

MINUTES OF A PUBLIC HEARING HELD BY THE MAYOR AND COUNCIL
OF THE TOWN OF CHAPEL HILL, MUNICIPAL BUILDING,
MONDAY, JUNE 20, 1988, 7:30 P.M.

Council Member Nancy Preston called the meeting to order.
Council Members present were:

- Julie Andresen
- David Godschalk
- Joe Herzenberg
- Arthur Werner

Council Member Wilkerson arrived late. Mayor Howes and Council Members Pasquini and Wallace were absent, excused. Also present were Town Manager David R. Taylor, Assistant Town Managers Sonna Loewenthal and Ron Secrist and Town Attorney Ralph Karpinos.

COUNCIL MEMBER GODSCHALK MOVED, SECONDED BY COUNCIL MEMBER HERZENBERG FOR COUNCIL MEMBER PRESTON TO SERVE AS MAYOR PRO-TEM AND CHAIR FOR THE MEETING. THE MOTION PASSED UNANIMOUSLY, (5-0).

Public Hearing on Proposed Amendment to the Special Use Zoning Regulations

Roger Waldon, Planning Director, said the proposal was to amend the Development Ordinance regarding special use district rezoning to limit the conditions upon which Special Use Zoning could be used. He said the amendment would preclude Special Use Zoning of land now zoned Residential-1A, R-1, R-2, R-3 and Rural Transition. Mr. Waldon stated that the staff and Planning Board felt that the proposal would limit the intended flexibility of the special use district concept and thereby eliminate the Council's ability for flexibility in response to special conditions. He said the Planning Board had also expressed concern that the language in the ordinance did not specifically address the issue of "changing conditions" as a result of a special use rezoning. He stated that the Planning Board felt the issue of "changing conditions" as a valid argument for rezoning more property in an area where a special use zoning request was granted was not applicable since the purposed of special use zoning was to address unique situations. Mr. Waldon said that the staff planned to explore this idea for future Development Ordinance Text Amendment proposals. He said in conclusion that the staff recommended no change to the ordinance at present and that the options for the Council were no change, modifications to the ordinance or to eliminate the ordinance completely.

Alan Rimer, Planning Board Chair, said the Board endorsed the Manager's recommendation for no change at this time. He said the Board did feel there should be an amendment to the ordinance to address the issue of "changing conditions" and also the possibility of limiting the number of allowable special use rezonings in a specific area.

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Council Member Preston asked if there would not be problems with equity if the Town were to limit the number of Special Use Zonings in an area? Mr. Rimer said the Planning Board had discussed this and felt more discussions were needed, but he said the Board also felt the Council could control the number of special use rezonings without a change in the ordinance.

Council Member Werner pointed out that there was still the option of general rezoning for property owners if the Special Use Zoning ordinance were eliminated or restricted.

Council Member Godschalk commented that with general rezonings it opened the way for any number of types of development without the control factor allowed with the Special Use Permit associated with Special Use Zoning.

Manager Taylor said he believed the reasons for the creation of the Special Use Zoning district were still valid and therefore his preliminary recommendation was for adoption of Resolution A to keep the Special Use Zoning ordinance intact.

Ron Ginsburg, speaking as a citizen, said that he felt more attention should be given to having applicants prove that their proposals would not have an adverse affect on the health, safety and welfare of the neighborhood and community. He said it appeared to him that too often, it was the neighborhood who had to prove that they would be hurt by a proposal rather than the applicant having to prove that the proposal would not hurt the neighborhood. He said the problem of non-residential uses in residential areas was that the comprehensive planners had failed to see and plan for this type of need and as a result were attempting to meet that need at the expense of the neighborhoods. He said he believed in the protection of the integrity of neighborhoods and that if a proposal for non-residential use were suggested for a neighborhood it should have to have neighborhood approval before it should be allowed to exist within the neighborhood.

Philip Pavlik, speaking as a citizen, spoke in support of abandoning the Special Use Zoning districts in residential zones. He said the issue was maintaining and preserving existing neighborhoods and Special Use Zonings allowed for uncertainty as to the protection of neighborhoods.

Joyce Brown, speaking as a citizen, spoke in support of abandoning the Special Use Zoning districts in residential zones, especially the residential areas around the University. She said these areas needed protection from encroachment of non-residential uses. She said if Chapel Hill were serious about protecting and enhancing residential neighborhoods then it needed to eliminate Special Use Permits in residential zones.

