

Department of Planning & Community Development



A meeting of the Franklin County Planning Commission was held on August 10, 2021, in the Board of Supervisors meeting room located in the Franklin County Government Center.

THOSE PRESENT:

Sherrie Mitchell- Snow Creek District
Debbie Crawford- Union Hall District
David Clements- Rocky Mount District
C.W. Doss, Jr.- Blue Ridge District
James Colby- Gills Creek District
David Pendleton – Blackwater District

THOSE ABSENT:

Angie McGhee – Boone District

OTHERS PRESENT:

Chris Dadak, County Attorney
Carrie Spencer, Director of Development and Planning
Timothy Mack – Senior Planner
Lisa Cooper – Principal Planner
Mindy Goldsmith - Clerk

The meeting was called to order by Chairwoman Mitchell at 6:03 p.m. The first order of business was approval of the July 2021 minutes.

Chairwoman Mitchell asked the Planning Commission if there were any comments or corrections to the minutes as written; there was one correction per Ms. Crawford. Chairwoman Mitchell announced the minutes would stand as written and with one correction. Ms. Spencer asked for an addition to Old Business – Item E – Short Term Rental Update

Chairwoman Mitchell introduced the next item on the agenda and asked for the staff report.

APPLICATION for REZONING –

Applicant Franklin County Planning Commission on behalf of Idlewood Shores Homeowners Association, Owners, requesting to rezone, with possible proffers, an approximate 80.321 acres of property currently in sixty-eight (68) parcels from A-1 Agricultural, to R-1, Residential Suburban.

Mr. Mack presented the staff report, including recommendation and conditions.

Ms. Crawford asked the name of the contractor who started the subdivision. A member of the audience answered that it was Mr. Cooper. Lisa was asked if she knew the history of Idlewood Shores. Lisa stated that A-1 allows for more options, which reduces the items that would require the 90-day rezoning process. Many developers chose to leave the zoning as A-1. Lisa stated that her developer where she currently owns a home decided to keep the zoning as A-1. She informed the Commission that we do see developers leave the zoning as A-1.

Ms. Mitchell asked where the Idlewood Shores document originated. Ms. Mitchell stated we would begin public comment. Mr. Davis first spoke and provided a referendum to the PC with 58 signatures. He feels this shows over 81% of homeowner approval rating to change the zoning. Mr. Davis reported that farmland was originally included in 1988 and was zoned A-1. Mr. Davis reported that they attempted to contact the other 14 residents but were unable to obtain their signatures due to various reasons.

Mr. Dave Metzger addressed the commissioners. He thanked the board for the opportunity. He stated he wished to clarify this was at the behest of the Planning Commission and this is a correction process. He described the characteristics of A-1, for which this neighborhood has none. He also wished to address the concern of not restricting property rights. He stated that every owner of a parcel in Idlewood Shores signed the covenants and restrictions and believes the document imposes over a hundred restrictions on property owners in Idlewood Shores. Regarding not restricting property rights, he stated, "too late".

Mr. Jim Gilbert addressed the planning commission. He stated he has been an attorney in Franklin County for 25 years and had the pleasure of representing Mr. Cooper in the past. He represents Mr. James Crane, who purchased a property in Idlewood Shores last year, and he did purchase the property with the HOA covenants. He stated that the original developers did not think through the leasing of property and there are no restrictions regarding the leasing of property. He stated this has been an ongoing theme in Bedford County as well as Franklin County. He referenced *Walter vs Scott* at the Supreme Court of Virginia. He stated that the original CCRs for Idlewood Shores had no restrictions to short-term or long-term leasing property in the covenants. He stated he feels the topic of short-term rentals is a knee-jerk reaction to his client's desire to rent his property on a short-term basis. His client was denied the SUP for short-term rentals, and therefore changed to long-term rental for his property.

In order to remain in compliance with the RCCs, his client rented the property for longer than 30 days. He stated these are long-term rentals. He feels there is no doubt the reason the HOA requested the Planning Commission to rezone the subdivision was to prevent any rentals of homes in Idlewood Shores. He also informed the PC that the Idlewood Shores HOA added an amendment in May to restrict short and long-term rentals. He stated he is here to inform the PC why this change sets a very bad precedent:

The attorney's grandmother and grandfather always stated "if it ain't broke, don't fix it. He stated that sometimes the fix has unintended consequences.

