



Planning Board Minutes November 12, 2009

Members Present:

David Nail, Chairman

John Robertson, Vice Chair

Allen Brawley

Danny Martin

Steve McGlothlin

William Ogburn

Larry Stamm

David Steen

Joe Thompson

Also Present:

Tim Brown, Planning Director

Craig Culberson, Senior Planner

Jim King, Senior Planner

Neil Burke, Transportation Planner

Mandy Edwards, Zoning Administrator

Gary Styers, Fire Marshall

Alan Bradford, IT Specialist

Angela Thompson, Senior Administrative Support Specialist

Mr. Nail opened the meeting at 6:21 p.m.

1. Mr. Brown introduced Mr. Allen Brawley, the newly appointed Outside Board member, to the Board members and Staff. He noted that the position had been vacant for quite some time.
2. Approval of the minutes of the October 8, 2009 Planning Board meeting.

ACTION: Mr. Stamm made a motion to approve the minutes as submitted. Mr. Robertson seconded the motion. The motion passed unanimously.

3. Consideration of a **REZONING** request from David W. Thompson of behalf of the George Winston Morrison Rev. Trust. The property located at 715 River Highway is further referenced as Iredell County Tax Map PIN 4647-07-9044. The request is to rezone the property from CMX (Corridor Mixed-Use) to R2 (Single Family Residential).

Mr. Brown presented the case stating the rezoning request was for an 11.49 acre tract located at 715 River Highway. He indicated that the property was originally zoned by the Town of Mooresville to CMX (Corridor Mixed-Use) and that the request was to rezone the property to R2 (Single Family Residential). This was due to the current economic climate. He said that the parcel would revert back to the CMX (Corridor Mixed-Use) District when development began to increase in the area. He stated that the current zoning was consistent with the 2030 Comprehensive Land Use Plan. He reiterated that the request was an interim proposition of the owner of the property until the economy improved.

Mr. Nail asked if there was a time frame in which a rezoning request could be made after a parcel had previously been rezoned. Mr. Brown stated that there was not.



Planning Board Minutes November 12, 2009

Mr. Martin asked if the property had been annexed. Mr. Brown affirmed that it was. Mr. Martin then asked if the annexation of the property could be reversed. Mr. Brown stated that a reversal of annexation would require action by the North Carolina State Legislature.

Mr. Steen asked when the parcel had been zoned CMX (Corridor Mixed-Use). Mr. Brown said the zoning took place approximately one year ago. Prior to that time the property was in Iredell County's zoning jurisdiction.

Mr. David Thompson, Trustee for the George Winston Morrison Revocable Trust, stated the property owners were asking for the rezoning due to the current economic climate and for relief of the tax liability for the property. He said the property taxes were about two thousand dollars (\$2000) per year prior to the parcel being zoned CMX (Corridor Mixed-Use). The taxes increased to twenty-six thousand dollars (\$26,000) per year. He offered to show copies of the tax invoices.

Mr. Stamm asked Mr. Thompson if he knew when he might request that the property once again be zoned CMX (Corridor Mixed-Use) if the request before the Board was recommended. Mr. Thompson said he did not believe it would be in the foreseeable future. He stated that plans for surrounding properties were on hold indefinitely.

Mr. Steen asked if the property was listed for sale. Mr. Thompson indicated that it was not for sale. He explained that the real estate market was not favorable at the present time. He stated that the property was still being used as residential property. He also said that the property would remain within the Mooresville town limits.

Mr. Steen commented that he believed the issue could create an opportunity for properties to be zoned and rezoned several times. He said that this would set a precedent for future requests to be made. He stated that there were no guarantees that properties would develop or would sell after being zoned. He indicated that he had misgivings about taking action on the request.

Mr. Stamm added that the Staff for the Town of Mooresville spent time planning the annual budget with the anticipation of tax revenue from the properties. He stated that if other requests were made to down zone properties, the decrease in tax revenues would adversely affect the overall budget.

Mr. Robertson said that the request was not unusual. He could remember two such requests from elderly couples who could not afford to pay the taxes for their properties after rezoning.

Mr. Martin stated that he believed that the circumstances were extraordinary at the present time. He said that he did not believe the first request for zoning would have occurred had the applicant known how the economic climate was going to be shortly after it was approved.



Planning Board Minutes November 12, 2009

ACTION: Mr. Robertson made the motion to approve the request and adopt the Statement of Reasonableness and Compliance. Mr. Martin seconded the motion. Mr. Steen opposed the motion. The motion passed.

4. Consideration of a **CONDITIONAL USE PERMIT** request from Southern Ridez LLC. The property located at 2869 Charlotte Hwy. is further referenced by Iredell County Tax Map PIN 4656-29-5802. The request is for a Conditional Use permit to allow auto sales.