Milton Van Hoy, speaking as a resident, spoke in support of the proposal to eliminate Special Use Zoning from certain residential

zones. He said he did not feel elected official should have too much flexibility. He said he preferred predictability in the way the Town operated. He said he felt Special Use Zoning allowed for the Council to be subject to pressures from all kinds of people in support of various projects.

Karen Murphy, speaking as a citizen, spoke in support of the proposal to eliminate Special Use Zoning in residential zones. She felt it constituted spot zoning and allowed for drastic changes in residential areas.

Robert Joesting, speaking as a citizen, said he felt the proposal was an illegal change to an illegal ordinance. He said he felt the only rational thing to do was to eliminate Special Use Zoning entirely as it was currently drafted. He said that people wanted to know what would happen in their neighborhoods and Special Use Zoning allowed for uncertainty as to how neighborhoods would develop. Mr. Joesting said that he felt the Council could allow for Special Use Permits in each zone, with a provision for a limited number of SUP's per area, etc. and thereby allow for flexibility without rezoning any property.

Kathleen Cheape, speaking as a citizen, spoke in favor of changing the Special Use Zoning regulations to eliminate them from residential zones. She said she would prefer the total elimination of the ordinance since she felt it was spot zoning.

Sally Massengale, speaking as a citizen, spoke in favor of the proposal. She said she was concerned that the burden was being placed on the residents and not the applicant to show why a change in the area should or should not occur.

Catherine Ward, speaking as a citizen, expressed support for the proposed changes to the Special Use Zoning ordinance. She said she felt Special Use Zoning regulations threatened the stability of neighborhoods and that people needed to feel secure that their home and neighborhood would still be the same for years to come.

Council Member Herzenberg asked the staff for information on the issue of changing conditions in relation to a special use rezoning and how it could be used as an argument in favor of rezoning; how the Council could limit the number of Special Use Zonings granted in an area and the question of equity to all involved; and the impact on a small neighborhoods like the Town Center of special use rezonings.

Council Member Godschalk asked for information on any applications for Special Use Zonings or rezonings which could be attributed to the "domino" effect of granting a Special Use Zoning.

Council Member Andresen asked for information on other methods of accomplishing the goals of Special Use Zoning without actually rezoning the property; for example, expanding the Special Use Permit process.

Council Member Werner asked for information on alternatives to the Special Use Zoning which would serve the needs of social service agencies within the context of the current land use plan, i.e. where could these agencies locate without Special Use Zoning.

Council Member Preston asked if the Chrismon case had been decided and if so how it would affect the Town's Special Use Zoning regulations and the lawsuit on a Special Use Zoning application granted by the Town. Attorney Karpinos said the Supreme Court had heard the Chrismon case in December and was still deliberating on it but once the Court made its decision then he would review it to see how it would affect Chapel Hill's ordinance.

Manager Taylor stated that with all the information requested by the Council that he did not feel that he could have a complete report to the Council by July 11 and would therefore like more time before having to report back to the Council.

COUNCIL MEMBER GODSCHALK MOVED, SECONDED BY COUNCIL MEMBER HERZENBERG TO REFER TO THE MANAGER AND ATTORNEY FOR A REPORT BY AUGUST 25. THE MOTION PASSED UNANIMOUSLY, (5-0).

Council Member Andresen left the meeting at this time, 8:24 p.m.

Council Member Wilkerson arrived at this time, 8:24 p.m.

Public Hearing on Zoning Annexation Area 1 - East of Chapel Hill

Roger Waldon, Planning Director, said that this was a public hearing on zoning an area to be annexed by the Town. He said the annexation areas within Orange County were already covered by Chapel Hill's Development Ordinance but the areas within Durham County were not and that the proposal was to zone those areas within Durham County which were to be annexed into Chapel Hill. He stated that there was litigation on these areas that may delay the annexation and therefore the recommendation for zoning this property was for the zoning to be effective as of June 30, 1988 or the effective date of annexation, whichever was later.

Mr. Waldon said the staff recommended zoning the Oaks area Residential-1, the Du Bose and Lloyd property Rural Transition, and the area south of NC 54 as R-2. He said the area south of NC 54 contained some property currently used for commercial uses that would be non-conforming if zoned R-2. He said the staff did not recommend zoning this area Community Commercial because of all of the uses which could be allowed in a CC zone. He pointed out that one of the sites, Caraflorea, contained warehouses which were not permitted in Chapel Hill except in OI-3 or Industrial zones.

