

MEMORANDUM

DATE: November 23, 2004

TO: The Board of Supervisors

FROM: Allen J. Murphy, Jr., Zoning Administrator

SUBJECT: Petition for Review of Zoning Administrator's Enforcement Action - Fernbrook Scenic Easement

Patrick and Josephine Garcia and Edward and Laura Lansford, property owners, have petitioned to appeal the Zoning Administrator's enforcement action related to two properties located at 2784 and 2792 Jonas Profit Trail. The appeal seeks the Board's review of the Zoning Administrator's decision requesting the removal of encroachments (fences and play equipment) located in the 100-foot scenic easement that exists along the frontage of sixteen properties in Fernbrook adjoining Greensprings Road.

The Fernbrook Homeowners Association (Association) brought to the attention of staff that several of the properties in the subdivision have fences built into the scenic easement along Greensprings Road and that some of the natural vegetation has been cleared on at least one lot. It should be noted that no building permit is required from the County to erect a fence. When asked for their official position on this matter by staff, the entire Executive Board of the Association provided and signed a letter (attached) which very strongly emphasizes the importance of protecting the integrity of the scenic easement for this community and the corridor and states clearly their "vehement" opposition to any compromise of the protections afforded by the easement. The Association requested that the requirements of the easement be enforced to the full extent of the law.

Condition (2) of the proffers associated with Fernbrook (originally First Settler's Landing) reads as follows:

2. A scenic easement shall be reserved across the property 125 feet deep, adjacent to and parallel with the center line of Route 614. Existing trees, shrubbery, and vegetation shall remain "as is" provided, however, the owner (the developer) shall have the right to install and construct such new road, driveways, public utilities and entrance signs, as may be necessary, in accordance with the terms of this agreement and approved by the Subdivision Review Committee of the County's Planning Commission.

As Zoning Administrator, I consulted the County Attorney, the Planning Director, the Development Manager, and the Assistant County Administrator on this matter before taking action. It is the opinion of the County Attorney that this easement belongs to the County. It is clear to staff that the intent of this proffer was to leave a completely undisturbed, natural wooded buffer within this scenic easement along Greensprings Road. The clearing of natural vegetation and/or placement of fences or other structures in the scenic easement did not meet the requirements of this proffer and represents, in staff's opinion, a violation of the proffers. Staff subsequently cited (see attached letters) the aforementioned property owners in October for a violation of the proffers and gave them a time frame within which to abate the violation. There are three other properties with fences along this road which are being investigated by staff. At this time, we do not have sufficient evidence of a violation in those cases. The two owners cited filed an appeal (attached) in accordance with Section 24-19(a) of the James City County Code shortly thereafter. The appeals serve to stay any enforcement proceedings until heard and reviewed by the Board of Supervisors.

The fence on the Garcia property encroaching in this 100-foot scenic easement is located approximately 44 feet from the edge of Greensprings Road right-of-way. The fence on the Lansford property is located approximately 56 feet from the edge of this same right-of-way. In addition, the Lansfords have done some clearing in and around the fence area and placed some playground equipment in the easement.

The recorded subdivision plats (attached) for these lots clearly show the scenic easement and list the restrictions within the easement. The deeds for each lot in question reference these same recorded plats. The development plan or plot plan for each house submitted with the building permits for one of the homes and for a deck addition on another also show the scenic easement so there was further evidence of its existence prior to construction of these fences. Mr. Lansford was contacted by a Zoning Officer prior to construction of his fence and was advised not to build it because it was located in a scenic easement. Mr. Lansford stated that he had obtained approval of the Association to build it and that he intended to proceed. It is clear from the documents received that the Architectural Review Committee of the Association did indeed approve these fences (see attached letters). In the case of the Lansfords, they were advised to check with the County as there was a scenic easement. That was not done. In the case of the Garcias, the approval letter does not mention any further approval. Mr. Garcia did not contact staff prior to construction.

Staff has attached supplemental letters from each property owner further explaining their desire to keep the fences. Also included is a petition signed by 28 property owners including all those owners whose property adjoins Greensprings Road and who are affected by the scenic easement. The petition states that they have no objections to the existing fences. The supplemental letters ask that they be allowed to retain their fences and cite safety concerns for children and concerns for privacy and noise.

The provision of the proffered scenic easement as a greenbelt buffer was an important factor in determining the consistency of this development with the Comprehensive Plan as part of the original rezoning. Greensprings Road is first on the list of Community Character Corridors in the Comprehensive Plan, as this corridor and its natural tree canopy has great historical significance and aesthetic value for residents in this area and throughout the County. The County has attempted to protect this corridor with each development that has occurred in this area through a variety of methods and has invested funds to preserve and protect part of the corridor in perpetuity with the Mainland Farm acquisition. Greenbelts, such as this one, preserve the natural and historical heritage of the County and enhance the quality of life for all its citizens and make much of the County a special place for aesthetic reasons.

This particular easement accomplished the buffering goals of the Comprehensive Plan at the time of rezoning and since. It also placed a known restriction on the land which affected future land owners. The stated position of the owners may be individually compelling but the acceptance of these restrictions as written and as voluntarily proffered is important to maintaining the integrity of this scenic easement along this very significant Community Character Corridor. The Board does have an option to enforcing the proffer as written. It could initiate a rezoning and proffer amendment which could offer several variations that allow fences or simply to reduce the depth of the easement. Staff does not advocate this option. We believe that allowing fences may only encourage the further conversion of lot space within the easement to actual yard space by these or future owners. This would create questions of maintenance in perpetuity, architectural style and color, and landscaping etc. all of which may further complicate and compromise the original intent of preserving a natural wooded buffer.

Staff recommends the enforcement of the proffers as written as the best and simplest way to ensure the perpetual integrity of the buffer in this corridor.

Allen J. Murphy, Jr.

CONCUR:

William C. Porter, Jr.

AJM/gs
fernbrookease.mem

Attachments