

JANUARY 18, 1982

MINUTES OF A PUBLIC HEARING OF THE MAYOR AND COUNCIL
OF THE TOWN OF CHAPEL HILL, MUNICIPAL BUILDING,
MONDAY, JANUARY 18, 1982, 7:30 P.M.

Mayor Nassif called the meeting to order. Present were:

Marilyn Boulton
William Broadfoot
Jonathan Howes (late)
Beverly Kawalec
David Pasquini
Joe Straley
R. D. Smith

Councilmember Wallace was absent. Also present were Ms. Sonna Loewenthal, Assistant Town Manager; Mr. Ron Secrist, Interim Town Manager; and Mr. Emery Denny, Town Attorney.

Mayor Nassif stated that persons wishing to make statements regarding Special Use Permits would need to be sworn in order for Council to consider such statements.

Zeta Tau Alpha Request for Zoning Map Amendment

Mr. Jennings, Planning Director, presented the request: a zoning map amendment to reclassify approximately 20,000 sq.ft. of land from R-3 to R-6. The property is a vacant lot at 116 North Street.

The requested change would: (1) increase the amount of floor area that could be constructed on the property; (2) allow multifamily development as a permitted use rather than a special use; and (3) allow a fraternity or sorority to be built, subject to issuance of a Special Use Permit.

The Zoning Ordinance outlined the following three criteria for consideration when making zoning map amendments:

1. To correct a manifest error in the chapter;
2. To accommodate changed or changing conditions in a particular area or in the jurisdiction generally; or
3. To achieve the purposes of the Comprehensive Plan.

Staff did not find that the first two criteria were applicable. In considering criteria #3, staff felt that a higher density classification was a reasonable request as (1) this block was not a logical location for continued low or medium density housing, (2) it would allow a logical transition of uses and intensity from the surrounding areas, and (3) permitting fraternities and sororities and multifamily uses would allow a reasonable adaptive reuse of existing structures for residential purposes. Therefore, staff recommended approval of the request.

Mr. Roscoe Reeve, Chairman of the Planning Board, stated that the Board concurred with staff recommendation.

Ms. Polly Dodd, an alumna of the sorority, reviewed the past unsuccessful efforts of this new sorority chapter to find acceptable housing. She supported the request, as rezoning would allow the existence of a sorority on this lot.

Mr. Robert Page, representing the Zeta Tau Alpha Sorority, submitted a Statement of Justification in support of the request. He felt that rezoning would promote health, safety, and general welfare and would be in conformance with requirements of the Comprehensive Plan. Points addressed were: (1) close proximity to UNC and Town Center; (2) single family residential uses for the site were no longer economically feasible due to the close proximity to the Town Center; (3) the surrounding area was in a state of transition (some surrounding properties were owner-occupied, some were rental property, and some were offices); and (4) there were currently two sorority houses within 1,000 feet of the property.

He further stated that, as there were few R-5 and R-6 zones in Chapel Hill to encourage fraternity and sorority uses, the current zoning designation of this area was an error.

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He submitted eight (8) letters from surrounding property owners that expressed support for expanding the rezoning request. A ninth letter stated a neutral position.

Mr. Bob Anderson, representative for the sorority, informed Council that if the rezoning request were approved, the Zeta Tau Alpha Sorority would be presenting a Special Use Permit request to construct a sorority building to house 31 sorority women. He felt that there was a manifest error in the current zoning due to the surrounding concentration of intense uses, as opposed to the present single family residential zoning of this site. He referenced the current mix of uses in the immediate area and the number of buildings which had exceeded the permitted density by being non-conforming uses.

He submitted statistics from a traffic study that showed a below normal traffic count for the area as currently zoned. Therefore, he did not feel that rezoning (and the eventual housing of sorority residents) would significantly accelerate current traffic movement or create a hazardous situation.

He submitted photographs of the area to show (1) the instability of the area's current zoning, and (2) that the eventual proposed use of this site would improve the present site condition.

Ms. Nancy Preston, speaking for the Preservation Society, stated that the Society supported the request for rezoning. She had contacted homeowners on North Street regarding the request and had received favorable results.

Mr. Joseph Herzenberg, a citizen, supported the request, feeling that rezoning would correct a manifest error in the Zoning Map and that a sorority house on this site would be an appropriate use of the property, stabilizing and enhancing that neighborhood. He felt that extension of the previously established parking restrictions would eliminate potential parking problems.