Council Member Godschalk asked since the staff was recommending Residential-2 zoning for property already developed as commercial

was it expected that the owners would apply for Special Use Zoning to allow for the continuation of their businesses? Mr. Waldon said the staff had talked with the property owners about Special Use Zoning.

Council Member Herzenberg asked what were some of the problems associated with non-conforming lots, etc. Mr. Waldon replied that the business could continue to operate but that it could not expand, renovate or reconstruct without meeting the current zoning designation standards. He said this would have an affect on any financing or insurance on the site.

Council Member Herzenberg asked how this type of non-conformity was different from the sign ordinance. Mr. Waldon replied that when the Council had adopted the sign ordinance it had included a specific amortization period during which time the individual/business could bring their signs into compliance, but that after that date if the signs did not conform then they would have to be removed.

Council Member Werner asked how many acres would be non-conforming if the area were zoned R-2. Mr. Waldon replied approximately 6 acres.

Council Member Werner commented that if the Special Appearance District ordinance were amended as proposed then this area would fall under those regulations. Mr. Waldon replied that the proposed amendments to the Special Appearance District ordinance would affect area 250' from the right-of-way of NC 54.

Council Member Preston asked if the staff had considered zoning the property as R-4, like the area across Barbee Chapel Road, and then if the proposed changes in the Special Use Zoning district ordinance occurred, then the property owners could apply for Special Use Zoning. She also asked if the staff had considered mixed use zoning in the area proposed for Rural Transition. Mr. Waldon replied that the staff had, in proposing the Rural Transition zoning for the Du Bose and Lloyd properties, been trying to address the concerns of the property owners that their property was not expected to be developed at any time in the near future and that the land constituted their homeplaces and farms. He said the RT zone was the lowest density zone allowed in Chapel Hill.

Mr. Waldon said that the staff and Planning Board had differed in its recommendations for the zoning of the annexation areas. He stated that an area in The Oaks III already platted in Durham County as a cluster subdivision was recommended by the staff to be R-1 while the Planning Board recommended R-2. He said the staff felt there was no need to separate this development into another zoning designation since it would fall under the Town's cluster subdivision regulations in the R-1 zone but that the Planning Board had felt more comfortable zoning this area R-2 to avoid any question of non-conformity. He also said the Planning

Board had recommended that the Du Rose and Lloyd property be zoned R-1 and not RT. Mr. Waldon stated that the Planning Board had recommended, because of the commercial uses on the some of the property south of NC 54, that the zoning of this area be delayed until a better solution could be found which would allow for some sort of "grandfathering" of these properties.

Council Member Godschalk asked what would happen if the Council did not zone the area south of NC 54 immediately. Attorney Karpinos responded that there were three lawsuits on the proposed annexation of Area 1 and that he did not know if they would still be in the courts by June 30th but in all probability they would. He said the zoning would not go into effect until after the annexation became effective and that the Council had 60 days from the date of annexation in which to zone the property for Chapel Hill's standards and until that time the area would still be under Durham County's zoning regulations.

Council Member Herzenberg commented that the annexation area contained at least two streets named Nottingham and he wondered if this would not be confusing and if it could be changed.

Alan Rimer, Planning Board Chair, said the Board had recommended zoning The Oaks Villas cluster subdivision as R-2 in order to avoid any question of non-conformity and that the Board had felt for consistency the Du Bose and Lloyd property should be zoned R-1 to mirror the zoning on the property in Orange County. He said the Board was also uncomfortable with the proposed zoning of the property south of NC 54 and recommended that further study be done.

Manager Taylor said his preliminary recommendation was to zone the property in Annexation Area 1 in Durham County as R-1, RT and R-2.

Herman Lloyd, speaking as a property owner in Annexation Area 1, said that his property had been zoned highway/commercial before the proposed annexation and developed as such and therefore should continue to be zoned in this manner after the annexation.

Steve Yoba, an attorney representing the Du Bose family, said he felt this public hearing was premature in that there were lawsuits pending on the annexation. He said that the area south of NC 54 which was zoned commercial had been so for a long time and that it would create a definite hardship on those property owners if the Town were to zone their property in such a way as to make the property non-conforming. He said his clients would prefer that no action be taken at this point on zoning or recommending zoning of any portion of the proposed annexation area.

