

MINUTES OF A PUBLIC HEARING HELD BY THE MAYOR AND COUNCIL
OF THE TOWN OF CHAPEL HILL, MUNICIPAL BUILDING,
MONDAY, MAY 18, 1987, 7:30 P.M.

Mayor Pro-tem Bill Thorpe called the meeting to order. Council Members present were:

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

Mayor Wallace and Council Member Howes were 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 Proposed Changes to the Resource Conservation District

Roger Waldon, Planning Director, said the Council had called the public hearing to consider changes in the Resource Conservation District ordinance because of new requirements by the Federal Emergency Management Agency (FEMA); changes recommended by the Rusten Management Study; and changes recommended by the staff and others to streamline and clarify the ordinance and its procedures based on two years of experience with the ordinance. He said the key sections which were affected by the proposed changes were Sections 10.3, 10.5, 10.8 and Article 18 (definitions). Mr. Waldon said the underlined passages in the memorandum were those required by FEMA and the starred passages were changes related to the FEMA changes and suggested by the staff. He said the staff had taken the proposed changes to the Board of Adjustment, Greenways Commission and Planning Board for review, and had held an all day workshop on the proposed changes on April 24 for all individuals interested in the proposal. He said after the workshop the staff had summarized the comments and taken them to the Planning Board for final review before presenting this proposal to the Council. Mr. Waldon indicated that many of the comments had been incorporated into the final product.

Mr. Waldon said the main policy points for which changes are suggested are in Section 10.3.2 dealing with the buffer width along perennial streams; Section 10.5(f) "Permitted Uses", a new section detailing the number and types of facilities which should be permitted uses; Section 10.8(a) dealing with the lowest allowable floor elevations; Section 10.8(k) dealing with the amount of cutting and fill in the RCD; and Article 18 "Definitions", most especially the definition of a perennial stream and watercourse.

Council Member Preston asked if the staff had indicated in the memorandum in any specific way the changes suggested by the Rusten Report. Mr. Waldon replied that the staff had not specifically highlighted those changes but that the changes were reflected in many of the staff recommendations.

Alan Rimer, representing the Planning Board, said the Planning Board recommendation was the same as the staff's. He commented that the Planning Board had spent over 25 hours discussing the proposed changes to the RCD and had gone through the ordinance section by section to integrate comments from various sources and had produced along with the staff the joint recommendation. He said that on May 5, at the last meeting at which the Planning Board reviewed the proposal, the Board had been given an alternate proposal from a joint citizen group to review and possibly vote on. He said the Board had voted not to review the proposal at that time, feeling that there was not enough time to review the proposal with the same amount of scrutiny as the Planning Board and staff had done over the last 9 months on the staff proposal. He said he felt the citizen group's proposal had merit and he hoped the Council would review it. Mr. Rimer said, however, that he did not feel the Board of Adjustment should be the judge of development in the RCD, rather this should remain with the Council.

Council Member Preston said that she had reviewed the staff and citizen proposal and felt both had merit. She asked Mr. Rimer if he felt the Council should adopt the staff proposal and then review the citizen proposal over the next few months. She asked if there was any sense of urgency in adopting the proposed changes. Mr. Rimer replied that there was an urgency with regard to adopting the changes required by FEMA

Council Member Werner asked for clarification of whether or not the Planning Board was saying that where the staff proposal differed from the citizens' proposal the Planning Board voted in favor of the staff proposal. Mr. Rimer said that for most of the proposed changes yes, but that the one proposed change the Planning Board had not discussed or reviewed was the proposal for an RCD Special Use process.

Council Member Andresen said since the citizen proposal was a different approach, how did Mr. Rimer feel about the Council's adopting the staff recommendation and referring the citizen proposal to the staff and Planning Board for formal review with the idea that once it was reviewed there might be other changes to the RCD ordinance? Mr. Rimer replied that it would be fine.

Council Member Pasquini said he disagreed with that approach. He said he would prefer reviewing both proposals now before adopting any changes.

