

MINUTES OF A PUBLIC HEARING HELD BY THE MAYOR AND COUNCIL
OF THE TOWN OF CHAPEL HILL, MUNICIPAL BUILDING,
MONDAY, MARCH 16, 1987, 7:30 P.M.

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

Julie Andresen
David Godschalk
Jonathan Howes
David Pasquini
Nancy Preston
R. D. Smith
Bill Thorpe

Council Member Arthur Werner 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 for R-5-S Special Use Zoning and a Special Use Permit - Orange-Person-Chatham Mental Health Adult Day Care Center

Citizens wishing to speak to this item were sworn in by the Clerk.

Manager Taylor requested that Agenda memorandum #1a, dated March 16, 1987, "Community Support Program Rezoning to R-5 Special Use Zoning and a Special Use Permit (85-F-8)", be entered into the record of this hearing; along with the Applicant's:

- Project Fact Sheet
- Statement of Justification

Manager Taylor stated that the Town had received a valid protest petition on the rezoning request.

Roger Waldon, Planning Director, gave a presentation on the application, saying the applicant was requesting approval of a rezoning from Residential-3 to Residential-5 Special Use Zone and an approval of a Special Use Permit for an Adult Day Care Center. He said this was the first Special Use Zoning application to come before the Council since it adopted the ordinance allowing this change. He said an application for an Adult Day Care facility in general would require a SUP, but not a special zoning. Mr. Waldon pointed out, however, that in this case rezoning was necessary because the applicant wished to use an existing house whose lot did not meet the Floor Area Ratio requirements in the current R-3 zone for a use other than single-family. He said the staff had encouraged the applicant to apply for the R-5S rezoning rather than the conventional rezoning in order to inform the Council and neighborhood of what exactly was to be developed on

that site and to give the Council the flexibility to permit this use and no other. Mr. Waldon stated that before the application for Special Use Zoning and SUP were approved, the property owner would have to prepare an affidavit agreeing to stipulations contained within the SUP approval.

Mr. Waldon said area residents had expressed concern that the density allowed under the R-5 district would hurt their neighborhood and that by approving the application it would be setting a precedent by establishing a "change of condition" and allow future requests for R-5 zoning within the area. Mr. Waldon said an Adult Day Care Center was a permitted use in Chapel Hill residential districts by Special Use Permit and therefore its existence in the neighborhood would not represent a changing condition. He also said the Special Use Zoning coupled with the SUP would restrict the property from any other use or increase in density. He stated that if the Center were to abandon this particular use, any other use of the property could only occur subsequent to appropriate application procedures and approval by the Council for that proposed use. Mr. Waldon also stated that concern was expressed that the proposed use would not be compatible with the existing neighborhood. He said the staff felt it would be compatible in that it would be a low-key daytime use whose appearance of the grounds and structure would remain that of a residential home. He pointed out that proximity to nearby residents and the Town Center was an important element in the success of this type of program. He commented that the Town's Goals and Objectives also called for facilities that meet the physical and social needs of the community to be located in a manner that provided convenient access.

Council Member Pasquini asked how many affirmative votes would be needed to pass the rezoning since there was a protest petition. Manager Taylor replied that a 3/4 vote or 7 members had to vote in the affirmative.

Council Member Preston asked for clarification of the rezoning request and if the property were rezoned to R-5 would it carry all of the floor area ratio numbers, etc. Mr. Waldon said the rezoning request was for a Special Use Zoning which meant that the Council would be potentially rezoning the site for a specific use, not any R-5 use. He said the rezoning was needed because the site itself did not meet the Floor Area Ratio requirements for the Adult Day Care Center use in the current R-3 zone.

Council Member Andresen asked if the request were granted and an adjacent property owner came in and requested a rezoning because of changed conditions would it be warranted? Mr. Waldon replied that in his opinion it would not be warranted. He pointed out that the Adult Day Care Center was a permitted use in all residential zones.

Council Member Thorpe asked if there was fee involved if the applicant abandoned the SUP and if there were a way to allow the

abandonment without paying the fee. Mr. Waldon replied that there was a fee associated with abandoning a SUP. He said if the applicant ceased using the site for the approved use and did not request abandonment of the SUP, they could and probably would initiate the abandonment and in that case there would not be a fee.

