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April 27, 2022

TO: TOWN OF BURKITTSVILLE PLANNING & ZONING COMMISSION

FROM: LAWRENCE E. HEFFNER, JR., ESQ., TOWN ATTORNEY

RE: GUYTON FARM SUBDIVISION ZONING APPLICATION 22-01  
REVIEW OF ZONING ADMINISTRATOR'S REPORT

Comments on Recommendations of Zoning Administrator: With respect to the Zoning Administrator's Recommendations concerning conditions to be included on the plat I would have the following comments:

1. I do not believe it necessary for the Applicant to dedicate any road or right-of-way area to the Town as the existing roadway has been present at it's current location for a period of time in excess of twenty years. As such, the Town of Burkittsville has a prescriptive easement to the existing roadway. If the Town of Burkittsville were to accept a dedication of any new area not necessary for a right of way the Town of Burkittsville would then become responsible for the maintenance of that new area.

2. In my considered legal opinion the other recommended conditions set forth by the Zoning Administrator are permissible within the reasonable discretion of the Planning & Zoning Commission.

3. In my considered legal opinion it is within the reasonable discretion of the Planning & Zoning Commission to request the suggested additional information from the applicant suggested by the Zoning Administrator.

Proposal I have no additional comments on the Zoning Administrator's summary of Applicant's proposal.

Procedure: In my considered legal option the Zoning Administrator's summary of the Procedure as set forth in his report propely sets forth procedure under the Town Ordinance's except that I do not believe it necessary to receive commentary from the Frederick County Health Department unless changes are being made to water supply to the property and/or disposal of waste water, septic and/or sewage disposal.

Background: In my considered opinion the Zoning Administrator has adequately set forth the Background information.

Property Description: The applicant's preliminary plat and the Zoning Administrator have adequately set forth the Property Description.

Analysis: In my considered legal opinion the Zoning Administrator has properly set forth the existing Town Ordinances to be considered in approving or disapproving the Applicant's Preliminary Plat.

In my considered legal opinion:

1. It is proper to inquire and consider why the Applicant believes it necessary to create a 50' wide right of way in approving, disapproving, or conditionally approving the preliminary plat.

2. It is proper to inquire as to the necessity of the dedication of a 25' wide right of way in that the Town already has a prescriptive easement. If no new right of way is required as a condition of plat approval the curb, gutter and sidewalk portions of the ordinance may not apply.

3. It is proper to inquire as to the issues raised by the Zoning Administrator with respect to the proposed 12' wide easement across the residential lot.

Zoning Ordinance: In my considered opinion the Zoning Administrator has correctly listed the requirements of the Zoning Ordinance and stated whether the proposed Preliminary Plat is in compliance therewith.

Neighbor Outreach: Concerns and/or objections of neighboring properties should be considered but should not be the sole basis for approving or rejecting the applicant's request.

Sincerely,

*Lawrence E. Heffner, Jr.*