Council Member Smith asked for the rationale for recommending that the lowest floor elevations within the RCD be reduced. Mike

Neal, Assistant Town Engineer, was that the staff felt that having the allowable lowest floor elevation the same as the boundary for the RCD, 2' above the 100 year flood boundary, was enough to protect development and keep disturbance to sensitive areas at a minimum. He said the additional 18" above the 2' meant that in order to develop certain properties, more land disturbance had to occur.

Council Member Smith said that he felt reducing the allowable lowest floor area would be wrong since there were areas within the RCD which currently flooded during times of heavy rains.

Robert Joesting, representing the Board of Adjustment, said the Board had chosen not to make a formal recommendation. He thanked the staff for involving the Board in the review process. He said in one sense, the proposed changes would make work easier for the Board because less than half of the variance requests over the last year would have been permitted uses under the new proposal. He urged the Council to review the proposed changes in definition of perennial stream in that what was proposed would reduce the size of the RCD. He also suggested that there could be some option between a use by right within the RCD and that use which would require a variance, and that there might be some way to have something like a certificate of appropriateness for cut and fill within the RCD, where the proposed use was the best option and not the only option.

Council Member Preston asked for clarification of the statement in the citizen proposal regarding requesting to the Legislature to change the number of members on the Board of Adjustment and the voting rights of each member. Mr. Joesting responded that he did not think the number of members and their voting powers should be changed. He pointed out that in the majority of cases before the Board, the vote was primarily a majority vote. He said very seldom was there either lack of quorum or that an item had to be brought back because a lack of the required majority vote.

Council Member Werner asked of the variances which the Board of Adjustment had reviewed in the last year, and which Mr. Joesting had indicated would under the staff proposal have been permitted uses, how many had the Board granted a variance? Mr. Joesting replied that he did not have the specifics but probably most of them.

Council Member Werner asked who would have the approval authority, with regard to Mr. Joesting's comment of the need for an intermediate ground between use by right and a variance? Mr. Joesting replied that he thought the Board of Adjustment should have that authority since it was a technical and not policy issue.

Philip Sloane, representing the Greenways Commission, said the Commission had studied and would continue to study the proposed changes in the RCD ordinance. He said the Commission supported the process of streamlining the ordinance, when feasible, but

were concerned that some of the proposed changes would significantly weaken the ordinance. He suggested that the staff re-review the proposals and consider how the proposal meets the goals of the RCD. (For a copy of statement, see Clerk's files.)

Council Member Werner asked for clarification of what constituted the urgency in making the proposed changes to the RCD ordinance. He asked if any of the FEMA requirements were controversial. Mr. Rimer replied that he did not believe there had been any problem with the FEMA requirements, but that adoption of the FEMA requirements was necessary within 90 days in order that the area qualify for flood insurance. He also stated that administratively there was a sense of urgency for the changes to be made in order that the ordinance could be administered better. Mr. Rimer said it would not be inconsistent with past actions for the Council to adopt the proposed changes and direct the staff to review the citizens proposal over the next few months and bring back a report which might entail other revisions to the ordinance.

Council Member Godschalk said the staff and Town had had a number of problems administering the ordinance, resulting in court cases and individuals having problems building and occupying their homes.

Manager Taylor said his preliminary recommendation was for the Council to adopt the changes proposed by the staff and Planning Board. He said that if the Council felt the citizens plan needed reviewing in more detail it would not be inconsistent for the Council to request that the ordinance be reviewed again in one year as they had when they first adopted the RCD ordinance. Mr. Taylor stated that this way the ordinance could be reevaluated using examples of how it had worked over the year. He said that the staff proposal included changes to meet FEMA requirements and to clarify the ways of interpreting the ordinance. Mr. Taylor suggested that the Council might like to review the issue of a special use permit for the RCD when it looked at broad policy changes to the special use and subdivision review process.