Tim Williams, speaking as the Adult Coordinator of the Orange-Person-Chatham Mental Health Center, spoke in support of the rezoning and special use permit request. He said there was a pressing need for a center of this type. He said the site was chosen because it was affordable, on the bus line, close to downtown and the mental health center, and because it was a residential house and looked like a home. He said the goal of the center was to reorient those people who suffer from chronic mental illness back into society. He pointed out that the Center needed approval for the proposal on this site because they ran the risk of losing their State funding for this project this year, and if they did not use those funds this year, the likelihood of their getting the funds again next year was diminished.

Twyla Peterson, speaking as the Director of the proposed facility, spoke in support of the rezoning and Special Use Permit. She said what they hoped to accomplish was to create an environment where the members could learn to help themselves and each other. She said the members had to be 18 years and older and under the care of a mental health facility. She said there would be no overnight programming and that the facility would probably be used from 10-3 each day.

Council Member Godschalk asked for the expected intensity of use. Ms. Peterson replied approximately 16 people per day.

Alan Rimer, representing the Planning Board, said the Board had voted in favor of the rezoning and the Special Use Permit feeling it was not counter to the other uses in the neighborhood.

Manager Taylor said his preliminary recommendation was for approval of the requests.

Ruby Alston, speaking as a resident and potential user of the facility, spoke in support of the proposal.

Sue Estroff spoke in support of the proposal. She said the only other program of this sort in the area was in Hillsborough. She stated that Chapel Hill needed a similar program and urged the Council to approve the rezoning request and SUP.

Bill Hollister, speaking as a member of the Orange County Mental Health Association, spoke in support of the proposal.

Kathleen White, speaking as a resident of Northside, spoke in support of the proposal.

Krista McGaw, Director of the Threshold program in Durham, spoke in support of the proposal saying it benefitted the community in that it would return individuals back to work and active lives.

Gail Wood spoke in support of the proposal.

Linnea Smith, speaking as a psychiatrist, spoke in support of the facility. She said a program like this was needed in the community.

Rebecca Ionescu Pioggia spoke in support of the proposal. She said she was the coordinator of a facility in Raleigh and that over 50% of the members of her facility had returned to work. She said the facility was not a place for people to "hang-out" but rather where they were motivated to work.

Zachary Ralston, speaking as a resident of Chapel Hill, said he lived in Colony Woods and that a lot of the people who would be using the facility lived near him. He said they never created any problems for the neighborhood and that the proposed facility was a good idea.

John McCormick, speaking as the attorney for the Orange-Person-Chatham Mental Health Board, spoke in support of the rezoning request. He said the rezoning would not have been necessary if the house and lot were a different size. He said the request for Special Use Zoning was perfect for the site because it would allow the Council to rezone the site for a specific use and that that use would be controlled by the Council. He said if the SUP were abandoned there was a stipulation that the property owner submit a request to rezone the property back to its original R-3 zoning.

John Price, speaking as a director of an Adult Day Care facility in Henderson, spoke in support of the proposal. He said his program had been in operation for 13 years, the last 6 of which have been in a residential neighborhood. He handed out a survey that had been conducted of the neighborhood where his facility was located which indicated few complaints from the neighbors. He also said his facility operated a thrift shop which generated \$30,000 in revenues last year.

Annie Louise Henderson and Howell Nelson, speaking as a residents of the ADP House in Henderson, spoke in support of the proposal.

Dr. David Janowsky, speaking as the Chair of the Department of Psychiatry at UNC, spoke in support of the proposal. He said the program would keep individuals out of the hospitals. He pointed out that it was more economically efficient to operate the facility than to have the individuals in the hospital.

Roy Callis spoke in support of the proposal and said he was a member of a similar facility in Durham and that since he had been

able to attend that facility he had spent less time in the hospital.

John Baggett, representing the Alliance for the Mentally Ill, said he represented the family members of the mentally ill. He spoke in support of the proposal. He said he had a twenty-seven year old son who was mentally ill and that his condition had not occurred until he was 17. He asked the Council to try to imagine what it would be like to have a family member suffering from mental illness and how important the proper support systems were to these individuals.

Sylvia Clayton, speaking as a mental health nurse and as the Director of the support program in Hillsborough, spoke in support of the proposal. She said her facility was located in the residential district and she had received no complaints. She said her facility had a waiting list of between 20 and 30 individuals for over a year.

Council Member Thorpe asked how many members were at the Hillsborough facility. Ms. Clayton replied about 15 to 25 per day.

