

County of Spotsylvania
Department of Planning



Board of Supervisors Staff Report

Rezoning # R16-0004
(Chancellor Voting District)

Planning Commission: Approval

Staff Recommendation: Approval with the proffered conditions
dated May 24, 2017

I. Overview

Applicant: Catherine T. Neale and Rebecca T. Acors

Request: The applicants request a proffer amendment to an approved rezoning R14-0008 Catherine T. Neale and Rebecca T. Acors (Thorburn Estates) which rezoned approximately 171 acres from Rural (RU) to Residential 2 (R-2) with proffers for a maximum of a 59-lot subdivision. The requested amendment would extend the deadline to either complete the proffered off-site transportation improvements at the intersection of Chancellor Road and Old Plank Road or provide a cash contribution to the County in the amount of \$971,664.00 to a time no later than the issuance of the 30th occupancy permit. The property is located along the south side of Chancellor Road (Route 674), approximately one (1) mile west of the intersection of Chancellor Road (Route 674) and Gordon Road (Route 627).

Tax Map Parcels: 21-A-60F, 21-A-60G and 21-A-95

Location: The property is located along the south side of Chancellor Road (Route 674), approximately one (1) mile west of the intersection of Chancellor Road (Route 674) and Gordon Road (Route 627).

Zoning Overlay: Reservoir Protection Overlay District

Future Land Use Designation: Rural Residential

Historic Resources: None identified

Date Application Deemed Complete: 8/5/2016

Figure 1: Zoning Map

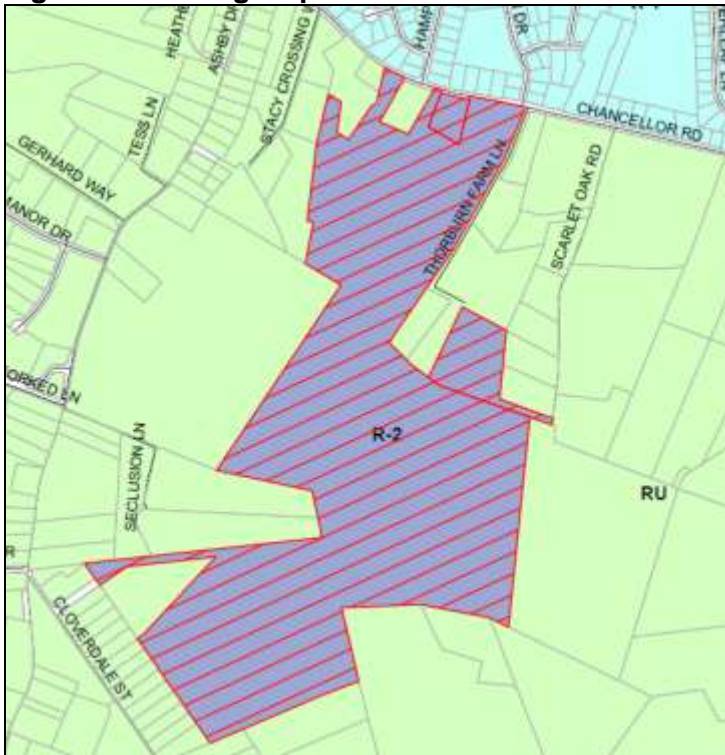


Figure 2: Aerial Map (2013) (subject parcels outlined in red)



Analysis

On December 9, 2014 the Board of Supervisors approved a rezoning of 171 acres located along Chancellor Road from Rural (RU) to Residential 2 (R-2) with proffers to allow for 59 single-family detached units (R14-0008 Thorburn Estates). With the approved rezoning, the applicant committed to construct off-site road improvements at the Chancellor Road and Old Plank Road intersection or provide a lump sum cash contribution in the maximum amount of \$971,664 within twelve (12) months of preliminary plat approval. No per unit cash proffers were offered. The applicant requests to amend the approved proffer to extend the deadline to either complete the proffered off-site transportation improvements at the intersection of Chancellor Road and Old Plank Road or provide a cash contribution to the County in the amount of \$971,664.00 to a time no later than the issuance of the 30th occupancy permit. The applicants have conveyed to staff the proffer amendment is based on the inability to market the property to a buyer with the existing parameters of the proffers related to the offsite improvements.

The proffered road improvements at the Chancellor Road and Old Plank Road intersection include widening Chancellor Road between Old Plank Road and Chancellor Pond Lane to add a northbound turning lane on Chancellor Road onto Old Plank Road and construct a dedicated westbound left turn lane from Old Plank Road onto Chancellor Road with a painted median. During the rezoning process it was discussed and understood by the applicants and staff that right of way would be needed and existing utilities would need to be relocated to accommodate the improvements. Thus, the approved construction estimate was inflated to \$971,664 to ensure those potential unknown costs would be adequately covered to complete the construction.

The existing condition of the northbound approach on Chancellor Road at the time of the rezoning and still today is a Level of Service E (LOS E). The impact of the Thorburn Estates development, which is projected to generate an additional 565 vehicles per day, will cause the northbound approach on Chancellor Road to drop to a Level of Service F (LOS F). With the proffered improvements the Level of Service for the northbound approach on Chancellor would be elevated to a "D". Both of the Old Plank Road approaches are free flowing with the only delay occurring when someone turns left onto Chancellor Road. The proffered improvements provide for a left turn lane on Old Plank Road onto Chancellor Road to reduce these delays. Overall if you looked at just the level of service for the entire intersection one might conclude it operated at an acceptable level; however that would be a false assumption. There are very few gaps in the traffic flow on Old Plank Road causing motorists on Chancellor Road to look for those gaps to safely merge with the Old Plank Road traffic creating a dangerous situation. An additional issue with the intersection is the poor turning radii on the eastbound approach of Old Plank Road. Larger vehicles cannot make a right turn when there are vehicles on Chancellor Road. The trucks usually must come to a complete stop and wait for the Chancellor Road traffic to make their turn onto Old Plank Road because they cannot make the turn given the narrowness of Chancellor Road. The proffered improvements include the widening of Chancellor Road to address this issue.

