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MINUTES

MAY 3, 2018

7:00PM

BOARD OF ADJUSTMENT

YOUNGSVILLE COMMUNITY HOUSE

Chairman Fonzie Flowers called the meeting of the Town of Youngsville Board of Adjustment to order at 7:00 pm. Chairman Flowers initiated a roll call. In attendance were Chairman Fonzie Flowers, Planning / Zoning Administrators Andrew Thomas, Jr. and Bob Clark, Members Terry Hedlund, Joseph Johnson, Larry Wiggins, Graham Stallings, and Catherine Redd, Interim Town Administrator Roe O'Donnell, Town Attorney Edward Bartholomew, and Town Clerk Emily Hurd.

The first item on the agenda was to approve the minutes from the April 19, 2018 Board of Adjustment Meeting.

MOTION: TO APPROVE THE MINUTES FROM THE APRIL 19, 2018 BOARD OF ADJUSTMENT MEETING

The motion was made by Member Wiggins and was seconded by Member Hedlund. The motion passed unanimously.

The next item on the Agenda was Old Business. The only item under Old Business was the application for Variance by DRCW Investments for 203 S Nassau Street. Chairman Flowers asked the Board to reopen the Hearing.

MOTION: TO REOPEN THE HEARING FOR THE APPLICATION FOR VARIANCE BY DRCW INVESTMENTS LLC FOR 203 S NASSAU STREET

The motion was made by Member Stallings and was seconded by Member Wiggins. The motion passed unanimously.

Chairman Flowers asked that evidence from the Hearing on April 19, 2018 be entered into evidence.

MOTION: TO ACCEPT STAFF FINDINGS AS EXHIBIT YOUNGSVILLE #1

The motion was made by Member Wiggins and was seconded by Member Stallings. The motion passed unanimously.

MOTION: TO ACCEPT THE APPLICATION FOR AN APPEAL FOR VARIANCE BY DRCW INVESTMENTS LLC AS EXHIBIT YOUNGSVILLE #2

The motion was made by Member Hedlund and was seconded by Member Wiggins. The motion passed unanimously.

Chairman Flowers asked the Board to validate the Findings of Fact and previous approval of the Variance.

MOTION: TO KEEP VOTES ON FINDINGS OF FACTS FROM THE APRIL 19, 2018 BOARD OF ADJUSTMENT HEARING

The motion was made by Member Johnson and was seconded by Member Wiggins. The motion passed unanimously.

MOTION: TO CLOSE THE HEARING FOR THE APPLICATION FOR VARIANCE BY DRCW INVESTMENTS LLC FOR 203 S NASSAU STREET

The motion was made by Member Wiggins and was seconded by Member Johnson. The motion passed unanimously.

The next item on the Agenda was New Business.

The first item under New Business was a Special Use Application from Mission Development LLC for property located on Sirchi Campus off of NC 96 Highway.

Attorney Bartholomew outlined the evidentiary and conduct guidelines for Board of Adjustment Hearings. He noted the worksheet had been updated to help remind everyone when evidence needed to be entered. Attorney Bartholomew stated there can be objections to the evidence. He explained the Board of Adjustment sits as a panel of judges and can only hear relevant testimony presented on actual knowledge of facts or opinions of experts. Hearsay is not allowed and should be disregarded. All testimony should be under oath which includes Staff, the applicant or their agent, and neighbors to the property at issue. Witnesses who are not neighbors should not be able to testify unless that witness can show that the decision would actually affect their property and not just that they are opposed or supportive of the application. Cross examinations and rebuttals are allowed. After all of the evidence has been presented, the Board will then deliberate.

Town Clerk Hurd swore in those wishing to testify; Andrew Thomas, Jr., Bob Clark, Roe O'Donnell, Dennis Tharrington, Mark McArn, and Justin Graney.

Thomas gave a preliminary statement to describe the case before the Board. He explained Dennis Tharrington, for Mission Development, LLC, had filed for a Special Use Permit (SUP) for property located on NC 96 Highway at the Sirchi Campus to construct an 80-unit senior housing complex. Thomas stated the complex will be situated on portions of 5 parcels, for

approximately ten acres, west of Hunter Place and adjacent to the industrial park on the south side of NC 96 Highway.

Thomas explained the applicant, Dennis Tharrington, had a pre-application conference with Staff prior to the submission of the application. Comments from Staff are provided in Staff Findings. The applicant presented several designs to Staff and the most recent version of the site plan was revised to accommodate those suggestions.