Christopher Gun spoke in support of the proposal. He urged the Council not to defeat the project on a zoning issue.

Bob Epting, representing several property owners in Northside, said they were concerned about the proposed rezoning request. He said those he represented were not against the proposed use of the site just that the site had to be rezoned in order for that use to be available. He read a letter to the Council concerning this issue into the record of the meeting. (For copy, see Clerk's files.) He said changing the zoning of a single lot even though the Town would be restricting the use would open the gate for those who wish to use the neighborhood for office and business use and would constitute spot zoning. Mr. Epting stated that if the Council voted to rezone the property it would be struck down in the courts as spot zoning. He said because such rezoning would violate the commitment made in the Land Use Plan that the Town would act to preserve existing neighborhoods, as well as the Plan's specific commitment that the institutional uses now in the Northside neighborhood would not be expanded, and because it would endanger the already diminished pool of moderately priced housing in Chapel Hill, and because it would be illegal, the rezoning proposal should be denied by the Town Council.

Town Attorney Karpinos responded that the issue of spot zoning had been raised in the Planning Board meeting earlier this month and at that meeting he had stated that it was his opinion and judgment that the rezoning would not constitute spot zoning. He said the issue was not discussed in the memorandum from the Manager because the staff did not consider it to be a key issue. He stated he had reviewed Mr. Epting's letter and believed that Mr. Epting based his argument on an erroneous premise and that the cases Mr. Epting had cited he had read and found to be

clearly distinguishable from the case at hand. He said in his judgment the matter would be supported as not being spot zoning if it were taken to court. Mr. Karpinos said specifically the erroneous premise was Mr. Epting's statement on page three that the "...rezoning the Church Street lot from its existing R-3 classification for which the use proposed would not be permitted to R-5 in which the use would be permitted with a SUP..." He said the Council had already heard that evening that in an R-3 district the use would be permitted with a SUP and also in a R-5 district with a SUP and that the rezoning request was not from R-3 to R-5 but from R-3 to R-5-S special use zoning.

Gilbert Waddell, speaking as a citizen, spoke to the process involved in developing the program. He said the preservation of neighborhoods had been stated as the goal of the Town. He said he was against spot zoning and felt that this rezoning request would constitute such. He said that if the Council were to deny the rezoning request he would be glad to discuss the use of a building he owned as a temporary site for the Adult Day Care Center until another site were found. He said this would mean that the Center would not lose its State funding for this year.

Robert Joesting, speaking as a resident of Northside, spoke against the proposed rezoning request because he felt it was contrary to the Town's Comprehensive Plan. He said he thought it represented a perfect example of spot zoning and urged the Council to deny the request.

Tom Shcheft, speaking as a resident of Northside, spoke against the rezoning request. He said Northside was an area of middle income families that needed to be protected in its present state.

Joe Herzenberg, speaking as a resident of Cobb Terrace, spoke against the rezoning request. He said he was concerned that the rezoning would constitute a precedent for further rezoning requests from other agencies throughout the Town.

Scott Herman-Giddens, speaking as a resident, said he owned property in Northside and was against the rezoning request. He said he was concerned that once the property was rezoned R-5 there was no real way to ensure that other uses would not be permitted. He argued that other sites were available for the project. He said the Manager's recommendation lent itself toward other agencies and groups requesting rezonings for specific uses.

David Murrell, speaking as a resident, spoke against the proposed rezoning. He said he was not against the project but just the rezoning because he felt it would set a precedent. He also stated that he did not want his property value to increase as a result of the project.

Nancy Taylor, speaking as a resident and Director of the Chapel Hill Day Care Center, spoke against the proposal. She said there were already several community service agencies in the

neighborhood. She also said she did not need for her property values to increase. She said she was worried that the neighborhood would not remain the same.

Velma Perry, speaking as a resident, said she was not against the program, but was against the rezoning request. She said she feared a domino effect from the rezoning. She gave the Council copies of a petition signed by area neighbors against the rezoning request. (For copy of petitions, see Clerk's Files.)

Barbara Powell, speaking as a resident, spoke against the rezoning request. She gave a break down of ages and length of residence of those who lived in Northside. She pointed out that most of them were single family residences and that she would prefer that this trend remain.

Sarah Allen, speaking as a citizen, said she had to move out of Northside when the property in question was sold. She spoke against the project saying the site needed to remain a single family home.

