

RZ 2014-DR-022 – BASHEER/EDGEMOORE-BROOKS, LLC

Decision Only During Commission Matters
(Public Hearing held on January 21, 2016)

Commissioner Ulfelder: It's been some time since the public hearing back in January on the – RZ 2014-DR-022, which involves some – the Brooks Farm in Great Falls. And there have been a number of meetings and a number of revisions, both to the proffers and to the General Development Plan for this proposed rezoning. And I just wanted to – I had one issue that I wanted to follow up with on staff as a result of some of those changes, if that's okay. So for staff, there was a revision that came in about week-and-a-half ago that made some additional changes that impacted stormwater – the stormwater controls on the site. And there – some of the comments that have come in this week seem to reflect, I think, some confusion as to exactly what the status of the stormwater detention and stormwater measures are on the site. So could someone just give me a quick update on where we are with the various stormwater measures on the site, in connection with this application? And particularly, what kind of bio-retention measures are now included in the proposal?

Camyllyn Lewis, Land Development Services, Department of Public Works and Environmental Services: I'm Camyllyn Lewis. I'm one of the stormwater reviewers in land development. And with regard to the improvements that have taken place on this project, there was originally a swale on the northern property boundary to pick up and treat water. That swale has been replaced with a bio-retention facility, which is in the northeastern corner – the primary reason there to not impact the trees on the adjoining property, but to still maintain – as much as possible – the water quality features that are on the site. That's the primary change and, really, the other changes – there aren't any changes.

Commissioner Ulfelder: But there now are a total of three bio-retention facilities on the site and, as I understand it, they're all level two. Is that correct?

Ms. Lewis: All but one of them are level two. And the one that isn't a level two – the level one is going into – looking at the stormwater management facility, which is the northern underground facility, is feeding into that one. So there is secondary treatment on that level one facility.

Commissioner Ulfelder: Is it correct to say that all of the collective measures that are now included in this plan, based on the GDP and the proffers, for stormwater retention are – significantly exceed the requirements of the Commonwealth and Fairfax County for stormwater retention and treatment, as part of this development.

Ms. Lewis: They are obviously proposed – from what we can see, they're going to exceed that. Obviously, the detailed review – we look at that again when we review the site plan. There are some measures that are also proposed, which we really don't give them any credit for. And so they've really gone above.

Commissioner Ulfelder: Okay. Thank you.

Chairman Murphy: Ready?

Commissioner Ulfelder: Yeah, if anybody else has any question.

Chairman Murphy: Any questions from anyone else before we go on verbatim? Okay. Mr. Ulfelder, please.

Commissioner Ulfelder: All right. Thank you, Mr. Chairman. The hearing on this application took place almost six months ago. Staff, after a lengthy review, concluded that the application met all of the requirements of the Zoning Ordinance and the Public Facilities Manual – and was consistent with the Comprehensive Plan, as well as the Springvale Community Planning Sector portion of the Comprehensive Plan. At the hearing, however, a number of questions, concerns, and issues were raised, some by the Commissioners and others by neighboring property owners, Great Falls residents, and the Great Falls Citizens Association. During the deferral period, these same community groups have raised additional issues, as well as provided more detail about their original issues. There have been a number of meetings, including walking meetings at the Brooks Farm property with the applicant, the community, and county staff to look more closely at the issues. And, as a result, the proposed proffers and the General Development Plan have gone through a number of revisions in order to better address the various concerns. The site, currently zoned RA and RE, is surrounded by large residential subdivisions, consistent with their RE zoning classification, with mature trees and landscaping – and some with small ponds and lakes. The pond on Brooks Farm sits at the headwaters of the Pond Branch watershed, which over the years has felt the impact of earlier development and is suffering from serious erosion along some sections of the stream bed. In addition, the homeowners in the immediately adjacent Walker Lake Subdivision have serious concerns about the impact of the proposed development on their downstream lake, which not only is a valued amenity, but provides local fire protection as well as some control of stormwater for the upstream portion of Pond Branch. These concerns are real and deserve careful consideration when considering the possible environmental impacts of the proposed development. At the public hearing, however, a more fundamental question was raised about the rezoning process, including this Commission’s responsibility in making recommendations to the Board of Supervisors and the extent of the Board’s authority in cases where the application appears to meet the technical criteria set forth in the Zoning Ordinance and the Public Facilities Manual, as well as be in accord with the Comprehensive Plan. In this case a large number of local residents have spoken out in opposition to the application because of the potential environmental and other impacts of the proposed new development – and concerns about the impact of this and other future development on the semi-rural character of Great Falls. While meeting the technical requirements of the Zoning Ordinance and the Public Facilities Manual are obviously critical to the eventual approval of any rezoning application, the Comprehensive Plan is more general in nature and requires application and interpretation on a case-by-case basis. It is developed, particularly the Area Plans, with significant input from local residents and reflects their vision for their community. But rezoning actions also must meet legal standards and a body of case law has grown in Virginia, a strong property rights state, that further defines and limits the authority of local jurisdictions when considering rezoning applications. As set forth in the December 30th staff report, there are a number of policy objectives applicable to this application, as well as specific guidelines for cluster development. Among other things, the Plan calls for the protection and enhancement of existing neighborhoods, “by ensuring that infill development is of compatible use and density/intensit, and that adverse impacts on public facility

