

**VILLAGE OF WESLEY CHAPEL
PLANNING BOARD MEETING MINUTES
September 30, 2013, 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.

Present: Chair Stephen Keeney, Vice Chair Chuck Adams, Members Bill Bennett, Jeff Davis, John Grexa; Alternates John Bowen (arrived late) and David Boyce

Others Present: Clerk Cheryl Bennett, Interim Planning/Zoning Administrator Bill Duston, Mayor Brad Horvath, Council Member Becky Plyler, Carol Mullis, Drew Rouzer, Claudia Prado, Charles Osborne, Chris Hope, Van Southard, Peggy Thewes, Sandy Fenn, Sue Winchell, Bob Thurbon, Stephen Bennett, Ray Minew, Gary Roseman, Sandy Ells

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

1. Pledge and Invocation

Chair Keeney led the pledge and Vice Chair Chuck Adams gave the invocation.

2. Public Comments

Carol Mullis said she has lived in Wesley Chapel 34 years, at the previous meeting when she expressed her opinion she was told she was only one, and tonight she has several more here with her.

3. Additions, Deletions and Approval of Agenda

Vice Chair Chuck Adams made a motion to adopt the agenda, Bill Bennett seconded the motion.

The motion passed unanimously.

4. Approval of Minutes

John Grexa asked if the chair can vote; Bill Duston read from the Rules of Procedure that the chair cannot make a motion but can vote. Sandy Ells was introduced. Vice Chair Chuck Adams made a motion to approve the August 26, 2013 minutes. Jeff Davis seconded the motion.

The motion passed unanimously.

5. Preliminary Plat – Wesley Pond Subdivision

Bill Duston handed out new information on Wesley Pond, a 7 lot subdivision off Cuthbertson Road, between Waynewood and Dobson streets near the schools. The subdivision went to Council for subdivision modification and got an exception on the length of the panhandle lots. The other item is a private driveway; which is basically an easement for people there to use. After speaking to the village attorney, Mr. Duston said Council had approved the driveway. Chairman Stephen Keeney asked why the Council

minutes did not address items like DENR approval; it was explained that Council just reviewed the driveway and panhandles, i.e. the subdivision modifications; the rest is part of Planning Board's review. Claudia Prado, the engineer for Wesley Pond said she got a letter of approval from Union County Public Works for water and sewer; the Village engineer is working on review of stormwater and runoff; and they are working with the fire chief on dimensions to make sure the driveway can be used by emergency vehicles. Chuck Adams asked about the road width. Bill Duston said because it is a private driveway, it doesn't fall under streets, the minutes of the subdivision modification were not clear, but he spoke to the attorney and feels the Council intention was to approve a private driveway, although the code says no more than two lots can access a private driveway. Chuck Adams asked why it went to Council first. Mayor Horvath said there is a provision in the code for subdivision modification, the developer needs some answers before they come to the preliminary plat stage; there may be a better way to do this. John Grexa asked why this is here tonight with so many things missing. Bill Duston said it is within your purview to make a decision or not at this point. This was initially classified as a minor subdivision by staff, but since public water and sewer is involved, it becomes a major subdivision. Claudia Prado said they have listed all trees larger than 10 inch diameter and there is a forty foot easement, which is portioned to lots 3 and 5 for maintenance. The loop road is 120 feet in diameter; they ran an auto-turn program to show fire trucks should be able to use it. Stephen Keeney said fire trucks can run hose 200 feet, so they wouldn't have to back up. The HOA will keep up the driveway and pond. Claudia Prado said the driveway would be asphalt. Chuck Adams asked if the lot with 41,942 square feet can include square footage for the driveway. Bill Duston said yes, and ditto for the easements, it is what you own fee simple. Chuck Adams asked if the lot 4 property owner could tell others to get out of the lake on their lot, Claudia said no, but it is deeded property. She said the easement is denoted on page 4.1. Bill Duston said regarding letters: Public Works for water and sewer – Claudia has it but he hasn't seen it, he doesn't have the US Infrastructure letter nor Union County EMS letter, nor US Army Corps of Engineers letter; on the easement they changed the property lines; he got the info on existing land uses on adjacent properties, and he got information on the 10" DBH trees to be removed. Chuck Adams said he would prefer we have the info that is missing.

John Grexa asked if this is a typical layout. Claudia Prado said the subdivision was initially reviewed administratively by the planner; Council saw the layout but did not approve it during the subdivision modification process. Bill Duston said we need a letter from the fire marshal per the minutes of the Council subdivision modification. Bill Bennett said he would like to see the fire marshal letter in writing before approval due to safety concerns. Bill Duston said this plat still goes to Council after Planning Board review. John Grexa asked about the middle of the cul de sac – Bill Duston said it will be HOA maintained, but not HOA owned. Claudia Prado said this won't be mass graded, it will be custom homes. Bill Duston said you can approve the lots in theory, but this is not the norm for layout. Bill Duston read from the code on lot dimensions at Section 404.2-B. John Grexa had concerns on the lot configurations. Bill Duston said the Planning Board has 30 calendar days to make a recommendation. Bill Bennett motioned to forward the preliminary plat to Council and not approve it until receiving the letter from

Army Corps of Engineers, EMS letter and final approval from USI. Jeff Davis seconded the motion.