Bruce Ballentine, representing the Chapel Hill - Carrboro Design Council, produced a petition signed by 17 members, urging adoption and support of the staff proposal as well as further study of the entire RCD review/approval process. He suggested that the Council might wish to place RCD provisions within the Design Manual to become part of the development review process and that developments which affected the RCD would have to meet the requirements of the ordinance or it would not be approved by the Council. Mr. Ballentine pointed out that the requirements for road, driveways and bridge constructions within the RCD was greater than that required by NCDOT for major highways. He said that the Design Council did have reservations about changing the buffer requirements, feeling the current 50' requirement was sufficient. Mr. Ballentine also suggested that the Council appoint those who were technically able to review the RCD

ordinance to an RCD Board or to the Planning Board. He said he did not feel the Board of Adjustment had these types of people and that the Council should restate the historical role of the Board. (For copy of the petition, see Clerk's files.)

Council Member Andresen said the proposal that the RCD ordinance be part of the Design Manual was interesting. She asked that since Mr. Ballentine was concerned that the Board of Adjustment was making planning decisions did he think this was taken care of with the proposed changes in the ordinance. Mr. Ballentine replied no, that he still felt the Board of Adjustment would still in some instances have the last word on whether a project was built or not.

Council Member Andresen asked who would make the variance if the RCD ordinance were part of the Design Manual. Mr. Ballentine said he would expect the Council to approve or deny a project based on all the normal conditions including meeting RCD requirements.

Council Member Godschalk said that the FEMA standards for lowest allowable elevation was 1' above the flood level and that they only allowed no development within the floodplain. Mr. Godschalk said the Town was at 3.5' above flood level and had more tightly controlled development in the 100 year flood plain. He asked Mr. Ballentine if he knew of any other community where the standards were comparable to those in Chapel Hill. Mr. Ballentine replied no.

Gina Cunningham, representing the League of Women Voters of Chapel Hill and Carrboro, said the League supported the intent of the RCD and supported the proposed changes. (For copy of statement, see Clerk's files.)

Jeannette Gay Eddy, speaking as a resident, expressed concern at many of the proposed changes in the RCD ordinance feeling they made the ordinance less strict. She urged that the Council have the outright permitted uses in the RCD kept at a minimum; that the reasons for the Manager to grant exemptions in Section 10.7 be explained in more detail so that the public could be more aware of what was going on. She also said that in Section 10.8 allowing stormwater discharge "wherever practical" and that cut and fill should not be allowed if it results in "significant" change, was opening the door to all kinds of interpretations; and that the definition of a perennial stream in Article 18 should not be changed until the impact of such change is known and what areas would be affected. Ms. Eddy also said a RCD guide was needed.

Claire Cooperstein, representing the Sierra Club - Research Triangle Group, said that the Club felt many of the proposed revisions appeared to weaken the ordinance. She said the Sierra Club, Last Woods Group, and Alliance of Neighborhoods, had joined together to present an alternative to the staff proposal. She said they had no objections to the FEMA suggestions, but had objections to changes in Section 10.3.2 with the removal of the

criteria for slope in defining buffer zones; Section 10.4 with the use of the term structure instead of development; Section 10.4.3 with the use of the terms expansion and expanded; Section 10.5.1(f) with the permitted uses, in particular artificial lakes, ponds, and dams; Section 10.5.2.2 with the dropping of the 6% impervious surface limitation for the water quality control areas; and Sections 10.8(a) and (k) with the lowering of lowest allowable floor elevation and deletion of the sentence stating that filling shall be permitted only if necessary to afford a legally reasonable use of the property. Ms. Cooperstein recommended that the Council recognize the weaknesses in the staff proposal and adopt the citizens' alternative.

Council Member Godschalk commented that the staff proposal actually strengthened the buffer requirements and that by increasing the width from 50' to 75' there was no need to include the slope criteria. He also said the water quality critical areas applied to areas of water sources like University Lake and Cane Creek reservoir and that Chapel Hill did not have any of these areas within its planning jurisdictions. He said as such the deletion of the 6% impervious surface limitation as it applied to water quality critical areas had little effect on Chapel Hill and was more a streamlining measure. He said he agreed that there needed to be limits on the amount of impervious surface.

Lynn Knopf, representing the Last Woods Group, said the group had worked to disseminate information on the ordinance. She said she felt the staff had been more interested in the technical and engineering aspects of the ordinance than in the environmental aspects.

