

**MINUTES
LURAY PLANNING COMMISSION
JULY 12, 2006**

The Luray Planning Commission met on July 12, 2006, at 7:00 p.m. in regular session. The meeting was held in the Luray Town Council Chambers at 45 East Main Street, Luray, Virginia. Chairman Clifton Campbell presided over the meeting.

Commissioners Present:

Clifton Campbell, Chair
Peyton Baughan
Terry Dodson
Larry Hakel
Sam McNeely
Tom Potts
Judy Suddith

Others Present:

Rick Black, Assistant Town Manager, Assistant Zoning Administrator
Ligon Webb, Town Planner
Jason Spittler, Town Attorney

Chairman Campbell called the meeting to order at 7:00 p.m. and welcomed everyone.

Approval of the Minutes of the June 14, 2006 Regular Planning Commission Meeting

There being no additions or corrections to the minutes, a motion was made by Mr. McNeely and seconded by Mr. Potts that the minutes be approved as presented. The motion carried 7-0.

Appointment of Chairman and Vice-Chairman for a Term of One Year

Mr. Webb stated when he put this on the agenda, he thought July was the date to reappoint Planning Commission Chairman and Vice-Chairman. It was January, so it's already been done. We will do this again in January but Mr. Borgie did step down, so that would leave the Vice-Chairmanship open and we need to fill that position. Mr. Baughan nominated Mr. Potts for the Vice-Chairmanship and it was seconded by Mr. McNeely. There being no other nominations, Mr. Potts was named Vice-Chairman.

Rezoning Request:

Mr. Webb stated the rezoning request of Ramsey, Inc. was to rezone 10.8 acres from R-1 (low density residential) to R-2 with conditions. The difference is that in the R-1 district the lots are 15,000 square feet and in the R-2 district the lots are 10,000 square feet. The rezoning would allow the applicant to get six or seven more lots on the property. The proffers submitted by the applicant included improvements to Atkins Drive.

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Before the applicant submits a preliminary plat, the Town, in conjunction with VDOT, will determine specific upgrades and improvements to be made to Atkins Drive. The applicant is also seeking to apply the Town's R-2 zoning to the adjoining 6 acres located in the County. Overlaying a town zoning district on an adjacent County property is allowable under the County's Zoning Ordinance.

Mr. Mark Reed made the following presentation.

10.838 acres are located in the Town and 6.04 acres in the County. Proposed total subdivision both the County and Town would be 51 lots, 32 of which would be in the Town and 19 in the County. Right now we are just doing a rezoning request but we have to come back after its rezoned and give you the plats and go through the subdivision parts.

Water and sewer – the developer's proximity to the Town water supply. There is a developer's agreement and they would install a new sewer pump. The sewer and water fees for 32 new residences which would be in the Town would come to \$296,320. A developer's agreement has been filed and we did that to solve the problem with Council's conditions. Rather than doing additional rezoning, we did proffering by agreement to the things Council was concerned about in their rezoning. Those are to upgrade and improve Atkins Drive, from Springview Subdivision, install curb, gutter and sidewalks in the subdivision and along Atkins Drive, install a new sewer pump station and install water and sewer lines in the subdivision.

Economic benefits for 32 residents - about an \$8 million project in the Town, real estate taxes, \$20,800 and \$53,000 to the Town; \$53,600 to the County and the water connection fees of \$296,320.

Mr. Spitler asked what was the reason for the County's denial of that portion of the project?

Mr. Reed replied it was a 3-4 vote and they were concerned with the railroad running along the back of the property, and how close the residences would be to the railroad. We were just doing a rezoning request; we were not doing a subdivision; that was the issue.

Mr. Spitler asked if there was any indication that if you went back with another plan it might be more favorable.

Mr. Reed replied he talked with several members of the Planning Commission after the meeting and my client had indicated to me after the meeting that he might be willing to do a 50 to 100 foot buffer between the railroad track and the houses and one of the persons who voted against it, indicated that if he would do that, he would be in favor of it.

Judy Suddith asked how many lots it would be if it remained R-1. Mark Reed replied you would have 22 or 23.

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Mr. Campbell asked if anyone from the public would like to ask questions pertaining to this request?

No comments were received from the public.

Mr. Campbell stated we have a request before us to rezone this property from R-1 to R-2 and the reason for this request is to allow for approximately 12 to 14 more houses on that property. How does the Commission feel about it?

Mr. Potts asked about upgrades to Atkins Drive. I agree that there is a problem where the subdivision road leads into Atkins. That's what the commitment is to begin at that point to the end of whatever building takes place. Mr. Webb replied that's what he thinks would be reasonable.

