

Baxter Station MXR Rezoning

July 20, 2021

Scheduled Time/Place: 5:30, Eagle Creek Pavilion

The meeting began at 5:30pm/Meeting Ended: at approximately 6:45pm

Attendees: (See attached sign-in sheets)

Also Justin Old, Developer
Mark Bissell, Engineer

The review procedures were outlined and an overview of the development plan and details were provided, both verbally and graphically. Comments from the community meeting that was held in December on a similar development plan were also reviewed and are attached for reference. Many of the same comments were heard regarding drainage, so only the new comments are included in this second community meeting record.

Comments from the Community	How Addressed
What size will the lots be?	A minimum of 15,000 sq. ft.
Can fewer lots be done?	The density has already been dropped from 125 to 80, and complies with MXR zoning.
Still concerned about raising the water table across the street due to berming.	We will consult with a hydrogeologist during the modeling and design.
Drainage problems should be resolved before more development is approved.	The drainage problems in question are on private property and the County cannot do this work.
Concerned about septic tanks raising the water table. How much water is being added to the site?	About 12,000 gal/day (equivalent to about 0.008 inch rainfall) will be considered in the design.
What happens if the HOA can't or won't take over?	The community has enough homes that it will be able to have professional management.
I understand from the engineering department that	The UDO requires us to model pre-

<p>no more water was to go to the Baxter ditch but rather was to be directed to the south.</p>	<p>development conditions to determine how much water goes to each outlet during a 2-year wooded condition storm and then limit the post development 10-year storm to that amount for each outlet, so we would not be able to redirect flow into a different drainage system.</p>
<p>There is too much development in Moyock.</p>	<p>The demand will continue; we are trying to do it in a way that also benefits the community.</p>
<p>Today it could possibly work and I'm not anti-development, but why does the county allow density on soils that don't perk? There are some smaller communities that do not adhere to UDO.</p>	<p>We are agreeing to conditions that <u>exceed</u> the UDO requirements and agreeing to make improvements to existing problems that otherwise would not be solved.</p>
<p>Will there be sidewalks and a sidewalk to the park?</p>	<p>There will be sidewalks on both sides of the street and a connection to Hidden Oaks, which connects to the park.</p>
<p>Are there tree buffers?</p>	<p>Yes, both to Baxter Lane Estates and to Hidden Oaks, and also along Baxter Lane to buffer homes across the street</p>

Community Meeting Sign-In Sheet
Baxter Estates
Conditional Rezoning
July 20, 2021
5:30PM

NAME	ADDRESS	TELEPHONE	E-MAIL
Cheryl Spurlin	203 Green Road	252-267-1321	
Cheryl Spurlin	116 Shady Oaks Way		
William Fry	Hidden Oaks		
George Fred	" "		georgebfrey@gmail.com
Jemie Turner	Carrihawk County Planning	252-232-6031	jemie.turner@carrihawkecounty.nc.gov
Kevin Kemp	Carrihawk Co. Development	Sec. —	kevin.kemp@carrihawkecounty.nc.gov
Rosanne Burling	125 Shady Oaks Way		rosanneburling@aol.com
Fred Whitman	181 ST Andrews Rd		
Larry Towell	103 Avul Road circle	757 615 1591	larry.towell@yahoo.com
Alex Wilbanks	107 ALDEN RUN	757-777-8372	Alexander.Wilbanks@gmail.com
Aaron Wares	102 AVUL BENDER	757-374-9168	Awares@wfsystems.com
Susan Old	131 Spruce Ln		
Kathy Skerick	PO Box 995 Shawsford		
DAVID IGLIDA HERMUDA	108 ARAWHEAD LN,	804 426 4909	DHERM ?

