

05.26.09 Planning Board minutes
Approved 06.22.09

VILLAGE OF WESLEY CHAPEL
PLANNING BOARD MEETING MINUTES
May 26, 2009, 7:00 PM

The Planning Board of the Village of Wesley Chapel, North Carolina, met in the Fellowship Hall of the Wesley Chapel United Methodist Church at 120 Potter Road South, Wesley Chapel, North Carolina, with Chairman John Grexa presiding.

Present: Chairman John Grexa, Members- Chuck Adams, Ray Davis, Stephen Keeney; Alternates - Sandi Bush, Shirley Wilson, Bill Fairman (sat as regular member)

Absent: Members Jimmy Allison

Others Present: Cheryl Bennett, Clerk; Joshua Langen, Planning/Zoning Administrator

Citizens: Carol Mullis

The meeting was called to order at 7:00 pm; a quorum was present.

1. Pledge and Invocation

Grexa led the pledge of allegiance, and Adams did the invocation.

2. Additions, Deletions and Approval of Agenda

There was concern regarding item 4 since members just received the information today and didn't have time to review it. Fairman made a motion to approve the agenda with Item 4. and Item 6. switching places. Adams seconded the motion.

The motion passed unanimously.

Fairman made a motion to postpone the Item on Review of Residential Stormwater/Flood Protection Ordinance Amendments to the Tuesday, June 2, 2009 meeting and add a discussion on parks. Keeney seconded the motion.

The motion passed unanimously.

Davis made a motion to approve the agenda as amended above. Adams seconded the motion.

The motion passed unanimously.

3. Approval of Minutes

Adams made a motion to approve the April 27, 2009 minutes, with a correction on Item 8 that it was the Hillbilly store in Waxhaw, not in Charlotte. Davis seconded the motion.

The motion passed unanimously.

4. Discussion of **Section 411. Homeowners' Associations Required** of the Village of Wesley Chapel Subdivision Ordinance

Adams asked if we know if it is law to require HOA's. Langen said the state doesn't require them but our ordinance does. Adams suggested if a subdivision doesn't have a lot of common ground to be maintained, or a pool or playground, it might not need to have an HOA. Fairman suggested it be up to the builder; you can't allow individual

homeowners to opt out, but he didn't think we should force subdivisions to have an HOA. Grexa asked why this was in our ordinance, it was put in 01/10/05. Adams said the ordinance says a new major subdivision (over 10 homes) must have an HOA. Keeney said isn't our concern not that HOA's exist, but that they have overreaching powers to remove property from an individual. Adams said he has a concern with the power to foreclose- the village shouldn't say it is okay to foreclose because you didn't pay dues or an assessment. Langen said it is redundant, it requires something that is state law and if it changes you find yourself in a contradictory position. Adams said just because something is state law, if we don't agree with it, we shouldn't put it in our ordinance. Grexa said what if someone can pay, but chooses not to, how does that impact the other homeowners. Davis suggested we change our ordinance to not require an HOA.

Adams proposed a re-write of Section 4.11.2(a) to:

... If the sum is not paid by the owner within thirty (30) days following receipt of notice of the amount due, then the sum shall become a continuing lien on the real property of the then owner, his heirs, devisees, ~~personal representatives and assigns of such lot. , and the taxing or assessing governmental authority may either bring an action at law against the owner obligated to pay the same or may elect to foreclose the lien against the real property of the owner.~~ Foreclosure of the property will not be allowed. The lien will remain without interest until the property is sold and at such time be paid after other debts are paid from lending institutions.

Adams added subsections (e) and (f) as follows:

- (e) Should a homeowner be negligent in paying the homeowner association dues or assessments no foreclosure will be allowed. Rather a lien may be placed on the property. Under no circumstances will a homeowners association be allowed to foreclose on a property for any reason. Liens will be without interest and will be satisfied behind debts from lending institutions at time of sale of the property.
- (f) If a homeowner has not paid dues or assessments the said homeowner may be barred from using any and all common ground, parks, pools and playgrounds located in the development. The ban will be enforced by the homeowner's association members and board.

Grexia gave an example of a home where the HOA paid their landscaping company to keep up a home's lawn for several years, it was eventually foreclosed, and the HOA didn't get any payment at all. Sometimes it is not someone losing their job, it is just their choices. Keeney said is the HOA's job to insure against homeowners who don't do what they should. Langen said you can't foreclose by state law if the debt is fines, only if it is interest on fines or attorney fees. Fairman noting that state law supersedes what we do, made a motion that we should strike all references to HOA's, and change it to "may" establish HOA's. Adams said we should send this to Council that we change 4.11.1 to "may" establish an HOA. Keeney said if you give builders that option they will take it; he suggested adding wording objecting to their rights to foreclose. Langen said we could make a recommendation in the language. Keeney gave an example of Stonegate which is a violation of this, because they have common property across from Mr. Boatright that is

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left in a natural state. Langen said he will try to rewrite this section with the input heard tonight. Grexa said his development also owns land that is wetlands, and can't be developed. Further discussion of HOA's was held. Planning Board wanted Council to take a long hard look at this in order to prevent foreclosures. Fairman retracted his motion.