Don Nicholson, speaking as a resident, said that Northside was an island of single family homes surrounded by higher density development. He urged the Council to deny the rezoning so as not to set a precedent and open up Northside to more intense uses.

Catherine Ward, speaking as a resident, spoke against the rezoning request because she said it would set a precedent for other uses.

Estelle Mabry, speaking as a resident, spoke against the rezoning request. She said Northside already had a concentration of community services. She pointed out on a map the different services and their locations. She wondered if the neighbors would have to battle for their single family neighborhood each time a property became available.

Michael Schlessinger, speaking as a resident, spoke against the proposal and urged the Council to preserve his neighborhood and not rezone it out of existence.

Council Member Howes said the staff needed to include a more detailed analysis of the Comprehensive Plan, spot zoning and special use zoning as it applied this site when this item comes back to the Council.

Council Member Preston asked for clarification of stipulation #6 in the proposed resolution approving the Special Use Permit. Roger Waldon said the stipulation stated that if the applicant abandoned the site for the approved use, they had to come to the Town with a rezoning request to rezone the property back to R-3. He said if the applicant failed to do so, the Town would initiate the rezoning.

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

Public Hearing on New Low Density Residential Zoning District

Roger Waldon, Planning Director, gave a presentation on the proposal to establish a new low density residential zone. He said the proposal grew out of a petition by the Lake Forest Homeowners Association for a new lower density residential zone. He said the staff proposed a new district called R-1A whose permitted uses would be identical to those in R-1. He said the proposed zone would have a minimum lot size of 25,000 square feet and that there were several existing neighborhoods with average lot sizes greater than 25,000 square feet. He said the staff recommended adoption of a Development Ordinance Text Amendment creating a new low density zoning district. Mr. Waldon stated that the staff felt creation of such a zone would be an appropriate action in pursuit of the Land Use Plan goal of preserving existing neighborhoods. He pointed out that no areas would be zoned by adoption of this text amendment only that a new zoning category would be created.

Alan Rimer, representing the Planning Board, said the Board had considered this matter at length and the majority decision was for denial was 7-2, with those voting for the denial questioning the desirability of the amendment. He said they suggested that all neighborhoods in the current R-1 zone could request this new district resulting in the nonexistence of the R-1 district. He said they expressed concern that the new zone could apply to newly developing land in Chapel Hill and could create "elitest" neighborhoods where affordable housing would be a thing of the past. Mr. Rimer said those voting in favor of the amendment felt it would only apply to a limited number of neighborhoods and could help stabilize existing conditions.

Manager Taylor said he recommended the Council adopt a Development Ordinance Text Amendment creating a new lower density zoning district.

Sandra Greene, representing Lake Forest Homeowners Association, spoke in support of the proposal. She introduced into the record a series of petitions, signed by area residents in favor of the new zone.

Pete Andrews, speaking as a resident of Morgan Creek Hills, spoke in support of the new R-1A zone. He said this could be a way to protect his neighborhood. He said his neighborhood had Sycamore Run, a duplex community, on one side and on the other side by a large undeveloped tract of land. He said even though the tract were zoned R-1 it meant it had the potential maximum density of 4 units per acre.

Council Member Godschalk asked how many units per acre did Mr. Andrews say he thought R-1 would allow. Mr. Andrews replied that his documentation showed 4 units per acre. Mr. Godschalk said with the zoning district of R-1, the minimum square footage was 17,000 square feet. He said that this meant that there could not even be three units per acre. Mr. Andrews said the covenants for the property set the property lot size at .7 acre per lot minimum and that adjacent land it was designated as protection area because of steep slopes. Mr. Andrews said that if the developer came in with a proposal to build on the site, he would choose to put as much high density use on the available land.

Council Member Smith asked if the new zone were created, how many nonconforming lots would be created. Mr. Taylor replied that the staff had decided not to research this matter until the Council had created a new zone and there was a request to rezone.

Council Member Smith expressed dismay that the Council appeared to be using the zoning ordinance as a restrictive covenant. He said he did not feel it was right to do so.

Council Member Godschalk said it appeared to him not to be too difficult to find out how many lots would become nonconforming if the new zone were created and applied to those zones for which it could be applicable. Manager Taylor said that the staff would prepare this information using the maps they had available.

Council Member Godschalk commented that he was not sure that this creation of a new zone was the proper manner in which to ensure preservation of existing neighborhoods, especially as it was the result of a petition regarding the subdividing of lots already platted. He said it might be better to use a new R-1A zone in newly developing land.

