



BOARD OF ADJUSTMENT M I N U T E S

Town of Carrboro

301 W. Main Street Carrboro, North Carolina 27510

O c t o b e r 1 8 , 2 0 0 6

MEMBERS PRESENT		TOWN ATTORNEY	STAFF
Thomas Arnel		T.C. Morphis	Marty Roupe
David Collins			James Thomas
James Dingfelder			Thelma Paylor
Richard Ellington			
Chip Muller			
Absent/Excused: BRAD DEMICCO			

MINUTES APPROVAL

MOTION MADE BY DAVID COLLINS AND SECONDED BY TOM ARNEL TO APPROVE SEPTEMBER 20, 2006 MINUTES. VOTE: AYES 5 (Richard Ellington, David Collins, Thomas Arnel, James Dingfelder, Chip Muller NOES 0; ABSENT/EXCUSED 1 (Brad Demicco)

INTRODUCTIONS AND ADJUSTMENTS TO THE AGENDA

Marty Roupe introduced Thelma Paylor to the Board and announced that she would be covering in Jane's absence.

MOTION MADE BY DAVID COLLINS AND SECONDED BY CHIP MULLER TO SWITCH ITEMS II AND III ON THE AGENDA. VOTE: AYES 5 (Richard Ellington, David Collins, Thomas Arnel, James Dingfelder, Chip Muller NOES 0; ABSENT/EXCUSED 1 (Brad Demicco)

PUBLIC HEARING: Special Exception for 200 Simpson Street

The applicant, Judith Belch, is requesting a Special Exception Permit for the addition to an existing screen porch that will encroach into the side yard setback. The proposed addition will encroach approximately four (4) feet, four (4) inches into the required twenty (20) foot setback. Section 15-92.1 of the Land Use Ordinance gives the Board of Adjustment the authority to grant Special Exception Permits to allow reductions of up to fifty percent (50%) in the required distances that buildings must be setback from lot boundary lines.

The Special Exception petition was presented by James Thomas. Dave Collins swore in all parties to speak on the issue. James Thomas sent out notices to those within 150 ft and has not received any complaints. Ms. Belch noted she would appreciate the Board's consideration in this matter.

MOTION WAS MADE BY DAVID COLLINS AND SECONDED BY CHIP MULLER TO CLOSE THE PUBLIC HEARING. VOTE: AYES 5 (Richard Ellington, David Collins, Thomas Arnel, James Dingfelder, Chip Muller NOES 0; ABSENT/EXCUSED 1 (Brad Demicco)

Richard Ellington noted this was straight forward and asked Ms. Belch about the homeowners on the left, Nancy and James Campbell. They signed the petition; Mrs. Kennedy across the street is the only neighbor that has been omitted, because they have not been able to reach Mrs. Kennedy.

MOTION WAS MADE BY DAVID COLLINS AND SECONDED BY TOM ARNEL THAT THE APPLICATION IS FOUND TO BE COMPLETE. VOTE: AYES 5 (Richard Ellington, David Collins, Thomas Arnel, James Dingfelder, Chip Muller NOES 0; ABSENT/EXCUSED 1 (Brad Demicco)

MOTION WAS MADE BY DAVID COLLINS AND SECONDED BY CHIP MULLER THAT THE APPLICATION COMPLIES WITH ALL (A-F) APPLICABLE REQUIREMENTS OF THE LAND USE ORDINANCE. VOTE: AYES 5 (Richard Ellington, David Collins, Thomas Arnel, James Dingfelder, Chip Muller NOES 0; ABSENT/EXCUSED 1 (Brad Demicco)

MOTION WAS MADE BY DAVID COLLINS AND SECONDED BY CHIP MULLER THAT THE APPLICATION BE GRANTED SUBJECT TO THE FOLLOWING CONDITIONS. VOTE: AYES 5 (Richard Ellington, David Collins, Thomas Arnel, James Dingfelder, Chip Muller NOES 0; ABSENT/EXCUSED 1 (Brad Demicco)

1. the applicant shall complete the development strictly in accordance with the plans submitted to and approved by the Board, a copy of which is filed in the Carrboro Town Hall. Any deviations from or changes in these plans must be submitted to the Zoning Administrator in writing and specific written approval obtained as provided in Section 15-64 of the Land Use Ordinance
2. if any of the conditions affixed hereto or any part thereof shall be held invalid or void, then this permit shall be void and of no effect
3. that the special exception is granted only to the extent necessary to provide for the proposed addition (including roof overhangs), and that no other additions or enlargements of any other portion of the house is permitted by this special exception permit.

