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Parkin, James
07-014

51829-6300

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

**STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS**

1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338
www.dnr.state.md.us/criticalarea/

July 10, 2007

Mr. Tom Burke
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6301
Annapolis, Maryland 21401

Re: Parkin, James A.
MS 07-014

Dear Mr. Burke:

I have received the above-referenced subdivision request for review and comment. As you may know, the Parkin mapping mistake was sent back to the County at the Commission's April 4, 2007 meeting pending correction of deficiencies identified with the County mapping for the Critical Area Program. Subsequent to that action, the applicant filed suit in Anne Arundel County Circuit Court and a decision by the Court is currently pending.

Therefore, it would be inappropriate for Commission staff to offer subdivision review comments at this time pending the outcome of the two actions mentioned above. If you have any questions in the meantime, please call me anytime at (410) 260-3478.

Sincerely,

A handwritten signature in cursive script that reads "Lisa A. Hoerger".

Lisa A. Hoerger, Chief
Project Evaluation Division

cc: Ms. Sally Iliff, Senior Assistant County Attorney
Mr. Jim Chance, Assistant County Attorney
Ms. Marianne Dise, Assistant Attorney General
Ms. Sandra Canedo, Assistant Attorney General

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2006-0121-C

MS-07-014

IN RE: JAMES AND VICTORIA PARKIN

FIRST ASSESSMENT DISTRICT

RECEIVED

JUN 26 2007

DATE HEARD: JUNE 1, 2006

PLANNING AND ZONING
DEVELOPMENT

ORDERED BY: STEPHEN M. LeGENDRE, ADMINISTRATIVE HEARING OFFICER

PLANNER: ROBERT KONOWAL

DATE FILED: JUNE 19, 2006

PLEADINGS

James and Victoria Parkin, the applicants, seek a Critical Area reclassification (2006-0121-C) from Resource Conservation Area (RCA) to Limited Development Area (LDA) on property located along the west side of Central Avenue, north of Wier Road, Edgewater.

PUBLIC NOTIFICATION

The hearing notice was posted on the County's web site in accordance with the County Code. The file contains the certification of mailing to community associations and interested persons. Each person designated in the application as owning land that is located within 175 feet of the property was notified by mail, sent to the address furnished with the application. Mr. Parkin testified that the property was posted on May 1, 2006. I find and conclude that the requirements of public notice have been satisfied.

FINDINGS AND CONCLUSIONS

This case concerns property with a street address of 1115 Mayo Road, Edgewater. The property comprises 4.18 acres and is split zoned R2-residential and OS-open space districts with a Chesapeake Bay Critical Area designation as RCA. There is a dwelling in the northeast quadrant of the property. The request is to reclassify the southern portion of the property comprising 1.8 acres. The request is preliminary to subdividing the property to create two new lots.

Anne Arundel County Code, Article 18, Section 18-16-302(b) provides that a Critical Area reclassification shall be granted or denied in accordance with compatibility with the underlying zoning district, but may only be granted based on the affirmative findings that:

- (1) There was a mistake in the approved Critical Area map based on land uses or natural features in existence on December 1, 1985;
- (2) The proposed Critical Area classification conforms to the State and County Critical Area mapping criteria;
- (3) The proposed Critical Area classification conforms to the environmental goals and standards of the General Development Plan (GDP);
- (4) There is compatibility between the uses of the property as reclassified and surrounding land uses, so as to promote the health, safety, and welfare of present and future residents of the County and effective environmental land use management; and
- (5) The applicant provided to the Critical Area Commission a copy of the Administrative Hearing Officer's notice and a copy of the application at least 30 days before the date of the hearing.

The applicants have the burden of proof, including the burden of going forward with the production of evidence and the burden of persuasion, on all questions of fact. Section 18-16-301(c).

Robert Konowal, a planner with the Office of Planning and Zoning, summarized the mapping criteria. In brief, the RCA designation relates to nature-dominated environments and resource-utilization activities in areas where (1) the density is less than one dwelling unit per five acres; or (2) the dominant land use is agriculture, wetland, forest, barren land, surface water, or open space. In contrast, the LDA designation relates to low or moderate intensity uses in areas where (1) housing density ranges from 1 dwelling unit per 5 acres up to 4 dwelling units per acre; (2) the dominant land use is not agriculture, wetland, forest, barren land, surface water or open space; or (3) public sewer and/or water exists¹.

In this case, aerial photography from 1984 shows the existing dwelling and cleared land used in part for agricultural purposes. There are no natural features in the area of proposed reclassification. The property is shown as Planned Service Area "S-4" (3 - 5 years) on the official sewer map adopted by the County Council on April 16, 1984. These factors evidence that the RCA classification is an error.

Mr. Konowal also indicated that the proposed LDA designation is compatible with the underlying zoning, conforms to the mapping criteria and the proposed residential use is compatible with the surrounding land uses.

