



CFFC Land Use Report 03/17/2020
Planning Commission March 19, 2020, Public Hearing

1. [A Zoning Ordinance Text Amendment to Article 2-705 to Authorize a Boundary Line Adjustment Between a Non-Common Open Space Parcel Subject to a Permanent Conservation Easement and an Adjoining Parcel Also Subject to a Permanent Conservation Easement](#)

On February 13, 2020, the Board of Supervisors initiated a Text Amendment to allow a parcel subject to a deed of non-common open space to be reduced in size by boundary line adjustment subject to certain standards. Both the parcel receiving acreage from the non-common open space parcel and the non-common open space parcel will be required to be placed within a permanent open space or conversation easement. No further subdivision of the parcels shall be permitted. (R. Holder Trumbo, Jr., Scott District Supervisor, Sponsor; Kevin Burke, County Attorney, Staff)

BACKGROUND INFORMATION:

The current county ZO for NON-COMMON OPEN SPACE along with the proposed changes to the ordinance (changes are shown in RED).

NON-COMMON OPEN SPACE AND IMPROVEMENT REGULATIONS

2-705 General Requirements

All lands and improvements as set forth in Section 702 above shall be established and maintained in accordance with the following requirements:

1. The lands and improvements shall be described and identified as to location, size, use and control in an open space easement. These restrictive deeds shall be written so as to constitute a deeded open space easement to run with the land and be in full force and effect in perpetuity unless terminated in a manner set forth hereinafter. These restrictions shall include prohibition of commercial and industrial development. Residential development shall be limited solely to a single primary dwelling unit, those accessory structures and uses allowed in Article 6 for such dwelling unit, and those permitted agricultural uses as 3-318. The Accessory Uses allowed shall include both Minor and Major Home occupations provided that such home occupations occur entirely from within existing structures without alteration of external appearance of the same, with no outdoor storage allowed.

2. Such open space easements shall be constructed so that the Board, a homeowners association of lot owners or each lot owner if no homeowners association is required, is party to the deed restriction.

3. Such open space easements shall also provide that after 25 years they can be changed or modified by a majority of all Board members, and a majority vote of the homeowners association or lot owners party to same. Such vote by the Board to be taken only after a public hearing. A vote to change or modify must be based on a positive finding that:

A. The open space, the use(s) to which the open space was restricted are no longer possible, and are in conflict with a duly adopted Comprehensive Plan.
and

B. Substitute open space proposed by the application is at least of equivalent usefulness and acreage and would better comply with the duly adopted Comprehensive Plan.

Or

C. That there is no provision in the Comprehensive Plan or this Ordinance advancing the purpose for which the deed restriction was required.

3.(a) Notwithstanding the foregoing, a parcel subject to a deed of non-common open space may be reduced in size by a major boundary line adjustment prior to the expiration of 25 years under the following circumstances:

A. Following a public hearing by the Board of Supervisors, the Board may vote to reduce the acreage of the non-common open space parcel and modify the non-common open space agreement subject to the following standards:

1. Both the parcel receiving acreage from the non-common open space parcel and the non-common open space parcel shall be located in or placed within a permanent open space or conservation easement authorized pursuant to the Open Space Easement Act, Section 10.11700, et. seq., of the Virginia Code;

2. The permanent conservation easement or easements do not permit subdivision of the parcel or parcels; and

3. The conservation values of both the non-common open space easement and permanent conservation easement will continue to protect the land for use as agricultural or open space and will not be impaired by reduction in acreage.

ANALYSIS:

Under the current zoning ordinance for open space easements the easement may be changed or modified after 25 years by a majority of all Board members under the following conditions:

A. The open space, the use(s) to which the open space was restricted are no longer possible, and are in conflict with a duly adopted Comprehensive Plan.
and

B. Substitute open space proposed by the application is at least of equivalent usefulness and acreage and would better comply with the duly adopted Comprehensive Plan.

Or

C. That there is no provision in the Comprehensive Plan or this Ordinance advancing the purpose for which the deed restriction was required.