Baxter Station MXR Rezoning

December 15, 2020

Scheduled Time/Place: 4:30pm and 6:00pm, Eagle Creek Pavilion

The first meeting began at 4:30pm/Meeting Ended: at approximately 5:40pm

The second meeting began at 6:00pm/Meeting Ended at approximately 7:15pm

Attendees: (See attached sign-in sheets)

Also: Jason Litteral, Currituck County
Justin Old, Developer
Mark Bissell, Engineer

Comments from the Community	How Addressed
Windswept Pines ponds are overflowing in 5 1/2" rainfall and impacting adjacent development.	Downstream conditons were observed during flooded conditions and it was determined that drainage along Baxter Lane is restricted and preventing Windswept Pines drainage system from draining properly.
What is being proposed to the ditch on Baxter?	The ditch will be studied and modeled, and based on the results of the model it will be widened, deepened, slopes laid back, put on grade, and an easement provided for ongoing maintenance.
Will the proposed construction be crawl-space or slab?	Probably elevated slab.
Will the development be on septic tanks? Previously it was going to be sewer.	Yes, septic systems are proposed similar to at Windswept Pines. County sewer is not available at this time.
There are problems with the property line ditch between the Baxter property and Hidden Oaks.	The plan will be to clean out this ditch along with the first phase of development.
What is the timeframe?	It will take a minimum of 1 1/2 years before the first house goes under construction and 2 yrs for occupancy. Very possibly longer.
Who will do the building?	Since that will be a year and a half to two years down the road, that has not been decided.
Will the project be phased?	Yes it will be done in two phases about 40 lots each.
Will there be a traffic light at Baxter Lane and	NCDOT will need to do a signal warrant. Even

Caratoke Highway?	when the proposed project was larger, they did not think it warranted it yet. This would probably not occur until the main entrance to Currituck Station goes in and development gets under way there.
The pipe needs to be replaced and upgraded at Baxter Lane extension because there was an existing water line that kept it from being put at proper grade when it was replaced a year or so ago.	We will speak with the land owners there to see if access can be obtained (the last time the developer asked he was refused access to do any work there)
Will construction traffic go through Hidden Oaks?	No, it will be from Baxter Lane, and the connection to Hidden Oaks will not be made until Phase 2.
Will the waterline be looped?	Yes, it will be looped from Hidden Oaks to Baxter Lane which should improve pressure.
Concerned about water in ponds raising the water table.	Improving the ditch along Baxter Lane should serve to lower the water table on the other side of Baxter.
Can the second entrance farther east on Baxter Lane be eliminated?	We believe the County will want the second entrance, but will ask if it can be eliminated.

Summary: Between the two meetings, ten residents attended, from Hidden Oaks and Baxter Lane. Most questions and discussions had to do with the need for drainage improvements in the area, and a plan to address those.

CONSISTENCY WITH COMPREHENSIVE PLAN
BAXTER STATION MXR

The proposed zoning is from AG to C-MXR, with a sketch plan limiting density to approximately 1.49 units per acre. This request is for approximately 53.52 acres along Baxter Lane just off Caratoke Highway to provide new single-family development. This request is consistent with the following density and development pattern policies of the 2006 Land Use Plan, Moyock Small Area Plan, and UDO:

1. 2014 Moyock Area Small Area Plan (“MSAP”):

The 2014 MSAP “is used to assist staff and the Board of Commissioners in guiding growth as well as planning for future county improvements to infrastructure and services.” MSAP, p. 1. The plan guidance materials indicate that it was intended to:

“supplement the [2006] Land Use Plan to more specifically address the needs and issues of the [Moyock] study area over the next 10 years. The policies and guidance given in this plan are consistent with the Land Use Plan and other county policies and documents. This plan will establish a new focus for growth and development. The Board of Commissioners and staff will use the SAP to make recommendations about development proposals and other county land use policy decisions. This plan is a vital tool for staff in day to day decision making and in assisting the public with development proposals.”

