
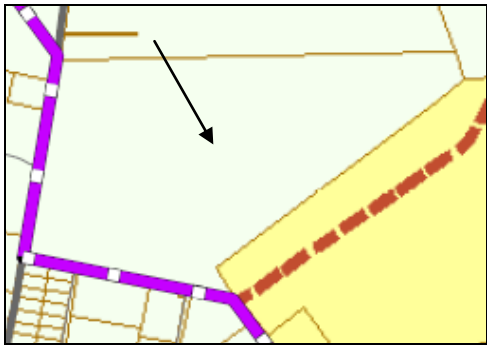


Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 February 16, 2012

Aspen Greens Subdivision Appeal (AP12-01)

Item #6: Appeal by property owner, Roderick Planes, LLC, of the Zoning Administrator's decision regarding the interpretation of Condition #6, Aspen Greens Conditional Use Permit #Z02-06. Condition #6 states, "Provide a note on the plat indicating a 50' easement along Flowing Springs Road (Route 17) and Old Country Club Road (Route 24) for the potential location of sidewalks and trails."

APPLICANT:	Roderick Planes, LLC
OWNER:	Same
DEVELOPER:	Same
SURVEYOR/ENGINEER:	Gates Associated, Inc.
PROPERTY LOCATION:	This property is located northeast of the intersection of Old Country Club Road with Flowing Springs Road.
LEGAL DESCRIPTION:	District: Charles Town; Map: 4; Parcel(s): 19 
ZONING DISTRICT:	Zoning Map Designation: Rural (R) 
SURROUNDING PROPERTIES:	Zoning Map Designation: <i>North:</i> R <i>South:</i> R <i>East:</i> RG <i>West:</i> R
LOT AREA:	110.71 acres
PROPOSED DENSITY:	203 single-family lots
PERMIT APPROVALS:	
Health Department Permit	N/A
Department of Highways	N/A

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APPROVALS:	
Conditional Use Permit	Submitted: 08/08/02 Site Assessment Passed: 10/02/02 1 st Neighborhood Compatibility Scheduled: 10/30/02 2 nd Neighborhood Compatibility Scheduled: 05/10/06 Public Hearing Scheduled: 06/15/06 PH & BZA Action: Approved CUP Official Issuance Signature: 12/20/07 Original Expiration Date: 06/20/09 <u>Variances:</u> 06/18/09: BZA approved a CUP extension request from 06/20/09 to 12/20/2010. 11/18/10: BZA approved an extension of the CUP to 07/01/12.
Community Impact Statement	Submitted: 06/15/07 Staff Review Meeting: 07/06/07 County Planner Approval: 02/2008 County Engineer Approval: 01/14/08 PC Approval: 03/25/08 <u>Variances:</u> 05/26/09: PC approved variance to extend the file expiration date from 07/06/09 to 12/31/09. 08/11/09: PC approved variance to extend the file expiration date from 12/31/09 to 12/20/10. 11/09/10: PC approved variance to request extend CIS expiration date from 12/20/10 to 07/01/12.
Preliminary Plat	Submitted: 04/15/11 Staff Review Meeting: 05/20/11 3 rd review returned to applicant: 11/22/11
Final Plat	N/A
OTHER APPROVALS:	N/A

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Aspen Greens Subdivision Appeal (AP12-01)

1. Overview

The Applicant has submitted an appeal of an administrative decision regarding the interpretation of Condition #6 of the Aspen Greens Conditional Use Permit (CUP), #Z02-06.

Separately, the applicant has submitted a request to amend this Conditional Use Permit condition. The applicant has indicated that if the Board amends the condition to be consistent with the amendment request, then the applicant will not pursue the appeal of the administrative decision. The CUP amendment request is scheduled to be heard at the same meeting at which the appeal is scheduled to be heard.

The February 16, 2012 staff report for the Aspen Greens Subdivision Conditional Use Permit Revision (Z02-06) is incorporated herein by reference.

2. Chronology of Relevant Events

The Board of Zoning Appeals approved the Aspen Greens Conditional Use Permit (case #Z02-06) on June 15, 2006. The conditions of approval required by the Board were the same conditions identified to resolve issues resulting from the Compatibility Assessment Meeting for this development.

