Minutes of 3/5/2014 Planning Board Meeting [adopted]

Russ W O'Melia on 05/08/2014 at 10:39 AM
Category: Planning Board Minutes

MINUTES

Wake County Planning Board
Wednesday, March 5, 2014
1:30 P.M., Room 2700
Wake County Justice Center
301 S. McDowell St.
Raleigh, N.C.

Members Present (8): Mr. Matt Martin, Ms. Tara Kreider, Ms. Michelle Muir, Ms. Nancy Szabados, Mr. Michael Birch, Mr. Douglas Ball, Mr. Matthew Brubaker, and Mr. Brian LiVecchi

Members Not Present (2): Mr. Joseph Springer and Mr. Dale Bouldin

Staff Members Present (10): Mr. Steven Finn (Land Development Administrator), Ms. Sharon Peterson (Long Range Planning Administrator), Mr. Tim Maloney (Planning, Development, and Inspections Director), Mr. Keith Lankford (Planner III), Mr. Bryan Coates (Planner III), Mr. Adam Cook (Planner I), Ms. Stacy Harper (Planner II), Ms. Kathy Williams (Plans and Permits Technician), Ms. Jill Perkins (Environmental Services Team Leader), and Mr. Russ O'Melia (Clerk to the Board)

County Attorneys Present (1): Mr. Kenneth Murphy

1. Call to Order – Mr. Martin called the meeting to order at 1:32 p.m.

2. Petitions and Amendments – There were none.

3. Oath of Office – Mr. O'Melia delivered the oath of office to newly appointed member, Mr. Brian LiVecchi.

4. Approval of Minutes from the February 5, 2014 Planning Board Meeting –

Mr. Birch made a motion to approve the minutes. Mr. Ball seconded the motion. The minutes were approved unanimously.

5. ZP-880-13: To rezone 2.98 acres, located at the southwestern corner of the intersection of NC 97 and Marshburn Road, from Heavy Commercial (HC) and Residential-40 (R-40) to Conditional Use-Heavy Commercial (CU-HC)

Mr. Lankford presented the staff report to the board.

Request: To rezone 2.98 acres, located at the southwestern corner of the intersection of NC 97 and Marshburn Road, from Heavy Commercial (HC) and Residential-40 (R-40) to Conditional Use-Heavy Commercial (CU-HC), to allow for one or more of the following nonresidential uses:

a) Business, trade and technical schools
b) Cultural exhibits and libraries

c) Day care, including child care home, child care center and adult day care
d) Lodge or private club
e) Public recreation/assembly buildings
f) Religious assembly
g) Veterinarian
h) Animal service, including veterinary and kennel or animal shelter
i) Eating and drinking establishments with or without drive through windows, excluding bars and nightclubs, except to the extent a bar is included as a part of a restaurant
j) Financial services, including free-standing and automated teller machines and drive-through facilities, but excluding pay-day loan sources, currency exchanges and pawnshops
k) Funeral home
l) Gas station
m) Hotel/motel
n) Offices including, without limitation, offices for businesses, medical offices, clinics and labs
o) Parking, commercial
p) Recreation, and entertainment, indoor, including the following: bowling alley, billiard halls, physical fitness centers, indoor shooting ranges and day camps
q) Day camp
r) Neighborhood/convenience-oriented retail (with or without gas sales)
s) Outdoor sales/service including outdoor displays and/or storage
t) Other retail sales (other than Neighborhood retail sales)
u) Self-service storage
v) Vehicle repair/service, including, without limitation, car washes, oil change services, impound yards, towing services and storage of motor vehicles
w) Contractor's office
x) Vehicle sales, leasing or rental, including sales of motor vehicles, boats and trailers (but not including mobile homes)
y) Warehousing limited to warehousing of motor vehicles, boats and trailers (but not including mobile homes)
z) Wholesale trade limited to wholesale trade of motor vehicles, boats and trailers (but not including mobile homes)
aa) TV, movie or video filming and production activities, including, without limitation, creation of sets, staging, dramatic representations, filming, editing and accessory uses related thereto

Note: A conditional use rezoning means that the petitioner has offered certain conditions as part of the rezoning petition (e.g.—limiting the number and types of uses that would otherwise be permissible) in an attempt to mitigate the potential for negative impacts of the rezoning and subsequent development upon the surrounding properties.

