

**VILLAGE OF WESLEY CHAPEL  
PLANNING BOARD MEETING MINUTES  
October 27, 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 and John Souza

Absent: Alternate Sandy Ells

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

**Others Present:** Mayor Brad Horvath, Carol Mullis, Elizabeth and Francisco Espinosa, Kevin Herring, Eric Sowers, Rebecca McManus, Phil Fankhauser from Epcon Communities

1. Pledge and Invocation

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

2. Public Comment

Phil Fankhauser, from Epcon Communities which specializes in 55+ housing; noted they listen to what customers want. They build one story housing, and provide all outside maintenance; he has done several communities in the area due to demographics, and have acreage on Cuthbertson Road. He handed out information.

Francisco Espinosa was disappointed that DOT wanted additional right of way from his land; also his engineer Kevin Herring is designing his site, and they felt they were not getting clear direction from Mr. Dustin. They asked that any text changes not adversely affect him. Mr. Dustin explained that DOT wants 50 feet right of way from the centerline; our front yard setback is 65 feet from the right of way edge. Article 6 has one setback for pumps and canopy, and the B-2 front yard setback is 65 feet. Mr. Dustin has consulted with the Village attorney on inconsistencies in the code.

3. Additions, Deletions and Approval of Agenda

John Bowen motioned to approve the agenda; Jeff Davis seconded the motion.

The motion passed unanimously.

4. Approval of Minutes

Vice Chair Chuck Adams asked we table the September 22, 2014 minutes until he listens to the tape.

John Bowen motioned to approve the September 8, 2014 minutes. Jeff Davis seconded the motion.

The motion passed with 3 yes votes; and Chuck Adams and John Grexa abstaining.

5. Conditional Zoning Text (continued)

John Grexa asked why conditional zoning was not legal in NC in 2003; Bill Duston said it wasn't in the statutes, a couple of places were using it and got sued; the statutes were changed to allow it.

In Marvin conditional zoning can go above or below the standards; as proposed here you could only go above the code. Vice Chair Chuck Adams commented a builder might ask to go below the standards for economic reasons. Mr. Duston said they would need a variance to do so. Mineral Springs allows you to go below the standard for some proscribed items. John Grexa asked about subdivision modifications; that is only for the subdivision ordinance. Chairman Keeney said this would be used more to go from residential to B-1 or B-2. Bill Duston said it was used in Marvin for senior housing. Conditional zoning is an option for any re-zoning, but you can also choose to use a CUP; for a straight re-zoning you have to consider any uses by right. Chairman Keeney asked if conditional zoning is a greater informational announcement to citizens; Mr. Duston said yes, for instance last month Mr. Perkins could not say what he wanted to do with his re-zoned land, with Conditional zoning you can sit down and give comments; they don't have to listen to the comments, but it gives the neighbors a voice prior to Planning Board review. Chairman Keeney noted Mr. Espinosa could have used this. Mr. Duston noted Council would approve a site plan with certain conditions and that is the only thing that can be done, it also gets recorded. It is incumbent on the applicant to list any deviation from the code; the Zoning Administrator would develop a checklist and provide it to the applicant. John Grexa asked how it would be compared to a public hearing; Bill Duston said it is more informal; Marvin has two informational meetings. Currently adjoining property owners get a letter, a sign is posted on the property, and a legal ad placed in the Enquirer-Journal. Chairman Keeney asked if this would be more effective with senior housing; Bill Duston said with a CUP you can only go above the standards unless you get a variance; the big difference is how it gets approved. Currently you need sworn testimony and a quasi-judicial hearing. Marvin has an informal rule that at least two persons be present to discuss the conditional zoning project. The other big difference is in showing renderings and less is needed for stormwater plans; our engineer determined what she would need. Chairman Keeney noted there was still some discomfort with the Board; there was a 3-2 vote to move forward. John Grexa said the point was that we want a country feel and he feels this benefits the developers. Bill Duston said anyone can apply for it; regarding the country feel, the Land Use Plan has some verbiage but we can't use the updated document since it has not yet been amended. A statement of consistency would address deviations. We don't have that much undeveloped land, but would first look at the Land Use Plan. John Grexa said it was changed in the case of Mr. Espinosa. Bill Duston's staff report said the Land Use Plan should be amended but it never was. He will waive a red flag if someone wants to re-zone a large parcel. Chair Keeney said the task is to recommend conditional zoning or not recommend it. Last month they agreed 3-2 to further refine the verbiage. Bill Duston noted they did not recommend the text last month. Chair Keeney said Sandra Ells had asked about quarantined vegetation or soil. You get to the same endpoint; the difference is in how

you get there. There are more ways to make a mistake with procedures for council with a CUP. Vice Chair Chuck Adams pointed out now for a CUP people can share input with Planning Board at the information meeting. Vice Chair Chuck Adams had some concerns; anyone can have a conversation with Council, he thought it negative, and gives the opportunity for back door conversations. Now everyone hears the same thing at the Public Hearing. It lends itself to relationship building. It is only for re-zonings, and a number of things need to be updated and tweaked in our ordinances, and we should do that first. You can still give notice to anyone of the project; regarding Council, all are not in favor of conditional zoning. Vice Chair Chuck Adams was concerned about the renderings, the property may not be exactly developed as shown, and the developer doesn't have to follow the input from the meeting. Chairman Keeney noted an example is the shopping center is not necessarily like the renderings. Vice Chair Chuck Adams noted the planner has final approval after Council approves the project; Bill Duston said he administers the code on a daily basis and would look at what Council approved and what the developer brings him.

