

MINUTES OF A PUBLIC HEARING HELD BY THE MAYOR AND COUNCIL  
OF THE TOWN OF CHAPEL HILL, MUNICIPAL BUILDING,  
MONDAY, JANUARY 20, 1987, 7:30 P.M.

Mayor James C. Wallace called the meeting to order. Council Members present were:

Julie Andresen  
David Godschalk  
David Pasquini  
Nancy Preston  
R. D. Smith  
Bill Thorpe  
Arthur Werner

Council Member Howes was absent, excused. Also present were Town Manager David R. Taylor, Assistant Town Managers Sonna Loewenthal and Ron Secrist, and Town Attorney Ralph Karpinos.

Public Hearing on Request to Zone 10.4 Acres - Jessee Property

Manager Taylor said the Town had received a request to annex a 70-acre parcel of land on Weaver Dairy Road, and that the property owner was requesting R-1 zoning for a ten acre portion of the property that was currently not zoned by Chapel Hill. He pointed out that the petitioner also had an application for a subdivision before the staff on the property.

Sallie Jessee, speaking as the property owner, urged the Council to zone the property R-1.

Pat Evans, representing the Planning Board, said the Board recommended zoning the property R-1.

Manager Taylor said his preliminary recommendation was for the Council to adopt an ordinance zoning the property Residential-1.

Harold Shapiro, speaking as a resident, said he had been under the impression that the request for zoning was for the entire 70-acre tract and not just a 10-acre portion. He said the area already under Chapel Hill jurisdiction was zoned R-2 while the request was to zone the 10-acre parcel R-1. He said he would prefer to see the entire tract zoned R-1, especially as it abutted a neighborhood (Lake Forest Estates) that was zoned and developed as R-1. Mr. Shapiro commented that the property also contained a large segment within the Resource Conservation District and that leaving the property zoned R-2 would permit a degree of land disturbance which would threaten properties downstream. He urged the Council to take this opportunity to rezone the entire tract to R-1.

Council Member Werner agreed with the statement that it would be better to have the entire site zoned R-1. He asked if there were

any specific reasons why this should not be done. Roger Waldon, Planning Director, commented that the reason the request for zoning was before the Council was because of the petition for annexation of the property. He said only 10 acres of the 70-acre tract was currently outside of the Chapel Hill Planning Jurisdiction and in order to have a zoning designation on the property within 60 days of annexation, the Council needed to zone the 10 acres. He said the property adjacent to the site was zoned R-1 and R-2 so that either designation was applicable.

Council Member Andresen asked when the R-2 zoning designation on the property within Chapel Hill's jurisdiction had occurred. Mr. Waldon replied that he thought it had been in 1981. Ms. Andresen asked what was the process for the property to be rezoned. Mr. Waldon said it would be a standard rezoning request made by either the property owner or by the Council who would call a public hearing on the rezoning request, hear comments, and then make a decision.

Council Member Andresen asked if the staff had encouraged the applicant to apply to rezone the entire tract. Mr. Waldon said no. Council Member Andresen said she agreed with Mr. Werner that the entire 70-acre tract should be zoned R-1.

Council Member Smith asked if the staff was reviewing a subdivision request for the entire tract. Manager Taylor responded yes. Mr. Smith asked if the staff knew the basis for the existing R-2 zoning designation on the property and if not to have this information for the Council when the item was considered again.

Mr. Waldon said he did not know the basis for zoning the property R-2 in 1981, but that the way it was zoned was consistent with normal procedures and that it was not unusual for zoning lines to follow property lines.

Council Member Pasquini expressed concern about the process of having a petition for annexation, request for zoning, and request for preliminary plat approval all within the same time frame. He was concerned that in the press for time, all aspects of the situation were not being addressed. He asked the Manager how the Council could make a motion to rezone property. Manager Taylor replied that the Council could make a motion calling for a public hearing to discuss the rezoning of the property and if the motion received a majority vote, then a public hearing would be called.

Council Member Andresen asked when the subdivision application was scheduled to be heard by the Council. Mr. Waldon said that the schedule was not set as the application had not been heard by the Planning Board. He said it was possible that the Council could review the plans in February.

COUNCIL MEMBER SMITH MOVED, SECONDED BY COUNCIL MEMBER PRESTON TO REFER TO THE MANAGER AND ATTORNEY. THE MOTION PASSED UNANIMOUSLY, (8-0).

Public Hearing on Modifications for Special Use Permit - Proposal for Development Ordinance Text Amendment

Roger Waldon, Planning Director, said the proposal to amend the Development Ordinance was a result of a request by the Board of Adjustment regarding nonconforming fraternity and sorority houses in Chapel Hill. He said recent changes to the Development Ordinance had resulted in increased numbers of nonconformities within the Town. He said the staff felt there could be situations where the Town's goal to preserve the Town character may be in conflict. He discussed four alternative actions: 1) granting the Board of Adjustment authority to grant variances for nonconformities within the Town Center and Historic Districts only; 2) increasing the Board of Adjustment's authority to grant variances for existing or proposed nonconformities; 3) deleting the floor area from the definition of a nonconforming feature; or 4) allowing the Council make modifications of the regulations when considering Special Use Permit requests. Mr. Waldon said the staff recommended that the Council adopt an ordinance to permit the Council to make modifications of regulations including the land use intensity ratios when considering a Special Use Permit. He said the staff felt such an ordinance would allow the Council flexibility in considering such Special Use Permit applications. He stated that the Planning Board had reviewed the proposed amendment to the Development Ordinance and had agreed with the staff recommendation although concern was expressed that the text amendment would allow too much flexibility.

