

Warfields Farm - Research of Zoning to Facilitate a Mulching Facility

Summary of the Research and Response by our HOA attorneys:

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At the present time, no application has been filed with the zoning office to obtain permission to conduct such an activity. Before such a petition can be filed, a community meeting must be held, with at least 3 weeks prior notice being given to all adjoining landowners, including the HOA. Once that meeting is held, the petition for a conditional use can be filed with the Office of Planning and Zoning. P&Z then makes its recommendations, and a full public hearing is scheduled. Of course, the HOA and its members have the right to be heard at both meetings.

At this point, it is premature for any action to be undertaken on the P&Z front. However, the HOA should continue to support Councilman's Fox and his efforts, and our attorneys recommend that the HOA contact the Councilman or his staff to see what actions it can take to support his efforts.

Our attorneys stopped by the Zoning Office/County Council, and have done additional research regarding the possible mulching operation on Mr. Warfield's farm. All citations below are to the Howard County Zoning Regulations.

The farm is currently zoned as "RC" (Rural Conservation). However, by a deed dated July 21, 2008, Kennard and Mary Ellen Warfield granted an environmental preservation easement to Howard County (the "County") and the Warfield Homeplace Homeowners Association (the "HOA"). The easement is a "County Preservation Easement" under the Howard County zoning regulations, although, per the zoning office, Howard County did not elect to dedicate the parcel to the Howard County Agricultural Land Preservation Program ("ALPP"). See Section 103.0 ("Preservation Easement, County: An easement held by Howard County which has been established through one of the following: . . . the dedication of a preservation parcel to an easement holder other than the ALPP"); see *also* Section 104.G.(4)(e); .

Section 106.1 of the Howard County zoning regulations set forth the uses permitted on property in RC Districts that is encumbered by a County Preservation Easement (as created by the dedication of a preservation parcel to the County and an owners' association, e.g. the HOA). See Section 106.1.A and Section 104.0.G. Currently, the regulations permit sawmills, bulk firewood, and mulch manufacture/soil processing as conditional uses subject to a use cap not to exceed the lesser of 1 acre or 2% of the easement area (for our purposes the cap is .78 acre – 2% of the parcel). Section 106.1.D(2)(a). Composting facilities are also currently allowed as a conditional use and "may require additional land

area” (apparently not subject to the 2% cap). Section 106.1.D(2)(b). Conditional uses cannot require construction of any additional principal structures, must “support the primary purpose of the easement property,” and be approved by hearing authority in accordance with the zoning regulations. Section 106.1.D(2)(a). As set forth in the deed of easement, “the primary purpose and use of the Preservation Parcel is environmental conservation.”

Under existing regulations, the HOA may be able to fight a proposed mulching operation in the hearing process on the grounds that such use is inconsistent with the environmental conservation purpose of the parcel. If the mulching operation is permitted to move forward, it would nonetheless be limited to .78 acre of the parcel.

Councilman Fox’s proposed legislation would amend the zoning regulations to delete mulch manufacture/soil processing and composting from the list of permitted conditional uses on County Preservation Easement parcels, but would permit sawmills and bulk firewood processing. Bulk firewood processing is the commercial processing of “branches and logs by chopping, cutting, sawing, or splitting to produce firewood for sale.” It includes the chipping/mulching of any waste wood created during the principal processing of the firewood. A sawmill would be defined as a “commercial facility which principally processes logs by sawing, splitting, shaving, or stripping to produce lumber or other wood products for sale.” Again, chipping/mulching of wood waste created during the principal processing of the wood products would be permitted as well. As conditional uses, they would be subject to approval by hearing authority under the zoning regulations.

If the pending legislation passes, the parcel could not be used for mulching or composting, which was the HOA’s primary concern. However, some limited mulching ancillary to the processing of firewood and/or lumber may be permitted as a conditional use (on up to one acre of the property). Because the sawmill and firewood processing uses would be conditional, the HOA could attempt to oppose them in the hearing process on the basis that they are inconsistent with the conservation purpose of the easement.