



**Planning Board
Regular Planning Board Meeting Minutes
September 25, 2018 - 6:30 PM**

Town Hall

A. Call to Order/Roll Call

The Chairman determined quorum and called the meeting to order. All members were present.

B. Approval of Minutes

B.1. Consider Approval of Minutes

Frank Gammon made a Motion to Approve the July 24, 2018 Regular Meeting Minutes, and Stephen Swanick seconded. The Motion carried 9-0.

C. Public Comments

Individuals signed up to speak declined.

D. Action Agenda

D.1. SUP09-01 Removal (Yellow Hill Inn)

Stephen Swanick made a Motion to Approve, and Joe Sailers seconded. Hal Bankirer made an Amended Motion to Approve to include that the request meets all required conditions for this kind of action, and Joe Sailers seconded. The vote was unanimous (9-0).

Discussion: Meredith Nesbitt, Senior Planner, presented the removal of the Special Use Permit ("SUP"), and entered the Staff Report into the record, a copy of which is attached hereto and incorporated herein. Staff described the location and zoning, along with giving a brief history of the SUP and site plan. Staff recommends approval of the removal and allow the applicants to develop the site in accordance with the TR zoning. There were no questions by the Board, and the Chairman called for a Motion.

D.2. Sketch Plan: Camden Subdivision

Ron Smith made a Motion to Approve. The application is complete and complies with necessary requirements. The block length waiver is supported by staff. Joe Sailers seconded.

Stephen Swanick made an Amended Motion to include the issuance of a PCO-1, and correct all outstanding items.

Hal Bankirer made an Amended Motion to Approve to include that the bike lane will be striped unless competent official authority indicates and directs that it is not to be striped. Joe Sailers seconded. The vote was unanimous (9-0).

Discussion: Meredith Nesbitt, Senior Planner, presented the Sketch Plan, and entered the Staff Report into the record, a copy of which is attached hereto and incorporated herein. Staff indicated the request is a by right subdivision sketch plan, and gave the location and zoning information. Staff further described the open space, density, and a dedication of land and a public access easement to Mecklenburg County for a future greenway. The plan meets all requirements. A Traffic Impact Analysis (“TIA”) is not required, but the applicant is doing improvements along McCord Road (bike lane, sidewalk, double row street trees, and 80’ buffer). Stub connections are planned. There is a block length waiver request. The length is 892’, and staff is in support of the waiver. Questions during presentation from the Board included a wide area in the road within the block, and it was noted that was for the mailbox kiosk. Staff further clarified block length waivers. Staff continued with the presentation and stated that the application is complete, and complies with regulations to the extent practicable with the block length waiver. Staff recommends approval.

Questions by the Board included F. Gammon asking about Mecklenburg County Water Quality Concept Plans, and staff noted that sketch plans are reviewed by staff and Mecklenburg County who had very minor comments to the Concept Plan (PCO-1). Staff is working with the application to resolve comments. J. Sailors asked about CMS assessment, and staff indicated the report results are in the Staff Report, and the increase to capacity is 1%. The pond and stream buffers were questioned by H. Bankirer, to which the applicant’s engineer, Matt Kearns with Shea Homes (8008 Corporate Center Drive, Charlotte), introduced himself and Brent Cowan, Civil Engineer with the Isaacs Group (8720 Red Oak Blvd., Charlotte) who was also present. Mr. Kearns described the larger lot subdivision that are more than double the normal requirement. Houses will be in the 3500-4500 square foot range at a price point of \$700,000. It was questioned when the features (bike lane) for the project would happen, and Brent Cowan responded that a left turn lane and bike lane will be installed, and NCDOT has said to widen for the bike lane, but stripe only the turn lane. As other developments come in they will add more pavement for a bike lane along the road. The improvements will be made in Phase 1. The existing pond has been studied as part of the PCO-1, and grading and drainage will not impact the pond. It was again asked about landscaping around the pond, and Mr. Kearns noted it may ultimately be landscaped, but is not shown in the current plans. Mr. Cowan noted it is an existing pond and cannot be used for treating storm water. The pond will not be impacted. It was noted that Mecklenburg County will build the greenway for Ramah Creek. F. Gammon asked about bike lanes for other subdivision, which Jack Simoneau responded that striping for those subdivisions were required by NCDOT. This applicant is being told to lay the asphalt, but do not stripe the bike lane. If adjoining property is developed additional asphalt may then be required by NCDOT and the bike lane striped. Staff will contact Town Engineering to confirm NCDOT’s reason why to stripe, or not. H. Bankirer noted the Urban Open Space (“UOS”) is being met by two (2) parks, and asked why children would have to cross the street to get to a playground. Mr. Kearns noted similar pocket parks in other subdivisions where parks are in a cul-de-sac and the traffic is very minimal. This pocket park is roughly one (1) acre with the playground in the center. There were no further questions.

