



FREDERICK COUNTY, MARYLAND

STAFF REPORT CONCURRENCE FORM

To: Office of the County Executive

Date: April 19, 2016

Through (Name of Div. Dir.): Office of the County Attorney

From (Name & Division): Wendy Kearney, Ofc. Co. Atty.; Steve Horn, Planning & Permitting Div.

Phone #: x12914; x11151

Staff Report Topic:

Presentation for Signing - Resolution - Trout Run Application for Historic Designation

County Funds Requested/Required? Yes _____ \$ _____ No ☒

Action Requested:

Information Only _____

Requires County Executive's: Approval _____ Signature _____

Please remember to flag all pages that need to be executed by the County Executive.

Staff Report Review:

This staff report has been thoroughly reviewed first by the appropriate divisions/agencies noted on Page 2 followed by those outlined below:

	Initials	Date	Comments Y/N (Page 2)
☐ Budget Office	_____	_____	_____
☐ Finance Division	_____	_____	_____

☒ County Attorney's Office	<u>ghm</u>	<u>4/12/16</u>	<u>no</u>
Refer to County Council?	Yes <u>X</u>	No _____	(If yes, requires County Executive's approval.)

☐ Chief Administrative Officer _____

☐ County Executive	_____	_____	_____
Approval to forward to Council?	Yes _____	No _____	

For Office Use Only

Council Meeting Date: 4-19-16 Presenter: Wendy Kearney

Public Hearing? Yes _____ No ☒

Requires Council President's Signature? Yes ☒ No _____

Other Reviewing Divisions/Agencies:

(Click to place a check mark in the following appropriate spaces.)

	<u>Initials</u>	<u>Date</u>	<u>Comments Y/N</u> <u>(noted below)</u>
☐ Animal Control			
☐ Citizens Services			
☒ Community Development	<u>Self</u>	<u>4.12.16</u>	<u>no</u>
☐ Emergency Management			
☐ Fire & Rescue Services			
☐ Health Services			
☐ Human Resources			
☐ Interagency Information Technologies			
☐ Internal Audit			
☐ Parks & Recreation			
☐ Public Works			
☐ Utilities & Solid Waste Management			
☐ Volunteer Fire & Rescue Services			
☒ Other: <u>John Mathias, County Attorney</u>	<u>(See cover page)</u>		
☐ Other: _____			
☐ Other: _____			

Elected Officials or Independent Agencies:

	<u>Initials</u>	<u>Date</u>	<u>Comments Y/N</u> <u>(noted below)</u>
☐ Board of Education			
☐ Board of Elections			
☐ Board of License Commissioners			
☐ Frederick Community College			
☐ Frederick County Public Libraries			
☐ Sheriff's Office			
☐ Social Services			
☐ State's Attorney's Office			

Comments:

1. <u>From:</u> _____	<u>Date:</u> _____
2. <u>From:</u> _____	<u>Date:</u> _____
3. <u>From:</u> _____	<u>Date:</u> _____
4. <u>From:</u> _____	<u>Date:</u> _____



FREDERICK COUNTY GOVERNMENT

OFFICE OF THE COUNTY ATTORNEY

Jan H. Gardner
County Executive

John S. Mathias, County Attorney
Michael J. Chomel, Senior Assistant County Attorney
Linda B. Thall, Senior Assistant County Attorney
Wendy S. Kearney, Senior Assistant County Attorney
Richard J. McCain, Assistant County Attorney
Kathy L. Mitchell, Assistant County Attorney

Date: April 12, 2016
To: County Council
Through: John Mathias, County Attorney
From: Wendy S. Kearney, Sr. Asst. County Attorney 
RE: Presentation for signing - Resolution – Trout Run Application for Historic Designation

Background:

Following public hearings on the application for inclusion on the County Register of Historic Places, the motion to approve failed by a 6-1 vote. The applicant appealed the decisions to the Circuit Court which resulted in the Court remanding the matter to the Council for the purpose of providing written findings and conclusions.

Recommendation:

Attached is a Resolution containing findings and the decision for approval and adoption by the Council and execution by the Council Members who voted on the prevailing side of the original Motion.

THE EFFECTIVE DATE OF THE RESOLUTION IS _____, 2016

RESOLUTION NO. _____

RE: Application for Frederick County Register of Historic Places –
CR -#14 -03; DOE #13-01 –Trout Run Property

FINDINGS AND DECISION

Pursuant to § 1-23-6, of the Frederick County Code, the governing body of Frederick County, Maryland, is authorized to designate properties or districts for inclusion on the Frederick County Register of Historic Places following a public hearing.

