

**VILLAGE OF WESLEY CHAPEL
PLANNING BOARD MEETING MINUTES
September 22, 2014, 7:00 PM**

MINUTES

The Planning Board of the Village of Wesley Chapel, North Carolina, met at Town Hall, 6490 Weddington Road, Wesley Chapel, NC 28104.

Present: Chairman Stephen Keeney, Vice Chairman Chuck Adams, Members Jeff Davis, John Grexa and John Bowen, Alternates David Boyce, Sandy Ells and John Souza

Village Staff present: Cheryl Bennett, Village Clerk; Bill Duston, Planning/Zoning Administrator

Others Present: Mayor Brad Horvath, Carol Mullis, Council Member Becky Plyler, Butch Plyler, Francisco Espinosa

1. Pledge and Invocation

Chairman Keeney led the pledge of allegiance, and Vice Chairman Chuck Adams gave the invocation.

2. Public Comment

Francisco Espinosa spoke regarding his concerns on the interpretation of a convenience store being limited to 3,000 square feet. He had measured the Market Express Convenience store and it measures 3,421 square feet from the exterior. He filed a Conditional Use Permit application on August 14, with 3,375 square feet measured from the exterior.

3. Additions, Deletions and Approval of Agenda

Chairman Keeney suggested amending the agenda to add a text amendment for convenience stores definition; this is not an interpretation, either we change the ordinance or Mr. Espinosa cannot go forward. John Grexa commented that again we are changing the ordinance for someone and asked when the re-zoning was approved by Council. Mr. Espinosa said Council approved the re-zoning on December 17, 2013. Bill Duston explained that he had talked to Mr. Espinosa and then reviewed the definition of a convenience store and it is gross floor area of 3,000 square feet, and what Mr. Espinosa submitted doesn't meet the ordinance definition. The Market Express floor plan shows 3,375 square feet and 759 square feet for the car wash for a total of 4,434 square feet. Mr. Duston read the code and checked with the attorney who agrees with his interpretation. Mr. Duston wasn't involved with the Market Express, but you can't ignore the ordinance. He told Mr. Espinosa that if Planning Board approves the definition change it can go to Council; there is no guarantee of what Council will do. Mr. Espinosa hopes to go to Planning Board in October. John Grexa reminded Chuck Adams that he had been a proponent that things should be sent to Planning Board two weeks before the meeting. Vice Chair Adams said sometimes it makes sense for exceptions.

Chairman Keeney said Market Express is an exception to our rule; the definition change would be an easy fix. Mr. Duston handed out a memo with the suggested text change. There were two options on a text change; the first would allow 3,500 square feet of gross floor area, and the second allows a principal structure of 3,500 square feet. Market Express has a car wash so the second definition would allow the car wash as an accessory structure. Mr. Duston noted he did not do anything to deliberately delay Mr. Espinosa; Mr. Espinosa filled out the paperwork and paid the fee, then Mr. Duston talked to Mr. Espinosa's new engineer regarding stormwater and the Traffic Impact Analysis and then the definition. The definition of gross floor area does include accessory structures; which he shared with the engineer, so the second definition is in line with Market Express. He has not yet seen a formal site plan. Last week Mr. Espinosa brought a 3-D rendering, and then the 3,000 square foot issue came up after Planning Board packets went out. John Grexa commented if he already filed an application, he won't be grandfathered in. Mr. Espinosa said Council and Planning Board were wrong to approve Market Express. Bill Duston said the Market Express is built and vested; the code did not change between now and then. He thinks they looked at the sales area of the store, but could not find anything to verify that, even checking the minutes; it was from Bill Pugh's time as zoning administrator. Chris Hope designed the Market Express and also Mr. Espinosa's store. Bill Duston said the CUP is a work in progress; the site plan can change due to stormwater, etc. Chairman Keeney asked who is in favor of putting the text change on the agenda; four were in favor, and John Grexa was not in favor, adding it doesn't give the members time to do their work. Vice Chair Adams motioned to approve the agenda with the addition; John Bowen seconded the motion.

The motion passed 4-1 with John Grexa voting nay.

4. Approval of Minutes

John Bowen motioned to approve the August 25, 2014 minutes. Jeff Davis seconded the motion.

The motion passed unanimously.

