



Planning, Development & Inspections

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MINUTES OF REGULAR PLANNING BOARD

Wednesday May 4, 2022; Wake County Justice Center, 301 S. Salisbury St., Room 2700, Raleigh, NC

MEMBERS PRESENT: (6) Mr. Thomas Wells (Vice Chair), Mr. David Adams, Ms. Brenna Booker-Rouse, Mr. Bill Jenkins, Dr. Kamal Kolappa, Mr. Ted Van Dyk.

MEMBERS ABSENT: (4) Mr. Asa Fleming (Chair), Mr. Jason Barron, Mr. Amos Clark, Mr. Danny Kadis.

COUNTY STAFF: (7) Ms. Jenny Coats, Mr. Steven Finn, Mr. Keith Lankford, Mr. Tim Maloney, Mr. Josh McClellan, Ms. Beth Simmons.

COUNTY ATTORNEY: (1) Mr. Kenneth Murphy, Senior Assistant County Attorney.

GUESTS: Mr. Gray Styers

4. Proposed Zoning Map Amendment – PLG-RZ-002881-2021

Request to rezone a 0.604-acre portion of this 2.934-acre property located at 9101 Falls of Neuse Road from Residential-40 Watershed (R-40W) to Conditional Use-Residential-40 (CU-R-40) to allow for a technical correction of the outermost watershed boundary based upon a field verified topographic survey, and to authorize staff to submit the requested change to the North Carolina Department of Environmental Quality.

Presentation by staff: Mr. Keith Lankford, Planner III

Mr. Lankford began his presentation by explaining to the board that this was not a typical rezoning amendment – the applicant was requesting only a 0.604 portion of the 2.934 acres be reclassified from a R-40W watershed to a CU-R-40 and that this change be authorized to submit to the NCDEQ. The property in question is being considered as a potential site for commercial development, under the provisions that it must later be subject to a Land Use Plan Amendment, followed by a Special Use Permit. The request before the Planning Board was only for consideration of reclassification.

The reclassification would permit for a technical correction of the outermost boundary of the watershed based on a field verified topographic survey. The property is located on Falls of Neuse Road near the I-540 West ramp, which is included in the R-40W classification. The Wake County Land Use Plan defines NUA/WSWs as areas within the county's jurisdiction that are not intended to be urbanized. Public utilities (i.e.--water and sewer) are generally not allowed to be extended into this water supply watershed area (thus its non-urban designation) except for public health and safety reasons (e.g.--contaminated groundwater or an unreparable septic system).

For ease of administering water supply watershed regulations most planning jurisdictions use a roadway as the dividing line between watershed and non-watershed areas, even though the staff

knows that the actual ridgeline may meander back and forth across the roadway. The Wake County Planning department has determined that variable areas on either side of the roadway / ridgeline generally net out and the overall watershed protection objectives are achieved. They have confirmed that the state's water supply watershed protection program staff finds this consistent.

The survey by Ralph V. Pendergraph, Jr. of PTS Land Surveying indicates that the topography has not been altered and that this 0.604-acre portion of this lot drains naturally out of the Falls Lake water supply watershed. Stormwater falling upon this 0.604-acre area sheet flows to the front ditch where it enters a 24-inch drainage pipe near the southeastern corner of the property and flows under Falls of Neuse Road (i.e.—away from Falls Lake). This 24-inch pipe connects to a series of other increasingly larger drainage pipes, continuing to the southeast, for a total run of approximately 450 feet before exiting into an open channel.

The State law and the Wake County Unified Development Ordinance (UDO) indicate that any rezoning should be consistent with the Land Use Plan. Even through this rezoning petition is a technical correction to the zoning map, the rezoning petition must be processed in the same manner as a regular rezoning case. The subject property's current zoning of R-40W is consistent with the Land Use Plan's General Classification map designation of this area as a Non-Urban Area/Water Supply Watershed (NUA/WSW). The NUA/WSW areas allow for low-density residential uses and a limited range of nonresidential uses (e.g.—daycare).