Mr. Potts stated that he takes it that the interpretation of reasonable here is in accordance with a two lane highway as required by VDOT.

Judy Suddith stated that we need to keep things R-1 because R-1 is the most restrictive for housing and I don't want us to get to the point where we are rezoning things and you can reach out your window and touch your neighbor's house. I think you can have some nice subdivisions in R-1.

Mr. Hakel asked if the sole purpose of the rezoning here is to change the square footage from 15,000 which are the requirements of R-1 to 10,000. Mr. Campbell replied yes.

Mr. Baughan stated residential districts are in your zoning rules and basically that provides a variety of sizes of lots and uses. My justification to change this to an R-2 is that there are not that many R-2 lots available for sale today in Luray. We have some areas that are zoned R-2 but never been developed as R-2. Most of our open land for residential is probably zoned R-1. It is available for people to purchase, so I think I see a need for the 10,000 square foot lot size to allow people to build and develop on smaller lots and more economical. If you look at your zoning map and identify where you have R-2 now, I think you will find most of that R-2 is built out. Most of your open land available for residential subdivisions is already zoned R-1 for the most part.

Mr. Campbell stated if we are ready to vote, we need a motion.

Mr. Baughan made a motion that we accept the staff's recommendation that we change zoning to R-2 and send it to the Town Council for their approval. Motion was seconded by Mr. McNeely.

Mr. Campbell stated I have a motion properly supported that we send this request to Town Council for their approval. All in favor of this motion signify by saying aye. All opposed say no. Motion carried 5-2 to send to Council.

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Mr. Webb stated that the next item for public hearing is the special use permit for Lauren and Anita Steidel. Mr. & Mrs. Steidel have requested a special use permit in order to build a single family dwelling in a B-1 zoning district. Presently a single-family dwelling is located on the parcel. The Steidel's have indicated that rehabilitating the existing single-family dwelling would be more costly than constructing a new dwelling.

Mr. Baughan stated that in the past when we have issued special use permits for residential building in the business district, we have made the requirement that the R-2 standards would apply to that lot as far as the setbacks, lot size, etc. Mr. Baughan stated if the lot is a half acre, he would have no trouble with R-2 setbacks.

Judy Suddith made a motion that we grant this special use permit application for this single family dwelling in the B-1 zoning district according to R-2 regulations. Motion seconded by Mr. Baughan. Mr. Webb stated could we make one note that the tax map number for the subject parcel, since it was incorrectly identified, is 42A5-(A)-70. It is identified as 1104 East Main Street. The condition is it be constructed to the R-2 standards.

Mr. Campbell said all in favor of this motion signify by saying aye. Motion carried 7-0 to send this request to Council for their approval.

Mr. Webb stated that the next item is the Preliminary Plat Review for 29.73 acres. This was rezoned approximately a year ago to R-5. This is the preliminary plat. Right now we are reviewing the intersection of this preliminary plat with VDOT.

Mr. Reed who represents the developers, stated that the property is currently zoned R-5 and so this is a by right subdivision. Townhouses are also permitted by right in the R-5 zone. There will be 218 townhouses, 3 floor units, 600 square feet per floor or about 1,800 square feet per unit. Total property is 29.73 acres and the Town Code has an open space requirement for townhouses and 2.66 would be dedicated to open space which more than satisfies the requirement. Another possible entrance way for the future would be Stonybrook Lane. Undeveloped at this point but could be developed and could be another entrance and exit point to the property. Mr. Baughan asked is there a reason why we have a cul-de-sac here rather than a connection back to Collins Avenue. Mr. Reed stated that VDOT didn't want a connection to Collins Avenue at that point.

Storm Water Management - There is a pond at the bottom of the property. Some of the costs the Town would be receiving are over \$2 million in facility fees, real estate taxes in the neighborhood of \$99,000 for the Town and \$255,000 for the County based on those units which is about a \$38 million project. This is a by right subdivision. The preliminary plat would be looked at and approved by or take action on by the Planning Commission and that would give us the go ahead to do a final plat and get all the submittals into VDOT and all the agencies that have to review it. Once those approvals are back, then it would come back to you all for final approval and then goes on to the Town Council for their final approval before it could be recorded.

