



COMMUNITY DEVELOPMENT DEPARTMENT

Planning, Zoning and Building Safety

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Carlos De La Torre, P.E., Director

MEMORANDUM

TO: Cochise County Planning and Zoning Commission

FROM: Keith Dennis, Senior Planner

For: Mike Turisk, Interim Planning Director

SUBJECT: Docket Z-11-02 (Zerkle)

DATE: January 3, 2012 for the January 11, 2012 Meeting

APPLICATION FOR A REZONING (DOWNZONING)

The Applicants seek to “downzone” seven parcels of land from TR-36 (Residential, minimum lot size 36,000 square feet) to RU-4 District (Rural, minimum lot size 4-acres). The parcels are: 301-42-116A, 301-42-140 through 143, 147A, and 151A. All but one of these parcels are undeveloped. Parcel 151A is developed as a single-family rural residential lot.

The Applicants are Thomas Zerkle, Sam Zerkle, and M. Stella Laferriere.

Note that this item is scheduled for action by the Board of Supervisors at their regular meeting of Tuesday, January 24, 2012.

I. DESCRIPTION OF SUBJECT PARCEL AND SURROUNDING USES

Size: 21.27 Acres
Zoning: TR-36 (Residential, 1 Dwelling per 36,000 square feet)
Growth Area: Category D (Rural Growth Area)
Area Plan: None Applicable
Plan Designation: Rural
Existing Uses: Rural Residential, Undeveloped Land
Proposed Uses: Unchanged

Surrounding Zoning

| Relation to Subject Parcel | Zoning District | Use of Property |
|-----------------------------------|------------------------|------------------------|
| North | TR-36 | Undeveloped Land |
| South | TR-36 | Undeveloped Land |
| East | RU-4 | Undeveloped Land |
| West | TR-36 | Undeveloped Land |

II. PARCEL HISTORY

The originating parcel for this Docket, now called 301-42-151A, was cited in September 2010 for building without a permit. At that time, the property consisted of eight contiguous parcels.

Through this process, the owner decided to apply to have the property downzoned, as discussed in Section III of this Memo. To facilitate this, the Applicant had the eight parcels combined in December of 2010.

There are no records of permits for this or any of the parcels subject to the request.

III. NATURE OF THE REQUEST



Southward view of the Zerkle Residence.

In the summer of 2010, the County Assessor became aware that Parcel 301-42-151A had been developed with a single family residence. This prompted Community Development staff to cite the owner for building the residence without a permit.

Because the home is already constructed, building code inspections might entail “destructive” measures, such as unearthing the footings to ensure compliance, or creating holes in walls in order to inspect existing wiring.

The Applicant, owner Thomas Zerkle, is aware that the County allows owner-builders to opt out of building code inspections if located in a Zoning District with a minimum lot size of four or more acres (Owner Builder Amendment or “Opt-Out”). The Applicant, having built the home himself, sought to take this route, but as the property is within a TR-36 District, was precluded from doing so.

The Applicant therefore sought to “downzone” the property from TR to RU-4, the latter carrying the four-acre minimum for the Owner-Builder Amendment to the County Building Code.

During the site visit and consultation with staff, it became apparent that the Applicant's brother and other neighbors might benefit from involvement in the current downzoning process. A Rural District was determined to be a more appropriate zoning designation for this area; most of the area is already so designated. In addition to the Owner-Builder Amendment options available, Rural property owners may construct outbuildings such as barns or other accessory buildings without first establishing a principal use. Such structures may also be larger than the principal use if desired. None of these options are available in Residential Districts such as TR. Note that the Application states a desire to rezone to SM-174, but after this consultation decided to pursue an RU-4 rezoning.

Subsequently, the Applicant consulted with his brother, Sam Zerkle, and an additional property owner, M. Stella Laferriere, and the proposed new RU-4 District expanded to include six additional parcels.

Although the range of permitted and Special Uses is greater in the Rural District relative to the Residential, the minimum lot size in the Residential District is smaller, such that the density of residential development is greater in the TR District. The RU-4 District allows one dwelling per four acres, whereas the current designation allows one dwelling per 36,000 square feet. Thus, if the rezoning were approved by the Board of Supervisors, Parcels 301-42-140 through 143 would have to be combined in order to be developed. As such, the proposal is considered to be a rezoning to a less-intensive District, commonly referred to as a "downzoning." The process for a rezoning to a less-intensive District is simpler. A Citizen Review is not required, for instance, and fees are less than would be required for rezonings to more intense Districts.

IV. ANALYSIS OF IMPACTS

Mandatory Compliance.