Location: The property is located at the southwestern corner of NC 97 and Marshburn Road (2601 NC 97). The road changes name from Marshburn Road to Lizard Lick Road on the northern side of NC 97

Present Zoning: Heavy Commercial (HC) and Residential-40 (R-40)

Proposed Zoning: Conditional Use-Heavy Commercial (CU-HC)

Existing Land Uses: vehicle sales, vehicle towing service, television/film production

Petitioner: Isabel Worthy Mattox

Design Firm: None

Owner: Ronnie Lee and Judith Ann Shirley

PINs #: 1785-52-1551

Surrounding Land Uses and Zoning Districts

Direction	Land Use	Zoning
North	NC 97, office, retail, vacant cleared	Heavy Commercial (HC)
East	Marshburn Road, retail with gas sales, vacant wooded	Conditional Use-General Business (CU-GB) Residential 40 (R-40)
South	Vacant wooded	Residential-40 (R-40)
West	Vacant wooded	Residential-40 (R-40)

Land Use/Zoning History

- 1976: General zoning was first applied to the eastern portion of Wake County.
- 2000: Southeast Area Land Use Plan was adopted and designated the surrounding area for moderately high-density residential uses of three to six dwelling units per acre, but showed the existing commercial lot, as well as several others around this intersection, as being located within a symbol-based Neighborhood Activity Center that was appropriate for neighborhood-scale nonresidential uses.
- 2009: Symbol-based activity center was converted to a parcel-based activity center (the existing commercial lot was included in both the 2000 and 2009 activity centers).

Wake County Land Use Plan
The Southeast Area Land Use Plan map designates this area south of NC 97 as Wendell's Long-Range Urban Services Area (LRUSA) and shows the surrounding area for moderately high-density residential uses of three to six dwelling units per acre. The corner lot where these existing commercial uses are located, and several other lots around the intersection of NC 97 and Marshburn Road/Lizard Lick Road are located within an 18.31-acre Neighborhood Activity Center (NAC). The NAC allows for a variety of neighborhood-scale nonresidential uses. The existing commercial uses on the subject property include vehicle sales, vehicle towing service and television filming/production and related accessory uses.

The purpose of this rezoning petition is to rezone the residentially zoned (i.e.—R-40) portion of this lot to Conditional Use-Heavy Commercial (CU-HC) and to bring the entire property (including the portion already zoned HC) under the same zoning conditions. A portion of the subject property is already zoned straight Heavy Commercial (i.e.—no conditions) and the petitioner wishes to rezone this portion of the lot, as well as the residential portion, so that the entire lot is subject to the same zoning conditions. Those conditions include the future possibility of redevelopment to allow for a variety of nonresidential uses (see petitioner's condition # 1). Having the entire lot under the same zoning designation and subject to the same zoning conditions would aid development, or redevelopment, of the subject property.

The petitioner has indicated that they have no plans for development or redevelopment, at this time, other than to reallocate the existing uses throughout the entire lot (i.e.—onto the residentially zoned portion of the lot). The petitioner's conditions shows the limitation on

future uses on this property if and when development, or redevelopment (including the reallocation or expansion of the existing uses throughout the entire lot), was to occur.

The Neighborhood Activity Center (NAC) is appropriate for Heavy Commercial zoning and small-scale, neighborhood-oriented nonresidential uses. Any future use on this property will have to be determined to be consistent with the Land Use Plan via a site-specific development plan before it could be approved. In preparing the rezoning conditions the petitioner has voluntarily excluded 31 possible uses that would otherwise be available for consideration of development. Many of these 31 uses may not have been viable given various constraints upon the land (both regulatory and physical).

In accordance with the North Carolina General Statutes and the Wake County Unified Development Ordinance, any proposed rezoning should be consistent with the Wake County Land Use Plan. The planning staff has determined that the rezoning petition for Conditional Use-Heavy Commercial zoning and the proposed range of uses would be consistent with the applicable Southeast Area Land Use Plan.

