



Planning Board Minutes November 10, 2011

Members Present:

David Nail, Chairman
John Robertson, Vice Chair
Danny Martin
Lisa Qualls
Steve McGlothlin
Allen Brawley
William Ogburn

Also Present:

Craig Culberson, Senior Planner
Jahni Vickers, Executive Assistant/Deputy Town Clerk

Members Absent:

David Steen

Mr. Nail called the meeting to order at 6:02 p.m.

1. Approval of the minutes from the October 13, 2011 Planning Board.

ACTION: A motion by Mr. Brawley, seconded by Ms. Qualls to approve the minutes as submitted. The motion was unanimously approved.

2. *Continued from October 13, 2011- Consideration* of a **REZONING** request from Redus NC All, LLC. The property referenced as Emerald Green, located on Aztec Circle off of Charlotte Highway, is further referenced as Iredell County Map PINs 4656178938, 4656280291, 4656281051. This request is to rezone the property from R2 (Single Family Residential-2) to RMX-C (Residential Mixed Use with Conditions).

Craig Culberson, Senior Planner with the Town of Mooresville gave a brief presentation in reference to the proposed rezoning. A copy of this presentation is on file in the Town of Mooresville Development Services office. Mr. Culberson said the recommendation last month was to table this item to allow the representatives from Wells Fargo and the homeowners to meet and make sure everyone is on the same page. The staff report has not changed since last month. The property was originally zoned for a duplex project. It was then amended to allow for a condominium project which would be ownership of individual units with common ownership of the land area. Since that time, this project has stalled and the remainder of the projects are currently under the guardianship of Wells Fargo. Currently, the request would be to change the zoning to facilitate making a townhome community. The reason for the request to go from R-2 to RMX is that the existing R-2 zoning does not allow for townhomes. The RMX with Conditions would allow all of the other things that need to take place to move forward. There are 56 units. That number does not change. There are walking trails, common area and a building, that would not change. Mr. Culberson said unless there are questions about the site plan specifically, what he would like to do is have a representative of Wells Fargo to come up and give the Board an update on what took place in the discussions with the homeowners since the last meeting.

Mr. Nail asked if there were any questions for Mr. Culberson.

There were no questions.

Jamie Bartolucci with Wells Fargo Bank addressed the Board. She said Wells Fargo Bank acquired 40 vacant lots and eight finished condominium units at Emerald Green approximately one year ago. The lots and units were acquired via foreclosure. Wells Fargo attempted, earlier in the year, to convert the whole project to townhomes. She said Wells Fargo has tried to work with the lenders to get permission to change the deed to their collateral to be townhome communities. She said she ran into one loan where the originating bank said the loan had been sold to



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Freddie Mac and that Freddie Mac would not allow changes to the deed. In that case, Wells Fargo then tried to keep the recorded condominiums as condos and then develop the rest of the community as townhomes and have a master agreement or a master association over the two or somehow address the use of common property. Ms. Bartolucci said that she was in quarterly meetings during the last Planning Board meeting and she could not attend. She understood the homeowners in Emerald Green were frustrated that they could not be included in the townhomes. After the last Planning Board meeting, Wells Fargo and the homeowners met and the homeowners felt strongly about being included as townhomes. Ms. Bartolucci said she asked the homeowners to work with their lenders and get them to agree to become part of the townhomes, that would be great. That was Wells Fargo's first idea. Currently, those people are working with their lenders and if everyone can agree, and if the one loan that is the holdout can be worked out and there was permission from all the lenders and all the homeowners then Wells Fargo would move forward with the entire community being townhomes. That is where the situation is currently. Ms. Bartolucci said if everyone can be a townhome there will be one Homeowner's Association. If not, then the attorneys have laid out a plan where there can be a townhome HOA and the condominium itself can be a member of the townhome and then if more opportunities came later that they could all be townhomes, the attorneys would try to structure the documents so that it always left a window for that change to be made. Ms. Bartolucci said it has always been her choice to make it one townhome community. Ms. Bartolucci said the proposed HOA documents have been presented to the Homeowners and that she does have a builder who is under contract to take down the lots only if he can build fee simple townhomes. This would move the community forward. She said she knew that the builder has worked with the Planning Department as to the look of the exteriors and they've presented their renderings so it will be very comparable to what has already been built. Ms. Bartolucci said she had to get rezoning before she could proceed with an all townhome community. Ms. Bartolucci asked if there were any questions.