MSAP, p. 7. The MSAP Future Land Use Map “should be used in conjunction with the entire plan.” MSAP, p. 30. The fact that the site is designated Full Service on the MSAP Future Land Use Map, will have County water available, is located close to 168, and is adjacent to a Full Service Area on the MSAP and 2006 LUP all support the requested density for the site. The MSAP designates this area as Full Service Area, with densities up to 3 units per acre. This is significant because only several portions of the MSAP include Full Service; the majority of the plan is Rural Area and Conservation Area. MSAP p. 30. The Full Service designations “are focal points in the community where high amounts of activity occur ...[and] ... a broad range of infrastructure and service investments ... will be made available by the public and/or private sectors.” These investments may include centralized water and sewer. MSAP p. 31. “[P]lanned commercial and residential areas with diversity in housing types is preferred. Typical densities in full service designations range from 1.5 – 3 units per acre depending on surrounding land uses.” MSAP p. 31.

Activity centers are located in full service designations, and are anticipated to be destination hubs for activity in the surrounding community. MSAP p. 32. This property is also almost adjacent to the largest Activity Center on the MSAP, the Employment Center, across Hwy 168. This center includes planned corporate parks, and supporting residential use is encouraged. The proximity of this development to Currituck Station, an area designated for significant growth, further supports the requested density.

Policy FLU 1 – promote compatibility between new development and existing development to avoid adverse impacts to the existing community.

Policy CC 1 - Encourage and foster development that is compatible with rural atmosphere, transitional areas, and a small town, main street feel consistent with the vision, policies, and future land use map of this plan.

Policy CC 2 - Encourage non-residential and mixed use development that incorporates building and site design to enhance community appearance, promote human scale, and create a unique sense of place. This may include common themed building materials, forms, and site amenities.

2. 2006 Currituck County Land Use Plan (“LUP”):

A. Land Use Compatibility Policies

i. Density: The project is located within the Rural Area of the LUP, and proposes a maximum density of 1.49 units per acre. The site is across from land zoned MXR and AG to the north, all put to residential, non-agricultural uses. To the west of the site is a General Business zoning designation, which extends along Caratoke Highway. To the east and south the land is zoned and used for residential use, zoned C-MXR and C-SFM. Directly across 168 from the property is an area proposed as G-3 and up to 12 dwelling units per acre, a much higher density than requested here. As such, the request can serve as a reasonable transition between uses.

The density guidance in the LUP is based on assumptions about available infrastructure, existing development patterns, and the presence of environmental features that do not apply to this site in the same way they may apply to Rural sites in general. There are no environmentally sensitive features or factors which suggest preservation of this portion of the development is critical. County water is available to be extended from Baxter Lane.

POLICY HN1: Currituck County shall encourage development to occur at densities appropriate for the location. LOCATION AND DENSITY FACTORS shall include whether the development is within an environmentally suitable area, the type and capacity of sewage treatment available to the site, the adequacy of transportation facilities providing access to the site, and the proximity of the site to existing and planned urban services. For example, projects falling within the Full Services areas of the Future Land Use Map would be permitted a higher density because of the availability of infrastructure as well as similarity to the existing development pattern. Such projects could be developed at a density of two (2) or more dwelling units per acre.... Projects within areas designated as Limited Service would be permitted a density of one (1) to one and one half (1.5) units per acre depending upon the surrounding development pattern and availability of resources. Projects within areas designated as Rural or Conservation by the Future Land Use Plan would be permitted a much lower density of 1 dwelling unit per 3 acres because of the lack of infrastructure in the area, the existing low density development pattern, and presence of environmentally sensitive natural areas. LUP, p. 9-7.