Dropping the water supply watershed designation of the front 0.604-acre portion of the subject property will not change the Non-Urban Area designation and would not significantly alter the allowable uses by-right (i.e.—administratively approvable by staff) on the property. Uses such as a library, school, place of religious assembly, governmental use, or a golf course as part of a subdivision would become uses by-right, however the petitioner has indicated that “none of these permitted uses is feasible due to the small size of the area being rezoned” (although they are not specifically excluded in the proposed conditions). The permissible range of uses, if the watershed declassification rezoning is approved, are reasonable for the area (as evidenced by their listing in the Permissible Use Table of section 4-11 of the UDO).

The petitioner indicated that the rezoning request also complies with two of the goal statements of the Wake County Land Use Plan. The petitioner has noted that Goal # 2 “is to allow and “encourage growth close to municipalities” and discusses in the petition material the proximity of more intensive urban-type development across Falls of Neuse Road (a major arterial road). They also maintained that the rezoning petition is consistent with Goal # 10, “which is the County's policy of “prevent[ing] contamination of and maintain[ing] the capacity of groundwater resources”. The petitioner notes that this goal also states that the County will use “groundwater monitoring and modeling to better understand the dynamics of groundwater movement in areas where groundwater is the primary source of drinking water”.

In accordance with the North Carolina General Statutes and the Wake County Unified Development Ordinance, any proposed rezoning should be consistent with the Wake County Land Use Plan. Since this survey represents a refinement of the data (i.e.—the watershed boundary) that is already represented on the General Classification Map, the staff has deemed that the rezoning petition is consistent with the Land Use Plan.

It is the planning staff's professional opinion that the rezoning petition for Conditional Use-Residential-40 zoning, the retention of the Non-Urban Area designation, and the permissible range of uses would be consistent with the general Wake County Land Use Plan, are reasonable, and appropriate for the area.

If the rezoning is approved by the Wake County Board of Commissioners (and then by the State Environmental Management Commission), then the Planning staff would make a corresponding administrative amendment to the General Classifications Map to change the designation of the front 0.604-acre portion of this lot from Non-Urban Area/Water Supply Water to just Non-Urban Area.

Presentation by Petitioner: Mr. Gray Styers, Attorney for Fox Rothchild

Mr. Styers introduced himself as the legal representative for James and Deborah Jackson, the managers of Falls Ridge West, LLC, applicant for PLG-RZ-002881-2021. Also appearing on behalf of the Petitioner were Mr. Chris Hamblet, of Cape Lookout Environmental Sciences - environmental soil scientist, Mr. Larry Green of Wetherill Engineering, and Mr. Mark Phillips of Pabst Design. Mr. Styers indicated that he had recently taken over as representative for the Petitioner but would be happy to provide any answers to the Board's questions, and that any of the team who aided Mr. Lankford would be available to address any concerns regarding the rezoning request.

Mr. Styers presented additional surveys and topographical maps to indicate the slope of land and flow of water in the parcel of land under consideration for rezoning. The Class AA Survey by Mr. Pendergraph was taken over a two-day period and he is confident of the accuracy of the slope of the land along the ridgeline of Falls of Neuse Road. Photographs indicating the direction through the culvert running from the property to the other side of Falls of Neuse. Mr. Styers provided a map from the NCDOT with pre-540 waterflow at the site. The DOT's initial survey was consistent with Mr. Pendergraph's findings. He reiterated that the request being made before the board is only a reclassification request and that any additional measures would need to be made at the appropriate time. Mr. Styers closed his presentation by offering to answer any questions by the Board.

Public Hearing: At 2:11pm. Mr. Wells opened the floor for public comment and heard from:

Citizens in Opposition

Five citizens spoke publicly in opposition to the petitioner but several more were present at the meeting. Citizens who spoke expressed concerns that if property were to be rezoned and developed that it would cause additional stormwater runoff and hazardous waste, future traffic congestion and potential accidents, as well as decreased property values.

One of the speakers provided additional written information to the Board and represented many citizens living in the Muirfield community who are opposed to the rezoning. All the citizens both in person and represented requested that the petition for rezoning be denied thus minimizing commercial development in residential areas to protect the Falls Lake Watershed and Raleigh's pure, public drinking water.

Board Discussion

Mr. Van Dyk asked if additional widening for I-540 and Falls of Neuse Road was planned by the DOT would affect this property. Mr. Lankford responded that all current plans have been accommodated into the preliminary assessment. If any further actions are needed, they would be addressed by obtaining permanent easements.

