

MINUTES
BURKE COUNTY PLANNING BOARD
April 25, 2019

The Burke County Planning Board met on Thursday, April 25, 2019 at 5:30 PM in the Commissioners Meeting Room, located at 110 N. Green Street, Morganton, North Carolina.

MEMBERS PRESENT:

Alan Scholl
Richard Evey
Gary Kling
William Tunstill

MEMBERS ABSENT:

Nick Newton
Bobby Costner

STAFF PRESENT:

Peter Minter, Sr. Planner; Jennifer Forney, Planner

CALL TO ORDER:

Chairman Scholl officially called the Burke County Planning Board to order at 5:32 PM.

APPROVAL OF THE MINUTES:

A motion for approval of the March 28, 2019 minutes, as presented, was made by Richard Evey and was supported by Gary Kling. The Board granted approval by a 4/0 vote.

PUBLIC MEETING

ZONING MAP AMENDMENT (ZMA 2019-03) - A REQUEST TO REZONE FOUR (4) PARCELS OF LAND CONSISTING OF APPROXIMATELY 1.20 ACRE FROM THE RESIDENTIAL THREE (R-3) ZONING DISTRICT TO THE GENERAL BUSINESS (G-B) ZONING DISTRICT, EDWARD ROBINSON / FARKASH FAMILY LIMITED PARTNERSHIP TRUST AND CHRISTOPHER WHISENANT, APPLICANTS.

Report by Planning Department

The Board was provided with a staff report prior to the meeting. Peter Minter gave an overview of the report at the meeting.

Presentation by the property owner

The property owner was not present for comment

Public Comment – Open 5:45 pm

Jackie Whisenant, Adjoining Property Owner:

The Whisenants own two properties in the proposed area, 3022 and 3045 Jamestown Road. Mrs. Whisenant stated that the gaming operation has become a nuisance because people come to their home begging for money. Mrs. Whisenant is concerned because she has children and does not like the idea of random people coming to her house wanting money after they have gambled their money away. Mrs. Whisenant said that the neighborhood used to be bad but that it cleaned up for a while and now this has come back. According to Mrs. Whisenants the owners of the gaming establishment wanted to buy their property from them but that they did not want to sell because they plan to give their property at 3045 to their children to live in. Just recently someone at the gaming establishment was beating on the windows and spinning out of the

driveway said Mrs. Whisenant.

Tiffany Poovey, Representative for Edward Robinson/Farkash Family Limited:

Ms. Poovey works at the arcade. According to Ms. Poovey the neighbors didn't have a problem with the arcade until they found out the structure would have to be brought up to code. She stated that they have not had any problems with people beating on the windows or anyone at all. Ms. Poovey says there was one person that went to a neighboring home and they were banned from the arcade. Ms. Poovey said they do not have the law coming around there and it is clean, drug free, and violent free. She stated that she could not work at any place that wasn't. Ms. Poovey feels that the surrounding home-based business would have more of an advantage if the rezoning were to pass because they would have more traffic. Ms. Poovey says that when she spoke with Mrs. Whisenant that she did not have a problem with the business.

Public Comment – Closed 5:52 pm

Board Discussion

Following the public meeting the Board discussed the following issues pertaining to the case

- A. The potential for spot zoning

Board Decision

Following the discussion, the Board reached the following decision:

- Richard Evey made a motion to approve ZMA 2019-03 - A request to rezone four (4) parcels of land consisting of approximately 1.20 acre from the Residential Three (R-3) Zoning District to the General Business (G-B) Zoning District, Edward Robinson / Farkash Family Limited Partnership Trust and Christopher Whisenant, Applicants. He was seconded by Gary Kling. The motion failed with a 0/4 vote.

PUBLIC MEETING

ZONING MAP AMENDMENT (ZMA 2019-04) BURKE COUNTY – IS PROPOSING TO REZONE SEVEN (7) PARCELS OF LAND CONSISTING OF APPROXIMATELY 161 ACRES. FOUR PARCELS WILL BE ZONED FROM THE PLANNED RESIDENTIAL MIXED USE (PRMU-CD) DISTRICT TO THE RESIDENTIAL ONE (R-1) ZONING DISTRICT. ONE (1) PARCEL CORRESPONDING TO PIN'S 1764483488 IS PROPOSED TO BE REZONED FROM PRMU-CD TO THE GENERAL BUSINESS (G-B) ZONING DISTRICT. ONE (1) PARCEL CORRESPONDING TO PIN# 1764573876 IS PROPOSED TO BE REZONED FROM PLANNED RESIDENTIAL MIXED-USE TO GENERAL BUSINESS. ONE PARCEL IS PROPOSED TO HAVE SPLIT ZONING. APPROXIMATELY 77 ACRES ARE PROPOSED TO BE REZONED TO THE R-1 DISTRICT AND APPROXIMATELY 7.00 ACRES FRONTING ON NC 126 ARE PROPOSED TO BE REZONED TO GENERAL BUSINESS (G-B) ZONING DISTRICT

Report by Planning Department

The Board was provided with a staff report prior to the meeting. Peter Minter gave an overview of the report at the meeting.