He summarized the agency comments. The County's Office of Environmental and Cultural Resources supported the request. The Chesapeake Bay Critical Area Commission disputed the sufficiency of the evidence submitted

¹ Undeveloped land within 2,000 feet of an existing water or sewer line was also classified LDA; as was land where sewer service was scheduled within 6 - 10 years or water service was scheduled within 11 - 20 years.

by the applicants in support of the request.² By way of ultimate conclusion, Mr. Konowal supported the application.

The proffered testimony by Mr. Parkin indicated that the applicants purchased the property in April, 2004. The prior owner operated an air conditioning business from the dwelling. The prior owner also operated a produce stand until 1988, although the property was never assessed for agriculture.

Doug Bourquin, a land surveyor retained by the applicants, testified that the property is predominantly a mowed lawn with approximately 1500 square feet of forested and mowed wetlands in the northwest corner. The average area for the proposed lots exceeds one acre. By contrast, the minimum area for an R2 lot with public sewer is 15,000 square feet and the allowed density in the LDA is up to 4 units per acre. The applicants are proposing less than 10% impervious coverage. Finally, stormwater management would be required at the time of development.

Dave Blaha, a land-planning consultant to the applicants, submitted the official zoning maps from 1972, 1988 and 2002. In brief, the property and surrounding area was zoned R2 in 1972 except for a strip of C1B zoning to the south; the OS zoning extended to the corner of the site in 1988; and the zoning of the property to the south was changed to the C1-commercial district in 2002. The surrounding land uses in 1985 and at present are undeveloped forest, floodplains

² More particularly, the application is limited to a comparison of adjacent LDA properties but fails to consider the RCA properties.

and wetlands to the north and west, strip development to the south along Central Avenue and an institutional use (Mayo Elementary School) to the east.

On the matter of mistake, the property was located in the 3 - 5 year Planned Service category with the existing dwelling connected to the sewer system in 1991 when service was made available. In this regard, Mr. Blaha suggested that the mapping line followed the C1 district, and then crossed Central Avenue to encompass wooded areas without regard to the presence of sewer.

Concerning the balance of the reclassification criteria, there is compatibility with the underlying zoning and the uses of the property as reclassified and surrounding land uses. In this regard, the applicants' development proposal is less dense than what is permitted by the LDA designation and the surrounding lands are zoned R2 or C1 with critical area designations as LDA. The project also satisfies the goals of the GDP.

In response to the written comments of the Chesapeake Bay Critical Area Commission, Mr. Blaha indicated that neither of the RCA mapping criteria was present in 1985; whereas, the property met the LDA criteria for density, land use and public sewer - even though any one of the criteria would have sufficed.

Upon review of the facts and circumstances, I find and conclude that the applicants have met their burden of proof such that the reclassification shall be approved. The central issue in this case is whether the RCA designation was in error based on land uses or natural features in existence on December 1, 1985. This was neither a nature-dominated environment nor resource-utilization activity.

In any event, the density exceeds 1 dwelling unit per 5 acres and the dominant land use is not agriculture, wetland, forest, barren land, surface water or open space.

Having established a mistake, the next inquiry is whether the LDA criteria are satisfied. The property is developed in a low intensity use. More particularly, it satisfies the density and is not dominated by RCA features and sewer service is available. The importance of sewer service is clear from a review of the Critical Area program document:

Most of the changes to the land use classification maps in September [1987] included shifts from Resource Conservation to Limited due to the availability of water or sewer service. The Criteria state that areas having public water or sewer qualify as Limited Development Areas. Existing County law, Article 26, Sections 3-305 and 3-312, requires that public water or sewer service must be extended to property in the "6 - 10 year sewer service area" and in the "11 - 20 year water service area" which is within 2,000 feet of an existing line. This is imposed upon an applicant for development as a condition of subdivision approval. Therefore, properties within these distances and timings are considered to have water or sewer service within the context of the definition of Limited Development Areas in the Criteria. Property beyond these distances and timings is not required to extend and construct utility lines and therefore is deemed not to have water or sewer and remains in the Resource Conservation designation. ...In November [1987], property that was changed to Limited Development in September that did not abut a water or sewer line, was reclassified to Resource Conservation.

I further find that the proposed classification conforms to the environmental goals and standards of the General Development Plan. The proposal for subdivision meets the impervious coverage limitation and includes stormwater

management. Finally, there is compatibility between the uses of the property as reclassified and surrounding land uses.³

ORDER

PURSUANT to the application of James and Victoria Parkin, petitioning for a Critical Area Reclassification from Resource Conservation Area (RCA) to Limited Development Area (LDA); and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this 19th day of June, 2006,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicants are granted a reclassification from RCA to LDA in accordance with the site plan.


Stephen M. LeGendre
Administrative Hearing Officer

NOTICE TO APPLICANT

Within thirty days from the date of this Decision, any person, firm, corporation, or governmental agency having an interest therein and aggrieved thereby may file a Notice of Appeal with the County Board of Appeals.

If this case is not appealed, exhibits must be claimed within 60 days of the date of this Order, otherwise that will be discarded.

³ The applicants provided the requisite notice to the Critical Area Commission.