Idlewood Shores has been zoned A-1 for 32 years. This request was only filed after the short-term rental issue came up.

If you look at the map, North of Idlewood Shores, it is zoned R-1. As you move South to Juniper Road and Harbor Club Lane, they are zoned A-1. Then South of Idlewood Shores the zoning is R-1. There is a hodge-podge of zoning districts in the area.

Mr. Gilbert further stated that this is truly an issue about short-term rentals, the issue has been fixed. His client cannot rent for less than 30 days. He would like the PC to consider the unintended consequences of fixing something that is not broken. The attorney highlighted some comparisons between zoning districts. Minimum lot sizes are reduced drastically in R-1. There are also drastic setback changes. There is a difference in Class A and Class B. In R-1, you can only have Class A. If a homeowner wished to work from home, a homeowner would have to apply for a special use permit. He also feels the commission should think about that if the commission was just rezoning one subdivision in a greater area of the county, this might be considered "spy zoning". The county can rezone if the issue is fairly debatable. He suggests this issue is not fairly debated. He reiterated that he feels this is only an issue because of short-term rentals. He feels that this is to settle a dispute about short-term rentals.

Mr. Gilbert stated that the HOA is inviting the PC to settle a dispute that the homeowners of Idlewood Shores should settle civilly in a court of law. It should not be the government's responsibility. He thanked the PC for their time.

Mr. Colby stated that he originally made the motion for this public hearing. He stated it had nothing to do with short-term rentals, but rather a correction of what he sees on the ground. He asked the attorney to advise the commission of what A-1 uses would be lost by rezoning. However, he stated it was developed as A-1 and has been for 33 years. People have purchased with the knowledge and understanding of what their rights and obligations are in regard to zoning.

Ms. Crawford asked about grandfathering. She stated that before she became a member of the PC, many who applied for short-term rentals took their applications to court. She wanted to know if the property owner would have the right to take his short-term rental to court. The attorney stated that the better question is whether the owner has grandfathered rights. The attorney quoted state legislature verbiage. He stated that basically the landowner's rights are deemed vested if the landowner is a beneficiary of a government act, the person relies on the information in good faith, and incurs considerable expense. The attorney stated it could be an interesting case in court.

Ms. Spencer cautioned the PC to separate the covenants from the zoning issue. The HOA has adopted and recorded the covenants. The covenant amendment was recorded on June 7th and prohibits rentals for less than 365 days. Ms. Mitchell invited any other members who haven't spoken to speak to the commission.

Mr. Scott Saher spoke and quoted, "that when we know better, we do better". He stated that the homeowner submitted a request for short-term rentals after he had already been renting and advertising on Airbnb. He stated they don't live on a farm and they should be rezoned.

Ms. Lisa Cooper stated the R-1 zoning was adopted in 1988 at the same time as A-1 zoning. She stated there have been some revisions regarding short-term rentals, and some revisions in 2008 and 2010. The subdivision dates to 1989. At that time the builder did have the option to go through the process of rezoning to R-1.

Ms. Mitchell asked for discussion among the PC members. Ms. Crawford stated she has an issue with our policy and would like to think that if she purchased property that was zoned A-1, she would not like the thought that someone could come in and change the zoning. She would be against the rezoning. She stated that Idlewood Shores did ask the planning commission to rezone and that the planning commission did not request this themselves. She also stated that the covenants have tried to fix the problem. She stated she lives in a subdivision that is RC-1, and down the road some contractors have zoned their divisions as RPD because situations may change in the future. She is concerned about a property owner's rights. She stated that she believes in protecting the homeowner's rights.

Mr. Colby quoted from the zoning ordinance. He read the ordinance to the planning commission and the public in attendance at the meeting. He stated that this proposal is one of many where the zoning and the actual use of the land do not fit. In his opinion, the PC has been asked to correct the error and feels it is not very complex. He feels it's a model example of an R-1 district.