5A. Text Change for Convenience Store Definition

Bill Duston presented the current definition of "convenience store" and the definition of "gross floor area". The text is very specific as to what the 3,000 square feet does not include. Jeff Davis said he could see how the applicant interpreted this, that the 3,000 square feet is dedicated to selling fuel, and food. Bill Duston said that is an explainer as to what a convenience store does. He told Mr. Espinosa he could appeal his definition interpretation to the Board of Adjustment, but that would delay him. Mr. Duston said he thinks the reason 3,000 square feet is in the definition, is there are some large convenience stores out there, so we included a maximum size so we don't have supersized ones. The second proposed definition refers to the principal structure, so the car wash and vacuum station don't count as to the principal structure area. John Grexa asked if we don't change the definition, is the previous planner, planning board or council liable for the previously approved convenience store; Bill Duston replied no, it is there and done. He noted this is a CUP so Planning Board will see the site plan, he doesn't even know if there is a car wash. John Bowen said it was not undermined to build the convenience store 9 years ago, and it set some sort of precedence, so we should consider words to match what exists so he motioned to approve the second definition which allows a principal structure of 3,500 square feet with a statement of consistency that approval of

the text change would allow for convenience stores to be in keeping with what has already been built in the Village, and in keeping with the spirit and intent of the Land Use Plan, and the statement of reasonableness that it would allow for a convenience store in keeping with one that has been in existence in the Village for 8 years and which has not been found to be objectionable. Mr. Duston said in view of recent court cases we need to be more specific in those statements. Vice Chair Adams seconded the motion.

The motion passed 4-1, with John Grexa voting nay stating the building in place is not even 3,400 square feet and we are going to 3,500 square feet, there was a mistake done, but two wrongs don't make a right, and we continue to change things because somebody doesn't get their way. Mr. Grexa said he asked about court cases and Mr. Duston said we wouldn't be liable; could Mr. Espinosa sue us; Mr. Duston replied that Mr. Espinosa could go to the Board of Adjustment and ask them to overrule his interpretation. Mr. Grexa added this item is also at the last minute. Chairman Keeney said it was needed because the existing building is in violation; John Grexa said we did not have to change the definition for that building; Chair Keeney and Bill Duston agreed with that statement.

5B. Subdivision Ordinance Text Amendments (Continued)

As requested, Bill Duston went through the last 5 plats and compiled a list of what modifications were requested; all got modifications for heritage trees, four got modifications for cul-de-sac and street pavement width, a couple got modifications for sidewalks, and for curb and gutter. All modifications were granted by Council; they will now come to Planning Board first. Mr. Duston said you may want to leave a little room for the case with unique circumstances; he asked Planning Board for input on putting the text together on this. Chairman Keeney asked for his recommendation. Bill Duston said you can say there are no road standards below DOT standards; there is a flaw with the tree ordinance; and there could be others for example street lighting. Chairman Keeney asked if this would go in Article 2, Mr. Duston replied yes it would be in Section 206. Mr. Duston noted Board of Adjustment has to make findings, and a variance should be hard to obtain. There should be something so peculiar to the property, that you need a modification.

The large majority of the text changes proposed are to bring us in line with the DOT road policy, there are a couple of other issues such as the five foot sidewalks that were added; Bill Duston went over all the changes and reviewed the text boxes last month. He asked if Planning Board wanted to address the modifications while we are making the other changes now. Chairman Keeney said he thinks the modification rule needs to be addressed. Bill Duston said he met with John Underwood at NC DOT and Mr. Underwood said DOT are the traffic engineers, he asked that the text be kept as proposed regarding deceleration lanes and access distances and offsets in sections 9 and 10; particularly with the safety of left turn lanes, which they look at on a case by case basis. At Section 206.2.1 Bill Duston put in that modifications go to Planning Board first, not to Council first. Vice Chair Adams said he was not comfortable with the changes to section 9; regarding deceleration lanes, DOT may not want to spend money on the pavement maintenance for a longer lane. Bill Duston noted for major subdivisions a Traffic Impact Analysis is required, and their engineer and our traffic engineer get together so there is synergy. Mayor Horvath noted they have a table of standards based on speed and how long the lanes should be. Bill Duston suggested tacking on "with input provided by the

Village". Vice Chair Adams said the developer pays for the deceleration lane, so they will try to make it shorter; he suggested language like on a case by case basis by the Village with consideration of DOT's input. Bill Duston said DOT noted they will have final say on the roads since they maintain them. He noted for roads like Candella's, where they are privately maintained, DOT will not look at the roads except for the driveway access to the public road; we set the standards. Mayor Horvath noted deceleration lanes will be in DOT right of way, even with privately maintained roads. Bill Duston added the subdivider may have to dedicate land to DOT for the right of way. John Bowen noted modifications will come to us and hopefully we will catch if they are not appropriate to the Village; he motioned to keep modifications as is in Article 2, and he amended his motion to include approving all four article text changes. Vice Chair Chuck Adams seconded the motion.

The motion passed 4-1, with John Grexa voting nay because he had not been present last month.

