

Town of Summerfield
Rezoning Case # RZ-02-13
Staff report: Julie A. Reid, Interim Town Planner

Owner: Dorothy Gilmor (contract pending)

Applicant: Combs, Incorporate (Kevin Combs)
P.O. Box 790
Oak Ridge, NC 27310

Location: The proposed site is approximately one half mile south on Birkhaven Drive Road from Oak Ridge Road, then right on Braelands Drive, then right on Briardenn Drive. The current road dead ends into the subject property. Guilford County Tax Parcel 0149857.

Parcel Size: 25.001 Acres

Applicant Request:

The applicant is requesting a rezoning from AG, Agricultural District in a Watershed III Protection Area, to RS-40 Residential Single Family District in a Watershed III Protection Area. The zoning regulations and Watershed regulations of the ordinance both apply to this parcel. Where the provisions differ, the most restrictive regulation applies.

Existing Zoning : Agricultural in a Watershed III Protection Area

The AG, Agricultural District, is primarily intended to accommodate uses of an agricultural nature, including farm residences and farm tenant housing. It also accommodates scattered non-farm residences on large tracts of land. It is not intended for major residential subdivisions. The district is established for the following purposes:

- 1) to preserve and encourage the continued use of land for agricultural, forest and open space purposes;
- 2) to discourage scattered commercial and industrial land uses;
- 3) to concentrate urban development in and around area growth centers, thereby avoiding premature conversion of farmland to urban uses;
- 4) to discourage any use which, because of its character, would create premature or extraordinary public infrastructure and service demands.

The overall gross density in AG areas will be 0.36 units per acre, with a minimum lot size of **120,000** square feet.

Proposed Zoning:RS-40 Residential Single Family District in a Watershed III Protection Area

The RS-40, Residential Single-Family District is primarily intended to accommodate single-family detached dwellings on large lots in areas **without access to public water and wastewater services**. The district is established to promote single-family detached residences where environmental features, public service capacities, or soil characteristics necessitate very low-density single-family development. Development within this district requires Open Space dedication.

The overall gross density in RS-40 areas will typically be 0.73 units per acre or less, with a minimum lot size of **40,000** square feet.

Watershed Regulation Minimum Lot Size:

The average minimum lot size for all developments not utilizing public sewer shall be sixty thousand (**60,000**) square feet.

Note: There are three ways to interpret the above average minimum lot size.

1. The first interpretation would permit lot sizes slightly smaller and slightly larger to be averaged to maintain an average lot size of 60,000 square feet. The purpose of this would be to best accommodate existing characteristics and sensitive areas.
2. The second interpretation relates to the use of clustered development, which is encouraged in the watershed regulations to minimize impervious surface such paving. Additional points are awarded in the watershed regulations for cluster zoning and development. The purpose of this averaging is to allow the clustering of development to those areas most suited for development, minimize disturbance of sensitive areas and reduce the amount of impervious surfaces.
3. A third interpretation would allow the reduction in all lot sizes by averaging in the required open space lot(s) required by Section 5-13-5 of the Development Ordinance. There is no provision for averaging minimum lot sizes within the RS-40 district, where the requirement for open space is ten (10) percent for 5-24 lots.

From the Development Ordinance

1-3.8 Watershed Protection Purpose

The watershed protection regulations, adopted and prescribed in this Ordinance, are found by the Governing Body to be necessary and appropriate to:

- (A) Protect those portions of designated water supply watersheds which lie closest to existing and proposed water supply reservoirs from activities which could degrade water quality in the reservoirs;*
- (B) Reduce the volume of nutrients and other chemicals which could enter the water supply by reducing the amount of runoff which any given development will generate;*
- (C) Minimize land disturbance to reduce the amount of sediment washing into streams and lakes and to enhance the infiltration of runoff into soil, thus alleviating the sedimentation of water supply lakes which reduces their storage capacity, shortens their useful life, and makes them less able to withstand drought;*
- (D) Reduce the probability of the release of harmful chemicals into water supply reservoirs, either through natural catastrophe or human error; and*
- (E) Provide for natural and engineered methods for managing the storm water which flushes contaminants off of built-upon areas in the designated water supply watersheds and which may reach water supply reservoirs unless controlled.*

Adjacent Zoning

All adjacent land is either Agricultural and the adjacent subdivision (earlier phases of Birkhaven 1-5) was zoned CU-Rs-40 Residential. Current land use is agricultural and residential. Phase 1 and two of Birkhaven have been approved for the construction of housing and permitting has begun. Phases 3, 4, and 5 have not yet progressed to that point.

Process Requirements and Notes

All required submittal requirements and fees have been received.

Compatibility with the Comprehensive Plan

North Carolina General Statute 160A-383 requires that “*prior to adopting or rejecting any zoning amendment*” each local governing board “*shall adopt a statement describing whether its action is consistent with an adopted comprehensive plan and explaining why the board considers the action taken to be reasonable and in the public interest*”. For the purposes of this statute, this document constitutes Summerfield’s *comprehensive plan*.

From the *Policy Area 6: Appropriate Housing and Residential Development* "The RS-40 District is intended for application on land tracts that **are predominantly free of environmental constraints**. A typical example would be a former farm that is not dissected by numerous stream sections and does not have extensive areas of steep slopes, floodprone areas, woodlands, and the like."

This property does have significant environmental restraints.

Policy 3.3: FLOODPLAINS, WETLANDS, STEEP SLOPES, and OTHER LANDS that are typically not suitable for development, should be retained as permanent open space.

These areas have been identified as Primary Conservation Area on the rezoning sketch plan. The open space does not designate the entire Primary Conservation Area.