Thomas explained the site is surrounded by Mixed Use Zoning (MU), which allows a variety of uses. To the north is vacant property, industrial, and multi-family uses. To the south is vacant property. To the east is a forensics laboratory and manufacturing. To the west is an industrial park.

Thomas stated the Technical Review Committee had reviewed the plans. He stated comments on Staff Findings from NC DOT have since been revised. Thomas explained NC DOT wants the main entrance to be from Hunter Place and to extend Wolfpack Lane as an emergency, all-weather access drive. He noted the plans have been revised to show these recommendations and also include another emergency, all-weather access drive to Jeffrey Way, through the industrial park. Thomas noted the vacant property to the rear has been looked at for a different residential development, if that happens, then Wolfpack Lane will be extended and NC DOT will require a left turn lane at that intersection.

Comments from Franklin County Public Utilities (FCPU) indicate utilities will be available in 2019, which fits into the construction timing of the project.

Comments from the Youngsville Fire Department (YFD) included the need for a 360 access via roadway around the proposed complex. Thomas noted this has been addressed in the revised plans. YFD also noted the hydrant system would need to be a private system on a loop from the water main to ensure proper water pressure and supply, should they have to use multiple hydrants. YFD expressed concerns about the encroachment of this development, with a potentially sensitive population to an industrial area that includes multiple types of chemicals. They noted the companies have been long established in Youngsville and is directly west of the proposed complex. YFD explained some of the chemicals used and produced in the industrial park are a risk to the public should they be involved in a spill / release or a fire. Either scenario could result in the need to shelter residents in place or completely evacuate them, if able. It was noted the YFD is not a specialized hazmat team. YFD noted they cannot legally go into specifics on which company uses particular chemicals and the amounts, but the information is available online. Due to these reasons, the YFD recommended against the proposed complex in that particular location.

Comments from the Planning Staff included that if the SPU was approved, then the applicant will prepare a detailed construction plan for review. It was recommended that a condition of the approval be an additional street, but the developer has already addressed these concerns. Staff also wanted to caution the Board to weigh the concern of the elderly population against the presence of nearby industrial chemicals.

Thomas stated the Planning Board met April 3, 2018 and gave a favorable recommendation with the condition for an extra, emergency-only access drive. He reiterated the developer has already addressed this concern.

When asked about the second development, Thomas explained a developer was looking at doing 150 residential lots, and if that were to happen, then the all-weather access of Wolfpack Lane would then be paved. Member Wiggins expressed concerns it would become an expense for the Town in the future and Thomas explained it would be installed at the expense of the developer.

Chairman Flowers polled the Board as to any conflicts of interest or bias. The Board answered no, unanimously, to not having a fixed opinion prior to hearing the matter that is not susceptible to change. Chairman Flowers asked the Board if there had been any undisclosed ex parte communications and the Board answered no, unanimously. The Board answered no, unanimously, to having a close familial, business, or other associational relationship with an affected person or entity; or a financial interest in the outcome of the matter.

Chairman Flowers opened the floor for the applicant to present evidence for his application. Dennis Tharrington, Mission Development, LLC, stated they have developed over twenty elderly housing complexes across the state, several of which were close to Franklin County. He noted they were always occupied. Mr. Tharrington explained most of the elderly that lived in these complexes were single females, though there were couples and single males as well. He stated complexes such as these were for people who no longer wanted to maintain property and wanted a closer community atmosphere. Though there is an age requirement of fifty five years old, though the average age was early to mid-seventies. Mr. Tharrington stated allowances were made for younger individuals with handicaps, though it didn't happen often. He noted there would be no children allowed to live in this facility. Apartments consisted of one bedroom / one bathroom or two bedroom / two bathrooms with a living area, full kitchen, and dining area in an open concept. All apartments opened to either a patio or balcony. There would be multiple elevators, a library, general purpose room, exercise room, and computer room. Mr. Tharrington noted this was not an assisted living facility nor was it a nursing home. He explained the buildings were energy efficient to keep costs down and included safety features such as key fobs to enter the outer locked doors and all visitors would have to be buzzed into the building, as there would be no public access. Fire alarms, fire doors and sprinklers will be installed. Mr. Tharrington stated the complex would have to be built to certain safety specifications to satisfy the financing agencies. He explained complexes such as these had to be built within one mile of grocery stores, pharmacies, and basic shopping. Mr. Tharrington stated he felt Youngsville would be a great place for a complex such as this.

