



Planning Board Minutes November 10, 2010

Members Present:

David Nail, Chairman

Allen Brawley

Danny Martin

Steve McGlothlin

William Ogburn

Also Present:

Tim Brown, Planning Director

Craig Culberson, Senior Planner

Chris Carney, Commissioner

Angela Thompson, Administrative Support Specialist

Members Absent:

John Robertson, Vice Chair

David Steen

Joe Thompson

Mr. Nail opened the meeting at 6:06 p.m. Mr. Ogburn offered the opening prayer.

1. Approval of the minutes from the October 14, 2010 Planning Board Meeting.

ACTION: Mr. Martin made a motion to approve the minutes as submitted. Mr. Brawley seconded the motion. The motion carried.

2. Mr. Nail stated that the Agenda had been revised. He explained that Agenda Item Number 6, a Text Amendment request from the Town of Mooresville to Chapter 13, Definitions and 6.7.4 Civic Building Forms, had been added after the November 10, 2010 Planning Board Agenda had been mailed.

ACTION: Mr. Brawley made a motion to add the Text Amendment request to the November 10, 2010 Planning Board Agenda. Mr. McGlothlin seconded the motion. The motion was approved unanimously.

3. Consideration of a **CONDITIONAL REZONING** request from Carolina Income Management Group, LLC. The property located at Lineberger Dr. and Muskedine Loop is further referenced by Iredell County Tax Map PIN's 4637-75-0571, 4637-75-0351, 4637-75-0105, 4637-75-1053, 4637-74-1914, 4637-74-0883, 4637-74-0753, 4637-74-0624, 4637-74-0503, 4637-64-9474, 4637-64-8736, 4637-64-8071, 4637-64-5442, 4637-64-6676, 4637-64-6802, 4637-65-6037 and 4637-65-6345. The request is to rezone the properties from Single Family Residential-2 (R2) to Corridor Mixed Use with Conditions (CMX-C).

Mr. Culberson stated that the applicant had asked that the request be deferred until the December 9, 2010 Planning Board meeting.



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ACTION: Mr. Ogburn made a motion to approve the request for deferral until the December 9, 2010 Planning Board meeting. Mr. Martin seconded the motion. The motion was approved unanimously.

4. Consideration of a **REZONING** request from Gillis Family, LP. The property located at 140 Raceway Dr. is further referenced by Iredell County Tax Map PIN 4647-34-6304 and a portion of 4667-34-3217. The request is to rezone the property from GI (General Industrial) to CMX (Corridor Mixed-Use).

Mr. Brown began the Power Point presentation stating the request was from the Gillis Family, LP to rezone the existing parcels comprising one point six four (1.64) acres from General Industrial (GI) to Corridor Mixed-Use (CMX). He indicated that the subject property was located in the Lakeside Park Business Park off of Williamson Road. He said that the site was originally developed as a specific use facility, formerly Red's Gym, with the building located on the eastern most parcel and the required 101 space parking lot was located on the adjacent property to the west. He said that the parking lot parcel was zoned Corridor Mixed-Use (CMX) on point six six (.66) acres and General Industrial (GI) on .37 acres. He explained that the two parcels were developed as one use and would allow for consistency in zoning classification and consideration of potential uses under one zoning district instead of two.

He stated that the two parcels were treated as one site when considered for development in 1999. He indicated that the building was constructed for assembly use, not for industrial use, which was more conducive to uses allowed in the Corridor Mixed-Use (CMX) zoning classification. He explained that the parcels are located near the entrance to the park with visibility from Williamson Road, which was zoned Corridor Mixed-Use (CMX). He said that since the two parcels were developed as one use it would allow consideration of potential uses under one zoning district instead of two.

He said that the rezoning of the property was consistent with adjoining properties and would allow for the vacant structure to be utilized under the provisions of the Corridor Mixed-Use (CMX) District. He said that it would also consolidate the zoning for the property. He said that the Staff recommended approval of the request.

Mr. Martin asked Mr. Brown if the Subject Property Map indicated that the property was not split zoned. Mr. Brown replied that the property consisted of two (2) parcels.