Mr. Culberson presented the Conditional Use Permit request for Southern Ridez LLC. He stated that the property was located at 2869 Charlotte Highway across from Balmy Lane and was currently zoned HB (Highway Business). The Conditional Use Permit was to allow for auto sales, which was a long standing use at the property. The previous use had been vacated for more than one hundred eighty (180) days, thus requiring, according to the current Zoning Ordinance, a Conditional Use Permit.

He indicated that the surrounding areas were zoned CMX (Corridor Mixed-Use). He said that auto sales would be in keeping with the 2030 Land Use Plan. He explained that the Applicant did not intend to make any physical changes to the site, which included a building. He further stated that the property had been divided quite a while ago, as the property line extended into the middle of the road. This was a common practice prior to the mid 1960's when Public Rights-of-Way were recognized for subdivision plats.

He pointed out that there was a fence on the site which encroached into the right-of-way which the North Carolina Department of Transportation was aware of. The Department, he said, was not concerned with the fence because of its distance from travel lanes. He stated that if North Carolina Highway 21 was widened in the future, the Department of Transportation would then consider the location of the fence.

Mr. Culberson instructed the Planning Board members that they would only be making a recommendation. The Board of Commissioners would have a Legislative Hearing at which time they would base their approval or denial upon the Findings of Fact.

Mr. Martin asked what type of cars would be sold at the proposed used car lot. Mr. Culberson indicated that the applicant was present and would be able to answer the question. Mr. Bob Tubridy, the applicant, stated that the current market of cars that he was selling cost between twenty-five hundred dollars (\$2500) and five thousand dollars (\$5000).

Mr. Nail asked if the fenced in area was the entire property. Mr. Culberson said that the building adjacent to the fencing was also included. Mr. Stamm asked if the property had been the location of a garage. Mr. Culberson affirmed that it had been a location for auto service. Mr. Stamm asked if the fence would remain. Mr. Tubridy stated that he had not discussed any changes to the property with the



Planning Board Minutes November 12, 2009

property owners. He said that he would like to be able to take the front section of the fence down for aesthetic reasons.

ACTION: Mr. Stamm made a motion to approve the Conditional Use Permit request to allow for auto sales. Mr. Steen seconded the motion. The motion passed unanimously.

5. Consideration of a **TEXT AMENDMENT** request from the Town of Mooresville. The Text Amendment is for **Section 2.3.2 (2) (B) Concept Plan Review by the Planning Director and Section 2.3.3 (3) (B) Concept Plan Review by the Planning Director**, of the Town of Mooresville Zoning Ordinance.

Mr. Culberson presented the request by explaining that currently the Zoning Ordinance required the submittal of Concept Plans for approval by the Staff for Conditional Use Permits and Conditional Zonings. He said that a large, barren property that was going to be developed with buildings and infrastructure would need Concept Plans. Citing the Conditional Use Permit request that the Planning Board had just approved, he stated that a request for a specific use in an existing building, which would have no changes, did not warrant the need for a Concept Plan. He stated that the proposed Text Amendment would allow the Staff to make a determination as to whether a Concept Plan would be required.

He illustrated further by referencing Mr. McGlothlin's building that was adjacent to the Iredell County Transfer Station. He said that if Mr. McGlothlin had an applicant who required a Conditional Use Permit to occupy the building but was not going to change the outside of the site, that applicant would not need to submit a Concept Plan.

Mr. Stamm, referencing the Conditional Use Permit request by Southern Ridez LLC, stated that if the applicant was not changing the physical character of the site, it was logical not to require a Concept Plan. Mr. Culberson agreed saying that had the Text Amendment been in place, Mr. Tubridy would not have had to hire a surveyor to have a plat drawn.

Mr. Robertson asked what the cost was for a Conditional Use Permit. Mr. Culberson stated that the application was five hundred dollars (\$500). Mr. Culberson further stated that the additional cost of hiring a surveyor would have been eliminated for Southern Ridez LLC had the Text Amendment been in place. Mr. Stamm also stated that the burden of the cost of a Plan would be relieved. Mr. Martin asked if the applicant would still have to pay the fee for the Conditional Use Permit, to which Mr. Culberson affirmed that fact. He also said that the process would still require that the request be presented to the Planning Board and Board of Commissioners. Mr. Stamm asked if the fee had to be paid whether the request was or was not approved. Mr. Culberson stated that it would be required.



Planning Board Minutes November 12, 2009

ACTION: Mr. Robertson made a motion to approve the Text Amendment and adopt the Statement of Reasonableness and Compliance. Mr. Stamm seconded the motion. The motion carried.

6. Consideration of a **TEXT AMENDMENT** request from the Town of Mooresville. The Text Amendment is for **Gasoline Station Canopies Chapter 5, Section 4.3 (4), (A) and (C)** of the Town of Mooresville Zoning Ordinance.