Mr. Tharrington explained the market studies indicate there is sufficient demand in the Youngsville area. He stated Mission Development LLC built good complexes and they have addressed the issues from the Review Committee. Mr. Tharrington stated the main entrance will be from Hunter Place, with two other access points for emergencies.

Mr. Tharrington explained another possible developer was investigating the property directly behind this area. He noted that if the other developer decided to move forward, NC DOT would then approve an outlet onto NC 96 Highway.

Member Redd asked how many of the active adults would have automobiles and Mr. Tharrington stated approximately 30% - 50%, based on other complexes. Member Redd noted the lack of public transportation and sidewalks in Youngsville and Mr. Tharrington stated the lack of public transportation and sidewalks would be a problem. He stated he would contact KARTS to see if they would be able to assist in this area of Franklin County. Mr. Tharrington stated that KARTS helped in other areas and noted some of the complexes in other towns didn't have sidewalks either. Mr. Tharrington stated the residents of these complexes formed a community that helped each other out, so there was also the possibility of carpooling.

MOTION: TO ACCEPT THE SPECIAL USE APPLICATION BY DENNIS THARRINGTON FOR MISSION DEVELOPMENT, LLC AS EXHIBIT YOUNGSVILLE #1

The motion was made by Member Wiggins and was seconded by Member Redd. The motion passed unanimously.

Per the recommendation of Attorney Bartholomew, the following motion was made.

MOTION: TO ACCEPT TESTIMONY BY DENNIS THARRINGTON AS EXHIBIT YOUNGSVILLE #2

The motion was made by Member Hedlund and was seconded by Member Wiggins. The motion passed unanimously.

Chairman Flowers opened the floor to ask questions of the applicant. He asked that anyone speaking identify themselves and their relationship to the property. There were no questions.

Chairman Flowers opened the floor to any persons in support of the application that would like to present evidence. Mark McArn, the commercial real estate broker for the seller of the property, noted the sellers would like to see this complex happen. He stated he felt there was a need for this type of complex in Youngsville. Mr. McArn wanted to acknowledge YFD Assistant Fire Chief Justin Graney. He noted Assistant Fire Chief Graney was knowledgeable, polite and cared about Youngsville and its citizens. Mr. McArn noted he was familiar with the industry that uses the chemicals that the YFD is concerned about. He explained it was a common chemical, though it was dangerous if mishandled / misused, and cautioned the Board to evaluate the level of legitimate risk. Mr. McArn stated the industry has precautions in place to prevent spills. He stated the proposed complex would have sprinklers installed to help in case of a fire. Mr. McArn noted he now had a better understanding of the chemicals and possible disasters after YFD Assistant Chief Graney's presentation at the Planning Board Meeting.

MOTION: TO ACCEPT TESTIMONY BY MARK MCARN AS EXHIBIT YOUNGSVILLE #3

The motion was made by Member Stallings and was seconded by Member Redd. The motion passed unanimously.

Chairman Flowers noted Thomas had presented the Staff Findings during his preliminary statement and asked if there was any further information. Thomas summarized Staff Findings. He noted MU allows for apartments to be developed with a SUP. Thomas noted that all of the site standards have been met, including setbacks, parking, public access, etc. He stated there were other multi-family complexes in the area, both Hampton Village and Hampton Downs.

MOTION: TO ACCEPT STAFF FINDINGS AS EXHIBIT YOUNGSVILLE #4

The motion was made by Member Wiggins and was seconded by Member Johnson. The motion passed unanimously. Attorney Bartholomew noted the testimony by Thomas was part of Staff Findings and did not need to be entered as a separate evidence.

Chairman Flowers opened the floor for questions of the Staff. There were no questions.

Chairman Flowers opened the floor to any persons opposed to granting the application that would like to present any evidence. YFD Assistant Chief Graney thanked Thomas for the great job he did in getting all of the information compiled and presented. He noted YFD was only one piece of the Review Committee. YFD Assistant Chief Graney explained they looked at fire suppression and notification systems, water supply, building access and overall risk factors. He explained they do not look at the economic impact, housing needs, or traffic; they look only at public safety. YFD Assistant Chief Graney stated the YFD is under a twenty year contract with the Town of Youngsville to provide services as a Fire Department. He reviewed the maps and proposal, the E-Plan database, and past response times for similar events, both in the area, and also nationally, to get a good picture on response / evacuations for Youngsville.