Fairman made a motion to ask Langen to rewrite this section including that they "may" have an HOA; Davis seconded the motion.

The motion passed unanimously.

Adams said we should challenge this because it is not okay; there are better ways to relate to neighbors than to say you have to do this.

5. Review of proposed Mobile Vendor/Sidewalk Sale Amendment to Zoning Ordinance
Langen had a re-write of Section 4.7 and Definitions for Mobile Vendor, Restaurant, Drive-in/Drive/Through and Sidewalk/Special Sales Events, as follows.

Section 2.2 Definitions of Specific Terms and Words.

Mobile Food Vendor

A person who sells retail merchandise, food or beverages, to the public from any vehicle, which is designed to be readily movable and located within the boundaries of the Village. Mobile-food vendors include pushcarts, mobile kitchens, hot dog carts, pretzel wagons, or similar uses. Foods are limited to prepackaged food unless the unit is equipped and approved to handle food preparation. Any-All vendors shall unit that requires direct hand contact with the food shall have a hand washing sink and comply with all applicable State and County Health Department requirements.

Restaurant, Drive-in/Drive-Through

An establishment whose principal business is the sale of prepared or rapidly prepared food directly to the customer in a ready-to-consume state for consumption on the restaurant premises or off-premises or for delivery. Unlike a fast food restaurant, a drive-in/drive-through restaurant does not contain any indoor customer dining areas. ~~Unlike a d~~Drive-in/drive-through restaurants, can have orders are taken from customers from centrally located drive-in windows rather than or from an individual outdoor calling station, and shall be associated with a principal building.

Sidewalk/Special Sales Events

A temporary event where a commercial business, religious institution, non-profit organization, charitable organization, or public entity engages in the sponsoring of a promotion or activity for the purpose of selling or offering merchandise, food and/or entertainment beyond the normal retail or display space of the sponsoring entity.

Section 4.7 Temporary Structures and Uses

Temporary structures and uses, when in compliance with all applicable provisions of this Ordinance and all other ordinances of the Village of Wesley Chapel, shall be approved by the Zoning Administrator who shall issue a permit for such approval. The following temporary structures and uses shall be permitted:

- 4.7.1 In the event of a disaster, the result of which would require the rebuilding of a dwelling, the owner and his family may occupy a manufactured home on the property. The permit shall be issued for a six (6) month period and may be renewed by the Village Council provided that construction has proceeded in a diligent manner.
- 4.7.2 Manufactured homes, construction trailer and temporary buildings not for residential purposes when used by a contractor for field offices and storage during the building of structures on the same site or subdivision are permitted. The permit shall be issued for a six (6) month period and may be renewed by the Village Council provided that the construction has proceeded in a diligent manner.
- 4.7.3 ~~Turkey shoots, S~~ales of Christmas trees, 4-H shows, and ~~other commercial and charitable uses of a limited nature (except Mobile Food Vendors)~~ and for a limited time may be allowed, but shall be specifically permitted. Each such permit shall be for a period of time as determined by the Zoning Administrator, but not to exceed forty-five (45) days without the specific approval of the Village Council.
- 4.7.4 Structures, whether temporary or permanent, located in a subdivision, and used as sales offices for the subdivision development are allowable, but shall be specifically permitted. Such permits shall be issued by the Zoning Administrator for a period of one (1) year, and are renewable for a period of time as determined by the Village Council, provided the development is being actively marketed. At the completion of the sales in a tract, the temporary structure(s) shall be removed, and any permanent structure(s), temporarily used as a sales office shall be used only for a purpose otherwise permitted in that district.
- 4.7.5 Mobile Food Vendor. No ~~mobile food vendor~~ shall be installed, maintained, or operated in any zone unless the standards and requirements set forth in this Section are complied with and maintained. ~~Mobile food vendors~~ are allowed only in commercial and industrial zones ~~or any zone on Village of Wesley Chapel-owned property~~, subject to the approval of a Temporary Use Permit by the Zoning Administrator. Such a Temporary Use Permit shall include any conditions appropriate to assure compliance of the requirements of this section, shall be limited to ninety (90) days in duration and may include additional conditions and requirements that are found appropriate to assure the use will not be detrimental to health, safety, peace, morals, comfort or general welfare of persons residing or working in the neighborhood:
 - (a) Every ~~mobile food vendor~~ shall be a temporary day-to-day use and all equipment, including any stand, cart, table, or vehicle, shall be