For reasons described below, staff determined that the sidewalk easement, as shown on the Preliminary Plat, did not meet the intent of Conditional Use Permit condition #6:

Provide a note on the plat indicating a 50' easement along Flowing Springs Road (Route 17) and Country Club Road (Route 24) for the potential location of sidewalks and trails.

The Preliminary Plat for the subdivision was submitted on April 15, 2011. Following the second review of the plat, on August 15th, staff provided comments asking the applicant to better clarify how the Conditional Use Permit conditions were met. Following the third review of the plat, staff contacted the applicant on December 19, 2011 to express concern about the satisfaction of the Conditional Use Permit conditions.

In a January 12, 2012 memo to the applicant, staff stated that the sidewalk / trail easement shown on the plat does not meet the intent of CUP condition #6, as approved by the Board of Zoning Appeals. The memo states:

As the proposed easement includes a portion of Flowing Springs Road and Country Club Road, it cannot be said to be located "along" the road – rather, a portion of the easement is located within the road. Staff also finds that it is not feasible for a sidewalk or a trail to be installed within the existing paved area of either road.

Moreover, the topography of the section shown for the proposed trail easement is not sufficiently level to allow installation of a sidewalk or trail without significant grading.

Staff identified the following two options to resolve this issue:

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- A. *Modify the plat to show along both Flowing Springs Road and Old Country Club Road:*
- *the 50' easement beginning at the edge of the pavement;*
 - *a continuous area of flat topography with a dimension of at least 15', in which a trail or sidewalk could be placed without the need for significant grading*

OR

- B. *Request that the Board of Zoning Appeals modify the condition of approval. This request must be heard as a public hearing, with required notification.*

3. Rationale for Applicant's Appeal

The appeal application states,

“Aspen Greens believes that the Zoning Administrator's interpretation of the condition intent raises concerns of the 50 foot easement only by the insertion of new criteria he now provides in the attached memo.”

4. Rationale for Staff's Interpretation of Conditional Use Permit Condition

In interpreting the CUP condition, the Zoning Administrator utilized the definition of “easement” in the Jefferson County Zoning Ordinance, a definition that predates the Aspen Greens Conditional Use Permit application. The Zoning Ordinance Sec. 2.2. definition of “easement” is as follows:

A lawfully acquired right or privilege to use a parcel of land or a portion thereof for a specified purpose. An easement is retained by a person other than the owner of the land parcel.

The proposed easement does not meet this definition, because an entity seeking to build a trail will not have a “lawfully acquired right or privilege to use” the portion of the proposed easement that is located within the existing roadway or within the roadway improvement area to be dedicated to the West Virginia Division of Highways (WVDOH).

The portion of the proposed easement located outside of the WVDOH dedication area includes a proposed berm. A sidewalk or trail installed in this area would require re-grading the berm, which would require approval of a separate permit to construct a retaining wall to contain the remaining portion of the berm. While the portion of the proposed easement that includes the berm may meet the technical definition of easement, staff finds that the easement does not meet the intent of the Conditional Use Permit condition because the applicant proposes to change the topography of this portion of the easement in such a way as to render it unusable for a sidewalk or trail without substantial re-grading.

The appeal further alleges that the Zoning Administrator “re-defines the CUP condition by selectively limiting the CUP language meaning, and adding criteria that is harmful to the long-standing approved design that were never part of the agreed upon condition . . . These will be harmful to the design already approved.”

There is, in fact, no approved design showing the location of a sidewalk/trail easement. The Concept Plan submitted with both the original Conditional Use Permit application and the Community Impact Statement did not show the location of the easement. The first plan submitted for approval, showing the location of the easement, is the Preliminary Plat, which is not yet approved.

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For this reason, the following statement in the appeal application is incorrect:

“This Preliminary Plat . . . is equal to the design as approved through DRS, through CIS and three reviews by Staff over the past year.”

For the reasons described above, staff recommends that the Board uphold staff’s interpretation of condition #6 of the Aspen Greens Conditional Use Permit (Z02-06).