Required Statement of Consistency with the Land Use Plan and Public Interest
North Carolina General Statute 153A-341 and Section 19-20-6 (E) of the Wake County Unified Development Ordinance require that the Planning Board provide the Board of Commissioners with a statement of whether or not the proposed rezoning petition is consistent with the Land Use Plan and otherwise advances the public health, safety, and general welfare. In making a determination of whether or not to approve the rezoning petition, the Board of Commissioners must adopt a statement describing whether or not the proposed petition is consistent with the Land Use Plan and otherwise advances the public health, safety, and general welfare, or why it chose not to follow the Land Use Plan and how that decision is reasonable and in the public interest--if that is the case.

The petitioner has provided several statements indicating (1) why they believe that the proposed rezoning and subsequent use is a public necessity, and (2) explaining its impact on the surrounding neighborhood and adjacent properties. They have also provided statements of (3) how rezoning complies with the Land Use Plan; and (4) how rezoning benefits the adjacent and surrounding properties and otherwise advances the public health, safety and general welfare. These statements are included in the attached petition package.

Input from the Town of Wendell
As part of the Wake County planning staff's review of any rezoning request, a copy of the petition is forwarded to the relevant municipality who's Urban Services Area that the subject property lies within. The subject property is classified as the Town of Wendell's Long-Range Urban Service Area (LRUSA).

Wendell's planning staff has returned comments to the Wake County planning staff indicating that they have no opposition to the proposed rezoning.

Input from Neighboring Property Owners
As per our normal process, the planning staff mailed out letters to all property owners within 1,000 feet of the subject property and also posted a public meeting notice sign on both NC 97 and Marshburn Road. The planning staff has not received any phone calls or letters in response to those efforts to solicit neighborhood feedback. The property owners and the petitioner held a neighborhood informational meeting on Monday, November 18, 2013 to discuss the requested rezoning.

Two-Step Conditional Use Rezoning Process
The Wake County Unified Development Ordinance (UDO) establishes a two-step conditional use

rezoning process. The first step is to obtain a conditional use rezoning from the Board of Commissioners. The second step requires that the Wake County Planning Board review and process a Planned Compliance Permit (PCP) for most uses (although some commercial uses could be approved administratively by staff if they were less than 2,500 square feet in size). Any commercial use with gas sales, regardless of building size, would require a PCP.

The petitioner has indicated that they have no current plans for redevelopment of this site and that no specific change of use is being considered for this property; rather the petitioner has provided a range of possible uses to accommodate future redevelopment of the subject property if and when the need were to arise. Any rezoning decision must be made based upon all possible uses of the subject property as listed in the petitioner's condition # 1.

The Planning Board acts as the permit issuing authority for uses requiring a PCP (as per Section 19-22 of the UDO). The PCP process requires the petitioner to submit a detailed site plan to the planning staff and Planning Board to demonstrate that the proposed project conforms with all regulations and standards generally applicable within the zoning district and specifically applicable to the particular type of PCP or class of PCPs. The planning staff and Planning Board will also ensure that any rezoning conditions are incorporated into the site plan. The Planning Board may impose additional "reasonable" conditions to address any impediments to the board reaching the required findings that are necessary for approval of the PCP.

A General Use Permit would be processed administratively by the planning staff for commercial uses of less than 2,500 square feet (except for those with gas sales) after demonstration of full compliance with all applicable regulations and standards.

Utilities
The subject property is classified as the Town of Wendell's Long-Range Urban Services Area (LRUSA). The Wake County Land Use Plan defines LRUSAs as areas within the county's jurisdiction that are intended to be urbanized, but probably not within the next ten years. There are no municipal sewer lines currently within this area, and none are projected to be extended into this area within the foreseeable future. There is an existing water line in the road right-of-way, but the existing business is not connected to that water line. There is also an existing fire hydrant at the northwestern corner of the intersection of NC 97 and Lizard Lick Road. Development on this property will be supported by an individual well and septic system unless and until municipal utility connections are provided by the Town of Wendell (although the property owner could pursue connection to the water line at any time).