Mr. Robertson said he had a question. He asked what was preventing Wells Fargo from buying the piece of property that is causing the hold up and turning around and selling it back to the current owner for the same price. Ms. Bartolucci said generally the bank just does not do that. Wells Fargo has so many assets already they generally don't buy more property.

Mr. Robertson said, to him, it looked like that option would be in Wells Fargo's best interest in order to move the other lots.

Ms. Bartolucci said she understood Mr. Robertson's point but it is just generally not a precedent that they would like to set. Wells Fargo has not done this to date.

Mr. Martin said he thought they probably had not run into this situation before either.

Ms. Bartolucci agreed. She said they were trying to exhaust all of their efforts to talk to someone at Freddie Mac and see if they did learn that Freddie Mac guidelines very specifically said there cannot be conversions to condominiums.

Mr. Nail asked if there were any other questions.

Mr. Martin said he understood that Wells Fargo, in order to go forward with the project, is not willing to buy this property to convert it to a townhome. He asked if they would rather just leave things like they are instead of doing that.

Ms. Bartolucci said that is not what she is saying.

Mr. Martin said that was what it amounts to.



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Ms. Bartolucci said they have not done that and they don't do that. She said that Wells Fargo is trying to work through what is there and trying to find a way to get Freddie Mac to do an exception or explore some other option.

Mr. Martin said Freddie Mac doesn't want to bend their rules, Wells Fargo doesn't want to bend their rules, so where does that leave us? He said they needed to do something for the homeowners. They bought their condos in good faith, expecting everything else to be condos. Now, because Wells Fargo comes in they should build townhomes and leave the current owners sitting in condos and have separate HOAs and everything else.

Ms. Bartolucci said no builders are building condominiums right now. It is difficult to get financing organized on condominiums in this environment. If it is a condominium tower and it resales as a condominium, established communities seem to fair well.

Mr. Martin asked what was worked out in the meeting between Wells Fargo and the homeowners.

Ms. Bartolucci said that they agreed that each person with a lender was going to work directly with that lender to get approvals and make every effort to try and work through things.

Mr. Martin asked if that was where it was just left.

Ms. Bartolucci said yes, everyone agreed that that is what they wanted to do.

Mr. Martin said last time there was some question about the clubhouse. He said he understood that there would be two HOAs and that the condominium owners would not own the clubhouse since it would not be in their HOA.

Ms. Bartolucci said if everyone is a member of the townhome HOA and the HOA owns the clubhouse then they would have access to it.

Mr. Martin asked if all the condo members would become members of the HOA that was the townhome HOA.

Ms. Bartolucci said that was correct. That is what the attorney presented when they met together and the owners said they really wanted to be a townhome as well. Ms. Bartolucci said that everyone agreed that if the homeowners could make that happen then it would be fine and everyone would be a member of the townhome association.

Mr. Martin asked if they didn't convert to townhomes if the condo itself would become a member of the townhome association.

Ms. Bartolucci said that was correct.

Mr. Nail asked if there were any other questions.