and transportation systems, the environment, and the surrounding community will not occur.” This does not mean no impact. Otherwise, any new development at a greater intensity than what is currently in place would be subject to denial. It does require, however, a careful review in the context of the site of the proposed development and its potential impact on the area. The proposed development on the 52-acre Brooks Farm site now consists of 19 homes, a reduction from the original proposal of 23. And the overall density on the site is now 0.365 – in the mid-range of the 0.2 to 0.5 recommended in the Comprehensive Plan and comparable to the densities of the surrounding developments. As a result of the most recent revisions and the elimination of one lot, the developer has been able to eliminate the proposed swale at the north end of the property and no longer needs any stormwater waivers. It also allows the developer to significantly reduce the limits of clearing and grading on the north end of the property in order to avoid possible damage to the trees on the adjoining properties. The applicant will be restoring and enhancing the existing pond, stabilizing the banks of the existing perennial stream, as well as reforesting the riparian fringe areas within the RPA/EQC. They will also be installing various level 2 bio-retention facilities, along with a number of other measures to control the volume of stormwater on-site and to improve the quality of the water as it leaves the site. Collectively, the various measures planned for this development go well beyond the minimum currently required by the Commonwealth and Fairfax County. They also have committed to a phased approach to the development to avoid any erosion and sediment problems that can occur during the development stage. And they have agreed to post-construction monitoring of the downstream channels for two years after completion of the project and to be responsible for any corrective restoration, if it is determined it is required. Similarly, they will be working with the Walker Lake Subdivision residents to make certain that potential runoff from the site is not causing sedimentation or water quality problems in Walker Lake. The applicant has agreed to establish a permanent conservation easement for approximately 10 acres of mature forest land on the eastern edge of the property and overall, the amount of open space has increased to 42 percent. They also will be installing public trails through the property, working with the Great Falls Trailblazers to make them equestrian friendly, as well as for walkers and bikers. They have committed to various measures to reduce water consumption by the new residents, to install state-of-the-art septic systems to significantly reduce potential pollution, and to limit the amount of additional impervious area that can be added to the lots in the future. These measures, along with many others, are aimed at protecting the local environment and to make certain that it will continue to be protected into the future. For these reasons, and based on the staff analysis reflected in the original staff report, as well as the three subsequent addendums to the original staff report, I believe that the proposed rezoning from RA to RE Cluster meets or exceeds the requirements of the Zoning Ordinance and the Public Facilities Manual – and is consistent with the Comprehensive Plan, including the Springvale Community Planning Sector – which is UP-2 – Plan. Therefore, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT IT APPROVE RZ 2014-DR-022, SUBJECT TO THE PROFFERS DATED MAY 31, 2016.

Commissioner Migliaccio: Second.

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

Commissioner Hart: Mr. Chairman?

Chairman Murphy: Yes, Mr. Hart.

Commissioner Hart: I want to – I'm going to support the motion. I wanted to make one additional observation. One of the guiding principles that the courts have given us in evaluating a rezoning application is that the locality cannot deny to one owner what has already been granted to a similarly situated owner. I think this is a paradigm example of a situation like that where we have an island or RA surrounded by RE where Plan text is identical – where the density has been the same for the entire area for many areas in the plan – where everyone around it has already gotten the 0.2 to 0.5. I don't think it's easy to deny the last – the hole in the donut – what everyone else has already gotten. Those cases are sometimes difficult to identify, but in this case, everything around this property has already gotten the RE and the benefit of that. Thank you.

Chairman Murphy: Any other discussion? All those in favor of the motion to recommend to the Board of Supervisors that it approve RZ 2014-DR-022, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Thank you very much.

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(The motion carried by a vote of 11-0. Commissioner Lawrence was absent from the meeting.)

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