

Town of Milton
Special Planning and Zoning Meeting Minutes
April 11, 2006

Members Present:

Linda Rogers Dean Sherman Richard Greig Carol Bruce
Michael Filicko Ginny Weeks

Others Present:

Stephanie Coulbourne Tim Willard Bob Kerr

Linda Rogers opened the meeting and introduced the application.

Dr. James C. White and Nancy L. White and Chestnut Properties, L.L.C, are requesting an annexation agreement. The property is identified by the Sussex County Tax Map Parcel number 2-35-14-132, 2-35-14-132.01, 2-35-14-143.03.

Linda Rogers: Is there anyone present on behalf of the applicant?

Joe Reed: Blake Thompson, Pret Dyer, and I are members of Chestnut Properties.

Pret Dyer: We have a signed annexation agreement that was forwarded to your solicitor, Mr. Willard. It indicated that we reviewed the minutes with regard to this project, and on September 20, 2005, we modified the plan to represent R1 zoning of 37.04 acres and R3 zoning of 25 acres. The plan before you is the concept plan we utilized for that presentation. During the public hearing, we agreed voluntarily to restrict the total number of units within the Dr. White project, from the maximum density of 494 units to 370 units. The purpose of the deed restriction is two fold. First, it is to provide the guidelines for development and secondly, to give the Town the ability to enforce the restrictions. Subsequent to annexation, we would request a public hearing for the LPD master plan, which would remove any concerns as to whether or not the information in front of you is detailed enough to meet your master plan requirements.

Linda Rogers: How many units did you say you have in the annexation agreement?

Pret Dyer: The maximum would be 370 units. The voluntary deed restriction was added to the existing annexation agreement, and we expounded upon those because the requirement is that the concept plan be followed as a guideline for development. The previous annexation agreements provided by your attorney indicated that any changes in land use necessitated by subsequent governing bodies would be deemed to be in compliance with the concept plan. In other words, we would seek to have the annexation with the two zoning designations and then ask you to come back for the LPD process. What we did in the annexation agreement, we talk about combined property, combined terms.

Michael Filicko: It is 25 acres to be annexed as R3. Are you permitted to build on non-titled wetlands?

Pret Dyer: No, we aren't building at all on non-titled wetlands. The 25 acres includes the wetlands. We would not encroach on any state or federal section 10 state wetlands, or section 404 federal wetlands.

Linda Rogers: Are there any questions for the applicant?

Michael Filicko: I recall your original presentation and it was done very professionally. In the years that I've served on this committee, it seems that I've learned some things, which I wouldn't have permitted, had I have had more knowledge. What are you going to do with the existing trees on the property? How will they be saved when you put in your infrastructure?

Pret Dyer: That's a very good question. We had our planner, an environmental consultant, we also have a historical and cultural consultant and what we have done is, if you look at the original plan, all of the trees in this area and across here were included within the development area. As a result of the environmental impacts, we have made very large strides in keeping, rather than leaving an isolated pocket of trees, it has much less value than it does as an integrated portion of forest. That is what our planner has not only explained to us but has been able to achieve here. The answer is there will be some impacts, some impacts are inevitable and we've had the opportunity here to really protect, another thing that is of importance is the little league ball field is located in this area. Rather than put houses up right against that, we've created walking trails and buffers and left that forested area so that as not to create a incompatibility of two particular uses. Dr. White was also very concerned that we had no negative impact on the little league situation. So, in doing this, they call it fragmentation of existing woodlands and if you fragment it and don't allow some degree of continuity, it has much less value both from wildlife perspective and also from the adjoining properties.

Carol Bruce: Just to clarify on what Mike asked, it looks as though about 80% of that is wetlands. I'm just wondering, the trees aren't necessarily so much down on the wetlands part and I just have a little concern about how many actual large trees would be sticking up as opposed to vegetation.