Council Member Werner asked what the Du Bose property was currently zoned. Mr. Yoba replied that he believed it was zoned Rural Development.

Council Member Werner said that it could be possible that the Rural Transition zone proposed might not be different from the current zoning. Mr. Yoba replied that he was not sure.

Mr. Waldon replied that when the report came back to the Council for action the staff would include information the Rural Development zone in Durham County and the Rural Transition zone in Chapel Hill.

Charles Stancell, speaking as a property owner in Annexation Area 1, said his property had been zoned highway/commercial for over twenty years and he did not understand why the Town wanted to change this. He said the area was already developed as commercial property. He stated that he did not feel he should have to apply for Special Use Zoning or a Special Use Permit, pay the fees and have to go through all the paper work, time and expense, for property that was already developed and businesses which had been operational for some time. He said that if the area were zoned to R-2 and his property became non-conforming then he would not be able to insure the property for replacement costs since he would not be able to replace the warehouses, etc. He said there should be a way to allow conformity of the current uses in whatever zoning the Town desired for the area.

Jack Simonds, speaking as the Director of the North Carolina Association of Emotionally Troubled, said that they owned and operated Caraflorea and Caramore in this area. He said they provided vocational training services for emotionally disturbed young adults. He requested that whatever zoning the Town placed on the area south of NC 54 that it allow for the continuation and growth of their business. He said the organization had a long term lease with Mr. Stancell for the property and that the location was perfect for expansion of the business as well as for access by bus service, etc. He said they operated a wholesale and retail greenhouse, landscape maintenance service, engine repair service, cleaning service, etc. and that the capacity for their clients had doubled since moving to this location in 1985. He urged the Council to allow for their continued operation.

John Mabe, an attorney representing Goforth Properties, said The Oaks Villas were platted as a cluster subdivision in Durham County and would be honored as such by Chapel Hill. He said the lot sizes were smaller than the R-1 minimum in Chapel Hill but not for R-2. He said the developer wanted to be sure the zoning by Chapel Hill would not affect the cluster development and therefore would prefer the R-2 zoning as recommended by the Planning Board. He introduced the recorded plat of The Oaks Villas into the record of the meeting.

Jack Smyre, representing the developer, said that they were concerned that non-conformity not occur and therefore urge the Council to zone the Oaks Villas area as R-2. He said zoning the remaining Oaks area as R-1 was completely acceptable to the developer.

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Council Member Godschalk asked the staff to look into the possibility of waiving the fees for existing developments in annexed areas in regard to Special Use Zoning or rezoning requests.

COUNCIL MEMBER GODSCHALK MOVED, SECONDED BY COUNCIL MEMBER HERZENBERG TO REFER TO THE MANAGER AND ATTORNEY. THE MOTION PASSED UNANIMOUSLY, (5-0).

Public Hearing on Zoning Annexation Area 2 - Northwest of Chapel Hill

Roger Waldon, Planning Director, said this public hearing was to receive comments on the proposed zoning of Annexation Area 2. He said the staff recommended zoning the area east of NC 86 as R-2, west of NC 86 and north of Homestead Road as R-1, Brookstone Apartments as R-4 and the remaining area south of Homestead Road as R-2. He stated that this area was also the subject of litigation and therefore the zoning was recommended to be effective on June 30, 1988 or the effective date of annexation, whichever was later. He said the primary area of discussion was the area proposed as R-1. Mr. Waldon stated that the Land Use Plan designated this area as low and medium density.

Alan Rimer, Planning Board Chair, said the Board had voted 5-4 to concur with the Manager's recommendation but that there had been concern that the R-1 designation for the area northwest of NC 86 should be zoned R-2 or R-3 in accord with the Land Use Plan and because it might be more appropriate to have higher densities permitted along NC 86. He said there was some concern that since this area was an entranceway, the R-1 zoning would be more appropriate.

Manager Taylor said his preliminary recommendation was to zone Annexation Area 2 as R-1, R-2 and R-4.

Joe Hakan, representing the Maddry's, owners of 100 acres of Annexation Area 2, said that they would prefer that their property be zoned as R-2 rather than R-1. He said the R-2 zoning allowed for more opportunities for affordable housing. He pointed out that of the 236 new homes in the Orange/Durham/Chatham area, only 42 were under \$100,000. He said in order to get less expensive houses one needed to have less expensive lots.