With this change both the parcel receiving acreage from the non-common open space parcel and the non-common open space parcel shall be located in or placed within a permanent open space or conservation easement authorized pursuant to the Open Space Easement Act, Section 10.11700, et. seq., of the Virginia Code. This only applies to a non-common open space parcel that is reduced in size by a boundary line adjustment prior to the expiration of 25 years. These are permanent legal deed recorded instruments that are much less susceptible to the political vicissitudes than are any and all zoning ordinance provisions which may be revised or deleted by the current BOS.

No CFFC Recommendation is Required

2. [Rezoning - REZN-19-011292 - Pelham Property - An Application to Rezone Approximately 41.35 Acres From Rural Agriculture \(RA\) to Residential: 3 Dwelling Units Per Acre \(R-3\) with Proffers \(Portion of PIN 6889-31-6326-000, Lee District\)](#)

The Applicant is seeking to rezone 41.35 acres from Rural Agriculture (RA) to Residential: 3 Units per Acre (R-3) with proffers. The proposal would allow for the development of a maximum of 65 single-family detached lots. The property is located in the Bealeton Service District off Catlett Road (Route 28) and James Madison Highway (Route 15/29). (Red Maple Properties, LLC, Owner/Elm Street Development, Applicant, Sponsor; Adam Shellenberger, Chief of Planning, Staff)

BACKGROUND:

Elm Street Development is seeking to rezone approximately 41.35 acres, referred to as the Pelham Property, from Rural Agriculture (RA) to Residential: 3 Units per Acre (R-3) with proffers. The proposal is to develop the property with 65 front loaded single-family detached homes, using the Zoning Ordinance's cluster provisions. The Applicant has stated the future homes within the Pelham development will have characteristics similar to those in the neighboring Southcoate Village and be placed on lots of comparable size. The proposed development has net density of 2.17 dwelling units per acre, and includes 22.15 acres (53.5%) of open space. Within the open space area, the

Applicant is proposing five exercise stations, a tot lot, trails, and a 3.15 acre active recreation area.

The project will be connected to public water and sewer provided by the Fauquier County Water and Sanitation Authority (FCWSA). The development will be primarily accessed by extending Southcoate Village Drive, across a creek and associated floodplain, to James Madison Highway (Route 15/29). This access point will be limited to left and right turns in, but will only allow right turns out (north onto Route 15/29). Existing Southcoate Village Drive also provides a direct connection, through neighboring Southcoate Village, to Catlett Road (Route 28). This access point will allow for all movements (both left and right turns in and out) to occur. The Applicant believes that the proposed development is able to meet all of the Zoning Ordinance requirements and fulfills the goals and policies of the County's Comprehensive Plan.

ANALYSIS:

Land Use/Development Patterns

The land use plan for the Bealeton Service District generally follows a traditional urban-to-rural planning transect. This type of planning model typically has six zones, moving from rural to urban. It begins with two zones that are entirely rural in character: Rural Preserve (protected areas in perpetuity); and Rural Reserve (areas of high environmental or scenic quality that are not currently preserved, but perhaps should be). In Fauquier County these two zones would represent the rural lands, where the County has been actively seeking conservation easements and has developed its ordinances to ensure that any development in these areas is an appropriate low intensity/density use.

The transition zone between rural countryside and urban town is called the Edge, which encompasses the most rural parts of the town or community, and the rural countryside just beyond. In the Bealeton Service District the Residential: No Sewer or Water and Open Space/Park land uses generally represent the Edge zone. It would also encompass the western portions of the land designated for Low Density Residential: 1 to 3 Dwelling Units per Acre. The next zone is General, which is typically the largest zone in most communities. The General zone primarily includes residential use, but is more

urban in character (somewhat higher density with a mix of housing types and a slightly greater mix of uses allowed) as it moves further from the Edge zone. In Bealeton, this represents the central and eastern portions of the Low Density Residential: 1 to 3 Dwelling Units per Acre land use area as well as the Medium Density Residential: 4 to 6 Dwelling Units per Acre land use area. The Bealeton Service Districts also includes civic land uses within the General zone. At the urban end of the spectrum are two zones which are primarily mixed use: Center (this can be a small neighborhood center or a larger town center); and Core (serving the region — typically a central business district). The Center zone in Bealeton is generally defined by the High Density Residential: 7 to 20 Dwelling Units per Acre, Mixed Use, Commercial Office/Mixed Use and Institutional/Office/Mixed Use land use designations, and the Core zone is defined by the Town Center land use.

