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County urges group to drop opposition to project

By EARL KELLY, Staff Writer

An attorney for the county told a group of homeowners last night that if they truly cared about the environment, they would withdraw their opposition to a developer who wants to build "designer homes" on 22 acres of woodland in Epping Forest.

In an unusual move, Assistant County Attorney James A. Chance told the Board of Appeals that residents' opposition to a request by Elm Street Development for zoning variances to build six homes on seven lots could backfire, causing the company to build as many as 12 houses in the proposed small development, Arrow Cove.

"If you had rather look at a park, buy it and make it a park," Mr. Chance told attorney Anne Fligsten and her clients, who oppose the project.

Mr. Chance said that Elm Street has a "matter of right" under the law to develop 12 lots. But rather than seek this maximum, Elm Street was asking for variances so they could build six new homes. The variances being sought would allow the developer to put part of the roadway and stormwater outfall in the critical area buffer, an environmentally protected area at the headwaters of Saltworks Creek.

"Ms. Fligsten's clients are rolling the dice and if they truly appreciated the consequences, they would withdraw their appeal right now," he said.

He went on to say that if the environmentalists and homeowners defeated Elm Street's request to build six homes, the developer could end up building 12 near the environmentally precarious Saltworks Creek.

"And they could have prevented it all," he said he said of the environmentalists.

Ms. Fligsten said after the hearing that she was upset that a county attorney would chastise her clients.

"In the past, Chance was supportive of the developers, but wasn't . . . so strident and threatening," she said.

Ms. Fligsten said the land would support three homes at most, and Mr. Chance had merely fallen for a tactic being used by Elm Street's attorney, Harry C. Blumenthal.

"If you start at 12, anything less than 12 (looks) better," she said. "We say you start with two, and if you are trying to go for variances, maybe three."

The situation that's giving rise to this fight concerns about 148 tiny, substandard lots platted in 1926, according to a board member.

Elm Street claims that it can consolidate these parcels into 12 lawful lots under the county's antiquated lots law, an argument the county supports.

Opponents say the Critical Areas law applies, and would limit development to one house on 20 acres, with one house being allowed on the remaining 2 acres.

Ms. Fligsten said she didn't know of any similar case where the two laws clashed head-on in this manner, and this case could produce a precedent.

Elm Street claims it is taking a moderate position as a way of avoiding litigation, attorneys in the case said.

Neighbors counter that Elm Street is merely looking to build fewer more exclusive homes.

The Board of Appeals will visit the site tomorrow, and is expected to hear testimony for several more weeks.

At least one board member complained that Elm Street was being too vague in its case, as its exhibits didn't delineate the boundaries of the proposed lots.

"It looks like terra incognita," said board chairman William Moulden.

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