

## CFFC Land Use Report 6-14-19

### **1. Lodge at Barrel Oak:**

This application was submitted to the county, but was not accepted as it was incomplete. It would seek approval from Fauquier County to establish a hotel, event operation, and restaurant on a 50-acre parcel just to the east of Barrel Oak Winery (Delaplane) in an area zoned rural/agricultural. Currently, there is an 8,300 square foot residence which would be expanded to a 32,000 square foot resort with 42 rooms, restaurant to serve the lodge, and an event center. The facility would host 78 events per year with 160 attendees on weekends and holidays and 80 on non-holiday weekdays. There would be a parking area for a 125 vehicles. The hours of operation for events would be 10am to 12am on weekends and 10am-10pm on weekdays. The proposal requests an approval that would be valid for 10 years with an initial 5-year period to complete construction.

Since the site of this proposed operation is in an area zoned rural/agricultural, it could only approved by the county if four special exceptions were granted for the (1) hotel/resort/restaurant; (2) events; (3) above ground water storage for fire suppression; and (4) a large alternative on-site septic system.

### **CFFC Analysis**

#### *1. Consistency with the Comprehensive Plan*

The proposed location conflicts with the comprehensive plan and the county's strategy of only allowing commercial operations such as hotels, resorts and restaurants in its eight service districts, including Marshall. This has been a very effective strategy to maximize the county's investments in infrastructure and preserve the rural areas of the county. The success of this strategy is one of the reasons that Fauquier County is so appealing compared to highly congested adjacent counties.

2. *Impacts to Public Health, Safety, and Welfare*

There could also be health and safety issues associated with water availability and wastewater treatment because the proposed operation could impact the wells of neighboring homes. There could also be a significant increase in traffic on nearby roads and the potential for noise emanating from the operation that would be disruptive to nearby residents.

3. *Undesirable Precedent*

If such an operation were approved, it would set an undesirable precedent that could lead to a proliferation of similar operations in many other parts of the county. This would undermine the service district strategy since businesses that have already invested would not reap the benefits of stronger and more vibrant service district, and future investors in the service districts would be less incented to invest if the county allows commercial operations outside the service districts.

4. *Reduces the Effectiveness of the Adaptive Reuse Ordinance*

Currently, restaurants may be permitted in rural/agricultural areas when they reuse a historic structure through the County's Adaptive Reuse Ordinance. Approval of a restaurant in a non-historic structure such as the current residence on the Barrel Oak property could reduce the effectiveness of this incentive to preserve and reuse historic structures in the county. ( Kevin Ramundo )

**2. Zoning Ordinance text Amendment to Article 2 to allow Family Subdivisions on certain parcels subject to non-common open space easements which is before the Planning Commission:**

This stems from an individual in the Cedar Run district who has used all of his development rights under the sliding scale and now is asking for an additional development right through the use of a Family transfer.

## Topic Description:

This text amendment proposes to allow a single-family subdivision lot on Agricultural (RA) or Conservation (RC) District parcels that were placed in a non-common open space easement prior to September 7, 1999.

## County Staff Analysis:

The non-common open space requirement was adopted with the May 19, 1981 Zoning Ordinance. The requirement is now 38 years old and to date two hundred sixty (260) parcels zoned RA or RC have been placed in a non-common open space easement granted to Fauquier County. A noncommon open space easement is currently required when an RA or RC parcel greater than 30 acres is subdivided using cluster development. The subdivision is clustered on 15% of the property and the remaining 85% is required to be placed in a non-common open space easement prohibiting further residential development. The easement is a perpetual easement that runs with the land and remains in full force unless the property owner requests the easement be modified or terminated in accordance with the Ordinance.

As stated above, this requirement has been in effect for 38 years and many non-common open space parcels have transferred to new owners. These new owners are often unaware of the easement and have not fully researched the implications of the easement. They will inquire about subdivision for the purpose of providing housing for adult children, elderly parents or siblings in order to be able to live on the farm. The current Ordinance prohibits any subdivision in a noncommon open space, even for family divisions. Staff has performed an analysis of the application of non-common open space and has proposed text to allow a single-family division on parcels in a long-standing easement.

As proposed, in order to be considered for a family division on a non-common open space parcel, the following limitations would apply:

- The parcel would need to have been created prior to September 7, 1999. This is the date in which major changes occurred to the Zoning and Subdivision Ordinances due to House Bill 2324. The bill prohibited localities from requiring conditional approval or special approval for by-right residential development. The Ordinance changes resulted in different tracking mechanisms for by-right RA and RC lots and different subdivision potential processes.
- Using this date, there are

108 parcels in non-common open space with the potential for a family division. • The parcel would need to remain a minimum of 25 acres after subdivision. The minimum size to qualify for non-common open space pursuant to Section 2-703 is 25 acres; therefore, any subdivision would require the resultant residue to remain a minimum of 25 acres. Applying this criteria, the number of parcels with the potential for a family division is further reduced to 84 lots. • The parcel cannot be the result of a legislative act by the Board of Supervisors. The non-common open space parcel cannot have been the result of Special Exception approval by the Board. This requirement would remove all parcels created prior to December 19, 1989. Prior to that date, non-common open space was required when considering major residential development on RA and RC parcels. There are 23 parcels that were placed in non-common open space prior to December 19, 1989. This leaves 61 parcels that can be considered for a family division in non-common open space. The Ordinance also added another Special Exception for a reduction in non-common open space in December 1989. These parcels would also be removed from consideration for a family division. • The parcel was created as non-common open space in excess of the 85% required and the residue parcel that remains after subdivision will not be reduced below the required 85%. These requirements would ensure the minimum required open space is maintained after the family division.