Policy 3.5: CLEARCUTTING OF TREES AND WOODLAND AREAS FOR DEVELOPMENT shall be avoided. Rather, new development should incorporate significant clusters of trees into the functional layout of newresidential and commercial areas.

There is no indication of preservation of trees or woodlands from the lot layout..

Policy 3.10: WATER QUALITY AND OPEN SPACE BUFFER STRIPS shall be preserved adjoining all perennial streams.

The rezoning sketch does identify a stream and the required stream buffers.

Policy 6.1: Residential development in Summerfield should remain mostly LOW DENSITY, SINGLE-FAMILY DETACHED HOUSING.

The lack of public water and sewer necessitates low density development. Additional considerations for determining the density of development is the topography and the types of soils available on the site.

Policy 6.5: OPEN SPACE DEDICATION requirements should be applied equitably to all residential developments regardless of the number of planned housing units.

Open space has been identified on the rezoning sketch plan, but does not encompass the entire primary conservation area.

Many of the policies established in the Comprehensive Plan assume that specific plans will be submitted with rezoning cases. It is not possible to determine the intent of the developer without such plans. Rezoning are not typically tied to specific plans except such rezoning including Conditional or Special Use Districts. This will not be the case with regular rezoning cases.

The ability of the development to meet or exceed these policies resides in the strength of the ordinance that regulates the way in which a development is built.

Additional Considerations

The rezoning sketch plan indicates 4.104 acres of open space in a primary conservation area. **It does not encompass the entire primary conservation area.** This primary conservation contains slopes of greater than 15%, poor soils with trees and undergrowth stabilizing the slopes. It also contains a stream and the required stream buffers.

Two additional parcels are designated for open space **and common area.** The area of these parcels are 1.082 acres and 1.143 acres. These two areas do not serve either a primary or secondary conservation area. The designation of common area would not be appropriate if these lots are used for placement of off-site sewage drainage fields for one or more houses. The two lots shown as open space and common areas also have an 80 foot utility easement across them. The use of this land is restricted.

The need for off-site sewage drainage fields can be eliminated by careful evaluation of the existing soils and rational lot design. The soils map submitted in the environmental inventory appears to be incorrect. Both the Guilford County GIS (copy of map attached) and the North Carolina Extension services soils survey show a different set of soils. I have attached a chart showing the restrictions for septic tank systems. Approximately one third of the land in this request have Ch-Chewacla soils, McE2 and MaE-Madison Soils and slopes of 15% or greater.. These soils have severe restrictions for septic tank absorption fields. An additional small area contains Wh-Wehadkee soils which also have severe restriction. This small area will be partially covered by roads. The remaining soil types do have a moderate restriction for septic tank absorption fields. This means it will take more area to distribute the effluent for the four bedroom houses planned.

The Summerfield Development Ordinance states "(E) Disturbance Limitations: Subdivisions should be ***designed to prohibit disturbance***, other than previous trails not to exceed 5' in width, ***within all required primary conservation area open space*** dedication and to avoid or limit disturbance in secondary area. "

" 1) Primary Conservation Areas. Because they represent sensitive environmental features and/or significant cultural resources considered unbuildable in a legal or practical sense, Primary Conservation Areas are the first type of open space designated on a subdivision plan to satisfy the minimum open space requirements. Because of their sensitive nature, ***there is to be no observable disturbance of any area designated as a Primary Conservation Area*** on a Master Sketch, Subdivision Plat, or Site Plan."

Homeowners Associations and individual property owners generally do not understand the purpose of restricting development in conservation areas and may do considerable harm to these areas. Funds would not be available to remedy such damage. It is prudent to place all primary conservation areas in an dedicated open space classification. Soil disturbing activities such as home building should not be allowed in the primary conservation areas. There should not be inclusion of primary conservation areas within individual lots

Highlights and Summary

There is some discrepancy in the interpretation of average minimum lot size in the Watershed Regulations of the Development Ordinance. Prior to the adoption of the zoning request, a determination will need to be made regarding this interpretation.

The proposed rezoning complies with some portions of the comprehensive plan. Additional policies could be met with application of the Development Ordinance regulation.

The inclusion of part of the primary conservation area in lots would allow disturbance of these areas.

Suggested motion:

Denial:

I move that the application for rezoning (RZ-02-13) from AG, Agricultural District in a Watershed III Protection Area, to RS-40 Residential Single Family District in a Watershed III Protection Area be (denied). This action (is)(is not) consistent with the adopted comprehensive plan) This action taken is reasonable and in the public interest because _____.

Conditional Approval:

I move that the application for rezoning (RZ-02-13) from AG, Agricultural District in a Watershed III Protection Area, to RS-40 Residential Single Family District in a Watershed III Protection Area be given conditional approval This action (is)(is not) consistent with the adopted comprehensive plan) This action taken is reasonable and in the public interest because _____.. Conditions that must be met prior to an approval are _____.

Approval:

I move that the application for rezoning (RZ-02-13) from AG, Agricultural District in a Watershed III Protection Area, to RS-40 Residential Single Family District in a Watershed III Protection Area be approved. This action (is)(is not) consistent with the adopted comprehensive plan) This action taken is reasonable and in the public interest because _____.

Change in Requested Zoning

I move that the application for rezoning (RZ-02-13) from AG, Agricultural District in a Watershed III Protection Area, to RS-40 Residential Single Family District in a Watershed III Protection Area be returned to the developer for amendment of the requested zoning classification to CU-RS-40. This action (is)(is not) consistent with the adopted comprehensive plan) This action taken is reasonable and in the public interest because _____.