Ms. Mitchell stated it's almost too late to make a comprehensive correction and we heard very good arguments from both sides. She is a strong proponent of property rights and is aware that the county has recommended approval, but she is not OK with a comprehensive zoning of this many parcels unless there is 100% agreement from all parcel owners.

Ms. Crawford stated that covenants can be changed. If you are A-1, there are many more choices than R-1, should future owners wish to apply for special use permits. She feels we are changing property rights for people who did not ask for their property rights to be changed.

Mr. Colby motioned that such rezoning will not be of substantial detriment to surrounding property, and adjacent property would not be harmed. He motioned to recommend approval of the application as such rezoning will be in harmony with the county code. He recommended APPROVAL of the request to rezone Idlewood Shores from A-1 to R-1. Second by Mr. Doss.

AYES: 2

NAYS: 2

ABSENT: 1

ABSTAIN: 2

Ms. Spencer asked if PC members can abstain when present for the meeting. Chris stated they can abstain. This vote will go to the Board of Supervisors as a tie vote, with no recommendations. The BOS will hear this motion on September 21, 2021.

Ms. Mitchell stated the application would go to the Board of Supervisors with no recommendation.

Chairwoman Mitchell announced the next item on the agenda and asked for the staff report.

APPLICATION for REZONE –

Application of Donald Hancock, Applicant and Owner, requesting to rezone, with possible proffers, an approximate 13.50 acres of property from RC-1, Residential Combined Subdivision, to A-1 Agricultural.

Mr. Mack presented the staff report, including recommendation and conditions. The property has been zoned RC-1 since 1988. Mr. Colby asked about a stream running through the lower portion of the property, and what kind of impact is expected on the stream, if known. He asked if any measures are being taken to minimize erosion. Mr. Mack responded that the county does not regulate impact on streams, nor does it regulate crop rotation.

Ms. Mitchell asked if the uses marked out on the proffers were marked out by the applicant. Mr. Mack responded, “yes”.

Ms. Mitchell asked if the applicant wished to speak. Mr. Mack reported that the applicant works a later shift and could not be available.

The public comment period was closed.

Ms. Mitchell asked for discussion among the planning commission members. She stated it was unusual in the Gills Creek district to request a rezone from RC-1 to A-1. Ms. Crawford stated that she felt the zoning was rather arbitrary in 1988 and that this was just the property owner’s request to do so.

Mr. Colby motioned that such rezoning from RC-1 to A-1 with the recommended proffers will not be of substantial detriment to surrounding property and that such rezoning would not be a detriment to adjacent property, and adjacent property would not be harmed. He motioned to recommend APPROVAL of the application as such rezoning will be in harmony with the county code. Second by Ms. Crawford. The motion carried.

AYES: 6
NAYS: 0
ABSENT: 1
ABSTAIN: 0

Chairwoman Mitchell announced the next item on the agenda and asked for the staff report.

APPLICATION for REZONE –

Application of Rithika Patel, requesting to rezone, with possible proffers, an approximate .79 acres of property from A-1 Agricultural, to B-2, General Business.

Mr. Mack presented the staff report including recommendation and conditions. Mr. Mack stated that during research the staff report changed from a recommendation to table the case to recommending the rezoning. The property was zoned A-1 in 1988 but has been used for commercial business since that time. The owner’s future tenant wants to open a bakery. Mr. Mack stated the applicant isn’t required to rezone, but a rezone gives more flexibility in the future. The applicant has submitted several proffers.

Ms. Spencer clarified that one half of the building is vacant and the other is occupied by a window tinting business. Ms. Crawford asked if the fire marshal had any concerns about the wall between the two businesses. Ms. Spencer reported that there is not a change of use in the property. Ms. Mitchell stated that she noted comments in the staff report about department of health regulations. Mr. Mack clarified that the tenant would have to apply with the VDH and follow VDH guidelines.

Mr. John Boitnott, attorney for the applicant, rose to speak. He gave a history of the sale and rental of the property. He feels the commercial use is a grandfathered use. He states this is a retail commercial business building sitting in the middle of A-1 zoning and is a nonconforming use. He stated that now is the time to conform the zoning to B-2 classification.

