending it, and I don't know how far we can push it. We can try. I think this applicant would probably be willing to try, but I don't know how far you can push what "diligently pursue" really means when you can't control the property, and when you're putting them in a position where another property owner has them over a barrel, basically – because he owns that property and he can say, "sure, I'll give it to you for \$2 million," or whatever – and we can't do anything about that. You know, it's not something – if this had the use that required it, we'd – we'd push harder because we'd have a nexus to push harder. We don't really have it here. And that's kind of, I guess, a long way to say I don't know the answer to your question, really.

Commissioner Hart: Not to prevent the U-turns or not to prevent the cut-throughs to the neighborhood that – that –

Ms. Abrahamson: We think that while there is no way to totally preclude U-turns or totally preclude people from going through the neighborhood, when you look at the trip distribution that we can anticipate, none of us will really know what happens until it's out there, because all we can use are the – the numbers and the models. The trip generation on this is so low and the – the timing on the lights that exist work so that there is actually a break, and if you go out and actually try to get out, you can get out. It's not one of those things where, like, I'm taking my life in my hands and I'm just going to go because I've been sitting here for half an hour. The signals are timed in such a manner that there is a break and even at the busiest times, you can get in and out of here. You couldn't get a stack of 20 cars out of here, but this use doesn't have that kind of generation even when the shifts change. So there's no – there's just no way to say that this is an unacceptable level without that. If they can get agreement to do it – if we can get this – the SE, sure, we'll get it. It will – it needs to be in the system eventually. We're going to do what we can to get the other guy out of trouble but, you know, putting that on this owner as a condition of his pretty low generation use is really not something that we can professionally tell you is a good idea. There isn't a nexus there. I can't tell you no one will ever do it, but I can tell you it's going to be at such a low level that it won't be a problem. And it's really a pain in the butt for people to go through the neighborhood, although somebody may figure it out. You know, it's not a direct cut-through. It's not a direct way to get to that light.

Commissioner Hart: All right. Thank you.

Chairman Murphy: Mr. Lawrence, then Ms. Hall.

Commissioner Lawrence: Thank you, Mr. Chairman. I'll try to be as brief as I can. I had gained the understanding that there was going to be agreement of you putting some signage on the service road that said don't park on this side, and that eased a concern that I had about single-axel trucks with medical supplies and taking people away for dialysis and patients with Alzheimer's may be compromised in other ways. And I thought that would balance it out. Is there any reason to believe that that's not going to happen, given the timeframes that we just heard for these things to develop?

Ms. Abrahamson: If the applicant consents to do some offsite signage on the service drive, as long as that service drive is not in no-man's land in – in – it could happen. Right now, it's kind of in an ambiguous situation. We've got a site where it's in private ownership at the moment – or at least most of it is. There's a little piece that's not. Most of it is in private ownership. We can't put signs legally on Matthews property while it's in private ownership. When they come through, we've already been through this in 1971 – 1971, when they did their Special Exception and even then we said, "you need to dedicate that service drive." It's going to be a request again when it comes to you as a Special Exception. If they elect for some reason not to pursue the Special Exception, we will – we will prosecute them and it will be their choice what they do with that property. They have a viable commercial use on it right now. You know, if they want to continue that viable commercial use, it needs a Special Exception. If they don't, they could abandon it. they could walk away and we would get nothing – we – until someday, something will happen. So I – we're kind of in this – I can't guarantee you the answer to that question. If it's in the public sector, we can pursue it through VDOT as a – you know, as a sign and, you know, if it meets, warrants whatever we want in there, we can do through the public system – it will have to have VDOT approval, so anything would be subject to VDOT. Right now, only a little, tiny piece in the wrong area is subject to VDOT approval because we have a little, tiny piece that's dedicated. Until that happens, it's private, and so even if this applicant would try and take, you know, do the due diligence and – and try and, even if the owner agrees, the guy doesn't have to leave it there. He doesn't have to do what you want. I have no way to force him. The only way I have to force him is by – you know, by the grace of God, he's in violation. So, we can enforce that and get him to come back in and – and redo his application, but I – I can't guarantee if he's going to do that or what's going to come through.