Council Member Godschalk said that Mr. Hakan's comments were an excellent point about affordable housing. He asked Mr. Hakan if he felt there would be aesthetic problems with zoning the area north of Homestead Road as R-2. Mr. Hakan replied that he did not believe zoning an area R-2 would take away from the aesthetics of an area. He said if the lot price were reduced then it allowed for additional funds to be used by property owners to landscape/develop their lots.

Council Member Werner asked if Mr. Hakan were making a commitment to building/selling affordable housing in Chapel Hill for less than \$100,000. Mr. Hakan replied that he was not making a

commitment but that he felt zoning the property R-2 would make the housing more affordable.

Council Member Herzenberg asked how Mr. Hakan felt about zoning the area R-3. Mr. Hakan replied that R-3 would be fine but that developments would need closer attention to design in order to get the quality developments which Chapel Hill wanted.

Grainger Barrett, an attorney representing the Creech family, who own 60 acres south of the Maddry property, said the property was designated as medium density on the Land Use Plan and that the property owners requested that the Council adhere to that plan and zone it accordingly. He said R-2 and R-3 were moderate or medium density zones and would be in accord with the Land Use Plan. Mr. Barrett stated that in discussing the Comprehensive Plan and zoning along major transportation corridors it was important that the more the Town was able to have critical concentrations of development along these corridors the more effective the transit system. He said that having low density development along major transportation corridors only increased the usage of single automobiles. He pointed out that this area already had good transportation corridors with NC 86, Homestead Road, Weaver Dairy extension and I-40.

Mr. Maddry, speaking as a property owner, said that he would prefer that his property be zoned R-2 or R-3. He said the area was suitable for this type of zoning, especially with the transportation corridors. He pointed out that if the Special Appearance District ordinance was amended as proposed it should address any questions of development along NC 86 and the entranceway. Mr. Maddry also said that if the property were developed, he would maintain approximately three acres along NC 86 as his homestead which would act as a buffer to whatever development occurred on the remaining site.

Council Member Godschalk said that when the Council had adopted the Land Use Plan, certain Council Members had made a point of striking out the higher density areas and replacing them with R-1 and now the staff was appearing to do the same in this area. He said he would prefer that the area be zoned for medium density in accord with the Land Use Plan especially when there a plenty of R-1 areas in Chapel Hill and when the transportation corridors in this area already exist or are planned which would handle the traffic associated with a more intense use than R-1.

COUNCIL MEMBER WERNER MOVED, SECONDED BY COUNCIL MEMBER GODSCHALK TO REFER TO THE MANAGER AND ATTORNEY. THE MOTION PASSED UNANIMOUSLY, (5-0).

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Public Hearing on Zoning Annexed Area - Riggsbee Property west of Pope Road

Roger Waldon, Planning Director, said this public hearing was on the proposed zoning of an area annexed by the Town on April 30, 1988. He said the staff recommended zoning this area as R-2.

Alan Rimer, Planning Board Chair, said the Planning Board concurred with the Manager's recommendation for R-2.

Manager Taylor said his preliminary recommendation was to zone the area R-2.

There were no citizen comments.

Council Member Godschalk commented that half of this subdivision was already zoned R-1. He asked why the staff was proposing to zone this new portion R-2. Mr. Waldon replied that the lot sizes in the annexed area were just under the minimum lot size for R-1.

COUNCIL MEMBER GODSCHALK MOVED, SECONDED BY COUNCIL MEMBER WERNER TO REFER TO THE MANAGER AND ATTORNEY. THE MOTION PASSED UNANIMOUSLY, (5-0).

Executive Session

COUNCIL MEMBER HERZENBERG MOVED, SECONDED BY COUNCIL MEMBER GODSCHALK TO ADJOURN TO EXECUTIVE SESSION TO DISCUSS LITIGATION AND PROPERTY. THE MOTION PASSED UNANIMOUSLY, (5-0).

The meeting adjourned to executive session at 10:00 p.m.

COUNCIL MEMBER GODSCHALK MOVED, SECONDED BY COUNCIL MEMBER HERZENBERG TO ADJOURN THE MEETING THE MOTION PASSED UNANIMOUSLY, (5-0).

The meeting adjourned at 10:30 p.m.