The urban-to-rural planning transect in Bealeton is also demonstrated by the current zoning and development patterns within the Service District. The most intense commercial districts - Mixed-Use Bealeton (MU-B), Commercial - Neighborhood (C-1), Commercial - Highway (C-2) and Commercial - Shopping Center Community/Regional (C-3), and the highest density districts - Residential: Garden Apartments (GA), Planned Residential Development (PRD) and Residential: 4 Dwelling Units per Acre (R-4) are located in the Core and Center zones. Then transitioning from PRD and R-4 to Residential: 2 Dwelling Units per Acre (R-2) and Residential: 1 Dwelling Unit per Acre (R-1) in the General Zone; to R-1, Rural Residential (RR-2) and Rural Agriculture (RA) being located in the Edge zone; and ending with RA outside of the Service District in the Rural Preserve and Reserve zones.

As the subject property lies at the western edge of the Service District, with adjacent properties to the east being zoned R-2 and RA and properties to the west being zoned RA and outside of the Service District, it seems counterintuitive and ill-advised to rezone the property to the requested Residential: 3 Dwelling Units per Acre (R-3) district. Staff surmises that a proposal that included R-1 zoning in the Low Density Residential: 1 to 3 Dwelling Units per Acre land use area and RA in the Residential: No Sewer or Water land use area would be more appropriate when evaluating the development patterns within Bealeton and be in greater conformance with the goals and vision of the Service District Plan.

Proffer Analysis/Capital Impact

As a part of the application materials, the Applicant submitted “Pelham Village - SB 549 Proffer Analysis,” which outlines the anticipated capital impacts on the County with regard to the provision of capital facilities for Public Schools, Public Safety (Sheriff’s Office and Department of Fire Rescue & Emergency Management) and Parks and Recreation improvements. As mentioned earlier, the Applicant’s analysis evaluated 64 single-family dwelling units over the present development potential of the property; as 66 new single-family detached dwelling units were being proposed when the analysis was completed, realizing the property has a current subdivision potential of two lots. It should be reiterated that the current proposal is for 65 new single-family detached units, which would be an increase of 63 units over the current by-right allowable development.

The Applicant’s analysis of public school capacity estimates 47 new public school students (24 elementary, 11 middle, and 12 high). The middle and high schools which will serve the proposed development have capacity for the additional students; therefore, there are no capital impacts associated with these projected new students. The projected 24 elementary school students from the development exceeds the existing capacity at Pierce Elementary and represents a need for additional Fauquier County Public Schools facilities. The Applicant’s report states that “The elementary students resulting from the Development are in excess of existing capacity for the relevant facilities.” It goes on to say, “...the County Capital Improvement Plan does not include any capital improvements to elementary school facilities that directly increase capacity for the Development. As such, any proffer related to such facilities would be inappropriate under the Residential Proffer Legislation.” Staff has concerns with this approach, as there is no language in the state code which states that projects must be in the County’s Capital Improvement Plan (CIP) in order for proffer contributions to be received.

The County’s Capital Impact Model, developed by TischlerBise, is based on capacity (seats) by school level and geographic region, and determines that a capital impact is triggered when 95% capacity is reached. The Pelham project was evaluated in this model for capacity at Liberty High School and Cedar Lee Middle School. It also was evaluated based on the combined available capacity at Grace Miller, H.M. Pearson, M.M. Pierce and Mary Walter Elementary Schools. The model shows that there is capacity available in the region to accommodate the project, and that no capital impacts are

triggered. However, we know from Fauquier County Public Schools published Ten-Year Enrollment Projections that Pierce Elementary, where these students would likely attend, is exceeding the recommended capacity. This document also recommends that enrollment at Grace Miller Elementary School be monitored closely because it is projecting a capacity approaching 95% in future years. The County's estimated capital cost per elementary school student is \$29,459; with an anticipated 24 new elementary school students the total estimated capital impact to public schools is \$707,016.