Chairman Murphy: Okay. I just want to remind everyone we are on verbatim because this is a decision only.

Ms. Abrahamson: Okay, the short answer is no.

Chairman Murphy: That's the way to go on verbatim. Okay. Anyone else?

Ms. Abrahamson: There's no good answer.

Chairman Murphy: All right, Mr. Litzenberger.

Commissioner Litzenberger: Thank you, Mr. Chairman. I want to thank all of the commissioners for their constructive recommendations. The staff worked long and hard along with applicant to try to iron out all of the concerns of the neighbors and they did a really good job. Therefore, I MOVE THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF SE 2014-SU-010, SUBJECT TO THE DEVELOPMENT CONDITIONS DOWN DATED OCTOBER 21<sup>ST</sup>, 2014.

Commissioner Flanagan: Second.

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

Commissioner Hart: Mr. Chairman?

Chairman Murphy: Mr. Hart.

Commissioner Hart: Before we vote, can we ask the applicant if they're on board with the new development conditions? I think we're supposed to do that –

Chairman Murphy: Right. I was just going to bring that up. Could you come forward again, please?

Mr. Adams: Good evening again. We are comfortable with the development conditions that were circulated yesterday.

Chairman Murphy: Okay.

Commissioner Litzenberger: My mistake. Let me read it. Mr. Adams, I request the applicant confirm for the record the proposed development conditions now dated 21 October, 2014.

Mr. Adams: We confirm that we are comfortable with those.

Commissioner Litzenberger: Thank you.

Chairman Murphy: All right.

Commissioner Litzenberger: All right. I have three – four more.

Chairman Murphy: Okay, all those in favor of the motion to recommend to the Board of Supervisors that it approve SE 2014-SU-010, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Sargeant: Mr. Chairman? Abstain; not present for the public hearing.

Chairman Murphy: Mr. Sargeant abstains; not present for the public hearing. Mr. Litzenberger.

Commissioner Litzenberger: I MOVE THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF A MODIFICATION OF THE ADDITIONAL STANDARD FOR MEDICAL CARE FACILITIES, SECTION 9-308.5, REQUIRING A 100-FOOT SETBACK FROM ADJACENT RESIDENTIAL PROPERTIES ZONED TO THE R-1 DISTRICT, IN FAVOR OF THE 30-FOOT SETBACK SHOWN ON THE SE PLAT.

Commissioner Flanagan: Second.

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

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Same abstention.

Commissioner Litzenberger: I MOVE THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF A MODIFICATION OF THE TRANSITIONAL SCREENING AND BARRIER REQUIREMENTS ALONG THE NORTH, NORTHWEST, AND EAST BOUNDARIES IN FAVOR OF THE LANDSCAPING SHOWN ON THE SE PLAT.

Commissioner Flanagan: Second.

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

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Same abstention.

Commissioner Litzenberger: I MOVE THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF A WAIVER OF THE SERVICE DRIVE REQUIREMENT ALONG ROUTE 50, LEE JACKSON MEMORIAL HIGHWAY.

Commissioner Flanagan: Second.

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

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Litzenberger: I MOVE THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF A MODIFICATION OF THE MAJOR PAVED TRAIL REQUIREMENT ALONG THE NORTH SIDE OF ROUTE 50, LEE JACKSON MEMORIAL HIGHWAY, IN FAVOR OF THE TRAIL SHOWN ON THE SE PLAT.

Commissioner Flanagan: Second.

Chairman Murphy: Seconded by Mr. Flanagan. Is there a discussion? All those in favor, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Sargeant: Abstain.

Chairman Murphy: Same abstention.

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(The motions carried by a vote of 10-0-1. Commissioner Sargeant abstained; Commissioner de la Fe was absent from the meeting.)

JN