The motion passed with three yeas; Chuck Adams voted nay, and John Grexa abstained which becomes a yea vote; the final vote is 4-1.

Bill Duston will review the revised plat and ask Claudia if he has any questions.

Chris Hope, an engineer, said the fire code says you can back up 150 feet or less, hose can go 150 feet and the road must support 80,000 pounds.

Bill Duston asked if the Board prefers to receive all approval letters before their recommendation; they agreed they would prefer that.

6. Rezoning RZ 13-3

Mr. and Mrs. Espinosa, their attorney, and engineer were present. Bill Duston reported this is tax parcel 06-042-002 at 4824 Waxhaw-Indian Trail Road, 3.152 acres, owned by Francisco Espinosa. It is currently zoned R-40 and he is asking for B-2. Existing land use is a storage facility – it was originally developed as a grocery store. Bill Duston said there are three spots of commercial zoning outside of the shopping centers, all accounted for in the land use plan. Spot zoning is not illegal in North Carolina, and he had two handouts from Dave Owens at the School of Government, “Is This Spot Legal?” and “What If A Proposed Rezoning is Inconsistent With Our Plan?” Per the first article, spot zoning is not illegal, but the burden is on the government to show that the rezoning is reasonable, with four factors to be considered: the size of the tract; the compatibility of the disputed zoning action with an existing comprehensive zoning plan; the benefits and detriments resulting from the zoning action for the owner of the newly zoned property, his neighbors, and the surrounding community; and the relationship between the uses envisioned under the new zoning and the uses currently present in adjacent tracts. The second article says a statement that the proposed amendment is inconsistent with a plan does not preclude the governing board from adopting a rezoning, and the statement is not subject to judicial review.

Bill Duston noted this is a general rezoning, there is no site plan, and there is a long list of potential uses in B-2; consider the full spectrum of uses. An “X” indicates a use by right, and “C” indicates a conditional use. Surrounding land use is Weddington (residential subdivision lots) to the rear, Wesley Chapel (residential dwelling and church) across the road, and Union County (undeveloped) to the south, and (residences) to the north. The land use plans of Wesley Chapel, Weddington, and the County are all consistent showing low density residential; Bill Duston had checked with Dick Black at the County Planning Department. This property was originally built as a grocery store; Mr. Duston did not know what the zoning was when the property was in the County.

Stephen Bennett, Mr. Espinosa’s attorney spoke. He said pursuant to article 12 they are asking for a re-zoning from R-40 to B-2. In the early 1950’s the property was used as storage for farm equipment, then as a grocery store, a service station, a hot rod shop, a junkyard, and a mechanic until it was foreclosed in 2010. He said the Wesley Chapel Land Use Plan adopted in 2003 doesn’t confine commercial development to those three corners; since then the commercial development has grown a lot. It is less than 1.5 miles from the commercial hub, so he thought it can support development, it has done that for 60 years. He said the underground storage tanks create environmental issues that prevent residential use. Chuck Adams asked if they couldn’t remove the tanks and use it as a

residence. Stephen Bennett said regarding spot zoning – The size of the tract – the smaller the less legal; Surrounding land – he cited a case in Burlington on a busy road and a church and school was across from the use; Compatibility with the land use plan, benefits and detriments of rezoning – they talked to the neighbors and they indicated support; relationship between current and proposed use – they are not asking for industrial, and the court upheld a rezoning for a convenience store.

Mr. Espinosa said he lives and owns property in Wesley Chapel. He had a dream and decided to build something beautiful here. He bought the land and got rid of 70,000 pounds of metal and 1000 tires, and showed pictures of the cleaned up land. In 1975 the surrounding area was residential he said, but this land did not meet the criteria for a residence. He said it should have been zoned B-2 but was an oversight by Union County thirty years ago. In June a short water line extension which benefits him and six neighbors came in. Chair Keeney asked what the current taxes are: Mr. Espinosa said the tax value was \$278,000 and it has been reassessed lower for 2014. He said he has paid about \$2,500 in annual tax.

Charles Osborne said he was born and raised here on Antioch Church Road, and he verified the uses there; he said he supported how much better it looks. A tax bill stating “commercial” was shown, even though the property is zoned residential. The house was moved to County land.

Roy Minew from 4816 Waxhaw Indian Trail Road said the property was an eyesore, and looks 100% better, and now they will get water.

Chris Hope, engineer, said it is very expensive to remove tanks for residential use, but it can be done.

John Grexa said Price Mill property was a sawmill, store, and junkyard, and there were cars there from mechanics. Chuck Adams said if there are two or three gas tanks and they leaked, it is very expensive to clean up.