Mr. Culberson explained that the purpose of the Text Amendment pertained to canopies associated with convenience stores or gasoline sales. He said that the current Zoning Ordinance required that canopies be attached to the principle structure and not be free standing or attached to any accessory structure. He stated that the Text Amendment would strike that language. He said that in talking with people who operate convenience stores with gasoline sales, it was realized that the architecture of the principle structure could be focused on more if the canopy was not attached. It would allow more freedom in design and would help to defer the cost of construction.

He cited that the majority of people pay at the pump now to avoid getting out in the rain. He said that most of the people going into the store do so by leaving the gas pumps and pulling up to the store. He stated that the Text Amendment would allow a business the opportunity to attach the canopy to the building, but it would not be a requirement.

He further stated that the second portion of the Text Amendment pertained to Paragraph C, section 5.4.3, in which the current Zoning Ordinance required the maximum height of fifteen (15) feet measured from finished grade to the underside of the canopy. The Text Amendment would change the maximum height to sixteen (16) feet six (6) inches. He said that this would permit compliance with the North Carolina Department of Transportation regulations for canopies. He explained that the new height requirement would better accommodate large trucks and RV's.

He indicated that the Text Amendment would also change the overall height requirement, so that canopies as high as eighteen (18) feet from grade to the underside of the canopy could not be constructed. Mr. Stamm asked how so many gasoline stations in Mooresville had detached canopies while the Zoning Ordinance required attached canopies. Citing the Liberty Station at North Carolina Highway 21 and Brawley School Road, Mr. Culberson stated that the stations with detached canopies were built under the provisions of the older version of the Zoning Ordinance. He said that the new Zoning Ordinance was adopted in 2008.

Mr. Martin asked if there needed to be changes made to Section B which addressed the distance of the canopy from the principle structure. Mr. Culberson stated that the canopy being referenced pertained to the type found at a drive-through restaurant or a bank with a remote drive-up teller location. He explained that the canopy would require the same architecture as the primary structure, if it was



Planning Board Minutes November 12, 2009

located within one hundred (100) feet from the building. Mr. Martin and Mr. Stamm asked that grammatical adjustments be made to Section C. The Board permitted the Staff to make those changes.

Mr. Nail asked for clarity about the maximum height of the canopies. Mr. Culberson stated that the maximum height of the canopy could not exceed twenty (20) feet six (6) inches.

ACTION: Mr. Martin made a motion to approve the Text Amendment with the Staff making the necessary grammatical changes for the Town of Mooresville Zoning Ordinance and adopt the Statement of Reasonableness and Compliance. Mr. Ogburn seconded the motion. The motion passed.

7. Consideration of the NC Highway 3 Corridor Study to be adopted by the Town of Mooresville.

Mr. Brown noted that when the Study began there were four entities involved, including the Town of Mooresville, the Town of Kannapolis, Cabarrus County and Iredell County. He stated that Cabarrus County had since withdrawn from the Study. He then began a Power Point presentation concerning the NC 3 Corridor. This presentation is available in the Planning Department.

Mr. Stamm asked if there had been any research done to plan for the upkeep of the proposed landscaped medians. Mr. Brown stated that no study had been done. He said that the approach and recommendation for the medians was aesthetic. He explained that the medians would serve to better manage traffic and access. He said that the landscaped medians would help to soften the expanse of asphalt and preserve the rural character.

Mr. Nail asked Mr. Brown about the ten (10) foot shoulders that were proposed. Mr. Brown stated that the anticipated dimensions, four (4) to five (5) foot shoulders, were outlined in the Comprehensive Transportation Plan.

Mr. Martin asked if the Food Lion on Shearers Road was located at the Rocky River Road or Johnson Dairy Road designated node. Mr. Brown stated that it was at the corner of Shearers Road and Rocky River Road. Mr. Martin asked why Johnson Dairy was an ideal location for a commercial node on North Carolina Highway 3. Mr. Brown stated that the Staff would examine the appropriateness of locating a node at that intersection. He said that there was the possibility of a node being located at the intersection of North Carolina Highway 3 and Center Avenue. He indicated that the Center Avenue location was already zoned and entitled. He noted that Kannapolis was developing a node at the intersection of Odell School Road. Mr. Martin asked that if after adopting the Study and changes were necessary, would there be the opportunity to change aspects of the Study. Mr. Brown affirmed that the changes could be made.



Planning Board Minutes November 12, 2009

Mr. Brown stated being aware of the intensity of the Odell School Road node, the Town of Mooresville would want to manage the Johnson Dairy Road intersection as a small node. He said that there could be a neighborhood services amenity or a convenience store at that location.