The Applicant's analysis of public safety facilities is split into two components - Sheriff's Office and Fire and Rescue. For the Sheriff's Office, the Applicant has chosen to focus on number of deputies per capita. This analysis shows that the Sheriff's Office currently has an appropriate number of deputies to accommodate the increased population for this development, and therefore there are no capital impacts to the Sheriff's Office with this proposal. Staff believes that this analysis is flawed as deputies do not constitute a capital impact, but rather an operating or fiscal impact. The County's Capital Impact Model, used by the County, estimates a capacity triggered capital impact of \$28,990 for the Sheriff's Department.

In regards to Fire and Rescue, the Applicant notes that the future Bealeton Fire Station would serve this development and that represents a capital impact. The Applicant's analysis calculates a per capita figure for the new station of \$271.30, which is slightly higher than the County's estimated per capita cost for the station construction of \$258.98. However, it should be mentioned that the Applicant's analysis does not address the new station's equipment needs, which are also a capital impact. When including both the cost to construct and the cost to equip the future Bealeton Fire Station, the County's Capital Impact Model estimates a total capital impact of a \$77,748; which is \$32,593.15 more than the capital impacts identified in the Applicant's study.

The final category examined by the Applicant is Parks and Recreation. The Applicant contends (i) that only projects identified for construction in 2020-2024 should be considered and (ii) that the cost of the demand for park facilities generated from the proposed development should be spread across the entire County population. Based on these assumptions, the Applicant estimates the project will generate a total capital impact of \$3,608.15 to the County's parks and recreational facilities. Staff believes that this approach is problematic, as there is not a direct and material benefit to all parks and

recreation facilities for all County residents. Alternatively, the County's Capital Impact Model only utilizes parks that are likely to be of benefit to the residents by dividing the County into the Parks and Recreation service areas (Northern, Southern, Eastern and Central). Only those facilities within the service area are then utilized for cost estimates of necessary capital facilities. A second concern with the Applicant's approach is the assumption that the entire County should subsidize new park facilities needed to provide service to the new residents. The County's Capital Impact Model is based on the current provided level of service and extrapolates that forward, so that new residents are expected to contribute sufficiently to ensure that the level of service does not decline. This model estimates the total capacity triggered capital impact to the County's parks and recreational facilities to be \$86,848; which is \$83,239.85 more than the capital impacts identified in the Applicant's study.

In total the Applicant's report estimates that \$48,763.00 (\$761.74 per lot) would be needed to mitigate capital impacts related to existing capacity within Fauquier's public facility system in those areas which are eligible (per the Code of Virginia) for cash proffer contributions. In comparison, the County's Capital Impact Model estimates a total capacity triggered capital impact of \$900,602.00 (\$13,855.41 per lot) in the cash proffer categories. **As mentioned previously, the Applicant is proffering to contribute a total of \$48,763.00, as identified in their report, which is \$851,839.00 less than impacts identified in the County's model.**

RECOMMENDATION:

CFFC recommends the Planning Commission sent this forward to the BOS with a recommendation of denial for the following reasons:

1. The proposed R-3 zoning district, and corresponding lot sizes and density, are not be compatible with the existing use and character of the area. Additionally, when evaluating the entire Bealeton Service District Plan, the proposal appears to be inconsistent with the development pattern envisioned in the Comprehensive Plan and being realized by the existing zoning throughout the Service District.
2. As a part of the Rezoning request, the Applicant submitted "Pelham Village - SB 549 Proffer Analysis," prepared by MuniCap, Inc. The report outlines the anticipated capital impacts on the County with regard

to the provision of capital facilities and identifies appropriate mitigation. When this analysis is compared with the County's Capital Impact Model it raises concerns which are not being adequately mitigated.