Community concerns during the early stages of the rezoning were primarily related to existing traffic concerns and the development's impact on traffic; specifically the Chancellor Road and Old Plank Road intersection. The traffic concerns were satisfied with the applicant's commitment to improve the intersection prior to the additional Thorburn Estates traffic and garnered community support for the application as a whole.

As noted, the proffers provided for either the applicant to construct the improvements with specific timing triggers in place related to the approval of the preliminary plat or the applicant would pay the lump sum to the County within one year of preliminary plat approval. The approved proffers also provided the County an alternative option to request the sum of \$971,664 within 90 days of preliminary plat approval. The Thorburn Estates preliminary plat was approved on July 20, 2016. Therefore, per the approved proffers, the applicant should have by this point in time scheduled a scoping meeting with VDOT, identified the total amount of right of way needed and pursued construction plan approval for the improvements. To date, other than preliminary plat approval, the applicant has taken no actions towards complying with the conditions related to the transportation improvements.

II. Key Findings

- A.** The northbound approach on Chancellor Road operates at a Level of Service E. The impact of Thorburn Estates will further reduce the Level of Service to an F. With the proffered improvements the Level of Service for the northbound approach on Chancellor would be elevated to a "D".
- B.** The community's support of the rezoning hinged on the applicants' commitment to complete the improvements to the Chancellor Road and Old Plank Road intersection prior to the additional Thorburn Estates traffic.
- C.** To date, other than preliminary plat approval, the applicant has taken no actions towards complying with the conditions related to the transportation improvements.
- D.** The applicants' proposal does not provide an expected timeline for completion of the improvements.

III. Summary and Recommendation

The Planning Commission held a public hearing on January 4, 2017 and on a motion by Mr. Newhouse, seconded by Mr. Smith voted unanimously to recommend approval of the amended proffer statement dated December 8, 2016. While the Planning Commission recommended approval, several members raised concerns with the potential for the development to progress through to house #29 and not beyond resulting in no trigger to the proffered improvements or cash contribution and therefore no mitigation would be provided.

UPDATE SINCE THE APRIL 25, 2017 BOARD OF SUPERVISORS' MEETING:

The Board of Supervisors continued the public hearing at the April 25th meeting to allow the applicant time to make revisions to the proffers with respect to the timing of the construction completion and cash payment in addition to the removal of all language associated with installation of trails within the development. The applicant submitted revised proffers dated May 4, 2017 which removes all language associated with the installation of trails within the development. Staff has no objection to the deletion of the trail language. The proffers were further revised to include a number of benchmarks associated with the construction of the transportation improvements including deadlines to 1) submit the Road Improvement Infrastructure Plan to VDOT, 2) respond timely to VDOT's technical comments on the plans, 3) obtain VDOT approval of the plans, and 4) complete construction of the improvements including a grace period. Per the revised proffer language, the ultimate guaranteed date of construction

completion is 5 ½ years from the approval of the proffer amendment. Staff has expressed concern to the applicant over the extended construction deadline. Based on staff's analysis and confirmation from VDOT, this is an extraordinary amount of time to accomplish rather simple improvements. A reasonable time allowance for the VDOT review and approval of the plans is 6 months and a reasonable time allowance for the construction of the improvements is between 12-18 months. Putting the construction timing aside, the most critical concern with the revised proffers pertains to the language which dictates when the cash payment would be made should the applicant not complete the improvements. As proposed, there is no legally binding language in the proffers that require payment of the \$971,664 to the County. Further, the County Attorney's Office has identified a fatal flaw with the language in Section 3, which includes the term "unable to construct" which leads to the absurd result that the applicant might be able to construct but choose not to construct and with that, the County does not get paid and the improvements to the intersection may not be constructed.

Staff has continuously raised the concerns noted above and the applicant has indicated they have no intention of providing further revisions to the proffers and they are content to operate under the currently approved proffered conditions. Given the fatal flaws within the proposed language which result in no guarantees for the construction improvements or cash payment, staff continues to recommend denial of the requested proffer amendment.

UPDATE SINCE THE MAY 23, 2017 BOARD OF SUPERVISORS MEETING:

At the Board's May 23rd meeting, the applicant presented revisions to the proffers which addressed staff's concerns related to the construction timeline and the lack of cash payment guarantees should the construction not be completed. The revised proffers dated, May 24, 2017 provide a construction completion deadline of 4 ½ years from proffer amendment approval. The language provides benchmarks for submission of the construction plans and VDOT approval of the plans with a cash payment commitment within 2 years of the proffer amendment (or 30th OP whichever comes first) should either of those target dates be missed. Further, the language commits to the cash payment should the construction not be completed within 4 ½ years of approval of the proffer amendment. The proposed language provides the County a guaranteed construction date or a guarantee of the cash payment should the construction not be completed. These guarantees exceed the commitments of the current proffers; therefore, staff recommends approval of the proffer amendment request.