The above analysis results in approximately 60 potential parcels in non-common open space that could be awarded a family division. The parcel cannot have been previously divided by the family division process. A subdivision potential letter would need to be requested by the property owner confirming the ability for a family division. Staff would analyze the parcel based on the criteria above and determine whether the parcel is afforded a family division. The new lot and residue parcel would need to meet all Subdivision Ordinance criteria in order to be created.

Because the property is in a non-common open space easement to the Board of Supervisors, both the family lot and residue would remain in the open space easement. A new easement document would be recorded as part of the family division process referencing both parcels. If the property owner would like to remove the family division parcel from non-common open space, a public hearing would need to be conducted requesting the Board of Supervisors remove the family parcel from the easement. Otherwise, both parcels would remain in a non-common open space easement.

Staff did not analyze parcel density in considering this text amendment. There were five Ordinance changes between May 19, 1981 and September 7, 1999 that affected density, lot sizes and open space in the RA and RC districts. Staff would analyze individual parcels based on the rules in place at the time of subdivision in order to determine whether they exhausted their density prior to being placed in non-common open space. This text amendment allows one family division on a non-common open space parcel only if a family division had not been previously awarded the parcel and the parcel meets the other criteria presented above. We currently allow one family division on parcels of less than 10 acres existing as of May 21, 1981, regardless of density.

### **CFFC Analysis:**

The pending ZOA may have several potential problems, to wit: Issuing development rights beyond the longstanding original sliding scale allocation is a slippery slope that erodes the permanency and integrity of this zoning construct and violates recent iterations of the County's Comprehensive Plan. Non-Common open space easements are recorded legal instruments that run with the land and use of zoning text amendments should not serve to vitiate legally binding land use restrictions. A long established rule of law is that where zoning and permanent recorded easements or covenant restrictions conflict the most restrictive provisions apply whether the easement or the zoning. ( Harry Atherton and Ken Alm )

### **3. REDEVELOPMENT OF VINT HILL BARRACKS:**

There is a proposal by Echelon LLC to turn the old barracks at Vint hill into apartments. These would be market rate apartments and not work force or low income apartments. This application has not reached the county. The developer has been holding informational meetings with the Vint Hill HOA.

### **4. REMINGTON DATA CENTER APPLICATION:**

The applicant is still working out details with the land owners. In addition, because of some of the concerns of residents the county will be re-looking at the Remington Service District comprehensive plan.

## **5. Chapter 8 of the Fauquier County Comprehensive Plan Dealing With Rural Lands:**

The county currently has two versions out for public comment. The first is the one approved by the Planning Commission and the second is one with changes suggested by Chris Granger. The Rural Plan will be on the BOS agenda for July. ( Les Cheek )

## **6. STORAGE OF NON AGRICULTURAL FILL MATERIAL:**

Last year the BOS passed (5-0) an ordinance concerning the storage of non AG fill material. The basics of the ordinance are listed below:

### **For parcels equal to or less than 10 acres in size:**

1. A no-fee Administrative Permit shall be required to allow up to 100 cubic yards of nonagricultural fill material to be placed on the subject parcel(s) within a one year period. If the amount of nonagricultural fill material exceeds 100 cubic yards within a one year period, a Special Exception approval, in accordance with Section 5-1816.2, shall be required.
2. The storage, or disposal, of nonagricultural fill materials shall not be located within 100 feet of a property line, well or the edge of a stream unless a permit has been obtained to construct an embankment within or near a stream.
3. The nonagricultural fill material must be used only to support an agricultural purpose and the applicant shall provide an Agricultural Affidavit attesting to that agricultural purpose.
4. The applicant shall demonstrate that the nonagricultural fill material is the only available option to improve the existing agricultural operation. The applicant shall demonstrate that the soil productivity ratings of the imported fill material are equal to, or better, than the existing agricultural soils on the subject parcel(s).

### **For parcels greater than 10 acres in size:**

1. Special Exception approval shall not be required unless the amount of nonagricultural fill material brought to the parcel(s) exceeds 200 cubic yards

within any 24 hour period OR if the amount of fill material brought to the parcel(s) exceeds 4,200 cubic yards within a one year period.

2. The storage, or disposal, of nonagricultural fill materials shall not be located within 100 feet of a property line, well or the edge of a stream unless a permit has been obtained to construct an embankment within or near a stream.

3. The nonagricultural fill material must be used only to support an agricultural purpose and the applicant shall provide an Agricultural Affidavit attesting to that agricultural purpose.

4. The applicant shall demonstrate that the nonagricultural fill material is the only available option to improve the existing agricultural operation. The applicant shall demonstrate that the soil productivity ratings of the imported fill material are equal to, or better, than the existing agricultural soils on the subject parcel(s).

5. The following items shall be required prior to the issuance of the required land disturbing permit:

- a. A grading plan indicating the location and amount of fill to be placed on the subject parcel(s);
- b.) An erosion and sedimentation control plan;
- c.) A land disturbing permit application.