Dr. Steve Moyer said he lived in the Emerald Green community. His address is 122 Aztec Circle. He said that the homeowners did meet with Ms. Bartolucci and the attorneys. Dr. Moyer said for the longest time they were under the impression that the person whose loan it was that belonged to Freddie Mac knew all about it. It turns out it was his loan. Dr. Moyer said he financed originally with BB&T. BB&T either with the original loan or a subsequent refinance sold the loan to Freddie Mac but kept the servicing rights on the loan. Dr. Moyer said he always paid BB&T. He said he never would have known in a million years that it was his loan. He found out it was his loan a day after they met with the attorneys and Ms. Bartolucci. Dr. Moyer said he went to BB&T and explained the



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problem and BB&T has no problem with it. However, they no longer own the paper. Dr. Moyer said he has given them his personal and financial history to see what they can do about either a refinance or to do whatever they possibly can do within BB&T because they value his business and they are trying to help out so that the separate condo and townhome community does not have to happen. Dr. Moyer said he thought, as homeowners, their fear is that if they are stuck with a condo situation and they are building townhomes, and we know that the condo situation is not preferable and they are not being financed by banks because it is just not considered a good investment, the homeowners will forever have properties that they cannot competitively market. Whatever the benefits are that accrue to the builder and to Emerald Green as townhomes, the current homeowners will always have comps that are not townhomes and they are underwater after the 2011 reevaluation. BB&T is working this up their hierarchy and they say there should be a way it could be done. However, BB& T has only had his paperwork for a little over a week because he didn't know it was his problem. As homeowners, at this point, they are opposed to going forward until they can be fairly certain that they will be involved in the project and be rezoned as townhomes and be one community instead of two. He said this would really kill the homeowners if the rezoning moves forward and the existing homes are still condos.

Mr. Robertson asked if a lawyer drew up the proper paperwork, would Dr. Moyer be willing to sell his condo to Wells Fargo and turn right back around and buy it back through them.

Dr. Moyer said absolutely. Dr. Moyer said he would be happy to continue to do the same thing he has been doing for the sake of himself and for the whole neighborhood. He said that would be no problem for him.

Mr. Nail asked if there were any other questions.

Ms. Tara Cashion said she lived at 146 Aztec Circle. Ms. Cashion stated that the predicament in which the homeowners find themselves is that the bank is willing to pay the attorney's fees to have the condos changed over to townhomes. The bank wants the homeowner's cooperation to help the Planning Board to recommend the rezoning so that they can move forward. She said if the Planning Board went ahead and rezoned the property, the bank then has no incentive to help them out afterwards. The homeowners cannot afford to pay the attorney's fees that it would take to have the property changed over to townhomes at a future date. Ms. Cashion said she asked another bank representative at least a half dozen times if they were certain that the homeowner with the holdout loan was aware that their mortgage was owned by Freddie Mac. Ms. Cashion also said she was assured every single time by that representative that the homeowner was aware that their loan was owned by Freddie Mac. It was two weeks after the last Planning Board meeting before the homeowners were able to get together with Wells Fargo. Ms. Cashion said at that meeting, she asked if the homeowner had been notified about their loan. Ms. Bartolucci said she would tell the homeowner in an email the following day. Dr. Moyer had no idea that his loan had been sold because he was still paying BB&T. The homeowners have only had about one week to work with this. However, if the property is rezoned tonight, Wells Fargo has no reason to work with the homeowners any further. Ms. Cashion asked if the Board had any questions.

Mr. Nail asked Ms. Cashion what she would like the Planning Board to do tonight.

Ms. Cashion said she would like for the Board to table the issue again until Dr. Moyer has had an opportunity to go further with his loan to see what can be done. She said she doesn't really understand why a huge bank like Wells Fargo cannot take care of this issue anyway. They agree with Mr. Martin's suggestion that Wells Fargo simply buy the loan from Freddie Mac and then they can give the proper permissions to have this done. She said it seems that would be less cumbersome and expensive. The bank is a big entity and if they had known prior, they could have been working on this issue since May but she was assured that the homeowner was aware.



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Mr. Nail asked if there were any other questions.

Mr. Robertson said he did not want to send this issue to the Town Board with the chance that it could be approved.

ACTION: A motion by Mr. Robertson, seconded by Mr. Martin, to table the proposed REZONING until the December 8, 2011 Planning Board Meeting. The motion was unanimously approved.