POLICY AG6: For areas experiencing intense development pressure, new residential development may be allowed to locate in COMPACT, VILLAGE-LIKE CLUSTERS, PREFERABLY NEAR EXISTING, NON-AGRICULTURAL ACTIVITIES AND SERVICES, or in other locations that will not interfere with resource production activities. Overall density shall

remain very low, with permanent open space, dedicated during the development review process, surrounding such clusters of homes. LUP, p. 9-7.

ii. **Development Patterns:** This is consistent with the County's approach to development in the Moyock area, which encourages continuation of development patterns instead of abrupt changes, holes, or leapfrogging. It is also consistent with the Board's findings in similar cases approving density in this area of Moyock. The site is also adjacent to commercial uses along 168, which is designated a Full Service Area, and thus is close to the area where more intense development is anticipated.

POLICY HN3: Currituck County shall especially encourage two forms of residential development, each with the objective of avoiding traditional suburban sprawl... OPEN SPACE DEVELOPMENTS that cluster homes on less land, preserving permanently dedicated open space and often employ on-site or community sewage treatment. These types of developments are likely to occur primarily in the Conservation, Rural, and to a certain extent the Limited Service areas identified on the Future Land Use Map. LUP, p. 9-7.

POLICY HN4: Currituck County shall discourage all forms of housing from "LEAPFROGGING" INTO THE MIDST OF FARMLAND and rural areas, thereby eroding the agricultural resource base of the county. LUP, p. 9-7.

POLICY AG3: County ACTIONS CONCERNING INFRASTRUCTURE (e.g. schools, parks, and utilities) and regulations shall serve to direct new development first to targeted growth areas near existing settlements identified as Full Service Areas on the Future Land Use Map, rather than "leapfrogging" to locations in the midst of farmland and greenspace identified as Rural and Conservation areas on the Future Land Use Map. LUP, p. 9-6.

POLICY AG4: County growth management tools, including particularly zoning, should provide PROTECTION TO AGRICULTURE and other RESOURCE BASED ACTIVITIES from incompatible land uses, such as a residential subdivision in the midst of generally uninterrupted farm land. LUP, p. 9-6.

B. Moyock Area Policy Emphasis of the Land Use Plan:

Summary of Area Character: *The Moyock area is the fastest growing part of Currituck County. Development densities currently range from 1 to 3 units per acre depending upon development type.*

Moyock Area Policy Emphasis: *The policy emphasis of this plan is on properly managing the increased urban level of growth that this area is sure to experience over the next decade and beyond. Residential development densities should be medium to high depending upon available services. In areas where on-site wastewater is proposed and other County services are limited, development density should be limited to 1-2 units per acre. However in areas where central sewer is proposed or existing, additional services are available and the character of the surrounding areas supports it, higher density ranging from 3-4 units per acre could be considered through the use of overlay zones. Clustered housing developments, with open space required by ordinance, will ... be encouraged. Given the existing development pattern and availability of services, much of the Moyock area is planned as Full Service. LUP, p. 11-4.*

The applicant is proposing on-site stormwater improvements, including improvements that will benefit the surrounding community, and will connect to County water available on Baxter Lane. The Moyock Area policy consistently references densities at 1 unit per acre minimum, and recognizes that increased density is appropriate where services are available. This is consistent with the 1.49 units per acre proposed.

3. UDO:

- A.** The proposed single-family residential use is designated in the MXR District is intended to provide moderate-cost housing options for county residents within well-designed neighborhoods and developments that incorporate open space resources,” and “accommodate a wide variety of residential use types at moderate densities” UDO Sec. 3.4.6.A.
- B.** This district includes dimensional standards for single-family detached development, including a minimum lot size of 15,000 square feet, setbacks and, and buffers. UDO Sec. 3.4.6.D. Maximum density is established in the master plan for these districts, and may not exceed 2 units per acre in Full Service areas or 1 unit per acre for Limited Service areas. There is no corresponding maximum density listed for the Rural Service Area, and thus the UDO does not restrict density in the Rural designated areas of the 2006 Land Use Plan. The proposed density is thus consistent with the UDO.