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SECTION OF ORDINANCE TO BE CONSIDERED:

Section 3.4 Boards and Commissions

A. Board of Zoning Appeals

3. The Board of Zoning Appeals shall hear and decide appeals from and review any order, requirement, decision or determination made by an administrative official in regard to the enforcement of this Ordinance or of any ordinance adopted thereto.

a. Filing an Appeal

- i. An appeal to the Board may be taken by any person, board, associate, corporation or official allegedly aggrieved by any administrative decision based or claimed to be based, in whole or in part, upon the provisions of this Ordinance. The property owner of the subject appeal shall sign the application or an affidavit allowing an agent for the property owner to file the application which shall be submitted.
- ii. Such appeal shall be filed with the Board within thirty (30) days from the decision appealed.

b. Notification

- i. Notice of a public hearing for an appeal shall be advertised in a newspaper having general circulation in the County at least 15 days before the hearing.
- ii. The subject property shall be posted conspicuously by a zoning notice no less than twenty-eight (28) inches by twenty-two (22) inches in size, at least 15 days before the hearing. The sign will be prepared by the Departments of Planning and Zoning but posting the sign is the responsibility of the applicant. The Board, in its discretion, may otherwise visit the specific property prior to or after the hearing.

c. Public Hearing

- i. The Board shall hold a hearing within forty-five (45) days of the date the appeal is received in the Departments of Planning and Zoning. At the hearing, any party may appear and be heard in person or by agent or attorney.
- ii. The Board shall render its determination on the application no more than thirty (30) days following the public hearing by registered mail.

d. Continuance of Hearing

- i. The Board may continue a hearing at another time and/or date once such hearing has been started; however, the Board shall announce the date and hour of continuance of such hearing while in session. Any hearing continued shall be held within thirty (30) days from the initial hearing.

Section 2.2 Definitions

Easement A lawfully acquired right or privilege to use a parcel of land or a portion thereof for a specified purpose. An easement is retained by a person other than the owner of the land parcel.

JEFFERSON COUNTY, WEST VIRGINIA
Department of Planning and Zoning

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Email: planningdepartment@jeffersoncountywv.org

MEMORANDUM

TO: Fred Gates, Gates Associated, Inc.

FROM: Steve Barney, Zoning Administrator, Jefferson County

DATE: January 12, 2012

SUBJECT: Determination Regarding Compliance with Aspen Greens CUP Conditions

I am writing to follow up on our recent meeting regarding the Conditional Use Permit conditions for the Aspen Greens Subdivision. Regarding the Preliminary Plat currently in review, the two significant issues we discussed were:

1. The applicant's need to document why the required WVDOH improvements are not applicable to the first phase of the development.

At our meeting, you brought to my attention an email exchange between yourself and West Virginia Division of Highways staff (Larry Alt and Jeffery Stanislawczyk). However, this message was not sufficient to document the WVDOH's position regarding the required improvements.

Following our meeting, I contacted Larry Alt to ask him to provide feedback on each condition and am currently awaiting receipt of this information. It should be noted that securing this documentation is the applicant's responsibility; however, as a courtesy, I have made the request of Mr. Alt.

2. The fulfillment of the intent of the CUP condition related to the required sidewalk / trail easement.

Condition #6 of the approved CUP reads as follows:

Provide a note on the plat indicating a 50' easement along Flowing Springs Road (Route 17) and Old Country Club (Route 24) for the potential of sidewalks and trails.

I am confirming my determination that sidewalk / trail easement shown on the plat does not meet the intent of CUP condition #6, as approved by the Board of Zoning Appeals:

Staff interprets the word "along" to mean "beside" or "adjacent to." As the proposed easement includes a portion of Flowing Springs Road and Country Club Road, it cannot be said to be located

“along” the road – rather, a portion of the easement is located within the road. Staff also finds that it is not feasible for a sidewalk or a trail to be installed within the existing paved area of either road.

Moreover, the topography of the section shown for the proposed trail easement is not sufficiently level to allow installation of a sidewalk or trail without significant grading.

Options to resolve this issue include the following:

A. Modify the plat to show along both Flowing Springs Road and Old Country Club Road:

- the 50’ easement beginning at the edge of the pavement;
- a continuous area of flat topography with a dimension of at least 15’, in which a trail or sidewalk could be placed without the need for significant grading

OR

B. Request that the Board of Zoning Appeals modify the condition of approval. This request must be heard as a public hearing, with required notification.

Following resolution of issues #1 and #2 above – in addition to any other outstanding issues noted in the review checklist – I will be happy to sign off on the Preliminary Plat.

Please let me know if you need additional information.

Sincerely,

Steve Barney
Zoning Administrator

Cc: Jennifer Brockman, Director, Planning and Zoning Department
Seth Rivard, County Planner
Jonathan Saunders, County Engineer