6. Conditional Zoning Text (continued)

Bill Duston compiled a four page comparison of what is required for a CUP versus conditional zoning. John Bowen asked about the floor plans and combined site/building elevations for the proposed development; and asked why Planning Board can't insist on seeing the actual rendering. He noted the first month he was on the board the developer showed renderings, and after the meeting he found out that the houses did not have to look like what was pictured. Chuck Adams noted the Aston vision book renderings do not look like what is built. Bill Duston noted one of the major differences under conditional zoning is Council does not follow a quasi-judicial process. Another major difference is the Public Information Meeting, where neighbors up to 1250' away will be invited to give public input before the project comes to Planning Board. He noted if you don't like an item he listed as required for conditional zoning, toss it out, and if you like something required under a CUP, add it in. The preliminary stormwater management plan requirements come from the Village engineer; there is not as much detail as required under a CUP. Vice Chair Chuck Adams noted the public will see renderings, but it is not exactly what will be built; also the developer doesn't have to listen to public input, and can do what he wants. Bill Duston agreed this was true. Sandy Ells asked if someone has a rendering can they change what they do under a CUP also; Bill Duston replied yes. Chuck Adams had some issues with conditional zoning, noting Planning Board doesn't get to approve the plat; only the zoning administrator will see it; also he had concern on the renderings, and didn't see this as a positive effect for the Village noting people don't come to meetings. He felt the process is slanted to the developer. Chair Keeney asked and Bill Duston noted Matthews, Weddington, Mineral Springs, Marvin and Indian Trail use conditional zoning. Chair Keeney said the tools should not be intimidating but should be employed wisely; it would have helped with Candella. Both CUP's and Conditional Zoning will require statements of consistency and reasonableness. John Grexa asked if it is all or nothing; Bill Duston said some communities have done away with CUP's, but he did not do that here, this is only for re-zonings. Meritage Homes was turned down in their bid to re-zone from R-40 to R-20; the attorney said it was okay to show the renderings.

Francisco Espinosa said conditional zoning gives you more power to decide what you will do and what your neighbors will think; you can put in stipulations, and a CUP costs more for the developer. Sandy Ells asked about the quarantined vegetation or soil and

endangered species, wetlands or other environmentally sensitive features being identified and protected being omitted from conditional zoning; Mr. Duston said you can add it in, he had never seen the item of quarantined soil before. Chair Keeney read the section stating that the conditional zoning district will not be less restrictive than the ordinance calls for. Vice Chair Keeney noted they have the choice of a CUP or Conditional Zoning, so it is not slanted to the Village.

Bill Duston noted a CUP or Conditional Zoning runs with the property; Conditional Zoning will be recorded at Register of Deeds and you can only do what is approved for the Conditional Zoning request. There are three options; use by right, a CUP, or a straight re-zoning. Francisco Espinosa noted he did a re-zoning; now he is doing a CUP; he could have just done it all in one step.

John Bowen motioned for Planning Board to accept the concept of conditional zoning as proposed by Bill and further refine the verbiage. Vice Chair Chuck Adams did not see why we need it, and said it makes it easier for the developer. Pinetops said more than once if they can't get R-20 they would not build, but they came back. John Grexa and Chuck Adams noted many times we have surveyed the public and they have wanted one acre homes.

Bill Duston said there are two benefits; it relieves Council of the quasi-judicial process, and gets neighbors involved before the official site plan. We can take the rendering and make them do that. Chuck Adams said we can do that now, so we are not gaining anything. Bill Duston said this will be used more for residential to commercial re-zonings, not for R-40 to R-20. John Grexa asked about form based codes; Bill Duston said it would have to be an overlay in each district. Jeff Davis seconded the motion.

The motion passed 3-2, with John Grexa and Chuck Adams voting nay.

John Grexa stated the biggest point was we want a country feel, but this is used to move to commercial, and we can't finish the commercial area we have. John Bowen said he thought council was pro-commercial. John Grexa suggested then we do a survey and see if people want R-20 and commercial. Chair Keeney said this is one tool that surveys the neighbors the most. John Grexa noted the only survey since 2004 was regarding the town hall and park; also didn't the town incorporate to get away from Indian Trail. John Bowen said he was surprised to hear the Council talking about more commercial, and they wanted our input.

7. OTHER BUSINESS

Bill Duston noted we had a joint meeting of Council and Planning Board regarding proposed changes to the Land Use Plan and map, and there were some questions and concerns raised by council. The proposed changes are coming back to Planning Board; how do we want to address it. Chair Keeney said we should re-evaluate the recommendations that Council is concerned with, and either re-approve them or change them.

In October Planning Board will review conditional zoning and senior housing. John Bowen noted we do have to consider what the public wants; what he heard at council was a different mandate.

Jeff Davis left the meeting ill at this point.

8. ADJOURNMENT

Chuck Adams motioned to adjourn the Planning Board meeting; John Bowen seconded the motion.

The motion passed unanimously.

Respectfully submitted,

Cheryl Bennett, Village Clerk

Stephen Keeney, Chairman