Council Member Pasquini asked what would prohibit developers from requesting the Council to modify the land use intensity ratios for any application that did not meet these ratios. He suggested the thrust of the ordinance should be toward development projects which already exist.

Council Member Smith expressed concern about changing the Development Ordinance in order to make modifications to Special Use Permits granted by a previous Council. He said the Special Use Permit when granted had been done so in the manner it was for specific reasons. He said before any changes were made to the Special Use Permit, a public hearing should be held. Manager Taylor responded that any modification to a Special Use Permit required a public hearing.

Pat Evans, representing the Planning Board, said the Board recommended adoption of the proposed ordinance but that the Board had reservations about the open-endedness of the ordinance.

Bob Joesting, representing the Board of Adjustment, said the Board had not formally reviewed the proposal but that he thought that since Fraternity and Sorority houses were under the Special Use Permit then granting a modification of the Special Use Permit would enable the Council to control the change.

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Council Member Andresen complemented the staff for a clear and concise memorandum on the issue.

Manager Taylor recommended that the Council adopt the proposed ordinance.

Jeanette Gay Eddy, speaking as a resident, urged the Council to adopt the Manager's recommendation.

David Nell, speaking as one of the property owners of Lambda Chi fraternity, urged the Council to make modifications to the Special Use Permit process to allow for changes in the Land Use Intensity ratios. He said the property owners and the fraternity were extremely interested in making improvements to the property but were at present prohibited from making the changes due to the nonconforming nature of the development.

Council Member Godschalk asked what would be the practical result of moving fraternity and sorority development projects into Use Group A, as was suggested in the Board of Adjustment's preliminary request. Mr. Joesting responded that when the Board had made its request, he had researched the matter and chosen several options which seemed to apply. He said the practical matter of moving fraternities and sororities to Use Group-A would be that modifications to some of these structures would still not be allowed due to continued nonconforming features.

Council Member Godschalk said he was concerned with the philosophy of nonconformities and their use in the development process. He said it was not the intent of the Council to eliminate the fraternity and sorority houses by refusing to allow modifications even when those modifications would further increase the amount of nonconformity.

Council Member Werner agreed with Mr. Godschalk and said that he was concerned that adoption of the proposed ordinance could be waiving the Land Use Intensity ratios for the entire Town. He suggested limiting the ordinance to specific geographic areas or to existing developments.

Council Member Thorpe asked if Mr. Werner felt the Council would be unable to evaluate the Special Use application in the proper manner that would prevent the wholesale elimination of LUI ratios. Mr. Werner replied that that was not what he meant, but rather that he did not see the reason to encourage or promote activity in this area when the Council was only concerned about modifications to Special Use Permits for specific developments. He said he thought it could result in the Council spending a lot of time on numerous applications.

Mayor Wallace said that in previous years the Council had had the authority to control the Special Use process and that he had no problems with the proposal as he felt the Council needed more control over the system.

Council Member Preston said that the alternative recommended by the staff was probably the best one available, but that she also had a problem with the philosophy of nonconformities and how the Town expected to handle them. She said it appeared that the Town was encouraging the deterioration of older buildings in the Town. Ms. Preston said that when these buildings were originally built they had met the development regulations of the time and that any subsequent change in the Development Ordinance should not be grounds alone for the prohibition of modifications to the buildings. She wondered if the Council could grandfather these earlier developments.

Manager Taylor commented that the Town did have a lot of nonconforming uses and structures and that they will increase when the Council reviews and changes the Development Ordinance. He said the fraternity and sorority buildings were nonconforming with the current Development Ordinance. Mr. Taylor stated that the Council could grandfather the buildings but that the nonconforming features would still be prevalent. He said the question then became whether the Council should further grandfather in any modifications which make the structure even more nonconforming. He said after discussions with the staff he felt the proposed ordinance offered the best solution to the problem.

Council Member Godschalk suggested rewording the ordinance to emphasize the reason for the modifications and focus on the intent and reduce the applicability to new developments.

Council Members Pasquini and Werner suggested stating that the ordinance would allow the Council to make modifications to existing projects, not new development.

Manager Taylor said the staff would amend the proposal to address modifications to buildings which existed at the date of the adoption of the ordinance and which would require a Special Use Permit.

Council Member Pasquini said the staff also needed to look at ways to have the ordinance address those projects which would not require a Special Use Permit like the buildings downtown.

Manager Taylor said the ordinance would apply to developments which require a special use permit to modify, currently have a special use permit, or would require one if it were built today.

Council Member Smith again expressed concern about the proclivity for creating nonconformities, as well as using the term nonconforming. Manager Taylor said most planners want to have the nonconforming feature as a method of eliminating structures which do not conform to the way the community was developing. Mr. Waldon stated that the attitude of the community changes and was reflected in changes in the Development Ordinance in order to address the new attitudes.

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COUNCIL MEMBER GODSCHALK MOVED, SECONDED BY COUNCIL MEMBER SMITH TO REFER TO THE MANAGER AND ATTORNEY. THE MOTION PASSED UNANIMOUSLY, (8-0).

Council Member Pasquini asked that all the options discussed be included in the staff memorandum when the item was brought back to the Council for deliberation.

COUNCIL MEMBER SMITH MOVED, SECONDED BY COUNCIL MEMBER PASQUINI TO ADJOURN THE MEETING. THE MOTION PASSED UNANIMOUSLY, (8-0).

The meeting adjourned at 8:30 p.m.