Council Member Andresen said she disagreed and felt that zoning was the best way to handle the situation.

Council Member Pasquini said he had no problem with creating a new zone, but felt that the Town should not research all subdivisions to see if applicable and which lots would become nonconforming. He said when a rezoning request was presented it should include information from the applicant about which lots would become nonconforming.

Manager Taylor asked for guidance from the Council as to whether or not the staff should review the original subdivision plats and give the Council an estimate of the number of lots which would conform if the proposed new zone were applied. Council Members Andresen, Godschalk, and Smith said the Manager could direct the staff to look at the subdivisions listed in the memorandum and give an estimate of the number of potential rezonings and nonconformities.

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

Public Hearing on Development Ordinance Text Amendment to Establish a Special Use Procedure of Considering Master Plans for Tracts of 20 or More Acres

Roger Waldon, Planning Director, said the proposal was for a two-step review process to for development of large tracts in the Mixed Use zones. He said the first step would include approval by the Town of a general development plan that specified the type of uses, road networks, buffers, open spaces, maximum floor areas, and general utility plans. He said then the specific plans would be prepared, and approved through the Special Use Permit process, for incremental development of the site. Mr. Waldon stated that no development of the site could occur until a Special Use Permit or a Zoning Compliance Permit was issued.

Alan Rimer, representing the Planning Board, said the Board had considered this process over several meetings and that they had been generally pleased with the result.

Manager Taylor said he recommended that the Council adopt an ordinance amending the Development Ordinance to allow for a two-step master planning process.

Ron Strom, speaking as a resident, spoke in support of the two-step process. He said he endorsed the concept but had some possible modifications to the wording of the ordinance. He said the staff report should be included as background material for the ordinance, therefore he said the Council should adopt a resolution directing the Town Manager to draft application documents reflecting the staff report or for the Council to formally adopt the staff report. He also said in Section 15.7.7 he thought it essential that language be added to further clarify the relationship between steps one and two. He suggested a complementary statement stating that "once a master plan were approved, there would exist a rebuttable presumption that three of the four findings that serve as global criteria for Special Use Permitting approval had been met," all but meeting the design criteria which was a step two criterion. Mr. Strom said that it was clear from reading the criteria for Special Use Permitting that they exist as step one evaluative tools, and that once achieved at the master planning level ought not to resurface at step two. He said this meant the burden of proof to obtain Special Use Permitting approval should shift away from the developer at the step two level. He also pointed out a couple of language changes he would prefer to see in the draft: On page 5 of staff report, item #4 drainage patterns, he assumed dealt with site analysis of existing conditions and that no attempt would be made there to talk about drainage patterns that would exist once development were completed, and on same page he said he was unsure of what was meant by the developer's "market analysis", and on page 6, #6, he asked for clarification of what was meant by needing to identify specimen trees. He commented that on a forty acre parcel one would have a tremendous amount of specimen trees and he wondered conceptually what the staff was trying to

achieve by this statement. Mr. Strom said with regard to item #9, external access study, that traffic studies were being requested and he hoped the Council would consider giving the developer option of a traffic analysis done at a step one level or on a phase by phase basis through the step two procedure. He concluded that in Section 15.7.2 he would prefer to see the term "compliance" replaced with the phrase "appropriate consideration of these criteria," and in Section 15.7.3.2 said he thought the master plan would be the initial step and therefore would not be any previously approved Special Use Processes that would determine what would be appropriate at the master planning level.

Council Member Pasquini said the memorandum was very detailed but that he would like more discussion on how the process would work and asked the Manager to plan for a lengthy discussion at the Council meeting at which this item was brought to the Council for action.

Council Member Preston thanked the Planning Board for their in-depth study and agreed that the Council needed to study this proposal closely.

Council Member Smith expressed concern that the master planning process which could extend over a long period of time would be realistic in that the plans would in all probability change. He said that market changes would require that the master plan change. He said he hoped the Council would hold developers to the originally agreed upon master plan.

Mayor Wallace commented that he thought this was a splendid step in Chapel Hill's development processes.

Council Member Howes expressed appreciation to Mr. Strom for his review and comments on the proposal.

Council Member Pasquini asked that information on what would be the legal obligations of moving from phase one to phase two be provided at the next meeting on this item.

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

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

The meeting adjourned at 11:12 p.m.