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Mr. Potts stated that as we were changing the zoning to say that townhouses in R-5 are a by right development, I brought up the comment about the need for open space and the answer was yes, it's already in the Town Code, but I just about fell over when I got a proposal to build 218 houses on 29 acres with only two and a half acres of open space at points where one part of it is not very usable and the part is very removed from the rest of the community. There is no doubt this meets the requirement of the law as we currently have it written, but I'm appalled and very concerned on several fronts. We just finished going through the whole issue of planned neighborhood developments and green space utilization and public activity and access. We did less than 400 houses and we extracted 12 acres of open space for it. We're talking about two different zoning aspects, and it makes me wonder if we need to go back and revisit the open space.

Mr. Potts stated he is also concerned about the traffic flow into the area, the way the roads are laid out and I'm concerned about the density of housing. I am not familiar with what we can do about the density in an R-5 area, but my feeling is that we should send it back to the planning staff for further discussion and advice to us on the issues of open space, traffic flow, flood plane line and the density of housing.

Mr. Webb stated that with the issues you have pointed out, the planning staff can review this with the applicant and if it would be appropriate for the Town ordinances. If we are allowed to table the preliminary plat, review these issues and bring it back up at the next meeting. Hopefully by that point we will also have a good idea and our review will be complete from the Town Engineer and VDOT. Is there a consensus that would be an appropriate action?

Mr. Baughan stated he believed it would be. The whole design could radically be changed if the flood plane stays where it is. Depends on where it winds up, it may have an effect on the final design. Mr. Webb stated it is possible that the flood plane might be moved.

Mr. Reed stated the idea would be to get comments from the Commission but it is not the same thing as a final plat. Whatever you do tonight, it will come back again for a final plat and you could reject the final plat, irrespective of whatever action you take on the preliminary plat. If you vote on this one way or the other tonight, it's not a done deal, there is still a lot of permits, etc. If you reject it, by law you have to state exactly where it doesn't comply with your ordinance and what changes need to be done in order to get it approved.

Mr. Webb stated the Code seems to be in conflict a little bit. One portion of the Code clearly states that you can build in a flood plane; you just have to meet all the flood plane ordinance.

Mr. Spitler stated Mr. Black just pointed out that there may be one Code requirement that is not being met given that we only have one outlet That would be 402.7 of our Subdivision Ordinance which says cul-de-sac streets should not furnish access to more than 20 dwellings.

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Mr. Spitler stated if that's not an issue for the Commission, I don't see any other basis at this point to deny the request regardless of whether we like the green space or not, it's a by right use for that district. We have to state why they are not in compliance with the ordinance.

Mr. Campbell asked if anyone had any input.

Mr. Ralph Janes from the Fair Association stated that they agreed to stipulations between us that Stoneybrook Lane would be an exit. If that's not going to be, then I don't think we are going to do what we were going to do.

Mr. Potts stated he thought we should know where the flood plane line is before we act on the request. Mr. Campbell stated I don't think we have to know where the flood plan line is at this point. We will have to know before they start building the project and that should come in the preliminary presentation. At this point, I think they are asking are we in favor of what we see here as a development process.

Mr. Baughan stated the only problem he has goes back to the language "usable open space." I think it's far more usable open space if it is interspersed and not all located at two ends of this situation. Open space is characterized as being for parks or recreational uses, so I would encourage you that when you finalize your plans, which is going to be greatly affected by the flood plane and other things, that you pay attention to making it more usable space.

Mr. Campbell asked if the Commission wanted to act on it now.

Mr. Baughan made a motion to approve the preliminary plat and encourage you to come back with a final plat that has usable space. Motion seconded by Mr. Hakel.

Mr. Campbell stated he has a motion properly supported that we approve this plat that we have before us. All in favor of Mr. Baughan's motion, signify by saying aye. The vote was 6-1 with Mr. Potts saying no.

New Business:

Mr. Webb stated he would like to recognize Councilman Bill Menefee's appointment of Mr. Larry Hakel. We think it will be a great addition to the Planning Commission and we welcome you here. Mr. Hakel thanked Bill for appointing him and looks forward to working with you.

Mr. Webb stated one other item of new business that is not on this agenda and is for informational purposes, is that a Request for Proposal is on our website and will be advertised in several papers for the update of the Town's Comprehensive Plan. Sealed bids are being accepted until August 25. Hopefully by the middle of September we will have our first meeting with a consultant and it will be finished in the spring if there are no unforeseen issues that arise. It is on our website and we are hoping we get lots of people interested in bidding on it.

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Mr. Webb stated the next item of business is the examination of off-premise signs. This was brought to our attention at June's Council meeting. A presentation was made in regard to businesses with off-premise signs. There appears there are quite a few off-premise signs for businesses. Our ordinance is pretty clear. Single standing businesses are not allowed off-premise signs but there are several grandfathered off-premise signs throughout the Town. It appears that the landscape is slowly filling up with some off-premise signs but there are some exceptions.

