

TOWN OF WAYNESVILLE
COUNTY OF HAYWOOD

BEFORE THE WAYNESVILLE
PLANNING BOARD

In the Matter of the Application of)
BROWNING BRANCH, LLC,)
for a Major Subdivision Approval)
_____)

ORDER APPROVING MAJOR
SUBDIVISION

THIS CAUSE, coming on to be heard before the Planning Board for the Town of Waynesville in the Town Hall Board Room at 9 South Main Street in Waynesville, North Carolina, on June 18, 2018, at 5:30 p.m. and July 16, 2018, on the Application of Browning Branch, LLC, for approval of a major subdivision to be developed on property adjoining Buchanan Drive.

Elizabeth Teague, Development Services Director, appeared for town staff and Greg Whishart appeared to present the application on June 18, 2018, and when the hearing was continued, attorney Kirk Kirkpatrick appeared for the applicant on July 16, 2018. Elizabeth Teague presented the application as it was submitted and testified as to the matters in the application, noting which requirements for major subdivision applications were contained in the application packet, and Greg Whishart made the initial presentation for the applicant. Owen Carson testified and described the process by which the property was inspected to delineate wetlands. Members of the public testified in opposition, but no one asserted that they had standing such that they might participate as parties.

The Planning Board of the Town of Waynesville, having heard the testimony and having reviewed the evidence, makes the following

FINDINGS OF FACT

1. The Planning Board has jurisdiction to hear this application for major subdivision approval pursuant to Section 14.3.1.E.2 of the Land Development Standards of the Code of Ordinances for the Town of Waynesville (hereafter called the Land Development Standards or LDS.)

2. Proper notice of the hearing was posted, published and mailed as required by the North Carolina General Statutes and by the ordinances of the Town of Waynesville.

3. The Applicant has an option to purchase real property located on Buchanan Drive off Allen's Creek Road desires to develop a major subdivision consisting of 23 lots, with a duplex on each lot, for a total of 46 residential units. The current PIN number for that property is 8604-94-0656.

4. Applications for major subdivision approval must be approved by this Board pursuant to Section 15.9.2 of the LDS.

5. The property is 7.038 acres, with 5.93 acres of that land being developable due to 0.415 acres of wetlands and 0.69 acres lying within the stream buffer.

6. The property lies within the Allen's Creek Neighborhood Residential District (AC-NR) and the density allowed is ten units per acre, and duplexes, or "Dwelling-Two Family", are permitted in that district.

7. The applicant Browning Branch, LLC, has an option to purchase the described real property and has standing to make this application.

8. The applicant as part of its application did provide an environmental survey and master plan as required by Section 15.9.2.C of the LDS, and the plans show that no construction or disturbance is planned in the delineated wetlands or in the stream buffer areas.

9. The master plan, additional exhibits and testimony does show that the plan is in compliance with all applicable requirements of the LDS, to wit:

A. The interior proposed roads of the subdivision comply with the requirements for lanes as defined by the LDS, and provision is made for sidewalks along one side of the streets, fulfilling that requirement of the LDS. A twenty foot wide paved roadway surface is proposed to meet the Fire Access Road standards. Landscaping will need to be provided between the sidewalk and the street, and street trees provided for, and the applicant has stated that will be done.

B. A thirty foot wide easement has been or will be obtained for access to Allen's Creek Road from the subdivision. This easement is not as wide as is required for streets within the subdivision, but the LDS is silent as to the required widths for access roads to subdivisions. If the fire marshall and NCDOT determine that an adequate and safe road can be constructed within such thirty foot wide easement, this Board finds as a fact that such easement is adequate and is approved for use to access the proposed development. The ordinances place no requirements on access roads and easements. While it is arguable that the requirements for interior streets in a subdivision should apply to access streets, the lack of specific requirements create an ambiguity and such ambiguity must be resolved in favor of the property owner, allowing the use of such easement for access.

C. No traffic study is required as the number of projected trips to be generated per day does not reach the threshold that would require a traffic study.

D. The number of units per acre of developable property is 7.58 units per acre, which is less than the ten units per acres allowed in the Allen's Creek Neighborhood Residential District.

E. The proposed lots all meet the minimum lot size (7,260 square feet) and the building envelopes are established in compliance with the dimensional requirements of the district.

F. The designated civic space exceeds 5% of the developable 5.93 acres and is in compliance with the requirements of the LDS.

G. A secondary emergency access point into the development has been provided.

H. The site plan indicates that a vegetative buffer around the exterior boundary of the property will be maintained and enhanced, and the interior of the property now contains no trees to be protected as it has been used as a hay field, so the requirements of Chapter 8 of the LDS are met except for a landscaping plan providing for street trees and plantings between sidewalks and the streets.

I. Driveways to the units consist of a shared driveway for each duplex, and the separation between the driveways and street intersections required by the LDS is met after application of the Administrator's allowance of a reduction of the required separation by 40% as allowed in low traffic areas.

J. The parking requirements of Chapter 7 of the LDS which requires one space per unit is exceeded as the planned parking provides for the parking of two cars per unit.

K. There is no proposed signage for the development.

L. The plans show all planned residential structures to be single story buildings, complying with the height limitations set out in the LDS.

11. There is sufficient access to water and sewer to serve the proposed development.

12. The nearest public road is Allen's Creek Road, which is shown on the submitted plan as being accessed by way of a private easement between the development and Allen's Creek Road, but the connection to Allen's Creek Road must be approved by the North Carolina Department of Transportation.

13. The use will not substantially injure the value of adjoining or abutting property, and

will not be detrimental to the use or development of adjacent properties or other neighborhood uses, as it is a residential development to be constructed in a predominantly residential neighborhood. No expert testimony was submitted by opponents to show otherwise.

14. The plan is consistent with the adopted plans and policies of the Town, as it will help fulfill the goal set out in the comprehensive land use plan ("LUP") titled "Waynesville Our Heritage, Our Future, 2020 Land Development Plan", by providing "an attractive range of housing opportunities and neighborhoods for all residents" (LUP 4-6) and by promoting "residential development in accordance with the future land use map concentrating higher density housing where the services and land are available for such development..." (LUP 4-8).

15. The preliminary and final plats shall not be approved before NCDOT approves the connection of the access road to Allen's Creek Road, a stormwater plan is prepared, and preparation of a landscaping plan providing for street trees and plantings between the sidewalk and the street is provided.

BASED UPON THE FOREGOING FINDINGS OF FACT, by a vote of 6 to 1, this Board concludes as a matter of law that the Applicant's major subdivision should be allowed, conditioned on approval of the access street connection to Allen's Creek Road by NC DOT and a landscaping plan showing street trees and plantings between the sidewalks and the streets that comply with the LDS requirements.

IT IS NOW, THEREFORE, ordered that the major subdivision application of Browning Branch, LLC, be and is hereby approved, on the condition that the access street connection to Allen's Creek Road be approved by NC DOT and a landscaping plan showing street trees and plantings between the sidewalks and the streets that comply with the LDS requirements be provided prior to approval of the preliminary plat.

This the 22 day of August, 2018.



Patrick McDowell, Chairman

If you are dissatisfied with this decision of the Board, an appeal may be taken to the Superior Court of Haywood County within 30 days after the date this order is received by you.