- removed at the end of each sales day, excepting those vendors associated with a fair or carnival sidewalk/special sales event where removal of equipment is not customary.
- (b) Every operator of a mobile food vending operation shall have written permission from the property owner or lessee of property on which the vendor is located, a copy of which shall be filed with the operators' application. The operator shall also have a copy of the permission statement required by these provisions at the vendor location for inspection upon request by any person authorized to enforce the provisions of this Section.
- (c) No activities relating to the operation of a mobile food vendor, including customer parking, shall occur on public property, without express permission from the public entity owning such property. All parking areas shall be maintained or surfaced so as to be dust free.
- (d) All stands, carts, vehicles, and display of merchandise shall be set back not less than ~~twenty five (25)~~ ten (10) feet from any property line. the right of way line of any public street., provided, however, that a table, stand, or cart of sixteen (16) square feet in size may be located at not less than twelve and one half (12 1/2) feet setback from a road right of way line.
- (e) No ~~concession~~ mobile food vendor, stand, cart, vehicle, merchandise, or parking area shall be located which restricts the visibility of vehicles along any adjacent streets or of vehicles entering or exiting the site.
- (f) No additional signs beyond the signs otherwise permitted in the zone in which the temporary concession is located shall be permitted, except temporary signs flat against the table, cart, stand, or vehicle which shall not exceed two (2) square feet per each lineal foot of such equipment parallel to the street where the setback is twenty five (25) feet or more from the right of way line. Where the table, stand, or cart is set back less than twenty five (25) feet, the area of the signs shall not exceed a total of six (6) square feet, and shall be placed flat against such equipment. One temporary/portable sign shall be allowed, not to exceed six (6) square feet in area, and shall be removed when vendor has completed daily sales activity.
- (g) No food items shall be prepared and/or sold for immediate consumption on site, except for sidewalk/special sales events.
- (h) Only one vendor at a time may conduct business on any parcel of property, except commercial shopping center properties or sidewalk/special sales events.
- (i) At least one trash receptacle shall be provided on-site.
- (j) Every operator of a temporary concession stand shall have legal access to restroom facilities within 1,000 feet of the concession. (May be public restrooms, assigned permitted access to private

restrooms, or a self-contained recreational vehicle.)— Shall not operate beyond the operating hours of the property owner/associated business entity or between 5:00 am and 11:00 pm (whichever is more restrictive).

- (k) Sale of produce is permitted only in accordance with applicable State of North Carolina laws.
- (l) The area used for sales or display of merchandise by the temporary concession shall be limited to 200 300 square feet. Such area shall be identified on the Use Permit and the Use Permit shall be valid only for the area so identified.

4.7.6 Sidewalk/Special Sales Events shall not be located within public right-of-way, shall not obstruct ingress/egress to a parking area, shall be held with permission of the property owner, shall not operate beyond the operating hours of the sponsoring entity or between 5:00 am and 11:00 pm (whichever is more restrictive), shall provide adequate restroom facilities and shall be specifically permitted. A Temporary Use Permit shall be issued by the Zoning Administrator, if approved, for a period of three (3) days and shall include any additional conditions deemed appropriate by the Zoning Administrator.

Section 5 Table of Uses

Delete “Restaurant, Carry-Out and Deliver” from Table of Uses, as “Restaurant with Drive-In/Drive-Through” definition would cover this use.

Grexa expressed concern with the reductions in the setbacks, that the bathroom requirement was removed, and that square footage went from 200 to 300. Section 4.7.5(d), Bush felt that with a fair, it would be hard to meet the setbacks. Grexa said there should be special rules for a sidewalk fair. Langen said we could do separate setbacks for different types of events. Grexa thought the 90 day renewal period was too long. Langen will change 4.7.6 to not require individual permits if associated with an event. Langen changed the amendment from food to mobile vendors. At 4.7.3 he added turkey shoot, and took out other commercial. Section 4.7.5 could be a problem if a church is on residential zoned property, we could add “institutional” to cover churches, schools, and fire departments. The timeframe in Section 4.7.5 was discussed, and will be changed to 45 days. Section 4.7.5(a) allows vendors to leave their stand there overnight if it is a sidewalk/special sales event; it will be moved to Section 4.7.6 for clarity. Section 4.7.5(b), food will be removed; setbacks in Section 4.7.5(c) and (d) were discussed.

Langen will move Section 4.7.6 into 4.7.5 and each individual can be three hundred square feet, we will only permit the applicant, and add a parking provision to require suitable parking. Section 4.7.6 will be an umbrella application and individuals will have to comply with Section 4.7.5 (a) – (l); The event has to have provision for restrooms. Langen will bring the changes to next month’s meeting.

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6. Review of Residential Stormwater/Flood Protection Ordinance Amendments

Was tabled to the June 2, 2009 meeting.

7. Discussion of commercial driveway turning radius requirements

Langen brought a table from NC DOT, he is still looking into this, this will be discussed next month.

8. Topics to Discuss at Next Meeting

Items for the June 2, 2009 meeting include review of the stormwater amendments, HOA's and parks and Rec. At the regular June meeting we will discuss mobile vendors, and the driveway turning radius requirements.

9. Other Business

The procedure to remove a member from the board was discussed; Adams said he had talked to Jimmy Allison and he said he intended to send a letter of resignation. Terms for two other members expire at the end of June.

10. Adjournment

Fairman made a motion to adjourn the meeting; Keeney seconded the motion.

The motion was approved unanimously.

The meeting was adjourned at 9:30 pm.

Respectfully submitted

Cheryl Bennett, Village Clerk

Chairman John Grexa