Council member Plyler said where the Walgreens is, they had to dig out tanks and pay to check the nearby wells.

John Grexa asked is this is grandfathered as commercial; Bill Duston said no, because it was abandoned, and they can only put in R-40 uses now.

The last business use was Wheelers Automotive and it went to foreclosure auction March of 2011. Bill Duston said after more than 180 days abandonment, they lose the use, so they lost their grandfathered status then.

Mr. Espinosa owns one parcel here, one in the County, and the parcels on either side of his parcel are County land. He will build a 1500 square foot garage for Roy on the County parcel to the north of his. Union County zoning came in 1975, and his parcel already had commercial use. He said he has no intention to sell the property, he has an investor and they intend to put a million dollars in it. Chair Keeney said they did a fantastic job of cleanup, and he admired his initiative and enthusiasm.

Chuck Adams said it has been a business over 50 years, and is better now. Since 1975 it was a grandfathered use, and it would be difficult at best to make it residential.

Clerk Bennett noted the tax rate is the same for commercial or residential property; it is the valuation that increases the tax.

John Grexa motioned to turn down the re-zoning; it came from the County as R-40, and the Land Use Plan we worked on shows it as R-40, the Master Plan shows commercial

growth at Waxhaw Indian Trail Road and Hwy. 84; we had similar properties with the school and part of a residential neighborhood. The motion died for lack of a second.

John Grexa said why hasn't the Land Use Plan revisions been approved, it is not old, we just finished updating it. Chair Keeney noted the Land Use Plan is not static, it is evaluated each year. John Grexa said this property came in the Village zoned as residential, regardless of use.

Chuck Adams recommended we table this to the next meeting. Chair Keeney asked staff to craft wordage of how we evaluate the Land Use Plan based on situations like this. Bill Duston said he can create a table with some general ideas. John Grexa asked if there could be "situational zoning", so it could be a CUP. Bill Duston said there are different methods out there; he could put some text together.

Bill Bennett made a motion to table this to the next meeting to work on consistency, and to get input from Bill Duston. Jeff Davis asked how the delay affects Mr. Espinosa. He said he didn't mind, he has waited two years. Chuck Adams seconded the motion.

The motion passed 4-1 with John Grexa voting nay, the reason being consistency.

7. Proposed Zoning Ordinance Text Changes: Article 11 – Board of Adjustment

John Grexa made a motion to adjourn. Bill Bennett seconded the motion. Bill Duston said these changes go into effect tomorrow, also for now he is still respecting the fifty foot setback for R-40 but it needs to be changed. Mayor Horvath said the Land Use Plan updates were never brought up by the former Zoning Administrator. It was on the September Council agenda, but conservation subdivisions came up and he discussed it with Bill Duston and there may be some changes needed due to that language. John Grexa rescinded his motion. Bill Bennett rescinded his second.

Bill Duston reviewed the changes to Article 11. Key items include: a majority vote of the Board of Adjustment (BOA) will now be required to modify or overturn a decision of the Zoning Administrator (ZA) (it used to require a 4/5th vote); only written decisions of the ZA can be appealed; statutes now state how BOA public hearings are to be advertised, appeals must take place within 30 days of date of receipt of ZA's decision, all ZA appeals applications are filed with the Village clerk, a hearing for an appeal can take place as soon as 15 days from the date the application for an appeal is filed; the ZA must appear at the public hearing at which the appeal case is heard; the applicant in an appeals case can bring up matters other than what was contained in his application, if significantly new information is brought up, the BOA can continue the public hearing; the "findings of fact" for variances have been changed; written decisions of the BOA must go to the applicant and the property owner and anyone else who has requested a copy of the decision, and the decision becomes effective once it has been filed in the Village Clerk's office. Chuck Adams motioned to approve the text changes for Board of Adjustments. Section 11.4.2 was left as "reserved for future text" so everything did not have to be renumbered. Jeff Davis seconded the motion.

The motion passed unanimously.

8. Proposed Zoning Ordinance Text Changes: Section 5.3.3(b) – Front Yard Setback for Residential Dwellings in the R-40 District

Bill Duston said this is a clerical issue from 2001, he went back to the old minutes, and the intent seemed to be to have all single family homes setback be 50 feet, and that

09.30.2013 Planning Board minutes,

manufactured homes are only in the RA-40 district. John Grexa motioned to add R-40 to Section 5.3.3(b) (3.). Bill Bennett seconded the motion.

The motion passed unanimously.

9. Summary of Weddington's conservation subdivision ordinance by Bill Duston
Tabled to the next meeting.

10. Other Business - none

11. Topics to Discuss at Next Meeting
Items 6 and 9.

12. Adjournment

Vice Chair Chuck Adams made a motion to adjourn the meeting; Bill Bennett seconded the motion.

The motion was approved unanimously.

The meeting adjourned at approximately 9:35 pm.

Respectfully submitted

Cheryl Bennett, Village Clerk

Chair Stephen Keeney