Irene Briggerman, representing the Alliance of Neighborhoods, said the Alliance felt the proposal tended to weaken the ordinance and spoke in support of the others who had expressed concern over the proposed changes. She introduced Robert Smythe and said that he would speak to the proposal.

Robert Smythe, representing the Alliance of Neighborhoods, said the citizens felt they had legitimate concerns about the proposed changes in the RCD ordinance as proposed by the staff. He said they were satisfied with the FEMA recommendations and urged adoption of those changes. He said however, that the citizens group would prefer for the Council to continue with review of the RCD ordinance with the possibility of additional revisions, especially those suggested by the citizens group. He reiterated the concerns expressed by Ms. Cooperstein except that he agreed the deletion of the use of slope in the buffer requirement seemed to be taken care of with the additional buffer area. Mr. Smythe recommended that the Council not adopt either the staff or citizen proposal until further review and consideration was given to both.

Lightning Brown, representing the Last Woods Group, agreed with the comments made by Ms. Cooperstein and Mr. Smythe and urged the Council to consider the citizens group's alternate ordinance. He said he felt the citizens' proposal was easier to understand and was more equitable than the staff proposal. He also said he felt the Board of Adjustment should remain as the review authority for RCD variances.

Council Member Smith commented that he hoped the Council would take into consideration the report from the Army Corps of Engineers, UNC Land Use Plan, FEMA recommendations, etc., when considering any changes to the RCD and to remember that conditions and the flood plain area was constantly changing. He spoke against any change in the lowest allowable floor elevation.

Council Member Godschalk commented that any proposed change in the RCD ordinance would not affect existing development in that those developments which currently experienced flooding during heavy rains, etc., would still experience that flooding, but the changes would affect new development. He said he felt the process in producing the proposed changes had involved a remarkable amount of effort and he commended the staff, Planning Board, citizens, and other boards who had made the effort to review and present proposed changes. He also commented that in his opinion, a stream was an area in which water flowed and that in his work with coastal communities when trying to establish an ordinance similar to the RCD, he urged adoption of an ordinance which had the lowest allowable floor elevation one foot about FEMA requirements. He said currently in Chapel Hill the RCD ordinance had this elevation 3.5' above those requirements. Mr. Godschalk concluded saying that flood protection and environmental protection do not always agree and what was needed was a balance between the two. He said a higher lowest allowable floor elevation requirement can create more environmental damage.

Council Member Werner said he felt the staff had done an excellent job in the revisions and also that there had been a positive effort by the citizens to try to develop alternatives. He said review of the proposed changes would be a complex process for the Council and he was concerned that it be done properly and not necessarily quickly. He said the Council needed to take time to review the citizen proposal and see if any of those suggestions should be incorporated into the staff proposal.

COUNCIL MEMBER PASQUINI MOVED, SECONDED BY COUNCIL MEMBER GODSCHALK TO REFER TO THE MANAGER AND ATTORNEY.

Council Member Pasquini suggested having the Manager bring back the ordinance with a review of each salient point and have the Council discuss each point at several different meetings until the entire ordinance had been reviewed and once this was done the Council could adopt the ordinance as a whole.

Council Member Preston said she would prefer that the Council hold a work session on the proposed revisions. She said liked the way the citizens' proposal was organized and would like the staff to review that.

COUNCIL MEMBERS PASQUINI AND GODSCHALK AGREED TO ADD TO THEIR MOTION TO REFER THAT THE MANAGER SET UP A WORK SESSION FOR THE COUNCIL ON THE PROPOSED RCD REVISIONS. THE MOTION PASSED UNANIMOUSLY, (7-0).