On July 23, 2013, West Coast Property Investments, Inc.,¹ (“Applicant”) submitted a “County Register Nomination Form” requesting that two parcels comprising approximately 39.9 acres located at 12929 Catoctin Hollow Road (“Trout Run,” “site” or “property”) be included on the Frederick County Register of Historic Places. The property is zoned Resource Conservation.

On the County Register Nomination Form, the Applicant placed check marks in specific boxes on the form to identify the following “Criteria” to be used to evaluate its application:

- Exemplifies cultural, economic, social, political, or historic heritage of county and its communities;
- Embodies the distinctive characteristics of a type, period, or method of construction or architecture; and
- Represents work of master craftsman, architect, or builder.

After submitting its County Register Nomination Form, the Applicant retained the services of a local “cultural resource management and preservation planning firm” to perform research on and prepare documentation to support the Trout Run site County Register application.

¹ It appears that at some point during the application process the contract to purchase the property was assigned to Social Betterment Properties International.

On August 14, 2013, the Historic Preservation Commission (a body charged with making recommendations to the governing body on County Register applications but without final decision making authority) made a preliminary recommendation that the property would be “eligible” for a historic designation.

After receipt of the Historic Preservation Commission’s (“HPC”) preliminary recommendation that the property would be “eligible” for a historic designation, the Applicant proceeded through the process on the Special Exception application it had filed on July 8, 2013, prior to its filing of the County Register Nomination Form.

Under §1-19-8.600 of the Zoning Ordinance, an existing historic structure or site located on any zoning district, may be converted for certain specified uses if a special exception is granted by the Board of Appeals, and the historic structure or site is listed on the County’s Register of Historic Places.

The special exception application was processed and a hearing held by the Board of Appeals on August 22, 2013. By written decision dated October 1, 2013 the Board of Appeals approved the Special Exception to operate a “group home” on the Trout Run property, subject to several conditions. The special exception can only take effect if the County Council places the historic structure or site on the Frederick County Register of Historic Places. §1-19-8.600.

Approximately a full year after receiving special exception approval from the Board of Appeals, the Applicant resubmitted a County Register Nomination Form and requested that the application be routed to the County Council for final decision on whether the Trout Run property would be added to the Frederick County Register of Historic Places.

After the HPC affirmed its prior recommendation of “eligibility,” the matter was placed on the County Council’s April 7, 2015, agenda for a public hearing. At the conclusion of its April 7th hearing, the Council decided to postpone its decision. The record was not closed.

A second hearing was held on April 21, 2015, but no decision was made. During the Council's June 2, 2015 meeting, a motion to approve the application to place the property on the Frederick County Register of Historic Places failed by a vote of 6-1.

During the initial Staff Presentation on April 7th by Mr. Denis Superczynski, Principal Planner with the County's Division of Planning and Permitting, and the Applicant's presentation, Council Member Jerry Donald raised the question of whether the property was truly "historic" or just "old."

Although the Applicant submitted supporting documentation asserting that "Trout Run is a rare surviving example of a private residential camp developed in the Catoctin Mountains in the early twentieth century," during testimony the Applicant's witness, Ms. Katherine Kuranda, acknowledged that there were a number of these types of camps and a number of similar guest houses and cabins developed throughout the Catoctin Mountains.

Ms. Kuranda could not identify the architect for the camp's design, and no facts were presented to support the premise that the property "represents work of master craftsman, architect, or builder," another of the criteria Applicant selected as justification in its application.

With respect to the "cultural, economic, social, political or historic heritage of the County" Ms. Kuranda indicated there was only 'anecdotal' information as to U.S. President Herbert Hoover visiting the site, and the owners at that time were not local residents or local business owners.

The Applicant's architect, Mr. Michael Proffitt, AIA, presented pictures and drawings of the buildings and explained the details and nature of the repairs the Applicant proposed be made to some structures. Mr. Proffitt also submitted written "rebuttal" information on behalf of the Applicant which acknowledged that prior repairs and improvements to structures had been made

using modern materials and methods, including non-original materials for roofs and gutters, and the installation of modern skylights on the Aspen building, one of the older structures.

There was ample information in the record, and the Council finds that several of the structures on the property were constructed in 1960's (the Yugoslav House) or 1970's (the A-frame structure). The site also contains a modern swimming pool and a tennis court. Mr. William Renner, a Thurmont nonagenarian, submitted his firsthand account, in writing, of happenings on the property, including that the permanent buildings on the property were built after 1945, which the Council finds to be credible evidence of the age of the structures located on the property.