Mr. Roy Sommerfeld, a resident of North Street, referenced current parking problems he had experienced. He felt more parking problems could result if the request to rezone were approved. He urged Council to take this into consideration.

Councilmember Broadfoot asked why staff had only recommended rezoning the lot and not the whole block. Mr. Jennings responded that during preparation of the Zoning Ordinance Council had decided not to zone the block R-5 or R-6. With Council's prior decision on this block, staff felt it best to allow the Council to consider the merits of the one lot requested.

Mr. Page informed Councilmember Pasquini that the current owner of the property was Mr. John Cates. The sorority, however, did have a contract to buy the property.

COUNCILMEMBER BOULTON MOVED, SECONDED BY COUNCILMEMBER SMITH, TO REFER THE ISSUE TO THE MANAGER AND TOWN ATTORNEY. THE MOTION CARRIED UNANIMOUSLY.

Gurlitz Zoning Map Amendment Request

The request was for a zoning map amendment to classify approximately 4.67 acres of land from R-1 to R-4. The property is located approximately 600 feet east of Airport Road between Taylor Street and Piney Mountain Road.

If approved, the requested amendment would (1) increase the amount of floor area that could be built; (2) reduce the minimum gross land area requirement per single family dwelling unit; (3) allow rooming houses as principal uses; and (4) allow multifamily housing developments of up to seven units as principal uses, rather than subject to issuance of a Planned Development-Housing Special Use Permit.

Staff did not believe that criteria #1 and #2 were applicable. In addition, staff did not recommend the request to rezone to R-4, as staff felt that high density residential development should not extend beyond a reasonable distance into the interior of a subcommunity. The currently existing power line easement was believed to be an appropriate dividing line between high and low density development, especially since it was bordered on the north, east, and southeast by low density development.

Staff recommended rezoning the area to R-2 as the Land Use Plan encouraged development at the upper end of the low density range in areas designated for low density residential use and the site's topography was characterized by gentle slopes.

Mr. Jennings submitted a protest petition from property owners protesting both the request to rezone to R-4 and the staff's recommendation to rezone to R-2. As 20% of the property owners had signed the protest petition, a 3/4 vote of the full Council would be required for a zoning map amendment to be approved for R-2 or R-4 zone change (Sec. 19.3 of the Zoning Ordinance).

Mr. Reeve stated Planning Board's concurrence with staff recommendation.

Mr. Josh Gurlitz, applicant, felt that the Comprehensive Plan addressed promoting a mix of development. He did not feel that such a mix presently existed in this subcommunity. Regarding the use of the power line easement as a division of uses in the area, he felt that a better separation of uses would be the natural barrier of the stream and the dense vegetation.

There were no citizens who spoke in support of the rezoning.

Mr. Jim Huegerich, a resident of Taylor Street, felt that there was no natural barrier between these two properties, and asserted that the applicant could conceivably develop the property all the way up to the adjacent property. He did not concur with the applicant's points that this request would achieve the purposes of the Comprehensive Plan as he did not feel that there was appropriate access for future residents, if one took the current traffic impact of the area into consideration. Mr. Huegerich felt that higher-density housing would create a greater risk in accommodating emergency vehicles into the area, also creating a risk for adjoining single family residents. He stated that if Council were to consider a R-2 zone change, they should be aware that 35 units could be constructed; if R-4 were approved, 91 units could be constructed. This was an extremely high-density housing proposal which the neighborhood did not wish to see. Lastly, current egress of single families from the area seemed to indicate a deterioration of the area.

Mr. Griffin Graves, an attorney, represented the property owners of the Pine Tree Corporation. He stated that the Corporation felt that a change in the zoning would have serious detrimental impact on the value of the neighboring lots. In addition, there were significant traffic safety problems at the point of access onto Airport Road. Amending the zoning map as requested or recommended would only increase the seriousness of the situation. The Corporation requested that Council deny the R-4 request. If Council considered the R-2 rezoning, the Corporation requested that a buffer strip (zoned R-1) be left to create a boundary to protect current development.

Mr. Al Wurth, a resident of the area, opposed the request due to the potential increase in traffic behind his home. He expressed concern that the possible rezoning to R-2, with adjacent R-4 zoning, could ultimately result in a density transfer. In addition, he did not feel that high-density of the area was appropriate due to its distance from the Town Center.

Mr. Lawrence Guymon, a resident, felt that high-density zoning would increase traffic safety problems.