YFD Assistant Chief Graney noted that risk is everywhere, every day, on different levels and it was their duty to give information to the Board so they can weigh those risks. He stated the fire suppressant and notification system would fall under building code and would be adequate, as would be the water supply for the fire suppression system and hydrants. YFD Assistant Chief Graney stated the newly designed access would allow for the ladder truck to get behind the buildings instead of having to lay thousands of feet of hose to try to get to a specific area.

YFD Assistant Chief Graney stated he felt there was a higher than average level of risk for this location based on the industrial complex on Jeffrey Way and the potential sensitive population. He expressed concerns about evacuations should there be a fire or catastrophic failure in the industrial complex to the west. YFD Assistant Chief Graney believes that an encroachment of residential into a primarily industrial neighborhood is concerning. He reiterated to the Board that anyone can find the specific types of chemicals by the Right to Know Act, though due to “trade secrets”, some information is omitted. Based on these chemicals, YFD Assistant Chief Graney stated he has safety concerns.

YFD Assistant Chief Graney explained the industry in question has been in Youngsville since 1994, with only one small fire that did not involve their chemicals. He noted they have a safety program in place. YFD Assistant Chief Graney noted the industry allows for the YFD to inspect their facilities for pre-emptive planning.

YFD Assistant Chief Graney presented the Board with background information on the chemicals being used. He read through the potential hazards and public safety for Sulfuric Acid, Sodium Hydroxide, Lactic Acid, Hydrochloric Acid, and 1-Methoxy 2-Propanol. Evacuation zones varied by chemical. YFD Assistant Chief Graney noted on duty emergency personal for the YFD, YPD, EMS, etc. would be taxed during an incident. He stated the YFD would respond and prepare for any and all situations.

Also included in YFD Assistant Chief Graney's packet were pictures of other areas where residential properties had encroached on industries and were involved in a chemical incident. Included was the West Texas Fertilizer Company in 2013, EQ in Apex, NC in 2006, and ConAgra in Garner, NC in 2009. Also included was an example of a liquid nitrogen plant. An aerial photo showed the plant with minimal surrounding buildings in 1993. As of 2010, there was a significant number of buildings surrounding the plant, including a school. During an incident, liquid nitrogen was released, which displaced the oxygen. This happened on a weekend morning but YFD Assistant Chief Graney expressed concerns of something like this happening when the neighboring buildings were fully occupied. YFD Assistant Chief Graney stated we can learn from these other situations concerning public safety.

In closing, YFD Assistant Chief Graney reiterated he felt this complex presented a higher than average risk and reminded the Board that the industry in question had not had a chemical incident since they opened in 1994. He noted that encroachment was the issue and it will come up again as Youngsville continues to grow. YFD Assistant Chief Graney asked the Board to put this situation in reverse and see how it would work by requesting an industry go in the middle of a residential area. He noted that industries belonged in an industrial area and residential belonged in a residential area.

Chairman Flowers asked about the existing complexes encroaching in the industrial area and YFD Assistant Chief Graney noted the YFD didn't have the ability to review the plans nor did they have the education or experience needed at that time. YFD Assistant Chief Graney noted they have learned a lot from Wake County.

MOTION: TO ACCEPT THE YOUNGSVILLE FIRE DEPARTMENT PACKET AS EXHIBIT YOUNGSVILLE #5

The motion was made by Member Wiggins and was seconded by Member Redd. The motion passed unanimously.

MOTION: TO ACCEPT TESTIMONY BY YOUNGSVILLE FIRE DEPARTMENT ASSISTANT CHIEF JUSTIN GRANEY AS EXHIBIT YOUNGSVILLE #6

The motion was made by Member Hedlund and was seconded by Member Wiggins. The motion passed unanimously.

Chairman Flowers opened the floor for rebuttals to opposing testimony. Dennis Tharrington noted he has used the types of chemicals mentioned by YFD Assistant Chief Graney in the past

and he has never felt in danger. He stated he respected everything that YFD Assistant Chief Graney said and noted if he felt the risk was too great, he would never had suggested building in that location. Mr. Tharrington stated he wants a safe facility and did not feel there was too great a risk.