Public Comment – Open 6:05 pm

Sam Zaffino, Adjoining property Owner:

Mr. Zaffino lives at 175 Waterford Drive in Salisbury but owns property affected by the rezoning. For clarification Mr. Zaffino received a letter stating that his property was not part of this rezoning, but it is. One of the reasons his purchased his property was to have open space with fewer restrictions than R-1. He currently has a building for boat storage that takes up about one (1) acre of his nine (9) acre parcel. The current zoning allowed for other uses. Mr. Zaffino stated that he could apply for a commercial boat storage and repair area not that he would but it's something he could do there. However, if the property is rezoned to R-1 those options are excluded. He said from listening to the previous case if he wanted to rezone his property back to PRMU he would be faced with a spot zoning situation. Mr. Zaffino said that he does not want to be part of Hawksbill or the restrictions that accompany that development. According to Mr. Zaffino he was not allowed to put a driveway from Hawksbill into his lot which was fine because he didn't want to be a part of the subdivision. But Mr. Zaffino is not happy with loosing the ability to put some of the uses that would have been allowed in PRMU on his property. Mr. Zaffino wondered if there is any way to make his property something else besides R-1.

Scott Carpenter, Planning Director:

The Planning Director, Scott Carpenter attempted to explain to Mr. Zaffino the reasoning behind the rezoning after disclosing that he has a vested interest in the rezoning as well. Mr. Carpenter explained to Mr. Zaffino that the uses allowed in PRMU are allowed only under a master plan and that the master plan are what the allowed uses are, not the table. It does not mean that each lot in a PRMU district would be allowed to do anything in the table unless they are part of the approved master plan. The commercial uses that Mr. Zaffino mentioned were only allowed in certain areas of the subdivision, not on every lot in the subdivision.

Sam Zaffino, Adjoining property Owner:

Mr. Zaffino stated that he knew what he was buying but the thought process was you buy nine (9) acres of land you think you can use it for doing things on it and it turns out I can't do that. He felt that he was closed out, but he was okay with the rezoning.

The Chairman disclosed that Mr. Carpenter has an interest in the rezoning and asked Mr. Carpenter to identify his property on the rezoning map. He stated that any questions on the opinion of what should be done should be disregarded and that Mr. Carpenter should recuse himself.

Public Comment – Closed 6:35 pm

Board Discussion

Following the public meeting the Board discussed the following issues pertaining to the case

- A. Covenants and restrictions applied to the property
- B. How covenants and restrictions are applied
- C. Taking of Property
- D. Effect of rezoning on the Zaffino Conditional Use Permit
- E. Compatibility of property restrictions with the rezoning

Board Decision

Following the discussion, the Board reached the following decisions:

Richard Evey made a motion to approve Zoning Map Amendment (ZMA 2019-04) Burke County – is proposing to rezone seven (7) parcels of land consisting of approximately 161 acres. Four parcels will be zoned from the Planned Residential Mixed Use (PRMU-CD) District to the Residential One (R-1) Zoning District. One (1) parcel corresponding to PIN'S 1764483488 is proposed to be rezoned from PRMU-CD to the General Business (G-B) Zoning District. One (1) parcel corresponding to PIN# 1764573876 is proposed to be rezoned from Planned Residential Mixed-Use to General Business. One parcel is proposed to have split zoning. Approximately 77 acres are proposed to be rezoned to the R-1 District and approximately 7.00 acres fronting on NC 126 are proposed to be rezoned to General Business (G-B) Zoning District. He was seconded by William Tunstill. The motion passed unanimously with a 4/0 vote.

Chairman Scholl: The next meeting will be May 23, 2019. At this time, I will adjourn this meeting of the Burke County Planning Board.


Note: *Verbatim minutes of this meeting are available upon request via recording in the Burke County Planning Office.*

Submitted by:


Jennifer Forney

Jennifer Forney
Planner

Approved this 23rd day of May 2019



Jennifer H. Forney
Secretary to the Board



Alan Scholl, Chairman
Burke County Planning Board