Public Hearing on North Carolina National Bank Special Use Permit

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

Manager Taylor requested that Agenda memorandum #2, dated May 18, 1987, "Application for Approval of Special Use Permit - NCNB at Timberlyne Shopping Center (24K-14)", be entered into the record of this hearing; along with the Applicant's:

- Project Fact Sheet
- Site Plan
- Traffic Impact Statement

Roger Waldon, Planning Director, gave a presentation on the application for a Special Use Permit to allow construction of a bank with drive-through windows at Timberlyne Shopping Center. He said the key issues were off-site road improvements, interior circulation, and parking spaces. He said the Transportation Board recommended that a left turn lane be provided at the intersection of Weaver Dairy and N.C. 86, while the staff and Planning Board recommended against this requirement. Mr. Waldon said the one-way interior circulation would be directed by a curbed island installed at the entry to the site to prohibit left turns and that the parking spaces exceeded the requirements but that the site plan could easily accommodate the extra parking. He stated that the staff recommended the use of an alternative buffer along the western boundary of the site due to Duke Power Company lines which prohibit the normally required buffer.

Council Member Andresen asked what was the rationale in not asking for the turn lane at Weaver Dairy and N.C. 86. Mr. Waldon replied that the scale of the facility was not significant enough to warrant the road improvement. He said many of the road improvements that would normally be required of the development had already been done when Timberlyne Shopping Center was built, but that the staff was requiring the inclusion of a sidewalk.

Council Member Andresen asked when there would be a need for the turn lane at the intersection. Mr. Waldon replied that if there were a development proposal for something larger than 4,000 square feet and which would generate a larger amount of traffic then there would probably be a need for the turn lane.

Council Member Andresen agreed that there was a need for landscaping along the frontage of the shopping center but warned the staff not to completely depend upon berms and alternative buffers since they did not always work. She pointed out the Brendle's site as an example.

Council Member Preston asked for clarification of where the entrance to the proposed Wachovia Bank was in relation to this development and if offsetting the two entrances would create problems. Mr. Waldon pointed out on the map where the entrances were and said he did not feel it would create a problem and that the staff did not expect a lot of crossover traffic between the two facilities.

Council Member Smith asked for clarification of what was involved in the 50' gravel construction entrance and asked when Wachovia Bank expected to begin construction of their facility. He said he was concerned that construction vehicles would park and block Banks Drive which was a public street. Mr. Waldon replied that he did not know exactly when Wachovia would begin construction and that he thought the 50' gravel construction entrance applied to having a gravel in the entrance to the site, going back 50', during construction.

Council Member Smith said that he would like information on the vehicular traffic patterns to and from banks during specific times of the day.

L. C. McLean, speaking as the construction manager for the project and representing NCNB, said the applicant supported the Manager's recommendation.

Pat Evans, representing the Planning Board, said the Board recommended adoption of Resolution A, approving the application.

Manager Taylor said he recommended adoption of Resolution A, approval of the application, with conditions.

COUNCIL MEMBER WERNER MOVED, SECONDED BY COUNCIL MEMBER GODSCHALK TO REFER TO THE MANAGER AND ATTORNEY. THE MOTION PASSED UNANIMOUSLY, (7-0).

Public Hearing on Reserving Future School Sites in Future Subdivisions
- Development Ordinance Text Amendment

Roger Waldon, Planning Director, said the proposed ordinance would give the Town authority to reserve future school sites, if sites were approved by both the School Board and the Town Council, and are designated on the Town's Land Use Plan. He said no future school sites had yet been designated.

Pat Evans, representing the Planning Board, said the Board recommended adoption of the proposed ordinance.

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Council Member Smith asked if there had been any comments from the School Board on this proposal. Mr. Waldon replied that the staff had discussed this proposal with the School Board and administrative staff and they had expressed support.

Council Member Preston commented that the proposal only affected subdivisions and not special use permit applications. She asked what would happen if there were a future school site designation for an area under consideration for a special use application. Town Attorney Karpinos responded said the ordinance would not authorize reservation, but if the site had been designated and the School Board wanted to act it would be able to act quickly, but it would not be able to reserve it for an indefinite period of time.

THE MOTION PASSED UNANIMOUSLY, (7-0).

A MOTION WAS DULY MADE AND SECONDED TO ADJOURN THE MEETING. THE MOTION PASSED UNANIMOUSLY, (7-0).

The meeting adjourned at 10:32 p.m.