Ms. Mitchell asked if anyone wished to speak to the petition. The period of public comment was closed. Ms. Mitchell clarified the property is .79 acres.

Ms. Mitchell asked for a motion. Ms. Crawford thinks it's wonderful that someone wants to use the building. Mr. Clements motioned that rezoning would not be of substantial detriment to surrounding property and that such rezoning will be in harmony with county code and recommends APPROVAL of rezone from A-1 to B-2 classification of .79 acres, with proffers. Second by Mr. Pendleton.

AYES: 6
NAYS:
ABSENT: 1
ABSTAIN:

Ms. Mitchell asked if anyone would like to speak to the planning commission about any other concerns. Ms. Mitchell stated the commission would begin old business.

OLD BUSINESS:

Application for SPECIAL USE PERMIT – Billy Martin - Application of Billy Martin, applicant and owner, requesting a special use permit, with possible conditions, to allow for the Short-Term Tourist Rental of a dwelling on an approximate 1-acre parcel currently zoned A-1. In July Mr. Colby had a question regarding approved septic tank and drain field and this application was tabled to August 10th.

The public hearing was held at the July 13th, 2021, meeting. Mr. Martin is available at tonight's meeting. The staff reported that there is a 3-bedroom septic tank with drain field on the property.

Mr. Martin spoke to the planning commission. Mr. Colby inquired about the septic system and stated it was a beautiful place. Mr. Martin stated the well was of high quality.

Ms. Mitchell asked for discussion.

Mr. Colby found that such use would not be of substantial detriment to adjacent property and would be in harmony with county code and recommended APPROVAL of the request for a special use permit to allow for the short-term tourist rental of a dwelling. Second by Mr. Clements.

AYES: 6
NAYS:
ABSENT: 1
ABSTAIN:

Application for SPECIAL USE PERMIT – Jeff and Jennie Zdenek and J Cubed Holdings, LLC - Application of Jeff and Jennie Zdenek, Applicants, and J Cubed Holdings, LLC, Owner, requesting a special Use Permit, with possible conditions, to allow for an RV Campground and Tourist and Resort Facilities Development on an approximate 16 acres of property currently zoned A-1.

Ms. Mitchell reported that the public hearing occurred at the July 13, 2021, meeting. She stated we heard concerns about terminology regarding RV's and tiny homes.

Mr. Mack reported that the concern was narrowing down the definition of the park. The staff revised the definitions and added the condition that RV's and campers are not allowed on the property. Conditions were added for tiny homes for skirting and septic, and no overflow parking.

There was also discussion about the primitive campground and distance from Kemp Hill Road. The primitive campground would be 450 feet from the road. There was also concern about fencing, and Mr. Mack reported that the applicants were amendable to fencing around the property. Mr. Mack stated the applicants were pleased with the staff recommendations. Mr. Mack stated that the description of the property has been changed to "Resort and Tourist Facility", with "RV" removed.

Ms. Spencer reminded the board that when the motion is made, to remove "RV Campground" from the motion.

Ms. Crawford motioned that such use will not be of substantial detriment and such use will be in harmony with county code and recommends APPROVAL of the applicants request for a special use permit for a resort and tourist facilities development with the twelve conditions listed in the staff report. Second by Mr. Doss.

AYES: 6

NAYS:

ABSENT: 1

ABSTAIN:

Staff Presentation – Solar Ordinance and Comprehensive Plan Amendment

Mr. Mack presented the recommendations made by Solsmart, the Solar Ordinance consulting company. Ms. Mitchell learned it may be possible for the planning commission to meet with Solsmart, and have the Board of Supervisors present, so they can "get it right" the first time. The suggestion is a joint workshop with Solsmart in attendance.

Ms. Spencer reported that she reformatted the ordinance to mirror how the rest of the code is written and stated that this reformatting may have caused confusion. Edits will occur after the workshop.

Ms. Spencer reported that Lisa Cooper has drafted a comprehensive plan with suggestions. The suggestions included adding objectives and strategies to the Public Utilities Section and add Solar Generation facilities (Utility Scale) category to Future Land Use Section.