After the Motion, it was noted by C. Graffy that the subdivision frontage is minimal with a narrow two-lane road with not much shoulder, and this is a small section for a bike path. It may be unsafe for the cyclists. NCDOT drives the decision. H. Bankirer expressed concerns about safety for children and the pond not being landscaped. Mr. Kearns stated they have no issue with installing the same landscaping as required for the BMP, and would commit to that. S. Thomas expressed support of the project's connectivity and UOS.

D.3. **R18-01: Northbrook**

Joe Sailers made a Motion to Defer to the November 27, 2018 meeting, as agreed and requested by the applicant, and Ron Smith seconded. The vote was unanimous (9-0).

Discussion: Susan Irvin, Attorney at Law, representing the applicant, stated that she met with the Planning Director to discuss a time schedule and decided that a two (2) month deferral is a good idea, and requested such.

D.4. **Petition #TA 18-05 - Amend Articles 3.2.1, 9 & 12.2.1 of the Zoning Ordinance to permit "Agritourism Catering Facilities"**

Hal Bankirer made a Motion to Deny based on the amendment being inconsistent with rural use zoning and the 2030 Comprehensive Plan. It is not reasonable and in the public interest to amend the zoning ordinance because the request is tailored and unique to the applicant's property and desire, and should not be applied to the entire Town. Susan Thomas seconded.

Stephen Swanick made a substitute Motion to Approve subject to use permitted with SUP status. It is reasonable and in the public interest to amend the zoning ordinance to allow selective use of off-site catering facilities so that Huntersville farm citizens shall not face undue hurdles for growing their business. Use of the SUP shall also prevent commercial and industrial exploitation of this amendment and allow flexibility for the situation, with revisions to numbers 4, 6 and 9 (later corrected numbers 4, 6 and 7). Number 6 should be worked out between staff and the applicant. Numbers 4 and 9 (corrected to 7) to allow situational changes to ultimately prevent extra steps and hurdles. Frank Gammon seconded the Motion.

The substitute Motion to Approve failed (3-6).

Opposed: Bankirer, Davis, Miller, Sailers, Smith, and Thomas.

The Motion to Deny passed (6-3).

Opposed: Swanick, Graffy, and Gammon.

Discussion: David Peete, Principal Planner, presented the text amendment ("TA"), and entered the Staff Report into the record, a copy of which is attached hereto and incorporated herein. Staff explained three (3) parts; 1) 12.2.1 for the general definitions, 2) 3.2.1 for uses permitted in the Rural district, and 3) conditions for certain uses as the applicant proposes. Staff recommends a Special Use Permit ("SUP"). Staff reviewed the eight (8) elements under 9.60, as follows, with Board discussion:

Questions from the Board began with J. Sailers asking if the residence (in #2) had to be a permanent home, not a trailer or mobile unit, and staff replied, anything the zoning ordinance would permit as a principal residence. H. Bankirer questioned why twelve (12) employees (#3), and staff responded that the applicant is writing the amendment and it is for the applicant's needs. Staff reminded the Board that the TA is for the entire zoning district of the Town. Staff identified by location the extraterritorial jurisdiction ("ETJ"), and properties that are 20+ acres. S. Swanick expressed a concern that rural zoning would be developed for commercial purposes, and asked if the principal residence could be rented to an employee, family member, or was restricted. Staff replied, that principal use is the primary purpose, and principal building is a building containing the principal use of that lot. Off-site catering cannot be the principal use. F. Gammon mentioned the agritourism statutes allowing a farms with a minimum of 5 acres for agritourism, and our zoning ordinance states a minimum of 10 acres, and banquet facilities have to be a minimum of 10 acres, but a farm in Huntersville has to have 20 acres. Staff explained the differences, and that the 20 acres is a condition offered by the applicant. Susan Irvin responded that the State allows a farmer or anyone who owns exempt property (farm, forest) to have an on-site catering event facility as a venue, which cannot be governed by Town ordinances. This is a request to allow someone who already does on-site catering to also be able to do off-site catering, because the statute is unclear about that. F. Gammon questioned if a property owner with 5 acres could grow produce and sell it off-site, and Ms. Irvin explained that is already allowed under the agritourism statutes, but if the person does not have an on-site catering facility this TA does not apply to them. R. Smith questioned if this is creating a venue verses a catering business, and Ms. Irvin informed them there is already a venue on this property for on-site catering events, and off-site catering is a logical extension of that business, and that is the purpose of this TA, and to do hydroponics and various things like that. R. Smith asked about the 12 employees and if there was a difference between caterings and farming, and Ms. Irvin stated there is a distinction between the on and off-site catering. When they have an event the applicants may have that many people on-site and they were concerned about having overlap with those employees also doing off-site. 12 is a maximum number for an on-site event. In this particular case, the farming is done by the owners, and farming is not part of the catering operation. F. Gammon went back to the acreage issue (10 acres) and off-site catering. Ms. Irvin explained that staff was concerned about how broad this TA would apply. Her client's tract is 23 acres, and felt that 20 acres would allow them to do what they want to do, but it does not address someone with a smaller tract. Staff addressed the concern about agritourism, on-site catering and off-site catering. In staff's opinion, this is not appropriate in the Rural zone, and is not supportive of the amendment. J. Davis questioned if the applicant is only doing on-site catering. Ms. Irvin noted the applicant has been doing off-site catering as a home occupation, and are looking to expand. The home occupation is getting too big, and the TA was requested shortly after the agritourism statute was passed. She felt off-site catering was agritourism because it was so close to the statute (i.e. meals, produce from the farm). The Town Attorney (then Bob Blythe), and now Angie Beeker (current Town Attorney) felt there was enough of a question about it that the off-site portion should come through a TA process.

Staff continued the presentation with #5. J. Sailers felt that #5 should be clearer in that outside storage is allow but screened. #6 was explained by staff, and Ms. Irvin noted the language was discussed in depth with the A. Beeker, Town Attorney. J. Sailers suggested that language for a facility used for off-site catering cannot be more than 50% of the primary residence. J. Davis suggested adding “the original” and striking “such” in the last sentence of #6. Staff suggested, “in case shall off-site catering exceed 50%” to clear it up. J. Sailers questioned 50% of heated space, and unheated space. Staff pointed out the word “finished” was used. Jack Simoneau noted that home occupations allow 25% of the “total floor area”, and that is cleaner and similar. R. Smith asked about on-site, and Ms. Irvin stated that on-site is not allowed to be regulated by statute. Further discussion was made to clarify the 50% total cap of square footage that can be used for off-site catering. The Town Attorney wants to avoid an industrial type of facility (i.e. warehouse, shipping meals). To be a bona fide farm you have to be certified with the State after meeting certain requirements. Staff continued to #7, with the applicant request for a shared exclusive easement of a minimum of 40’ in width and to be used by no more than three (3) adjoining properties at the time of issuance of the permit. Staff included that the building permit for the home was only possible by getting a variance, because they did have an exclusive easement. Ms. Irvin included that the prior owner, not the applicant, received the variance. This is a rural area and farm, and there are not many with road frontage. There is a 40’ paved road that is shared by three (3) property owners. It is unrealistic to require town standards, and if required in this case, the applicant would have to go through a SUP process, and then to the Board of Adjustment (“BOA”) for a variance. The purpose for agritourism is to allow sustainable businesses on the farms, and the rules that apply to in-town projects. The statute is saying that we want to give farmers a chance and preserving farm land. Requiring this strict access for off-site catering is too limiting. Staff included that the access needs to be to the basic level. The access easement was further described. J. Sailers questioned 50’ in #8, and staff clarified it was 50’ in length.