Vice Chair Chuck Adams motioned to not approve conditional zoning. John Grexa seconded the motion.

The vote was 3 yay (Adams, Grexa and Davis) – 2 (Keeney and Bowen).

#### 6. Senior Housing Text

Bill Duston noted he got a lot of help from Sandy Ells and Council Member Plyler and they went on site visits. The definition of senior housing comes from HUD; they really liked the pinwheel homes when they went in the field, so they included them. For the Table Of Uses he proposed senior housing as a CUP. A nursing home is included as part of a continuum but no free standing nursing homes. Proposed minimum project area is 10 acres, however if an assisted living facility is provided also, the minimum project area shall be 25 acres. Proposed minimum lot sizes are 8,000 square feet for detached dwelling units, and 2,500 square feet for pinwheel homes, which have virtually no yard. Proposed minimum front yards are 15 feet for detached dwelling units, and 10 feet for pinwheel homes/townhomes, and 15 feet for assisted living facility/nursing home. Vice Chair Chuck Adams noted you can't even park a car if the front yard is 15 feet; also we need to address visitor parking.

For rear yards, Bill Duston took text from Stallings, so proposed rear yard setbacks are 20 feet for detached dwelling units, except 10 feet if the rear yard abuts any screened or buffer area that is a minimum of 25 feet in width; for a pinwheel home there is no minimum rear yard; and for a townhome it is 10 feet, and for an assisted living facility or nursing home 30 feet, except 50 feet if the side yard lies at the exterior of the senior housing development. John Bowen asked if the neighbors are not senior housing; Bill Duston replied it would be subject to the regular setbacks.

Concerns on fire walls, sprinkler systems, and carbon monoxide if the second story was above a parking area were discussed as was one or two stories. Vice Chair Chuck Adams suggested just one story housing, noting a lot of people are selling their home because they want one story. Proposed minimum lot width is 55 feet for a detached dwelling unit, none for a pinwheel home, and 150 feet for assisted living facility or nursing home. Proposed maximum density is three units per acre; currently we require 40,000 square feet, but when you add the infrastructure it is less than one per acre. Proposed screening is required for a nursing home or assisted living facility that abuts residential zoned property. Proposed amenities for 30 or more single family dwellings include a

clubhouse, no size specified. Mr. Duston said 30 seemed reasonable as did requiring detached or pinwheel homes be no more than 110 feet from a swimming pool, clubhouse, or common open space that is accessible and usable to the residents. Land such as flood plain, or steep slopes may not be usable. You want amenities that you can walk to or golf cart to. The 110 feet would be to one amenity, probably there will only be one pool or clubhouse, but there might be a trail network. Vice Chair Chuck Adams suggested putting pinwheels in a circle around a clubhouse where people could gather.

John Grexa noted there are three senior housing developments near us; is this a done deal. Mr. Duston said the topic was the second item coming out of the agenda, his opinion was senior housing is a good thing, but give him tweaks to the language if you don't think something is right for Wesley Chapel. Please give him any items in time to get them on the agenda. John Grexa said it goes back to a survey; we still have a shopping center that is not finished, there is senior housing in Stallings, Marvin and Weddington. With 8,000 population, if 25% is seniors, there would be 2,000 if they all choose to stay here. Also the Land Use Plan says this should be at Potter and Hwy. 84. Mr. Duston said if you want senior housing, you need to consider the Land Use Plan and consider conceptually where you want it; are there portions of the community where you do want it; what are the parameters.

Vice Chair Chuck Adams suggested garages; it is safer due to car break-ins, also a garage is a place to keep your stuff. John Bowen said we might be writing rules to discourage senior housing, why would Planning Board pick the sites, since Planning Board members change. Developers would pick the site. John Grexa said there are two kinds of developers; those who choose the site because they want it, and those that lowball and try to get in as low as possible. He wanted to keep home prices up and be somewhere developers want to come; he suggested we survey the community to see what people want. Mr. Duston said we should come up with parameters, ex. Do we want it near downtown, a park, off a major highway, on a steep slope? The Land Use Plan says 40,000 square feet lots, but you can add "except for senior housing". Chair Keeney said senior housing has been a hot topic at the Advance the last two years. John Grexa asked why; Mayor Horvath said there was a cross section at the Advance, about 40 people. Chair Keeney noted we have an aging population.