Mr. Martin stated that the Planning Board voted to not allow church uses in the General Industrial (GI) Districts at the October 14, 2010 Planning Board meeting. He asked if the rezoning would allow a church by right at the location. Mr. Brown said that the Corridor Mixed-Use (CMX) District would permit a church use but that it would also allow a variety of other uses that were appropriate for the building type that was located on the subject property. Mr. Brown explained that the rezoning would not be use specific. Mr. Martin stated that he was concerned that the request was similar to the October request, and he was concerned that the present request would be recommended for approval



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while the prior request for a church use had been recommended for denial. Mr. Brown explained that the subject parcel was on the perimeter of the Lakeside Business Park and was adjacent to other Corridor Mixed-Use (CMX) zoned properties. He said that there was a grocery store to the rear of the property along with retail uses located across the street.

Mr. Nail asked what the total acreage for the subject property was. Mr. Brown replied that total acreage was one point six four (1.64) acres of which point six six (.66) acres was zoned General Industrial (GI). He further indicated that the adjoining parcel was a parking lot and was zoned Corridor Mixed-Use (CMX). He explained that there was a single use being occupied on two (2) parcels.

Mr. Doug Gillis, owner of the subject property, stated that he built the building as an assembly structure, and he was required to have one hundred one (101) parking spaces. He reiterated that the parking lot was zoned Corridor Mixed-Use (CMX) and that the building was zoned General Industrial (GI). He said that he was asking that the entire parcel be zoned Corridor Mixed-Use (CMX). He said that the two parcels combined consisted of two point three three (2.33) acres.

Mr. Brawley asked Mr. Brown if the building was constructed for assembly uses and would not be allowed to support a church under the present zoning. Mr. Brown explained that the General Industrial (GI) District did not allow church uses.

Mr. Martin asked if the adjacent properties were zoned Corridor Mixed-Use (CMX). Mr. Brown replied that Corridor Mixed-Use (CMX) properties were to the south and adjoining the subject property. He reiterated that the parking lot on the west side was also zoned thusly, as well as the parcels that were close to Williamson Road.

ACTION: Mr. Brawley made a motion to adopt the Statement of Reasonableness and Compliance and to recommend approval of the Rezoning request. Mr. Ogburn seconded the motion. The motion was approved unanimously.

5. Consideration of an **AMENDED CONDITIONAL REZONING** request from G.K. Curtis Pond LLLP. The property located at Curtis Pond Phase 4, is further referenced as Iredell County Map PIN's 4665-96-0893, 4665-96-1891, 4665-96-3718, 4665-96-3771, 4665-96-4654, 4665-96-5536, 4665-96-5434, 4665-96-3485, 4665-96-4320, 4665-96-5245, 4665-96-5133 and 4665-96-4150. The request is to change the front setback on lots 413-416 and 421-428 from thirty (30') feet to twenty (20') feet.

Mr. Brown presented the request along with a Power Point presentation. He explained that the request was to amend a Conditional Use Site Plan to change the setback requirement for twelve (12) parcels in Curtis Pond Phase 4 located on Quinn Lane and Karlyn Court. He said that all of the parcels were undeveloped, vacant and subdivided.



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He said that the land use for the properties was low density residential and that the change to the front setback would not preclude compliance of the Land Use Plan.

He explained that because the plan had been approved with conditions, the applicant had to present the proposed change to the Planning Board and the Mooresville Town of Board of Commissioners. He said that the proposed request to change the front yard setback of twenty (20') feet was permitted in the Single Family Residential-5 (R-5) District. He indicated that portions of the Curtis Pond Development had similar setbacks.

Indicating the Site Plan, Mr. Brown showed the Board members subject properties in relation to the developed properties in Curtis Pond Phase 4 saying the request would have no significant impact to the surrounding properties.

He said that the physical attributes of the site contributed to the adjustment of the front setback. He said that the rear portion of the site had a very sharp slope. Mr. Ogburn also commented that the back portion indeed dropped off dramatically. Mr. Brown continued by stating that the request would provide a greater building envelope and more flexibility in locating a residential structure on the site.

He stated that the Planning Staff supported a recommendation to approve the Amended Conditional Rezoning request.

Mr. Jonathan Carter reiterated that the request was to change the front yard setback from thirty (30') feet to twenty (20') feet to keep the back grade from sloping off too much. He said that the subject properties were located predominately on Quinn Lane.

Mr. Bill Rice, representing G.K. Curtis Pond, said that the contractor hired to grade the lots brought the situation to his attention. He said that to locate the residences closer to the front of the property would create less of an impact on the environment. He said that the subject properties were adjacent to a pond and a creek.