MOTION: TO ACCEPT REBUTTAL TESTIMONY BY DENNIS THARRINGTON AS EXHIBIT YOUNGSVILLE #7

The motion was made by Member Johnson and was seconded by Member Redd. The motion passed unanimously.

Chairman Flowers asked if there was any more discussion or questions. Attorney Bartholomew asked that the evidence be listed. Hurd noted Exhibit Youngsville #1 was the Application by Dennis Tharrington, Mission Development, LLC, for a Special Use Permit, Exhibit Youngsville #2 was testimony by Dennis Tharrington, Exhibit Youngsville #3 was testimony by Mark McArn, Exhibit Youngsville #4 was Staff Findings, Exhibit Youngsville #5 was the Youngsville Fire Department Informational Packet, Exhibit Youngsville #6 was testimony by YFD Assistant Chief Justin Graney, and Exhibit Youngsville #7 was rebuttal testimony by Dennis Tharrington. Clark asked that the information concerning notification of the Board of Adjustment Hearing be added as evidence. After a brief discussion, the following motion was made.

MOTION: TO ACCEPT THE NOTIFICATION OF HEARING PACKET AS EXHIBIT YOUNGSVILLE #8

The motion was made by Member Hedlund and was seconded by Member Wiggins. The motion passed unanimously.

Chairman Flowers asked if there were any conditions requested and Clark noted the requests for access modifications have been addressed. Clark asked if additional buffering would make any difference for the YFD and if it did make a difference then it could be added as a condition. YFD Assistant Chief Graney stated it would not change their position so there was no need to add it as a condition.

MOTION: TO ACCEPT TESTIMONY BY PLANNING STAFF REGARDING BUFFERING AND ANSWER AS EXHIBIT YOUNGSVILLE #9

The motion was made by Member Johnson and was seconded by Member Hedlund. The motion passed unanimously.

After verifying the nine pieces of evidence, there was no further discussion.

MOTION: TO CLOSE THE COLLECTION OF EVIDENCE PORTION OF THE HEARING.

The motion was made by Member Wiggins and was seconded by Member Redd. It passed unanimously.

Chairman Flowers opened up the deliberation section of the Hearing for the Board. Member Wiggins noted the Findings of Fact only address how the applicant affects the surrounding property and not how the surrounding property may affect the applicant. Attorney Bartholomew explained the Ordinance, at the time it was written, did not take into account the growth in the area and Member Wiggins felt it needed to be addressed. Clark explained it would require a text amendment. Attorney Bartholomew noted it may could be handled as a condition, if needed. O'Donnell stated certain questions on the Findings of Fact may can be interpreted for both the applicant and surrounding properties. He asked the Board to keep both sides in mind when voting.

Attorney Bartholomew read the Findings of Facts.

1. 710.1.1 The proposed use will comply with all of the dimensional and other standards which this ordinance applies to all users? 5 ayes / 0 nays
2. 710.1.2 Access roads or entrance and exit drives are or will be suitable in size and properly located to ensure automotive and pedestrian friendly safety and convenience, traffic flow, and control and access in case of fire or other emergency. 5 ayes / 0 nays
3. 710.1.3 Off-street parking, loading, refuse, and other service areas are located so as to be safe, convenient, allow for access in case of emergency, and to minimize economic glare, odor, and other impacts on adjoining properties in the general neighborhood. 5 ayes / 0 nays
4. 710.1.4 Utilities, schools, fire, police and other public and private facilities and service will be adequate to handle the proposed use. 5 ayes / 0 nays
5. 710.1.5 The location and arrangement of the use of the site, screening, buffering, landscaping, and pedestrian ways harmonize with adjoining properties and the general area and minimize adverse impacts. 5 ayes / 0 nays
6. 710.1.6 The type, size and intensity of the proposed use, including such consideration as hours of operation and number of people who are likely to utilize or be attracted to use, will not have significant adverse impact on adjoining properties or the neighborhood. 5 ayes / 0 nays

Attorney Bartholomew stated the Special Use Permit for Mission Development LLC has been approved with no conditions.

The next item on the agenda was Reports and Other Business. There was no comment.

MOTION: TO ADJOURN THE BOARD OF ADJUSTMENT HEARING

The motion was made by Member Wiggins and was seconded by Member Johnson. The motion passed unanimously.

The meeting adjourned at 8:24 pm.