Vice Chair Chuck Adams motioned that we not move senior housing to Council tonight, and take time to look at the details, including garages, setbacks, exterior materials, and parking. Bill Duston noted you would not only have to amend the Land Use Plan but also Council wants you to look at the Land Use Plan in its entirety. The motion was amended to not approve tonight to send senior housing to Council. Jeff Davis seconded the motion. Vice Chair Chuck Adams noted we have an obligation to make some good decisions.

The motion failed 2 (Adams and Davis) – 3 (Keeney, Bowen, Grexa).

Discussion was held on the need to make a proper decision, how the density could affect the firehouse if it was near there, and what could be provided to help Planning Board make a decision. Vice Chair Chuck Adams motioned to table this for further discussion to make sense. John Bowen seconded the motion.

The motion passed 4-1, with John Grexa voting nay saying before we move from lots that are 40,000 square feet to something less, senior housing or other types of high density subdivisions, we need to have a demographic study and a survey to see what the residents of Wesley Chapel want, not just Council or Planning Board, but what the public wants, not what we want.

## 7. MINIMUM LOT SIZE CALCULATIONS

Bill Duston reported there is a discrepancy between the Subdivision and Zoning Ordinance text in how minimum lot size is calculated. Section 3.1.1 of the Zoning Ordinance (it should be in the Subdivision Ordinance, because that is where lots are created) excludes buffer, open and/or common areas and floodplains or floodways from minimum required lot sizes. It doesn't address other non-buildable areas such as wetlands, tree save area, and ponds and lakes. He gave Planning Board two options, to exclude all non-buildable land, or option 2 was to require half the lot size be buildable, which is more builder friendly. Section 3.1.1 was written before we had a tree save ordinance. A recent development had a lot of wetlands, but it was not excluded from the 40,000 square feet. John Grexa asked if they can average the lot sizes; Mr. Duston said no, every lot has to have at least 40,000 square feet. Chair Keeney recommended option 2. John Grexa motioned to approve option 1 and read the verbiage from the staff report, which is to delete section 3.1.1 of the Zoning Ordinance, and add to Section 402 of the Subdivision Ordinance: *Minimum lot sizes, as prescribed by the Zoning Ordinance, shall be exclusive of any required buffer, open and/or common areas, floodplains, or floodways, wetlands and required tree save areas. Individual lot sizes on proposed subdivision plats shall not be calculated by averaging or through the application of similar mathematical techniques in order to satisfy this Ordinance's requirements.* Chair Keeney read from the staff report: *Option 1 is the more restrictive of the two options in that it requires all measurable non-buildable lands to be exempted from the minimum lot size calculations. This seems to be in keeping with the thrust of current regulations as the Zoning and Subdivision Ordinance texts each call for exempting some (but not all) non-buildable lands from the minimum lot size requirements.* John Grexa amended his motion to add lakes and ponds be excluded in the square footage calculation, but count tree save areas. Vice Chair Adams asked why exclude tree save area. John Grexa did not have a problem with the tree save areas, so he amended his motion to allow tree save areas to be included in the 40,000 square feet, but not lakes and ponds. He gave an example of his own development, where there is floodplain, open area and unusable land across Potter Road; and felt it should be usable land. John Grexa asked how you will police tree save areas; Mr. Duston said it will be recorded on the plat, he will not know if someone removes a tree. If a pond is commonly owned, it wouldn't count toward the lot size. Vice Chair Adams asked the reason for eliminating lakes and ponds; Bill Duston said because you could have a lot that is mostly pond. Vice Chair Adams seconded the motion.

The motion passed 3-2, with Keeney and Bowen voting nay.

Grexa motioned that the statement of consistency is it protects the homeowner, it gives them 40,000 square feet of land, the Land Use Plan doesn't address it directly; and the proposed changes ensure that such preservation is accomplished in a uniform manner in subdivisions throughout the Village in the future. John Bowen seconded the motion.

The motion passed unanimously.

Bill Duston referred to Mr. Espinosa and Mr. Herring bringing up inconsistencies in the code, and said he would like to bring some simple text changes to Planning Board, for

instance what can you do in the setback, and how close can the canopy be to the property line. He asked Planning Board to think about how we measure setback and what is allowed in the setback as well as where signs are allowed. John Grexa wanted to see information from the state regarding the right of way; Mr. Duston received an email from DOT today and will provide it. If someone feels Mr. Duston's decision is wrong, they can always appeal it to the Board of Adjustment. Chairman Keeney asked Mr. Espinosa and Mr. Herring to have patience; Mr. Duston is dealing with ordinances that have some inconsistencies.

The November meeting date was discussed, and will be kept as is on November 24, 2014.

## 8. ADJOURNMENT

John Bowen motioned to adjourn the Planning Board meeting; Jeff Davis seconded the motion.

The motion passed unanimously.

Respectfully submitted,

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Cheryl Bennett, Village Clerk

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Stephen Keeney, Chairman