The Applicant also presented testimony and documentation about Narconon, the proffered future user/occupant of the site, and several individuals from outside of Maryland spoke in favor of the Applicant's proposed use as a drug and alcohol rehabilitation center and the success of the Applicant's proposed user's program. Roughly equal numbers of people testified in favor of and against the Applicant's proposed use during the April 21st hearing. As it has been advised by its Attorney, the Council did not consider any of the testimony or documents related to the "Narconon" or "Scientology" entities or programs, because it was not relevant to making a decision on whether the Applicant had established that the site met the selected criteria for placement on the County Register of Historic Places.

The pertinent section of the Frederick County Code § 1-23-6(A) merely authorizes but does not require the governing body to grant a historic designation: "[t]he county governing body may designate boundaries for landmarks, sites, structures, or districts of historic, archeological, or architectural significance after a public hearing thereon, consistent with adopted criteria for such designation." The use of the term "may" in the statute indicates that decisions by the

Council whether or not to designate sites or structures for placement on the County Register is discretionary and not mandatory.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COUNCIL:

The Council hereby incorporates by reference the findings set forth above.

Upon consideration of the County Register Nomination Form and its supporting information, the relevant testimony received during the hearings, as well as the relevant documentation in the record, the County Council finds that:

The Applicant has failed to establish in the record sufficient factual or persuasive evidence from which the Council is able to conclude that the Trout Run site:

- Exemplifies cultural, economic, social, political, or historic heritage of county and its communities;
- Embodies the distinctive characteristics of a type, period, or method of construction or architecture; or
- Represents work of master craftsman, architect, or builder.

The Applicant's witness, Ms. Kuranda, testified there was only "anecdotal" information that U.S. President Herbert Hoover "may have stayed there overnight or been entertained there...." The Applicant failed to provide sufficient factual or persuasive evidence that the site was significant in terms of the cultural, social, political or historic heritage of Frederick County.

The site appears to have been used in the past as a private fishing camp, however, Petitioner's witness, Ms. Kuranda, stated "there were a great number of these types of camps that were developed through the Catoctins," and therefore the Council does not find that site is a "rare surviving example of a private residential camp" as asserted in the Applicant's supporting documentation.

The Council finds that many similar structures and camps exist in the Frederick area, for example, Camp David, Gambrill Tea Room, Mar-Lu-Ridge Summer Camp, Camp Baker as well as several Adirondack style structures in the Braddock Heights area.

Accordingly, the Applicant failed to provide sufficient factual or persuasive evidence to establish that the site “embodies the distinctive characteristics of a type, period, or method of construction or architecture.”

In addition, the Council finds that the continued development of the property by the addition of several new buildings, tennis courts and a swimming pool, throughout the years, coupled with the significant number of repairs and improvements made to some older structures utilizing modern materials and methods has eroded any historical integrity which may have existed.

The Applicant’s failure to provide sufficient factual or persuasive evidence to identify any architect of the camp’s design, any craftsman, or any builder associated with the improvements, results in the Council finding that the site does not represent the work of a master craftsman, architect, or builder, nor meet the third criteria selected by the Applicant.

Reservations about whether the site and structures are “historic” existed from early in the initial hearing and continued to be discussed throughout the hearing process. The Council did not base its findings or decision on any of the testimony or documents relating to Narconon or Scientology in making its decision on whether to place the property on the Register of Historic Places.

The Council did not base these findings and decision on religion or the religious exercise of any individual, group or person. The Council did not base this decision on a connection or relationship, if any, between the Applicant and any church or religious organization or the religious exercise of any individual, group or person.

Relying upon the testimony and documents in the record (all documents and emails received by the Council were provided to the Applicant) relating to the property and the historic criteria selected by the Applicant, the Council finds that the Applicant failed to meet the burden of proof and failed to persuade the Council that the site and structures satisfied the selected criteria for placement on the Frederick County Register of Historic Places.

In addition and alternatively, even assuming for purposes of argument, that the Applicant met its burden of proof to establish the selected criteria, the Council declines to exercise its discretion to designate the property for placement on the Frederick County Register of Historic Places.

For the reasons set forth herein the Applicant's request to have its property placed on the Frederick County Register of Historic Places is hereby denied.

The undersigned hereby certify that this Resolution was approved and adopted as of the ____ day of _____, 2016.

ATTEST:

COUNTY COUNCIL OF
FREDERICK COUNTY, MARYLAND

Ragen L. Cherney
Council Chief of Staff

By: _____
Bud Otis, President

M.C. Keegan-Ayer, Vice President

Tony Chmelik, Treasurer

Kirby Delauter

Jerry Donald

Jessica Fitzwater

Council Member Shreve voted in favor of the motion to place the site on the Frederick County Register of Historic Places.