Mr. Wells asked about a comment made during public comment referring to an ongoing study from the Department of Environmental Quality regarding possible contaminants on site. Mr. Lankford clarified that this was in reference to an underground storage tank, but this referred to an initial site plan that Mr. Jackson would need to address which does not specifically pertain to the watershed

reclassification. He also indicated that the referenced traffic survey was conducted in 2018 but would be subject to further updated studies if the property were to be developed. Mr. Jenkins asked for clarification based on a member of the public's question about rezoning only a portion of land – did this have precedent? Mr. Lankford indicated it is normally the whole parcel, or if necessary, a property could be split zoned, such as in this case.

Dr. Kolappa asked the petitioners what the tenor of feedback had been during community meetings regarding the potential rezoning and possible development of this parcel of land. Mr. Styers indicated that, to his knowledge, the response from community members had been uniformly in opposition. He clarified that there would continue to be meetings and discussions with adjoining property owners should their petition move forward into the development phase.

Mr. Van Dyk asked Mr. Maloney to confirm that should the property in question be developed that no water and sewer utilities would be utilized from the City of Raleigh. Mr. Maloney confirmed that to be correct. Mr. Maloney also confirmed that the Wake County Land Use Plan does not permit a neighborhood activity center within a mile of another activity center per public comment. The parcel being rezoned and considered for development is six tenths of a mile from an existing property under that classification.

Mr. Murphy reminded the board that they would consider two motions: a motion of consistency with the land use plan, and a motion to recommend the Board of Commissioners to consider this rezoning application. Mr. Van Dyk commented that amidst the discussion the Board had heard that the motions they were to entertain were limited to the rezoning petition, not any questions regarding future development. Based solely on the merit of the evidence presented, the Board need only address whether the R-40W line should be moved. Mr. Jenkins expressed confidence in the surveyor's maps and that their motions should be based on the available evidence of those findings. Mr. Adams expressed some concerns about governmental bureaucracy but thanked the public speakers for expressing their comments.

Board Motion #1 – Adoption of the Statement Consistency in PLG-RZ-002881-2021

Motion was made by Mr. Adams in the matter of PLG-RZ-002881-2021 that the Board offers to the Wake County Board of Commissioners the following Statement of Consistency, Reasonableness and Public Interest:

1. The proposed Conditional Use-Residential-40 rezoning is a refinement of the data that is already represented on the General Classification Map (i.e.--the outermost water supply watershed boundary), and is therefore consistent with the Land Use Plan.
2. The retention of the non-urban area designation is consistent with the Land Use Plan.
3. The permissible range of uses if the watershed declassification rezoning is approved are reasonable for the area.
4. The Petitioner has indicated compliance with two stated goals of the Wake County Land Use Plan regarding encouraging growth close to municipalities and protection of groundwater resources.
5. A detailed traffic assessment statement indicated that the proposed development would increase traffic on the adjacent roadway by only 1.6% and an ongoing NCDOT project to widen Falls of Neuse Road should help traffic conditions.
6. A Most subsequent uses would require the Petitioner to first obtain a Land Use Plan Amendment via a separate public hearing process to create a new Activity Center at this location, and then a Special Use Permit review with a detailed site plan to confirm compliance with applicable regulations via a public hearing before the Board of Adjustment.

7. The Department of Environmental Quality staff has not indicated any issues or concerns with the proposed technical correction of the watershed boundary.
8. The request is reasonable and in the public interest because various provisions in the Wake County Unified Development Ordinance and the established development review process with outside agencies such as The North Carolina Department of Transportation and other county departments will ensure that there are no significant adverse impacts on the public health, safety, and general welfare. The subsequent development will comply with county requirements regarding buffering, stormwater and erosion control and protection of environmentally sensitive areas.

Dr. Kolappa seconded the motion, and it was adopted unanimously.

Board Motion #2 – Approval of the Proposed Rezoning of PLG-RZ-002881-2021

Motion was made by Ms. Booker-Rouse in the matter of PLG-RZ-002881-2021 that the Board offers to the Wake County Board of Commissioners a recommendation for approval of the rezoning request as presented, and to authorize staff to submit the requested change to the North Carolina Department of Environmental Quality.

Dr. Kolappa seconded the motion, and it was adopted unanimously.

Mr. Wells thanked the public for participating and turned to the next item agenda.