Mr. Brawley asked if the overlay was located to one side of the road for convenience. Mr. Brown explained that the Viewshed illustrated in the Power Point presentation was just an example. He indicated that the Viewshed would be on both sides of the highway. Mr. Brawley asked if the North Carolina Department of Transportation had already established right-of-ways. Mr. Brown stated that there would be a need to acquire right-of-ways in the future. He said that the Town of Mooresville Zoning Ordinance required that a development was required to dedicate right-of-ways to meet the Town's future right-of-ways in the Comprehensive Transportation Plan.

Mr. Stamm stated that it appeared that the Towns of Mooresville and Kannapolis had worked closely together; he asked what had attributed to the withdrawal of Cabarrus County from participation with the Study. Mr. Brown answered saying the elected officials of Cabarrus County had not visualized the traffic volume that would necessitate widening along the corridor. They also had very restrictive watershed regulations in that area. He stated that municipalities of Mooresville and Kannapolis would be providing amenities along the corridor, so it was very important for the two to partner each other with the Study.

ACTION: Mr. Ogburn made a motion to accept the NC Highway 3 Corridor Study as presented. Mr. Stamm seconded the motion. The motion passed unanimously.

8. Other business the Board may consider.

Mr. Stamm suggested that the Staff develop a Text Amendment that would make a requirement that a property could not be rezoned for a certain period of time, using the example of the George Winston Morrison request for a rezoning. He cited that the down zoning was going to affect the budget for the Town of Mooresville, because the Town Staff made budget recommendations based on projected tax revenues. He said that this might discourage future applicants from requesting rezoning on a frequent basis in order to take advantage of a tax rate based on the zoning of a particular property. Mr. Martin said that the property owners would still be paying taxes for the property. Mr. Robertson pointed out that part of the tax revenues belonged to Iredell County.

Mr. Brown stated that the request was the first one recently in which the applicant wanted to down zone their property due to the current economic climate. He cited that there were a couple of requests several years ago for properties along the North Carolina Highway 150 Corridor. Those requests were for properties that were involuntarily annexed and commercially zoned by the Town of Mooresville. He said that the Board of Commissioners approved the requests, because the applicants had not intended to sell or develop their property. These applicants were generally elderly and had planned to maintain residences on the parcels.



Planning Board Minutes November 12, 2009

Mr. Brown also pointed out that the current request was property being held in a Trust. He stated that the location of the property was ideal for development and that the property was well configured for future development.

Mr. Martin also agreed with Mr. Stamm's proposal stating that a property that was voluntarily rezoned should be committed to that zoning for a specified period of time. He said that he did not think the restriction should apply to a property that was involuntarily rezoned.

Mr. Robertson stated that he understood the request for down zoning, as his property's value, and thus tax liability, had increased greatly after the Mount Mourne Small Area Plan had been adopted. He stated that he wanted the Board to be sympathetic to such requests, being mindful that each request would be different.

Mr. Stamm reiterated his point of view and stated that he wanted to discourage frequent requests for changes in zoning. Mr. King stated that the rezoning request was a business decision by the applicant. He pointed out that the rezoning process was legislative and did not require a Findings of Fact. He also explained to the Board that they did not have to make a decision at the time of the presentation of the request. He stated that the Board could deliberate until the next meeting. Mr. Steen stated that the adjoining property owners could request to be down zoned. He said that it would be difficult for the Board to deny their requests after making a recommendation of approval for the George Winston Morrison Revocable Trust.

Mr. Brawley asked if there was a provision in the Zoning Ordinance that would allow a Conditional Zoning based upon a business deal being closed. He stated that a tenant would not accept an agreement with a developer until it was determined that the zoning would be allowed for the proposed use. He explained that at times tenants have withdrawn from an agreement leaving the owner with the tax liabilities for the zoning. He asked if there was a mechanism within the process that would allow for rezoning based on the beginning of construction. Mr. Brown responded that Conditional Zoning with a Site Specific Plan associated with it did have triggers pertaining to vesting, a substantial investment in infrastructure in proportion to the overall value of the project. Adopted Plans, he explained, also would have a statutory vesting status of two (2) years, which could be extended on a discretionary basis for up to five (5) years. If infrastructure, roadways and buildings were not in proportion to the overall value of the development, the developer could lose their vesting status or the right to develop.

Mr. Brown pointed out to the Board that the Mooresville Board of Commissioners would be making the final decision on such requests; therefore it would be at their discretion to approve or deny the request. He explained that the Iredell County Tax Assessor's office used the zoning for a property as a basis for calculating the tax liability for said property.



Planning Board Minutes November 12, 2009

Mr. Brown assured the Board that the Staff would research, review and discuss the Board's concerns pertaining to the discussion. The Board was reminded that the next meeting on December 10, 2009 would be a Joint Board Workshop to focus on the Zoning Ordinance, Design Standards and the Quasi Judicial process.

ACTION: Mr. Stamm made a motion to adjourn the meeting. Mr. Ogburn seconded the motion. The motion passed unanimously. Mr. Nail adjourned the meeting at 7:39 p.m.