He indicated that an area of the development that was adjacent to the Rocky River streambed had twenty (20') foot front setbacks which lessen the impact on the environment.

ACTION: Mr. Martin made a motion to adopt the Statement of Reasonableness and Compliance and to recommend approval of the Amended Conditional Rezoning request. Mr. McGlothlin seconded the motion. The motion was approved unanimously.

6. Consideration of a **TEXT AMENDMENT** request to clarify the definitions and appropriate locations for Adult Entertainment Establishments. The Text Amendment is to **5.3.3**,



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Commercial Uses (1) Adult Entertainment and Chapter 13, Definitions of the Town of Mooresville Zoning Ordinance.

Mr. Culberson presented the Power Point presentation. He began by saying that the Text Amendment request pertained to Section 5.3.3 and Chapter 13, Definitions of the 2008 Town of Mooresville Zoning Ordinance, specifically pertaining to sexually oriented businesses. He said that the language change would bring the regulations in line with the North Carolina General Statutes with regard to definitions of adult entertainment establishments and sexually oriented businesses. He explained that Section 160A-181.1 of the General Statutes addressed sexually oriented businesses and that Section 14-201.10 addressed adult entertainment establishments.

He stated that the request would amend the language in the Zoning Ordinance. He also indicated that the definition of an adult entertainment establishment would be added in Chapter 13 of the Zoning Ordinance. He said that it also defined the frontage conditions. Citing the Zoning Ordinance, Mr. Culberson explained that adult establishments were allowed in the General Industrial (GI) or the Highway Business Districts subject to twelve (12) criteria.

He further explained that one (1) of the twelve (12) criteria was that the business must be located on a collector or local street. He indicated that the business would not be allowed on a major thoroughfare such as Plaza Drive or Williamson Road.

He said that the Text Amendment request would restrict the establishments' locations. He stated that the adult establishments would have to be five hundred (500') linear feet from a residential district or a residential use.

He indicated that the underline portions of the Staff Analysis were change recommendations made by the attorney for Town of Mooresville, Mr. Steve Gambill. Citing Item Number (iii) he stated, "A lot, parcel or tract of real property upon which an adult entertainment establishment is located shall have frontage only on a collector or local street. For purposes of determining frontage in this subsection, frontage adjacent to I-77 shall not be considered." He explained that Interstate 77 was obviously a major thoroughfare but that the distance and topography separation that typically existed on lots fronting the interstate would not discount the ability of an adult establishment from being located in the area.

He explained that the Text Amendment request was due to recent inquiries in the Planning Department concerning adult entertainment establishments. He reiterated that the request would more closely align the Zoning Ordinance requirements with North Carolina General Statutes.

Mr. Martin asked if the Planning Board could make a recommendation to the Board of Commissioners to increase the distance requirement from five hundred (500') linear feet to one thousand (1000') linear feet. Mr. Culberson assured him that the recommendation to the Town Board could be amended. Mr.



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Martin said that the distance would be only the length of a football field. Mr. Culberson stressed that the measurement requirement was property line to property line and not building to building.

Mr. Brawley asked if the distance requirement was an interpretation in the Zoning Ordinance. Mr. Culberson confirmed that the requirement was in the Ordinance. He stated that Mr. Gambill amended the language to read that the distance requirement was specific to the lot on which the establishment was located. He said that this gave the intent that the measurement would indeed be property line to property line.

Mr. Brawley stated that he would like for the distance requirement to be fifteen hundred (1500') linear feet.

Mr. Nail asked if the Text Amendment was comparable with other municipalities. Mr. Culberson said that the Staff had researched the requirements of other towns. He explained that the most prevalent distance requirement in the comparisons was five hundred (500') linear feet. He indicated to the Board that they could increase the footage to one thousand (1000') linear feet.

He explained that the North Carolina General Statute required that all municipalities make allowances for adult entertainment establishment uses. He said that it was not possible for the Town of Mooresville to not allow the uses and that such uses had federal and state protection.

Mr. Martin made a recommendation to increase the distance from five hundred (500') linear feet to one thousand (1000') linear feet. Mr. Culberson asked that the Planning Staff be able to examine a map showing the distance of one thousand (1000') linear feet from all residential, church and daycare uses to make sure that it would not totally restrict any sexually oriented business uses. If this was the case, he asked for the ability to leave the separation distance at five hundred (500') linear feet.