Pret Dyer: Quite honestly, we're not asking you to approve the master plan under an LPD. I think that I feel very comfortable with defending this plan given environmental. I feel this plan exceeds the criteria required. It's not necessarily the trees themselves, it's the quality of the trees. You can save some trees that are not a high quality tree to save and, what we've done, the very largest and the most protected species and varieties of trees are in this area. That is why we've endeavored to protect that area. We've spent a lot of time and money to make sure we examined that before we bring a plan to you and have you ask questions about that. It is important, it's a question that we deal with in other municipalities and on a regular basis with Sussex County I can assure you that I know a lot more about trees than I ever thought I would or ever knew I'd have to. This plan is both environmentally sound and I think also very appropriate to meet your requirements under the LPD. The majority of this site is clear now. It's probably already over 90% cleared where the houses are going. We did a survey for cultural and historical significant features on this property and we do have an area down where the "X" is and at one time there was a brick operation there. What our planner suggested was that that be incorporated as a very significant feature in the overall design of the property. That's what we've done, and in no way are we going to impact that. In fact, we are going to enhance the opportunity for that to be utilized. Those types of features, while we think are significant, are exactly what you just said. They are very, very positive features, not only to maintain but also for the enjoyability of the residents of the community.

Linda Rogers: Tim, have you reviewed these annexation agreements?

Tim Willard: To answer that question a little bit, Mr. Dyer and I spoke about his letter that he wrote last week and I think he has articulated it well, but, so everybody understands, because when this comes down from council you're charged with two tasks. Considering the proposal for annexation, should it come into the town and, if so, why. Why being that maybe it's in the comprehensive plan, it fits well, it should be part of the town, etc. And simultaneously, you are to hear a request for zoning. That's where it's been somewhat confusing. Originally, as Mr. Dyer said, it came in as R3 and then they said that they will do an LPD, I asked him, because he does this somewhat is parallel and I have to get those minutes. You all had a public hearing reference R3 zoning on this, which also includes R1. Apparently, notice has been satisfied. Your chore now is simply

to recommend to council what your recommendation is. We recommend this property and the property that is not currently in the town represents about 62 acres be annexed into the town for these reasons and that it be zoned something for these reasons. What you need to be clear about is the applicant has suggested that you just simply classify it as a zone R3 and R1, and I think the reason is, is because we somewhat got bogged down with the master plan and the LPD, which is a good thing, but it has the potential of bogging us down because it gives you the authority to micromanage trees and where commercial will go and such. By requesting that you simply zone it R1 and R3, the applicant must identify the territory he wants to zone R3 and R1. I think that is what is attached to the declaration of convenience. So, if you all recommend that this should come into town, we should annex this for these reasons, and it should be zoned single and it should be zoned R3 for these reasons. The worse case scenario is that, the council has the final decision that they agree with you and they have their public hearing, then the applicant is now sitting on property that is now in the town and this is designated R3 and this is designated R1, as well as the parcel that is already in town. Then they can do what is permitted in those zonings in those areas. That worse case scenario is not as bad and as arbitrary as it sounds, because, simultaneously to designating this zoning, we are recommending, if you will, an annexation agreement. The applicant, land owners and their successors if they sell it to another developer, will be bound by that. What they're envisioning, making part of the agreement, is they will apply for an LPD. They do this somewhat at their peril too. They have to go through this process again, but they are saying why they want to come in, they want this density, which is why they are designing this zoning but they are willing to submit to this process, which you have already gotten more than a glance of now. They will have to come back if the town council annexes this property and zones it, they will have to come back for a change of zone and that change of zone will be for an LPD. In addition to the annexation agreement, which will express their intent, it will include this concept plan. What will be clear, will be the applicant's intent, what will not be clear will be the council's decision, that's their choice? To that extent, this is a larger parcel and there has been a lot of effort made on it and a lot of effort on your part, it's kind of a compromise. As an attorney, one always is a little skeptical of we agree to agree, if it was worthless I would caution you, but, however, we have the history, we have the annexation agreement, we'll have restrictive convenience, where the town becomes a party to the protection you get if the annexation agreement with the concept plan and restrictive convenience attached, the idea being that we will come back, put the bells and whistles on it, but that is at the discretion of the council and you, as far as your recommendations. When you talk about trees, street light designs and architectural designs, that isn't what this is about now. This is about whether this parcel, those 50 acres should come in and, if they do come in, is this density appropriate? Just as a practical matter, I foresee a letter to council from you if I get marching orders to this extent, in the form of a cover letter, expressing your recommendation to annex or not annex to change the zone accordingly. The reasons in that letter and attached to that cover letter, will be the annexation agreement, the restrictive convenience, this, it designates the zoning, and the concept plan. I haven't gone over the annexation agreement with a fine tooth comb, I see some reference to an LPD, but it should be in the terms of how I'm speaking now. It cannot be in the form of the applicant shall get an LPD, because that has to go through a separate zoning process and review process for the master plan, where you get more involved. What the applicant is doing is backing off a little bit so you can digest it and they can move forward and then come back later, depending what council decides.