Environmental Issues
There are no Federal Emergency Management Agency (FEMA) regulatory floodplains, Wake County flood hazard soils, wetlands, or drainageways on this property.

Transportation Plan
The right-of-way of NC 97, which is classified as a major thoroughfare in the Wake County Transportation Plan, already meets the 100-foot width that is prescribed in the plan. No additional right-of-way dedication is required from the subject property's frontage along NC 97. The NC 97 cross-section is proposed to be widened from its existing two-lane 21-foot roadway to a 36-foot two-lane roadway with a center turn lane in proximity to intersections.

The right-of-way of Marshburn Road, which is classified as a major thoroughfare in the Wake County Transportation Plan, currently has a 70-foot width. Ten (10) feet of additional right-of-way may be required from this property owner, to increase the right-of-way to 80 feet as prescribed in the Transportation Plan. The property owner across Marshburn Road has already provided ten feet of right-of-way on their side of the road when they made some site modifications several years ago. The Marshburn Road roadway cross-section is proposed to be

widened from its existing two-lane 22-foot roadway to a 36-foot two-lane roadway with a center turn lane in proximity to intersections.

Any future development or redevelopment on this site will be required to comply with the requirements of the Wake County Unified Development Ordinance related to the provision of transportation facilities identified on the Wake County Transportation Plan. As a general rule driveway connections should be located as far from the intersection as possible. Any roadway improvements and/or driveway permits will have to be coordinated with, and approved by, the North Carolina Department of Transportation (NCDOT).

Traffic Volumes
The most recently available NCDOT average annual daily traffic (AADT) counts for this area are from 2011. The 2011 AADT figure for NC 97 was 10,000 vehicles per day taken just east of its intersection with Marshburn/Lizard Lick Road. The 2011 AADT figure for Marshburn/Lizard Lick Road, was 6,300 vehicles per day at a point just south of the on and off ramps for US 264 (approximately one-third of a mile to the north of the subject property).

Both NC 97 and Marshburn/Lizard Lick Road have a standard roadway design capacity of 12,000 vehicles per day. Both roads have sufficient capacity remaining, with NC 97 operating at 83.3% of its design capacity and Marshburn/Lizard Lick Road operating at only 52.5% of its design capacity.

Accident Report
The North Carolina Department of Transportation's Traffic Engineering Accident Analysis System report for the 3-year period from July 1, 2010 through June 30, 2013 indicated that there have been 18 accidents in the 0.85-mile section of NC 97 between Vista Drive/Fox Run Drive and Pitty Pats Path. Nine of those 18 accidents occurred at, or in close proximity to, the Marshburn/Lizard Lick Road intersection. Five of the 18 accidents involved minor injuries, one resulted in moderate injuries, and 12 were property damage only.

The corresponding accident report for the 0.77-mile section of Marshburn/Lizard Lick Road from Buck Stage Trail to Bear Lane, indicated that there had been 16 accidents in the same 3-year period. However, six of those 16 accidents were also captured by the report for NC 97. Of the ten remaining accidents, one involved moderate injuries and the other nine were property damage only. Five of the ten accidents occurred within 50 or so feet on either side of the intersection, but were reported solely as a Marshburn/Lizard Lick Road accident (i.e.—not as an intersection accident).

Traffic Impact Analysis
A Traffic Impact Analysis (TIA) is required by the Wake County Unified Development Ordinance (UDO), for any development, or redevelopment, that generates more than 1,000 trips per day, or more than 100 peak-hour trips, as determined by the Institute of Transportation Engineers' Trip Generation manual for specific proposed uses. Any required TIA must be submitted during the site plan approval process—if and when a site plan is submitted. The petitioner has indicated that they have no plans for redevelopment at this time—just a proposed reallocation of the existing uses within the existing residentially zoned portion of the subject property. The petitioner will be required by the UDO to install any necessary roadway improvements that may be recommended by the findings of the TIA and/or the County's consulting engineer who reviews the TIA submittals. All roadway improvements are subject to coordination with, and approval by, NCDOT.