Mr. Ogburn asked if the distance restriction would have an effect on existing sexually oriented business uses. Mr. Culberson replied that there were no such businesses in Mooresville. He explained that there was a map created by the Staff to show the locations where the businesses would be allowed. He said that there had to be a provision to allow sexually oriented businesses in Mooresville.

Mr. Martin asked where the areas in Mooresville were that would allow for sexually oriented business uses. Mr. Culberson replied that the use would be allowed in areas located in Lakeside Business Park, Talbert Point Business Park and along Oates Road. He said that there was a list in the Planning Department that classified the roads in Mooresville's zoning jurisdiction. He said that the classifications were local, connector, minor thoroughfare, major thoroughfare and expressway. He said that there were a few more classifications.



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He said that the sexually oriented businesses would only be able to locate in Highway Business (HB) or General Industrial (GI) zoning districts. He said that the frontage requirement would also be reviewed to insure that the business fronted a local or collector street.

ACTION: Mr. Martin made a motion to adopt the Statement of Reasonableness and Compliance and to recommend approval of the Text Amendment request with the possible change to the separation distance. Mr. Brawley seconded the motion. The motion was approved unanimously.

7. Consideration of a **TEXT AMENDMENT** request from The Town of Mooresville. The Text Amendment is to **Chapter 13, Definitions and 6.7.4 Civic Building Form** of the Town of Mooresville Zoning Ordinance.

Mr. Culberson began the Power Point presentation explaining that the Text Amendment would create a definition for modular structures in Chapter Six (6) of the Town of Mooresville Zoning Ordinance. He said that Chapter Six (6), Building Form Standards, contained design criteria pertaining to building form types, but it did not address modular structures.

He said that modular structures were built according to the provisions of North Carolina Building Code and were fabricated in a contained environment and then transported to the site.

He said the first part of the Text Amendment pertained to Chapter 13.2, Definitions. He said that the description was changed from modular homes to modular structures because there were commercial applications for modular structures. He read the definition saying, "Sectional prefabricated buildings or structures that consist of modules or sections constructed on or off site in accordance with the North Carolina State Building Code usually composed of components assembled in a manufacturing plant and transported to the building site for assembly on a permanent foundation." He said that the definition would give the Planning Staff the ability to apply the material and construction standards of the commercial retail building requirements to modular structures as well.

He indicated that the second part of the request applied to Section 6.7.4(3), Materials. He said Item (E) that was being added pertained to civic buildings. He explained that the civic building category included libraries, courthouses, government buildings, churches and schools. He said that Section 6.7.4 was limited in material types that could be used, including brick, stone or heavy traditional building types.

He said that in addition to the materials listed in (A), structures located within the Residential-2 (R-2), Residential-3 (R-3), and Residential-5 (R-5) zoning districts could also be clad in cementitious fiberboard, wood clapboard, stone or stucco veneer or other similar materials as a primary treatment when the Civic Building Form was required.



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He explained that there would be more material choices for civic buildings or churches that were to be located in a residential district. He said that this would allow for a choice for what kind of building was going to be built.

He explained that there had been an inquiry from a group of people who wanted to create a start up church. He stated that the group would start out in a small building as there were approximately a dozen members. He said that they did not have the capital to use brick or stone applications. He said the request would offer additional materials that could be used.

ACTION: Mr. Ogburn made a motion to adopt the Statement of Reasonableness and Compliance and to recommend approval of the Text Amendment request. Mr. Martin seconded the motion. The motion was approved unanimously.

8. Other business the Board may consider.

Mr. Culberson informed the Planning Board members that there would be a Joint Board Workshop on January 13, 2011. He said that there were no requests to be presented at the meeting. He explained that the Planning Staff had been working on the Use List Chart in Chapter Five (5) of the Town of Mooresville Zoning Ordinance. He explained that it contained a Use Matrix that listed different Uses down the side, and Zoning Districts were listed across the top. He said that the Staff had been examining the chart to make sure that the Uses were appropriate for the different Zoning Districts. He said that the need for Conditional Use Permits would be minimized. He said that it would be beneficial for the Town Board and Planning Board members to receive the information in a workshop format.

ACTION: Mr. Martin made a motion to adjourn the meeting. Mr. Brawley seconded the motion. Mr. Nail adjourned the meeting at 6:41 p.m.