Jamie S. Schwedler

Partner

t: 919.835.4529

f: 919.835.4618

jamieschwedler@parkerpoe.com

Atlanta, GA
Charleston, SC
Charlotte, NC
Columbia, SC
Greenville, SC
Raleigh, NC
Spartanburg, SC
Washington, DC

December 1, 2020

Via Email: Laurie.Locicero@CurrituckCountyNC.gov

Laurie B. LoCicero, AICP
Planning and Community Development Dept.
153 Courthouse Road, Suite 110
Currituck, NC 27929

Re: Age Restrictions for Baxter Station Rezoning

Dear Ms. LoCicero:

North South Development Group, LLC is preparing to submit a conditional use district rezoning for land known as Baxter Station, along Highway 168 in Currituck County (the "Property"), to create an age-restricted community. The age restrictions are planned to be documented both as zoning conditions on the Property, and in restrictive covenants recorded against the Property. As explained below, both methods are legally enforceable land use restrictions, and the ongoing nature of the restrictions are regulated by federal and state fair housing laws. Thus, the County can accept the zoning conditions as legally enforceable on several grounds.

First, age-restricted communities can be created via conditional zoning districts and have been accepted as such by multiple jurisdictions in North Carolina. A sample condition is as follows: "The use of the property shall be limited to an age-restricted residential community which meets the federal definition of elderly housing, having at least eighty (80) percent of the occupied units occupied by at least one person fifty five (55) years of age or older per unit." This condition was accepted by the Raleigh City Council, approved this year. See attached case Z-29-19 zoning condition 1. This zoning condition would be enforceable by the County under section 9.5 of the Currituck County UDO, just like any other condition. That is, if compliance with the age restriction was not demonstrated after construction and sale of the homes, the County could issue a notice of violation and, if not corrected, pursue legal and equitable remedies. However, as explained below, compliance records are required by law, and thus determining compliance should not be any more challenging or time-consuming for the County than any other enforcement action it has initiated.

Second, the age restriction can be documented in a restrictive covenant contained in the homeowners association documents for the community ("Declaration"). This method was used in an age-restricted apartment development in Cary approved in 2018, see attached p.4, sec

PPAB 5968562v1.docx

1.3.1. In the Cary case, a zoning condition was offered and a Declaration of restrictive covenants recorded to mirror the condition (“Developer of the community shall record with the applicable Register of Deeds office a Declaration of Covenants, Conditions, and Restrictions ... providing that at least eighty percent (80%) of all occupied units shall have as a resident at least one person age 55 or older”). See Wake County Register of Deeds, Book 17448, page 331. The Declaration was recorded prior to building permits being issued, and provides restrictions on persons living within the household and procedures to verify and enforce these restrictions. See Sections 1.2, 2.1, 2.2. While the Baxter Station community is intended for single-family housing, the Declaration would still be recorded prior to any sale of the first home, such that all purchasers would take title with notice of, and be bound by, the occupancy requirements, including requirements to provide proof of age of occupants on a regular basis.

Finally, regardless if established by zoning condition or restrictive covenant, federal and state laws ensure continuing compliance with the age-restricted community requirements after the development has been established. The federal Fair Housing Act, 42 U.S.C. § 3601, *et. seq* (“FHA”) and North Carolina Fair Housing Act, N.C.G.S. § 41A-4, *et. seq* (“NC FHA”) prohibit discrimination in the sale or rental of housing based on familial status. Familial discrimination occurs when a real estate agent or property owner treats someone different because they have a family with one or more individuals under 18 years of age. *Iniestra v. Cliff Warren Investments, Inc.*, 886 F. Supp. 2d 1161, 1166 (C.D. Cal. 2012). Both acts provide an exception for housing communities intended for and operated for occupancy by at least one person 55 years of age or older per unit. 42 U.S.C. § 3607(a)(2); N.C.G.S. § 41A-6(e). In order to qualify for the exception, at least 80% of the development’s occupied units must be occupied by at least one person 55 years of age or older. 24 C.F.R. § 100.305. This occupancy must be verified by survey or other means once every two years, and the records of such occupancy should be kept available for inspection upon reasonable notice. Verification procedures allow for drivers’ license, birth certificates, and passports as among the forms of acceptable evidence of age of occupants. 24 C.F.R. § 100.307. Finally, the community must publish and adhere to policies that demonstrate its intent to operate as housing designed for persons 55 years old or older, which can be evidenced by a Declaration, lease provisions, advertising to prospective residents, and public posting in common areas. 24 C.F.R. § 100.306. Thus, in order to comply with these state and federal laws and regulations after the homes are sold, the developer is responsible for ongoing investigation and certification that the occupancy standards have been met.

