

RESOLUTION

CASE NO. ZA-0002-2010. ZONING ADMINISTRATOR'S OPINION APPEAL - CHISEL RUN

WHEREAS, Mr. Vernon Geddy, appellant on behalf of the property owners (the "Appellant"), has appealed of the Zoning Administrator's interpretation and decision of the accepted proffers for the Chisel Run development to the Board of Zoning Appeals (the "BZA") and the Board of Supervisors; and

WHEREAS, the BZA voted unanimously in finding that the determination was an interpretation of a proffer and it had no jurisdiction to consider the appeal on November 4, 2010, and this BZA decision was not subsequently contested by the Appellant; and

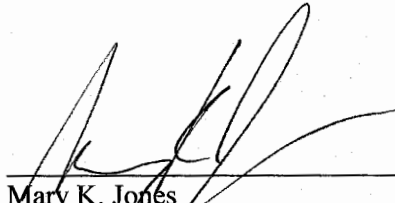
WHEREAS, the Board of Supervisors, at its meeting on January 25, 2011, held a public hearing and considered the statements made by the public and also reviewed and considered the materials and testimony offered by the Zoning Administrator and the Appellant; and

WHEREAS, the Board of Supervisors is of the opinion that the determination of the Zoning Administrator is correct and that the Appellant's appeal should be denied.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby uphold the Zoning Administrator's interpretation and decision that the total remaining units to be constructed in the Chisel Run development is two, and in consideration of such determination, the Board of Supervisors makes the following specific findings of fact:

1. Section 15.2-2299 of the *Code of Virginia*, 1950, as amended (the "Virginia Code"), authorizes the Zoning Administrator to administer and enforce proffers attached to a rezoning. Section 15.2-2301 of the Virginia Code directs the Board of Supervisors to consider any appeal from a decision rendered pursuant to Section 15.2-2299 of the Virginia Code; accordingly, the Board of Supervisors has jurisdiction to hear this appeal.
2. The Board of Supervisors must give deference to the Zoning Administrator's determination.
3. The Board of Supervisors approved rezoning case Z-10-83 by resolution on November 16, 1983, rezoning 45 of 60 acres from R-3 to R-5 and the adopted resolution for case Z-10-86, accepted voluntary proffers and referred to the Board of Supervisors Memorandum dated November 7, 1983 (the "Memorandum"), in reference to the interpretation of the proffers. The Board of Supervisors must, therefore, consider the Memorandum when interpreting the proffers.
4. Proffer No. 2 states that "the total number of living units that may be constructed on the subject property shall not exceed Two Hundred Thirty-Nine units (239). This includes all living units to be construction in Section One (1) of Old Town Farmes presently before the James City County Site Plan Review Committee and which is an area not under consideration for rezoning but that the said number of units shall be considered as part of a total 239 units to be construction on the subject property."

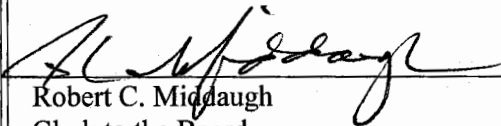
5. The subject property referred in the adopted November 16, 1983, resolution and accepted proffers is Parcel B as shown on "Plat For Rezoning Parcel "B" Old Town Farms, Inc."
6. The Board of Supervisors Memorandum dated November 7, 1983, states "the second proffer limits the total number of dwelling units to be construction on the property 239. This total includes the single family section of the property which will remain in the R-3 zoning district."
7. The Board of Supervisors Memorandum dated November 7, 1983, states "the second proffer provides a total development density which is equal to that which could be obtained in the R-3 district and provides an overall density of four units an acre which is the upper limit of low density residential as designated by the Comprehensive Plan."
8. The unit count per County records as of the date of this resolution are as follows:
Section 1 - 25 units; Section 2 - 12 units; Section 3A - 18 units; Section 3B - 60 units; Section 4 - 122 units.
9. The calculation of density of four units per acre included all sections of Chisel Run and Sections 1 and 2 of Olde Town Farms as shown as Parcel A on the document titled "Plat For Rezoning Parcel "B" Old Town Farms, Inc."
10. The total number of remaining units to be constructed in the Chisel Run development is two.



 Mary K. Jones
 Chairman, Board of Supervisors

<u>SUPERVISOR</u>	<u>VOTE</u>
KENNEDY	AYE
GOODSON	AYE
MCGLENNON	AYE
ICENHOUR	AYE
JONES	AYE

ATTEST:



 Robert C. Middaugh
 Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 25th day of January, 2011.

za-2-10ChiselRun_res