Ms. Betty Riggsbee, a resident, expressed her concern regarding traffic safety and referenced incidences of traffic accidents in the area.

Councilmember Broadfoot asked Mr. Jennings to elaborate on the staff's recommendation for R-2. Mr. Jennings explained that staff, during the preparation of the Zoning Map, had attempted to designate zones comparable to previous designations. This property had been in an Agriculture (AG) district and R-1 was the most comparable district to AG. These two designations were not interchangeable. There was a definite density for each. However, the Comprehensive Plan did stipulate that development at the high end of the low density range be encouraged to promote adequate housing and low prices. R-2 was within that range and would not create a form of development that would be incompatible with present development.

Councilmember Howes asked Mr. Gurlitz about future plans for the area, if R-2 were approved as opposed to R-4. Mr. Gurlitz stated that his plans for development of the area were the basis for his request to rezone the area for R-4. An approval for an R-2 rezone would, of course, necessitate a change in his plans for development.

Mr. Reeve explained to Councilmember Smith that the dissenting vote of the Planning Board was based on the feeling that the current R-1 zoning was appropriate and that no change should occur.

COUNCILMEMBER STRALEY MOVED, SECONDED BY COUNCILMEMBER BOULTON, TO REFER THE MATTER TO THE MANAGER AND TOWN ATTORNEY. THE MOTION CARRIED UNANIMOUSLY.

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Hickory Hill Request for Planned Development-Mixed Use Special Use Permit

Witnesses were sworn.

Mr. Jennings outlined the request: Planned Development-Mixed Use Special Use Permit to construct (1) 111 dwelling units, and (2) 2,400 sq.ft. of convenience commercial space on approximately 25.35 acres of land zoned R-2. The property is on the west side of Erwin Road at its intersection with Weaver Dairy Road.

Staff recommended approval based on stipulations addressed in the proposed resolution to approve the request.

Mr. Reeve stated that the Planning Board recommended approval of the project if the convenience store were deleted. (This deletion would also negate the need for a sidewalk along Weaver Dairy Road and Erwin Road.) The Planning Board did not concur with staff recommendation to relocate the entrance of the project as it had the potential of adversely affecting the adjacent property and the Planning Board felt the entrance's distance from the intersection was adequate.

Mr. Reeve expressed concern that the developer had not adressed problems previously expressed by area residents at Planning Board meetings. Expressed concerns were (1) adequate water drainage, and (2) the close proximity of the project to residential property.

Mr. John McAdams, the applicant, described the proposed project and explained that if the convenience store were approved, the request would be for a Planned Development-Mixed Use; if it were not approved, the request would be for a Planned Development-Single Family Housing Project.

He stated that the project would be required to comply with storm water management standards to accommodate anticipated additional water run-off.

Mr. McAdams did not concur with staff recommendation to relocate the entrance as the proposed change would not allow (1) satisfactory visual control of the project, and (2) sufficient traffic stacking at the entrance.

The Statement of Justification, Project Fact Sheet, and Transportation Impact Report were submitted (please refer to permanent files in the Planning Department).

In response to concerns expressed by Councilmember Straley regarding sufficient backyard buffers, Mr. Jennings stated that the plans showed a minimum rear-yard setback of 25 feet which exceeded the 11-foot requirements.

Mr. John Hensley, developer of the property, stated his desire to create a quality project in accordance with Town requirements and standards.

Ms. Deborah Lewicki, a resident of Foxwood Drive, submitted a petition of 195 residents of Booker Creek (refer to files in the Clerk's Office). Petitioners favored the request for a Special Use Permit for this development, but sought to inform Council of three areas of concern: (1) the deletion of the convenience store; (2) appropriate buffer between the development and the single family dwellings in existence; and (3) drainage problems. These issues were addressed individually:

1. Mr. Eric Bigham, a resident of Foxwood Drive, expressed concern regarding the establishment of the convenience store and stated that it was undesirable for the following reasons: (a) the store would change the character of the residential area on Weaver Dairy Road and Erwin Road and would be a forerunner of strip commercial development; (b) such a commercial establishment would aggravate the already-existing traffic problems, and would create concerns for pedestrian safety; and (c) a convenience store was not needed in the area.
2. Mr. Arthur Werner, a resident of Millwood Court, addressed point #2 of the petition (adequate buffers). Residents desired a development that would not be at the expense of the owners of the contiguous property. Residents felt that the developer had been unresponsive to citizens' concerns for the close proximity of the development. Because of such concerns, residents requested the addition of a stipulation to the Special Use Permit that no building road, parking area, nor recreation area be allowed within 150 feet of any contiguous property. Area residents also felt that all of the Old Oxford Road should be paved to provide two reasonable exits from the Booker Creek area.