3. The Traffic Impact Analysis (TIA) for the project has not yet been approved by the Virginia Department of Transportation (VDOT) or County.

3. [Rezoning Proffer Amendment - REZN-20-012526 - Carter's Crossing - An Application to Amend Previously Approved Proffers \(REZN-14-001168\) to Allow a Community Center Use \(PIN 6969-46-7985-000, 6969-57-3762-000, 6969-57-7244-000, 6969-66-2693-000 and 6969-57-1607-000, Marshall District\) –](#)

On November 13, 2014, the Board of Supervisors approved REZN-14-001168, which rezoned the property currently known as Carter's Crossing (formerly known as Cannon Ridge) subject to proffers, a Code of Development (COD) and a Concept Development Plan (CDP). The Proffer Statement (Proffer 2.a) permits the existing stone house, located on future Lot 177, to be occupied as a single-family detached residence or commercial offices. The Applicant would now like to use the stone house as a community center/club house which requires an amendment to the Proffer Statement. The requested change does not affect density, nor does it require any changes to the project's Code of Development (COD) or Concept Development Plan (CDP). The properties are located south of West Main Street between Lunceford Lane and Frost Street in Marshall. (Old Salem Community Development, LLC, Owner/Applicant, Sponsor; Adam Shellenberger, Chief of Planning, Staff)

ANALYSIS:

The Applicant is requesting a change to the Carter's Crossing Proffer Statement which was offered as a part of the subject properties Rezoning (REZN-14-001168), approved by the Board of Supervisors on November 13, 2014. The requested change does not affect density, nor does it require any changes to the project's Code of Development (COD) or Concept

Development Plan (CDP). The purpose of this amendment/proffer revision is to include Community Center as a permitted use for the existing stone house located on the Property. If this amendment is approved, the Applicant still intends to construct a separate pool bath house (of colonial architectural design) within the Community Green as described in the COD.

Currently, Proffer 2.a states that "...the existing stone house located on Lot 177 may be occupied as a single-family detached residence, or as commercial offices..." At the time of the 2014 Rezoning application, the stone house was being leased as office space. Since then, the tenant has relocated and the Applicant has re-evaluated the ultimate use of the structure and surrounding property. The Applicant would now like to use the existing stone house on Lot 177 as a Community Center to be utilized by the future Carter's Crossing residents. As such, the Applicant is requesting to add the language below in red to Proffer 2.a. No other changes to the approved proffers are being requested.

Maximum Residential Dwelling Lots: The maximum number of lots that may be developed on the Property shall not exceed one hundred seventy seven (177) single-family residential lots. Notwithstanding the aforesaid, the existing stone house located on Lot 177 may be occupied as a single-family detached residence, Community Center, or as commercial offices. Any modifications or alterations to the existing stone house on that Lot for use as a commercial structure or Community Center shall be in character with the existing structure. In the event the existing stone house is utilized as the Community Center, the description under #9 - Community Green on page 22 of the COD is amended to permit the pool bath house to be located in a separate structure of colonial architectural design.

In addition to being an amenity to the future Carter's Crossing residents, the Applicant believes that the proposed proffer furthers the Marshall Service District's goal of preserving historical buildings and implementing designs that are compatible with the historical structures.

NO CFFC RECOMMENDATION IS REQUIRED

4. [Comprehensive Plan Amendment - COMA-18-009531 - A Comprehensive Plan Amendment to Add a Wireless Master Plan as an Appendix to the Plan for Commercial Wireless Facilities](#)

This Comprehensive Plan Amendment proposes to add a Wireless Master Plan as an appendix to the Commercial Wireless Facilities Addendum to Chapter 9. The Master Plan provides an overview of the existing infrastructure in the County as well as anticipated demand for future infrastructure. The Plan does not introduce any new policies, but rather provides informational background to support the policies put forth in the Commercial Wireless Facilities Addendum. (Richard Gerhardt, Cedar Run District Supervisor, Sponsor; Andrew Hopewell, Assistant Chief of Planning, Staff)

NO CFFC ACTION IS REQUIRED