It was agreed that the Solar Ordinance and Comprehensive Plan should be on the same agenda for the workshop. Ms. Mitchell requested the members look at the rough draft of the comprehensive plan first.

Ms. Cooper reported that the public utilities section would be an amendment to the 2007 comprehensive plan, and she added a new objective and some strategies. The Solar Generation Facilities Utility Scale is a starting point to see if it meets the objective of "having more teeth", which has been a request from commission members in the past. She stated she would like Solsmart to look at both documents and reiterated that these documents are a very rough draft. She reported that wind energy was not addressed in the two documents.

Ms. Mitchell asked that commission members be given a list of the State of Virginia's goals for renewable energy. Ms. Cooper reported that the state goals were for commercial and residential. Ms. Spencer also noted that the state's goals could be provided at the workshop. Mr. Colby stated he would review the documents in detail and submit his comments.

Ms. Spencer suggested that we also look at other locality comprehensive plans. Ms. Spencer reviewed items from the updated version of the Ordinance as of August 6, 2021. Solsmart also suggested that we pull the setback closer because the buffer would not shield the solar farm with a 300-foot setback. SolSmart stated that best practice was a setback of 150 feet. Ms. Crawford asked if we could add buffering methods such as landscape berms.

Ms. Spencer reported that wildlife resources does not recommend fencing between five and eight feet. If there is a wildlife corridor, an opening at ground level in the fence is recommended.

Mowing five times per year could be counter-intuitive to pollinating habitats. If there is no pollinator habitat or farming under the panels, mowing might be appropriate.

Ms. Spencer stated that in a comprehensive plan we can prioritize practices that promote items such as "pollinator friendly". Ms. Spencer reviewed other changes and edits she had made to the ordinance.

Ms. Crawford asked if there could be a threshold of how many panels would be allowed. Mr. Mack reported that Solsmart advised that we could establish thresholds. Ms. Mitchell asked how soon a meeting could be set up with Solsmart. Mr. Mack stated he would reach out to Solsmart on August 11th. Timing could not be promised at this time.

Union Hall Village Discussion:

Ms. Cooper presented an update to the planning commissioners. EPR, PC and Michael Baker are the consultants. Staff is holding monthly meetings with consultants and quarterly meetings. Ms. Cooper reported that water authority will be an important component of the village plan. The next meeting is a week from Friday. A community meeting is scheduled for October 5th at 6 PM. The community meeting will be advertised. Ms. Cooper said the format will be the same as other plans, but the content will be different. Ms. Crawford asked if letters would be sent to every person in Union Hall. Ms. Cooper suggested we could send letters to everyone in a certain zip code. Ms. Cooper reported four meetings are scheduled with the consultant and the planning commission. Some of the meetings will be virtual. The consultant trips are limited and would have to be paid separately. Consultants will be looking at the area on October 5th, and Ms. Cooper reported the plan might be finished by May or June 2022.

Short-Term Rental Update:

Ms. Spencer reported that the county has collected \$22,000 in fees. Over 90% of properties comply. We are pleased with the Granicus software program, and we anticipate receiving tax revenue information from the Commissioner of Revenue. Ms. Spencer suggested that after we complete the solar ordinance, we should update the short-term rental ordinance. Short-term rentals are only allowed in A1, RPD, and PCD. She asked if the commissioners wanted to entertain whether short-term rentals should be allowed in other districts with separate standards, or are the commissioners happy with the current zoning? This can be addressed later. Ms. Spencer strongly recommended that we have strong criteria for approving short-term rental applications. Ms. Crawford stated we shouldn't have to burden the Board of Supervisors with every short-term rental application. Ms. Crawford suggested the land-use office also review applications. Ms. Spencer also reported that Granicus has a very good complaint hotline, and the process works very well. Only three properties have been problematic.

Ms. Mitchell asked if there was any new business on the agenda. Hearing none, the meeting was adjourned at 8:50 PM.

Mindy S. Goldsmith, Clerk
Franklin County Planning Commission

August 10, 2021
Date