Because there are adequate means to enforce such a restriction by the County, the developer, and the occupants themselves, the County is able to accept an age-restricted community zoning request for consideration by staff and the Board of Commissioners. Like the ongoing maintenance obligations of the drainage conditions offered and accepted in the Flora rezoning, this restriction is able to be accepted and enforced by the County, but has even more oversight and protection due to the safeguards of federal and state law requirements.

The Baxter Station community intends to offer the following age-restriction zoning condition, followed by a Declaration confirming the same:

“The use of the property shall be limited to an age-restricted residential community where all units are occupied by occupants fifty five (55) years of age or older. Before the issuance of the first building permit for the first dwelling unit, Developer will record a restrictive covenant in the homeowners association documents restricting the use accordingly, requiring occupants to certify the age of all

December 1, 2020

Page 3

household occupants at least once every two years, and providing for enforcement of such restriction.”

This condition exceeds the above-stated restrictions, complies with federal and state law, and prevents school-aged children from occupying the units. We are happy to discuss the details of such a condition, as well as any timing of recording, frequency of age confirmation, or other details staff or the Board may request.

Please contact me with any questions or to discuss further.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jamie S. Schwedler".

Jamie S. Schwedler

JSS
Attachment

LETTER OF TRANSMITTAL

Date: 07/22/2021

To: Donna Voliva, CZO
Assistant Planning Director
Currituck County Planning and
Community Development

Project # 4671

ADDRESS:

Project Name: Baxter Station
Cond. Rezoning-MXR

153 Courthouse Road, Ste. 110
Currituck, NC 27929

<input checked="" type="checkbox"/>	HAND DELIVERED		OVER-NITE MAIL		MAILED		FAXED
-------------------------------------	----------------	--	----------------	--	--------	--	-------

We are sending Enclosed Attached Under separate cover via _____ the following items:

- | | | | |
|--|--|---|--|
| <input type="checkbox"/> As Requested | <input type="checkbox"/> For Client Approval | <input type="checkbox"/> For Bid Submission | <input type="checkbox"/> For Construction |
| <input type="checkbox"/> For Your Signature | <input type="checkbox"/> For Permit Approval | <input type="checkbox"/> For Distribution | <input type="checkbox"/> For Const. Record |
| <input checked="" type="checkbox"/> For Review & Comment | <input type="checkbox"/> For Your Records | <input type="checkbox"/> For Release | <input type="checkbox"/> Confidential |

COPIES	DESCRIPTION	DATE
1	APPLICATION FOR COND. REZONING	7/22/2021
1	APPLICATION FEE	7/22/2021
2	COPIES OF COMM. MTG. MINUTES	7/22/2021
2	COPIES OF AGE RESTRICTION LETTER	12/1/2020
2	COPIES OF CONSISTENCY WITH COMPREHENSIVE PLAN	7/22/2021
2	COPIES OF PLANS	7/22/2021
2	COPIES OF PROPOSED STRUCTURES	7/22/2021
1	8X5 X 11 REDUCTION OF PLANS	7/22/2021
1	CD OF ALL	7/20/2021

Thank you.

Sincerely,
BISSELL PROFESSIONAL GROUP

Marcie Respass

Marcie Respass

Engineer Coordinator