Planning Staff Findings

1. The proposed Conditional Use-Heavy Commercial rezoning and the proposed uses are

consistent with the Land Use Plan's Neighborhood Activity Center designation.

2. The traffic volumes and accident reports from the North Carolina Department of Transportation do not indicate any significant traffic issues for the relevant roadways.
3. A detailed site plan, or subdivision plan, must be approved by the appropriate Wake County entity prior to future development or redevelopment.
4. The Town of Wendell's planning staff has no objections to the rezoning petition.
5. The planning staff has received no comments from the surrounding property owners.

Conditions Proposed by the Petitioner

1. The following uses shall be permitted on the subject property, subject to Planned Compliance Permit requirements where applicable:

   a) Business, trade and technical schools
   b) Cultural exhibits and libraries
   c) Day care, including child care home, child care center and adult day care
   d) Lodge or private club
   e) Public recreation/assembly buildings
   f) Religious assembly
   g) Veterinary
   h) Animal service, including veterinary and kennel or animal shelter
   i) Eating and drinking establishments with or without drive through windows, excluding bars and nightclubs, except to the extent a bar is included as a part of a restaurant
   j) Financial services, including free-standing and automated teller machines and drive-through facilities, but excluding pay-day loan sources, currency exchanges and pawnshops
   k) Funeral home
   l) Gas station
   m) Hotel/motel
   n) Offices including, without limitation, offices for businesses, medical offices, clinics and labs
   o) Parking, commercial
   p) Recreation, and entertainment, indoor, including the following: bowling alley, billiard halls, physical fitness centers, indoor shooting ranges and day camps
   q) Day camp
   r) Neighborhood/convenience-oriented retail (with or without gas sales)
   s) Outdoor sales/service including outdoor displays and/or storage
   t) Other retail sales (other than Neighborhood retail sales)
   u) Self-service storage
   v) Vehicle repair/service, including, without limitation, car washes, oil change services, impound yards, towing services and storage of motor vehicles
   w) Contractor's office
   x) Vehicle sales, leasing or rental, including sales of motor vehicles, boats and trailers (but not including mobile homes)
   y) Warehousing limited to warehousing of motor vehicles, boats and trailers (but not including mobile homes)
   z) Wholesale trade limited to wholesale trade of motor vehicles, boats and trailers (but not including mobile homes)
   aa) TV, movie or video filming and production activities, including, without limitation, creation of sets, staging, dramatic representations, filming, editing and accessory uses related thereto

2. Flush mounted lighting fixtures, rather than drop-down fixtures, shall be used in any canopy installed over gasoline pumps.

3. In the event that a self-storage facility is developed on the subject property, direct entrances to individual storage units shall be screened from view from the public right-of-way

Uses Excluded from Future Consideration by the Petitioner

The petitioner has voluntarily excluded the following uses from being considered as possible future uses on the subject property:

1. Upper-story residence
2. Botanical garden/arboretum
3. All other public parks recreation (except as noted above)
4. Parking, Park and Ride
5. Governmental
6. Body art service
7. Bars and nightclubs
8. Pawnshop, currency exchange or payday loan
9. Campgrounds and recreational vehicle parks
10. Rooming or boarding house
11. Conference center/retreat house
12. Firearm/archery ranges and clubs
13. Equestrian facilities/riding clubs/stables
14. Fishing club
15. Golf course
16. Swimming pool/tennis club
17. Wildlife/game preserve
18. All other outdoor recreation/entertainment (except as noted above)
19. Mobile Home Sales
20. Sexually oriented businesses
21. Artisan manufacturing
22. Limited/Light manufacturing
23. Land-clearing and inert debris landfills, C&D landfills
24. Recycling collection (household collection only)
25. Sanitary solid waste landfill (municipal)
26. All other waste-related (except as noted above)
27. Forestry
28. Special Events
29. Static Transformer Stations, Radio/TV and Towers, Relay Station
30. Telecommunication Facilities—freestanding and co-located
31. Water towers—stand alone or part of a subdivision

The uses listed above do not indicate that they were viable uses for the subject property in regards to such factors as lot area, the availability of utilities, and compliance with all regulatory requirements or market demand. Rather this list merely indicates that in the absence of the petitioner's conditions, these uses would have been available for consideration.