3. *Application amended from October 13, 2011*- Consideration of a **TEXT AMENDMENT** request from the B K Barringer. The Text Amendment is to **Section 5.1.4, Table of Uses, Medical Treatment Facility in Exclusive Industrial Zoning District** of the Town of Mooresville Zoning Ordinance.

Craig Culberson, Senior Planner, with the Town of Mooresville said after the meeting last month, the applicant for this text amendment looked at the fact that their original request was based on an older version of the ordinance that has not been updated. The discussion last month was typically around the area of five thousand square feet. However, the application now says they are asking for a text amendment to allow medical treatment facilities up to fifteen thousand square feet. Because the wording is different, rather than take it to the Town Board with some unclear wording as far as what is being requested, this is back before the Board tonight and we are asking that the Board act on the specific request of “up to fifteen thousand square feet” in exclusive industrial, subject to the conditions of a Conditional Use Permit. Mr. Culberson showed a Power Point slide that indicated what the Use Table of the Town of Mooresville Zoning Ordinance would look like if this text amendment were approved. A copy of this Power Point Presentation is on file in the Town of Mooresville Development Services Office. Mr. Culberson said, as he said last month, that medical office facilities are allowed in RMX, TND, CMX, HB, Town Center, and numerous other districts in various shapes and sizes. The staff’s concern, as stated last month, is whether or not this use is actually appropriate in exclusive industrial. Mr. Culberson said he would be glad to go back and answer any questions but essentially the spirit of the request is the same as it was last month. Mr. Culberson offered to answer any questions the Board may have.

Mr. Martin said if the property is zoned Exclusive Industrial and there is a desire for another use in there why is the zoning of the entire property not changed. Mr. Martin said, to him, Exclusive Industrial meant Exclusive Industrial.

Mr. Culberson said depending on what happens with the current request that could be an option. As far as the request that is before the Planning Board this evening, it is whether or not that you want to make a recommendation to the Town Board of Commissioners to amend the Ordinance as it is currently shown.

Mr. Brolin said last month when it was determined that he had used an old code he was “shooting from the hip” in saying up to five thousand square feet. Mr. Brolin said he went back and talked to some of the people at Lake Norman Regional and they indicated that that amount of space would not be sufficient to do the kind of work they were planning to do for the industries in the area. Lake Norman Regional indicated that they would probably be using somewhere between five and ten thousand by the time they factor in lab space and other uses. That is the reason for the increase in space in the request.

Mr. Nail asked if there were any questions for Mr. Brolin.

Mr. Brolin said he had talked to a number of people who are interested in this use such as Best Sweets and Niagara. He has been told, even by the Economic Development people that this use makes a lot of sense in order to facilitate that industry because that is the whole goal, to have a package that is more sophisticated than the norm. These are amenities that would distinguish Mooresville’s industrial areas from other industrial areas that may not have those amenities to offer. The effort is to have various entities joined together in the industrial area to have a local medical



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facility given the costs that accompany operating such facilities. Mr. Brolin said there had been a lot of positive feedback from those that he had spoken to about this facility. Mr. Brolin said he understood what the Board was saying, from a very purist standpoint; Exclusively Industrial really means to be Exclusively Industrial but within the rubric of economic development and knowing that a function or a use does not exist all by itself it needs a lot of synergy from the community. This would be one of those things as a conditional use that would have to come back, would be reasonable.

Mr. Martin said he thought it would create problems down the road. He said this may not necessarily be a problem but there will be something coming up again and someone will want something similar in their area with new proposals like having overnight patients. Mr. Martin said he thought it would open up a lot of problems down the road in his opinion. He said it was not that this was a bad idea, but he thought that it would present problems later.

Mr. Brolin asked if Mr. Martin really thought there would be a ground swell of medical facilities that want to come into Industrial Parks. He said there is basically a medical facility in town and maybe two physician groups in town as it is now. He said it is these groups that are trying to consolidate and be more efficient in delivery of services. He said he understood Mr. Martin's concern but that he didn't think that it was reasonable to think that it would create that many problems.

