

BEFORE THE MAYOR AND COUNCIL OF BOONSBORO

BNRZ18-01(rev)

APPLICATION OF PRESERVE AT FOX GAP, LLC

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to notice, a public hearing was conducted by the Mayor and Council on February 4, 2019, to consider the rezoning application of Preserve at Fox Gap, LLC.

The subject of the Applicant's piecemeal rezoning application is part of the property owned by the Applicant at the intersection of South Main Street and MD Route 67. The location of the subject property and the changes in zoning classification proposed by the Applicant are depicted on the drawing appended to these findings and are incorporated as part of these findings.

The Applicant seeks through rezoning to increase the depth of the commercial area along South Main Street, and to achieve greater variety and flexibility in its offering of residential lot sizes in the residentially zoned component of the property, allowing some residential lots to be smaller than allowed under the current zoning classification. The Applicant does not seek to increase the overall residential density of development of the property, and acknowledges that the uses and densities of development of the property remain subject to the terms of an Annexation Agreement dated December 28, 2006, as amended on March 2, 2009, and April 6, 2009. Section 4-103(b) of the Land Use Article provides that "[a] municipal corporation may include in an annexation agreement conditions and limitations on the use of land and density of development otherwise allowed in the zoning district where the land is located."

The specifics of the Applicant's proposal are summarized in the Planning Commission report and recommendation, and are incorporated herein by reference.

The Mayor and Council make the following findings in accordance with § 4-204(b) of the Land Use Article:

1. Population Change. Current population estimates for the Town show 3,553 residents. The closest residential development to the subject property is the Sycamore Run neighborhood, 0.3 miles northwest of the property along South Main Street. The development proposed in the Concept Plan prepared by the Applicant represents approximately 100 new residential units and several commercial establishments. There are currently seven commercial lots on the applicant's property.

2. Public Facilities. There is currently adequate water and sewer capacity in the Town to serve the development needs of the subject property. Specifically, there is available capacity with respect to our permitted withdrawal capacity for the Town's water system and available capacity with respect to permitted intake at the Town's wastewater treatment plant.

3. Present and Future Transportation Patterns. MD Alt 40 (Old National Pike), MD 67, and the future Ostertag Pass (currently under construction) will all serve the area and the subject property. A roundabout will be a prominent part of State Highway Improvements currently under construction at the property.

4. Compatibility with Existing and Proposed Development in the Area. The proposed rezoning does not alter the combination of land uses envisioned at the time of annexation of the property, or introduce new uses. Instead, the Applicant seeks to alter the balance of residential and commercial development and the densities of residential development by adjustment of the internal zoning district boundaries applicable to the subject property. The Mayor and Council concur with the Applicant that compatibility with existing adjacent residential uses may be accommodated by buffering, taking into account the area of floodplain which will not be

developed and serves as a transitional area. The proposed uses of the subject property having a potential to impact the existing residential uses along Mousetown Road are similarly residential in character.

5 Planning Commission Recommendation. The Planning Commission recommended the proposed rezoning. Its recommendation is included as Planning Director Exhibit 1 in the record of the public hearing. The Planning Commission's recommendation is consistent with these findings. *See the following recommendation from January 15th, 2019 Planning Commission Meeting Minutes:* The motion was made to approve the applicant's zoning map amendment request based upon a mistake in the original zoning classification, with the additional recommendation that the Town amend the zoning map for the property's remaining lands to a lower residential density based upon smart growth and smart neighborhood concepts in order to not create more overall density on the property. The motion noted that the property and the Planning Commission's recommendation were subject to the applicant's original annexation agreement between the Mayor & Council of Boonsboro and the Easterday's dated December 28th, 2006 as amended. Carvel Wright made the motion, David Parmelee seconded the motion, and the motion passed unanimously. Chairman Maricle then stated that he proposed an amendment to the first motion to reflect that the development in towards the center of the property would be developed according to smart growth principles, which would intensify that development area and therefore necessitate reducing the zoning density of the surrounding areas to balance that growth and density. David Parmelee motioned, Carvel Wright seconded, and the motion passed. At the end of the agenda topic, Town Planner Strickler summarized the motions by stating that the approval is that the request is approved based upon a mistake in the existing zoning classification with the additional recommendation that the Town rezones remaining

portions of the property to a lower residential density, with both actions and map amendment approval being based upon Smart Neighborhood Principles for Residential Development.

6. Relationship to the Comprehensive Plan. The proposed rezoning is consistent with the Town's adopted comprehensive plan. Specifically, it implements in part the Smart Neighborhoods Overlay recommendation in the plan, despite delay on the part of the Town in implementing the Smart Neighborhood Overlay recommendation of the Plan through revision of the Zoning Ordinance. The recommended pattern of development in the Plan, Medium Density Residential (2-8 Units per Acre) and General Commercial, is generally consistent with the proposed pattern of residential and commercial development existing and proposed for the subject property.

7. Change or Mistake. The Applicant has established to the satisfaction of the Mayor and Council that the proposed rezoning is supported by a mistake in the existing zoning classifications. In approving the current comprehensive plan, the Mayor and Council determined to implement the Smart Neighborhood Overlay initiative recommended in the plan, but as of the time of the rezoning application, have not yet undertaken the recommended implementation through any revision to the zoning ordinance. This rezoning implements these Smart Neighborhood principles in part with respect to the affected portions of the subject property, facilitating a greater variety of housing types and enhancing home ownership through zoning principles designed to achieve greater housing affordability. "TC(-R)" or Town Center Residential zoning classification is appropriate, in that, while the subject property is not in the immediate central area of the Town, it is part of the Main Street corridor, and may properly be considered as a component of the Town's extended core.

With respect to the commercial component of the proposed rezoning, the Mayor and Council agree with the Applicant that the depth of the commercial area, as established at the time of annexation, was somewhat restrictive. With the benefit of the Applicant's more focused analysis, it was a mistake to draw the zoning boundary of the commercial portion of the property as established at the time of annexation. The proposed zoning the Applicant put forth in their rezoning application matches the current parcel and lot lines present in the commercially zoned area of the property (Plat # 10850).

Accordingly, the application for rezoning of the property of Preserve at Fox Gap, LLC is approved as submitted.

The development of the property remains subject to the provisions of the Annexation Agreement, as amended.

The Ordinance shall be amended in accordance with these findings, and the official zoning map shall be revised to indicate the change in zoning boundaries approved in these findings.

Dated this _____ day of _____, 2019.

THE MAYOR AND COUNCIL OF BOONSBORO

By: _____
Howard W. Long, Mayor