Ms. Muir asked if there is a conflict by including indoor shooting ranges as a permitted use but excluding firearms clubs. Mr. Lankford answered that firearms clubs is part of the use category of outdoor recreational uses while indoor shooting ranges is part of the use category of indoor recreational uses.

Mr. Brubaker asked about the buffers for the site. Mr. Lankford said that he could not answer that without a formal site plan since factors such as impervious surface coverage dictate what the buffers would be. However, he estimated that the buffers would most likely be 60-80 feet on the western and southern border. A six-foot-tall opaque fence would provide a 25% credit to the buffer.

Mr. Ball asked about the conditions proposed by the applicant. Mr. Lankford said that the list of proposed excluded uses are currently permitted on the Heavy Commercial portion of the property. Mr. Ball asked what the acreage on the site for each district is. Mr. LiVecchi estimated that the R-40 portion is 2 acres and the HC portion is 1 acre.

Ms. Isabel Mattox, P.O. Box 946, Raleigh, NC came forward to address the board representing the landowner. Utilizing an aerial map, Ms. Mattox described the property and surrounding uses. The applicant wants to spread the Heavy Commercial zoning to the entire site; this would be consistent with the Land Use Plan since the site is part of a neighborhood activity center which calls for a mix of uses. On the property, there is a car sales lot and Lizard Lick Towing. Past infractions of the county's ordinance have been rectified by either removing buildings or bringing them up to code. Spreading the Heavy Commercial zoning through the whole site would allow cars to be parked on the entire lot which would alleviate the issue of cars being parked in the right-of-way. The county ask that this case be brought to fix various compliance issues. Ms. Mattox said that they are shrinking down the entitlement on the currently HC-zoned portion in exchange for having the whole parcel zoned Heavy Commercial. The applicant has proposed to remove uses that would have a negative impact on the Lizard Lick area. The Town of Wendell had no objection to the case. There was no objection to the petition at the neighborhood meeting.

Mr. Ronnie Shirley said that he does not intend to put buildings in the area that is currently zoned R-40. He said that he wants nothing on the property that would be detrimental to the community.

Mr. Martin asked about video gaming parlors. Ms. Mattox said that video gaming parlors was not excluded because it is an illegal use.

Mr. Birch stated that the request is consistent with the Land Use Plan: the activity center designation, the list of prohibited uses, the lighting conditions, and the screening of entrances for the self-storage facility all make the case more reasonable and in the public interest. Mr. Birch made a motion that the Planning Board recommends approval of the rezoning petition, ZP-880-13, as presented, and finds that the requested zoning map amendment is consistent with the Land Use Plan and otherwise advances the public health, safety, and welfare, as required by UDO Section 19-21-6 (C). Mr. Brubaker seconded the motion. By a vote of 8-0, the motion passed.

6. Reports – There were no reports.

7. Planning, Development, and Inspections Report – Ms. Peterson reminded the board about the Hazard Mitigation survey available online. Staff reported to the Board of

Commissioners at their retreat regarding demographic updates. Ms. Peterson notified the board about upcoming events, including the Keeping the Farm workshop on March 12 and a Meeting the Managers workshop on March 26.

Mr. Finn reported that subdivision activity has been high. The Board of Commissioners will consider two ordinance amendments on March 17 related to temporary political signs and Board of Adjustment-related changes. Mr. Finn said that he will be on a panel discussing the RDU airport.

Mr. Maloney updated the board regarding the new planning and permitting software that was approved by the Board of Commissioners. He invited the board members to a training session for Board of Adjustment members on March 18. The Board of Commissioners committed to a work session related to transit later in the year.

8. Chairman's Report – Mr. Martin reported that the board will elect a chair and vice-chair at its next meeting.

9. Adjournment – With no other business, the meeting was adjourned at 2:31 p.m.