Joe Reed: The minutes from back in October, 2005, what was the recommendation from the Commission.

Tim Willard: In addition to the letter from the commission, but if you do recommend approval of annexation, if you do recommend zoning, I think we include the annexation agreement, the covenants and the minutes and to answer your question I don't have them.

Jim Reed: I thought they recommended sending it up to the state.

Tim Willard: I think at the commission's meeting next week, my expectation would be that you clean up this package and have it by the end of this week with a letter and if you could add this item to your agenda on Tuesday, next week, you'll have a letter to council, that you can read before hand, the annexation agreement, the restricted covenants, the zoning map, the concept plan, the minutes so that your level of comfort of making a decision next Tuesday will be in front of you in black and white.

Stephanie Coulbourne: I can do that revision based on the information being given at tonight's meeting? It can be listed as old business on the agenda next week.

Tim Willard: I'm volunteering to go through the annexation agreement and make sure it's what is appropriate and the restrictive covenants and drafting a letter for you to consider. It isn't complicated but it is important that when it goes to council, they get the clearest vision of what your decision is and why we are where we are.

Linda Rogers: You need to write the letter giving the reasons why we feel it should be annexed if that is what we are going to decide to do, right for your consideration. Are most of the members in agreement that we do feel that this parcel of ground does need to be annexed into the Town of Milton for development?

Tim Willard: Yes.

Linda Rogers: Do we all agree with the proposed zoning areas, boundaries and districts? Yes. Do you agree with the density that they have agreed to voluntarily put into their agreement which is 370 units, correct? Yes. We all agree that those things and the reasons being that it is in the development zone is the proper thing to do and what more wording do you want to put in your letter for us to send to council in order for us to make the motion, which apparently you are wanting us to do next week after we have this letter to review.

Carol Bruce: There are things I find in this proposal that I do find attractive and did before and I do have a little concern about it being mostly flat and mostly houses and I would love it if you would consider putting some trees, other than street tree, because street trees, by large, are susceptible to disease, they don't add that much.

Dr. Greig: What I have liked since the beginning is that it seems to flow into the Town of Milton, there's a characteristic here of useful term segway, whereas most of the other developments that we have had added to Milton, have only been attached on the outside. This is part of the town. We've endeavored to try to connect to the town; we've acquired a neighboring property to try to? We would also love to have a walkway here along the water all the way through to the downtown, have a river walk, but not sure if that is a possibility through the neighboring property.

Linda Rogers: Bob, do you have any comments?

Bob Kerr: I would feel more comfortable if there was a dimension on the lines that divides R1 from R3. The line is shown but I don't know where it physically states. Any other recommendations?

Dean Sherman: I make a motion that the planning and zoning authorize Mr. Willard draft this letter for us to consider and hopefully forward to the mayor and council.

Dr. Greig: Second. All in favor, say "Aye" – aye. Opposed? None. Motion carried.

Dean Sherman: I make a motion to close the meeting.

Michael Filicko: Second. All in favor, say "Aye" – aye. Opposed? None. Motion carried.