The subject property lies within a Category "D"—Rural Growth Area and is considered a "Rural" land use designation area. Section 402 of the County Zoning Regulations permits owners of property lying within "Rural" land use areas to request a rezoning to RU-4.

Compliance with Rezoning Criteria

Section 2208.03 of the Zoning Regulations provides fifteen (15) criteria used to evaluate rezoning requests. Eight of the criteria are applicable and are listed below. The Applicant's request complies with seven of the eight applicable criteria.

1. Provides an Adequate Land Use/Concept Plan. Does Not Comply.

There is, at this time, no concept plan nor any proposal for new development on any of the properties associated with the rezoning request.

2. Compliance with the Applicable Site Development Standards—Complies.

All but one of the parcels under consideration are undeveloped at this time. It is anticipated that, particularly with the more rural development standards allowed in the RU District, future development on the properties would be able to meet those standards.

3. Adjacent Districts Remain Capable of Development – Complies.

The proposal would not affect the development prospects of any neighboring property.

4. Limitation on Creation of Nonconforming Uses—Complies.

The proposal would not create any potential for non-conforming uses.

5. *Compatibility with Existing Development* – **Complies.**

When built out, development on the properties would be in keeping with the character of development in the area. A downzoning from a TR District to RU may be characterized as more compatible with the character of the rural area.

6. *Rezoning to More Intense Districts*—Not Applicable.****

As discussed, the proposal is for a less-intense District.

7. *Adequate Services and Infrastructure* – **Complies.**

The Applicants have chosen these properties in order to live in a rural, off-the-grid setting. The parcels are not served by any utilities, although they are within the Bowie Volunteer Fire Department jurisdiction boundary. For the type of development that may occur on these properties, the area roads and infrastructure are adequate.

8. *Traffic Circulation Criteria* – **Complies.**

The proposal would result in development considered within the capacity of the transportation network. The area is characterized by unimproved dirt farm roads.

9. *Development Along Major Streets*—Not Applicable.****

The property does not border or access any major street.

10. *Infill*—Not Applicable.****

The Applicant does not propose a rezoning to GB, LI or HI.

11. *Unique Topographic Features* – **Not Applicable.**

This Factor only applies to rezonings to more intense districts, and not to downzonings.

12. *Water Conservation*—Not Applicable.****

This criterion is applicable only to rezonings associated with Master Development Plans, or within the Sierra Vista Sub-Watershed.

13. *Public Input*—Complies.****

A Citizen Review process is not required for downzoning requests. Public input is further discussed in Section V of this Memo.

14. *Hazardous Materials* – **Not Applicable.**

No hazardous materials are proposed as part of the proposal.

15. *Compliance with Area Plan* – **Not Applicable**

The property is not within the boundaries of any Area Plan.

V. PUBLIC COMMENT

The Department sent the required notice to neighboring property owners within 1,500 feet, posted the property as required, and published a legal notice on December 22, 2011. To date, staff has received one letter from a neighboring property owner in support of the request.

VI. SUMMARY

Factors in Favor of Approval

1. The properties under consideration are within a now defunct subdivision (Apple Valley Ranches). The area is unlikely to develop as 36,000 square foot lots, and the Rural District uses and development standards are more appropriate for this area;
2. The project complies with seven of the eight applicable rezoning evaluation factors; and
3. Two neighboring property owners have expressed support for the proposal.

Factor Against Approval

1. The rezoning request comes as a result of a Zoning Violation for construction without a permit on Parcel 151A. The Applicant's interest in rezoning the property was prompted by the Owner Builder Amendment options available in the RU-4 District as a means of rectifying the Violation.

VII. RECOMMENDATION

Based on the Factors in Favor of Approval, staff recommends that the Planning and Zoning Commission forward Z-11-02 to the Board of Supervisors with a recommendation of **conditional approval**, subject to the following conditions:

1. The Applicant shall provide the County with a signed Acceptance of Conditions and a Waiver of Claims form arising from ARS Section 12-1134 signed by the property owner of the subject property within thirty (30) days of Board of Supervisors approval of the rezoning; and
2. It is the Applicants' responsibility to obtain any additional permits, or meet any additional conditions, that may be applicable to the proposed use pursuant to other federal, state, or local laws or regulations.

Sample Motion: *Mr. Chairman, I move to forward Docket Z-11-02 to the Board of Supervisors with a recommendation of conditional approval, with the conditions recommended by staff, with the Factors in Favor of Approval as findings of fact.*

VIII. ATTACHMENTS

- A. Rezoning Application
- B. Statement from Property Owners
- C. Location Map
- D. Public Comment