3. Mr. Ed Bynum, a resident of Millwood Court, addressed drainage concerns. He distributed a map that indicated portions of the development that would create additional run-off. A second map indicated drainage areas in Booker Creek. Area homeowners had been advised that the creek presently operated at maximum capacity and increase in the rate of run-off would cause flooding of their property. Concern was for rate of flow and the duration of flow. Current proposed construction at the lowest part of the drainage area would require considerable infill and removal of present vegetation for the construction. He urged Council to require a drainage plan sufficient for the proposed site plan prior to approval of a Special Use Permit. He also urged Council to consider rate and duration of run-off, the quality of water, the effect of holding basins and landfill on existing environment, the collective impact of drainage, and the close proximity of dwellings.

Mr. Indu Parikh of Booker Creek Road, representing the Lake Forest Association, stated concerns regarding traffic at both the US 15-501 intersection, and the intersection at Weaver Dairy Road and Erwin Road. With the recent opening of Hotel Europa, he felt that additional traffic would increase these concerns.

Dr. Myron Silverman, Chairman of the Board of Directors of the Lake Forest Association, spoke as a neutral party, being concerned that drainage would add to the already "horrendous" problem of sedimentation that the Lake Forest residents were concerned with.

Mr. L. B. Gordon, a citizen, expressed concern regarding the possible closing of Honeysuckle Road if the Special Use Permit request were approved. He also stated that he would like to see the pedestrian sidewalk deleted, as it was adjacent to his property. Mr. Jennings advised Mr. Gordon that he could request that the pedestrian access be closed, or put the sidewalk in the middle of the right-of-way.

Mr. D. R. Mayer, a resident, expressed concern that the currently low-lying areas were marshy and wet after small rains, and if further non-porous surfaces were added "it would be a catastrophe."

Mr. Bill Olsen stated that he represented both himself and his client. His client had expressed concerns regarding (1) the commercial impact of the proposed convenience store, (2) drainage problems that could develop as a result of the development, and (3) safety aspects of the increased traffic on existing roads and intersections of the area.

Councilmember Smith stated that he had looked at the drainage aspect of the project itself and was concerned about the drainage of lots #13 and #14 on Millwood Court. He asked about the amount of infill that might be required to divert the run-off. Mr. McAdams had submitted a storm water management plan to the Town Engineer earlier in the day. He stated that he knew that current drainage collected behind lots #13 and #14 and stated that a storm water retention basin was proposed for that area. There would be 8 or 9 storm water retention basins throughout the site and one of the larger ones would be at this location.

Councilmember Smith asked about how effective a retention basin would be in reducing run-off in dry or semi-dry weather. Mr. McAdams explained that the basin would not reduce the total amount of run-off, but would retain the peak flow and discharge it over a period of time; therefore, water would not rise any higher in the creeks than it did now.

Councilmember Smith felt that drainage problems and buffers should be addressed early in the proposed development.

Mr. McAdams responded that he did not wish to appear insensitive to concerns of area residents. Efforts for screening would be adequate and pleasing and drainage would meet required standards.

Councilmember Boulton felt that paving all of Oxford Road might encourage the re-routing of traffic and bus service in that area. Mr. Reeve and the Planning staff, however, did not feel that such paving could be required at this time.

Councilmember Pasquini requested to see a copy of the storm water management plan submitted by Mr. McAdams to the Town Engineer. He did not feel that the water retention system was a positive thing to be living next to. He expressed disappointment that the developer and residents had not worked together more closely to seek to resolve problems before this hearing.

Councilmember Kawalec asked about the appropriate procedure to follow in making additional stipulations that would address citizen concerns. Mr. Jennings offered to draft recommendations for Council's consideration. Councilmember Straley stated that he would like to see a draft.

Mr. Denny suggested that (1) the developer could propose some minor changes without submitting a new application, (2) Council could make suggestions now for specific stipulations they would like to see addressed, or (3) they could wait until the next meeting and make individual requests for specific additions even though he felt it would be too difficult for Council to state conditions during a Council meeting. He reminded Council that they could not consider new evidence.