The applicant has requested that #4 and #7 be modified, and Ms. Irvin noted that the TA is as proposed and that no SUP be required, so the applicant will not need to go through another full process of a public hearing. If the Board determines that a SUP should be required, it is being asked to that the Board be allowed to grant the variance(s) for numbers 4 and 7; especially 7, that deals with the easement issue. Applicant feels a fence is a more rural screening (#4). Staff commented that the TA is not recommended by staff; however, if approved, that it be a SUP. Staff clarified the SUP process, and Ms. Irvin gave the timeline for this TA with a variance before the BOA. Staff reminded the members that a variance may not be required by other applicants for access.

The members expressed concerns beginning with J. Davis noting she needed more time to consider the amendment, and S. Swanick noted a Motion to delay could be made. H. Bankirer commented that the application is setting policy for the entire Town to meet the needs of a singular individual. If agritourism is going to be expanded, staff should propose something that is applied across the board, and bring that for consideration. It is an inappropriate way to do business for the Town as a whole. S. Swanick commented this is broad for other people, and

there are only 40 parcels. H. Bankirer noted if the Town wants to improve the ability of legitimate farmers as recognized by the State to expand agritourism beyond what the State provides, then the Town needs to create a TA. S. Swanick expressed his concerns for denying the TA. J. Davis stated she agreed with H. Bankirer, and the request is for a specific property, and it excludes other property owners. C. Graffy expressed her concerns for the proposal, and thought a TA should be re-drafted to be clear and fair to all applicants. J. Sailors asked staff about another draft to be considered, and staff responded that another version can be presented, but this amendment proposal will continue to the Town Board on October 1st. Jack Simoneau commented that Susan Irvin has built in flexibility in places that the applicant needs (i.e. parking lot, access). There should be no flexibility in screening, and SUPs are specific with criteria. The access issue is for the applicant to avoid going to the BOA. There was no further discussion and Motions were made (see above).

Discussion after the Motions: S. Thomas talked about the rural jurisdiction, landscaping and buffering, and requested the members to think about what little rural property was left now and for the future. S. Swanick commented that if he made a motion approving the TA it solves problems and enables farmers to support their family. It will prevent turning the rural area into industrial catering. It is compromise, and encourages what we want. S. Thomas noted she views the ETJ and rural area extends beyond farms, to canopy preservation, and sustaining the land for the future. The landscaping exemption is very specific. There are 40 other properties, and this request is very specific to the applicant. S. Swanick noted the SUP process in the TA, and made a substitute Motion to Approve (see above). #9 is corrected to be #7. C. Graffy asked if staff knew how many properties would be involved if the acreage was lower, and staff did not know. S. Swanick asked if any bona fide farm should be allowed to apply for a SUP, and staff agreed it was an option. C. Graffy noted that it is being assumed that all farmers want to have off-site catering. The basis of agritourism is that small farms in of themselves can sustain themselves, and can supplement income, which catering is one way. H. Bankirer commented that the discussion highlights his points made. To provide additional income outlets for small farms, a comprehensive amendment to achieve that end is needed. It is not just catering, but other kinds of off-site agritourism. It can be strongly urged to the Town Board to discuss this and if they are inclined, to instruct staff to draft a TA that will cover outside agritourism functions in a comprehensive and fair way. The TA for off-site catering is an expansion to the applicant's business, and it is not to save the farm. F. Gammon agrees with the proposal with staff's recommendation of a SUP. F. Gammon asked staff how long has the applicant been working on the proposal. Jack Simoneau responded that it started out as a Notice of Violation for the home occupation (end of 2017). The applicant retained Susan Irvin to craft an ordinance amendment. This case has been continued on multiple occasions by the applicant to get staff approval on the language. David Peete noted the TA application was March 20, 2018 with two continuances. Staff explained the permits issued and/or sought by the applicant, and staff has worked with them and Ms. Irvin. Ms. Irvin commented that the building permit application was for the events venue for on-site catering. There were several months spent with the Town Attorney about what constitutes agritourism. The previous Town Attorney (Bob Blythe) recommended an amendment. There was

no further discussion and the Chairman called for votes on the Motions.

E. Other Business

F. Adjourn

Approved this 23rd day of October, 2018

Chairman or Vice Chairman

Secretary