Mr. Baughan asked if the basic problem with off-premise signs is that you haven't been enforcing your ordinance? Mr. Black stated there are a lot of signs out there and whether they came before the ordinance or have been approved in some manner in the past, I don't know.

Mr. Campbell asked what signs are you mostly concerned about. We can tell you whether they have been added or not. Mr. Black stated there are about 50 signs at the Wrangler ball park. Mr. Black stated those are some of the things out there and asked whether we want to take a strict interpretation of what the sign ordinance says or whether we want to make some sort of concessions for something like that.

Mr. Campbell stated he thinks we should allow conditions in the ordinance for that type of sign because it wasn't the intent when we did the sign ordinance to eliminate that type signing. Our intent was to eliminate billboards and off-premise advertising on public right-a-ways and especially on Main Street.

Mr. Webb stated that the Code does speak to exempt signs. One of the exempt signs is in Item I of 801.6 which is public signs including traffic, utility, parking directional, public events and festival signs approved by the Town Council. Mr. Campbell stated the Planning Commission has done their job by having it in there. Someone else is not doing their job of enforcement of the ordinance.

Mr. Webb stated that is true. We do have the ordinance and I don't think it's a policy of the Town to go out looking for violations, but it was brought to our attention in June and we might have to change that policy.

Mr. Baughan asked if the staff would be willing to go out and make a list of violations and then bring it back as to whether we want to tweak this and make some of these things not violations.

Mr. Spitler commented one of his questions would be whether or not Council intended for every approval to go before the Council or if that's something more efficiently dealt with through Town management. Does Council want to have to approve every single sign?

Mr. Campbell stated he would like for someone to poll Council and get some type of language they would like to have in the ordinance pertaining to these signs. If Council has problems with our present ordinance, then make some recommendations to us and we will gladly give it consideration.

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Old Business:

Mr. Webb stated we continue the conversation we started at our last meeting of “running with the land” or “running with the applicant”. I talked to several of you about this and it seems to me the best way to approach this is to define special use and make it our guiding policy. From here on out special use permits will run with the land and the only addition would be unless otherwise noted. The policy has been to run with the applicant exclusively. Unless it is explicitly stated in the permit that this runs exclusively with the applicant, otherwise it will run with the land.

Mr. Potts asked how do we avoid the interpretation of arbitrary and capricious? Mr. Webb stated I think you always run that risk of running with the applicant regardless. Mr. Potts commented he thinks we might be able to avoid some of the arbitrariness of it by saying that those issued for the construction of property run with the property and those issued for the operation of enterprise run with the individual or with the business.

Mr. Spitler stated he didn't see why we couldn't review our Code and look all of the various zoned districts and the uses by special use permits and focus on the ones that may cause concerns. We do need some guidelines there. Mr. Black suggested a work session. We have to have it at least three weeks before the meeting so it can be published twice in the newspaper. We would have to have it to the paper by the 31st, so the work session would have to occur before that time. A work session was scheduled for Wednesday, July 19, at 7:00 pm.

Mr. Potts asked Rick if he had the Washington Post article. I am asking you to take a look at an article from the Washington Post dated June 25 “Developers Neglect is Costly for Fairfax”. It talks about what happens when builders proffer things and they are all included and half way through the money evaporates, the builder disappears and the County is left with trying to get the money to finish what was suppose to have been done. I bring it up because we are approaching that point where proffers are being made to us and I'm particularly interested in us trying to figure out how we keep Luray from getting caught up in the same sort of thing. We need to start thinking now because as we see from what's being presented tonight, we are going to be in that position. Mr. Campbell stated that he made the statement the only way we can control it, is to stop rezoning.

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Mr. Potts stated as we have seen tonight we approved a preliminary plat with a common area based on .25 square feet of open area per square foot of house constructed and I am appalled that we are building 218 houses with only two acres of clear land or green space. I think we as a Planning Commission need to look at and decide whether we need to propose an amendment. I would ask that we consider that and ask the Planning staff to come to us at our next meeting with a discussion point and we can start it.

Mr. Spittler asked will we be looking at only our R-5 district or do you want us to look at other districts? Mr. Webb stated he really thinks the issue as I see it, is the useable. I think the question he is bringing up is that we should look at the placement of that open space as well.

Judy Suddith made a motion for adjournment.

There being no further business to come before the Commission, the meeting adjourned at 9:20 pm.

Respectfully submitted,

Richard M. Black
Assistant Zoning Administrator