Councilmember Kawalec suggested that Council request a draft of stipulations from the Planning staff.

Councilmember Smith felt that earlier concerns regarding drainage into Eastwood Lake and traffic safety at the intersection at US 15-501 were incorrect. He asserted that there was no drainage into Eastwood Lake and concerns for traffic safety on US 15-501 would be eliminated when the State Department of Transportation erected traffic lights near Hotel Europa.

COUNCILMEMBER HOWES MOVED, SECONDED BY COUNCILMEMBER BOULTON, TO REFER THE MATTER TO THE MANAGER AND THE TOWN ATTORNEY.

Councilmember Straley wished to clarify Council's request for draft suggestions: he felt that traffic and the impact of the project on the adjacent property should be addressed now, but felt that drainage problems could be addressed later.

Mayor Nassif assured Council that all issues could be discussed until they were fully satisfied with the proposal.

Councilmember Kawalec felt that construction of a holding basin before construction of the project was not appropriate timing. Mr. Jennings explained that drainage plans had never been required as part of the preliminary approval of a planned development or of a Special Use Permit. Council would first need to approve the project as proposed.

THE MOTION CARRIED UNANIMOUSLY.

Wendy's Restaurant--Reconsideration of Request for Drive-In Window Special Use Permit

Mr. Jennings described the request: a drive-in window Special Use Permit to add a drive-in window to the existing Wendy's restaurant. Background was that Council had denied a request for a drive-in window Special Use Permit on May 29, 1979. A second request for a drive-in window Special Use Permit was considered and denied on October 12, 1981. On December 14, 1981, Council rescinded policies of the Comprehensive Plan which addressed drive-in businesses and directed reconsideration of the request at the January 18, 1982 public hearing.

Staff recommended approval of the request with stipulations as outlined in the resolution to approve the request.

The Planning Board concurred with staff recommendations. Dissenting vote was due to the inability to make Finding #1 (public health and safety) as it related to pedestrian/vehicular traffic.

Mr. Doug Hargrave, representing Wendy's Restaurant, demonstrated the proposed traffic pattern, stressed the inevitability of pedestrian/traffic conflict, and assured Council that the best possible design had been proposed.

He opposed the stipulation to widen Scarlett Drive and the stipulation to construct a paved sidewalk along the frontage of the property with Scarlett Drive. He felt that such stipulations had not been required of other area businesses.

Mr. Jennings stated that Central Carolina Bank and North Carolina National Bank had been required to comply with regulations.

Mr. Hargrave asked that records of the September 29, 1982 public hearing be incorporated into this hearing and that Council rescind their prior action of denial and grant the Special Use Permit request. (Please refer to Minutes of the September 29, 1982 public hearing in the permanent files of the Clerk's Office.)

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No one spoke in support of or in opposition to the request. There were no questions or statements from anyone present.

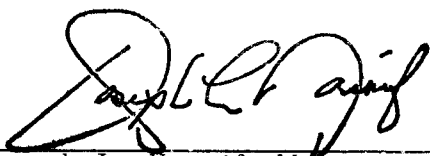
Councilmember Smith challenged the actuality of pedestrian safety in light of the proposed traffic routing plans. Mr. Hargrave asserted that the best possible design had been proposed and felt that pedestrian/traffic conflict could not be totally avoided, referencing similar situations (i.e., shopping centers, etc.). He again asserted that precautions had been taken to minimize this danger.

Councilmember Broadfoot asked Mr. Jennings if the requirement to construct a sidewalk was an indication of an anticipated increase of pedestrians as a result of the drive-in window. Mr. Jennings explained that the restaurant was a "permitted use" under the old Zoning Ordinance and as such did not require a sidewalk. The requirement was now recommended to make it possible to make Finding #1.

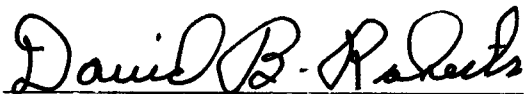
Mr. Reeve explained that there were two types of traffic entering this area. The issue here was how to minimize the potential inherent conflicts.

COUNCILMEMBER BOULTON MOVED, SECONDED BY COUNCILMEMBER SMITH, TO REFER THE MATTER TO THE MANAGER AND ATTORNEY. THE MOTION CARRIED UNANIMOUSLY.

The meeting was adjourned at 11:45 P.M.



Joseph L. Nassif, Mayor



David B. Roberts, Clerk