Mr. Martin said he was referring to a place that patients were allowed to spend the night because technically that would be allowed under the ordinance if the text amendment were granted. He asked why, if Mr. Brolin's clients wanted to open this type of facility in this location, that some other organization would not want to do this somewhere else.

Mr. Brolin said that he thought the Board would find that this was more like a physician's office. He said he didn't know of any physician's office, even the largest ones in town or even in Charlotte that allow for overnight stays. He said in the regulatory environment, with insurance and other issues of the medical field, you don't often find people simply throwing up a building and allowing people to stay there overnight. They are there to serve a purpose in a piece of the community and that is what is being requested here. He said he would bet you wouldn't see another one of these in 50 years. He said if there was another one it would simply be because this facility cannot handle the business that is coming its way. Mr. Brolin said this was not a request for general office space in this category; this is strictly for medical offices. He said he would also be resistant if the request were for a general office in an industrial district because he could see how that would create problems. Mr. Brolin said the request was made to Lake Norman Regional by the various businesses involved. He said that his firm became involved in helping with property selection and the zoning issue. He said it is not a "done deal" that his firm would get Lake Norman Regional's business but it made sense. He said he'd been developing for 20 years in the Mooresville area and BK Barringer had been doing it for 40 or 50 years in Mooresville. He said they are trying to be proactive in economic development. He said given the fact that they've developed in Mooresville and that this has been requested by employers in Town and they had received positive feedback, he hoped that the Board would not be so parochial in their point of view on this particular matter.

Mr. Martin said he apologized but he did not agree.

Mr. Nail asked if there were any other questions.

Mr. Brawley said he understood Mr. Brolin to say that the facility was not one to encourage overnight stays, yet the language for overnight stays was placed in the amendment.

Mr. Brolin said the definition of "Medical Facility" is what is written on the application.



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Mr. Culberson said that the definition that is in there is the one that is currently in the ordinance today. This request is to add that possibility in the Exclusive Industrial District subject to a Conditional Use Permit. That definition of "Medical Facility" is already in the ordinance today.

Mr. Brawley said by definition, if a medical facility is approved, they can have an overnight stay situation. He asked if he was correct.

Mr. Culberson said if this amendment was approved then Mr. Brolin or another party would have to come to the Town Board of Commissioners and ask for a Conditional Use Permit. In the process of that Conditional Use Permit, whether or not it would be appropriate for overnight stay can be discussed and made a condition. Mr. Culberson said it would not be a "done deal" that there would be an overnight stay situation but that could be a topic of discussion if it came forward with the specific request.

Mr. Brolin said this just opened the door for them to bring a specific project to the Town Board for conditional approval. At that point, restrictions and obligations can be laid on the project. Mr. Brolin said they did not have a project, they were simply asking that this be allowed to come forward. Right now, there is no option, not a variance, or any other avenue. This facility simply opens the door for consideration.

Mr. Nail asked if anyone else wished to speak.

ACTION: A motion by Mr. Martin, seconded by Mr. Ogburn to recommend to the Town Board the denial of the proposed TEXT AMENDMENT to Section 5.1.4, Table of Uses, Medical Treatment Facility in Exclusive Industrial Zoning and adopt a statement of reasonableness and compliance based on its opening the door to future problems. The motion was approved with members Martin, McGlothlin, Brawley, and Ogburn voting for the motion and Members Robertson and Qualls voting against the motion.

4. Any other business the Board may consider.

Mr. Culberson said sometime over the next month or so, there will be, as there always is a Planning orientation for the newly elected Board members and the Planning Board members would certainly be invited to that as well so that they can have a refresher. If there are any questions that have come up that can be discussed then that would be a good time. Mr. Culberson said it would most likely be January before the meeting was held after their other orientations and the Christmas holiday. Mr. Culberson said if there were specific items that the Planning Board would like to be covered to please let him know.

ACTION: A motion by Ms. Qualls, seconded by Mr. Ogburn to adjourn the November 10, 2011 Planning Board Meeting. The motion was unanimously approved.

The meeting adjourned at 6:47 P.M.