PUBLIC HEARING: Special Use Permit Request for Office Conversion at 127 Fidelity Street

The applicant, Warren Mitchell, Professional Engineer, is requesting a Special Use Permit for the conversion of the existing building (4,000 square feet) that is currently occupied by a drycleaners (use# 16.200) at 127 Fidelity Street. The proposed use for their conversion will be Office, Clerical, Research and Services with all operation conducted entirely within an enclosed building (use# 3.110, 3.120,

3.130). Prior to reaching a decision on a request for a SUP, the Board of Adjustment must hold a public hearing to receive input.

James Thomas presented his staff report, which included the existing and proposed site plan elements such as parking, tree protection, screening, shading, drainage, grading and erosion control; utilities and exterior lighting and surrounding uses. Mr. Thomas noted that two new covered porches for bike storage are proposed. Existing vegetation along the eastern and southern property lines is sufficient to meet the Town's screening requirements. Typically, this requirement is met on the lot requesting permit approval. In this instance, the homeowners and Mr. Mitchell have agreed that those plants can satisfy the requirement so long as their ongoing health and maintenance is the responsibility of the owner of 127 Fidelity Street. Staff is recommending approval, subject to two conditions related to maintenance and replacement of vegetation on the property boundaries shared with the Village Square town homes, determination that two existing nonconforming light fixtures may be retained.

Warren Mitchell described the site and proposed changes. The property has been used as a dry cleaning business for over 20 years. Since the Village Square condominiums were developed, neighbors have expressed concerns about the dry cleaning operations. A few years ago, the Village Square HOA proposed that office uses, which were not allowed in the B-3 zoning district. Mr. Mitchell considered the proposal and began working with the neighbors on the issue. The Mitchell's requested a text amendment to allow office uses, per the neighbor's interest, subject to receipt of a special use permit. The text amendment was adopted in March 2006.

The traffic, parking and sidewalk; tree protection, screening and shading; drainage, grading, and erosion control, utilities and architecture-exterior design of the project were discussed. It was noted that there are no specimen trees on the property; however, there is one pine tree in front that the applicant has chosen to leave on the property. During the parking discussion, Marty Roupe introduced T. C. Morphis from Mike Brough's staff. The Red Tips and Leylands were discussed and David Collins noted that he preferred the vegetation versus a fence even though they both accomplish the same thing. Mr. Morphis stated the way the condition is written, it is vegetation and unless they get a modification, they have to abide by the way it is worded.

David Collins asked for more information about a Phase 1 Environmental Site Assessment. Warren Mitchell responded that it would cost approximately \$2-3,000.00. He then further described what a Phase I study entails. Mr. Mitchell said his dad had a study done when he was there for about 10 years and Carolina Cleaners came in the early '90's. Chip Muller asked if the homeowners have any problem with the recommendations.

David Collins discussed the EAB's recommendation of plant replacement as related to the LUO's list of recommended plant species. James Thomas said what the applicant has is within the Town recommended planning list.

Stormwater management was then discussed at some length. James Thomas mentioned that Sungate reviewed and agreed with the applicant's assertion that the amount of impervious surface is actually decreasing.

Existing lighting was then discussed. Specifically, the Board discussed the merits of the Planning Board's recommendation to bring the lights into partial compliance. Planning Board Chairman James

Carnahan spoke to the matter. The Board continued discussing the merits of whether to require any changes to the lights. Neighbor Bob Proctor opposed the replacement or modification of the lights. He mentioned that he feels obligated to speak on behalf of his female neighbors. He has no objection to a conical feature; but prefers that it be broad enough to hit the Village Square Townhomes' driveway.

Chip Muller asked why a meeting was not held with the neighborhood. Warren Mitchell explained that they met directly with the Village Square Townhomes' property owners (immediate neighbors) in lieu of a formal meeting with all neighbors to a distance of 500-feet.

Bob Proctor spoke about a caucus of owner occupants that met in April 2004. He mentioned that he has tried to keep his fellow Village Square owners informed throughout the review process. Mr. Proctor said that Mr. Mitchell was very accommodating when he spoke to the homeowner's board. Mr. Proctor questioned whether the mutually-agreed upon conditions of approval (1-9) would be binding as written on the plans if the SUP document did not specifically reference them. Martin Roupe said they are on the plans and therefore binding, but it would not cause harm to add them to the SUP document as well. Mr. Proctor preferred to put them on the SUP document or somehow make it perfectly clear that these conditions are binding.

Richard Ellington questioned standard note #4. Marty Roupe said it looks like a typo and Warren Mitchell agreed. It was suggested that the matter be corrected by SUP condition. David Collins asked for clarification on the mutually-agreed upon condition related to generators. Warren Mitchell said they would apply for a Minor Modification if necessary at a later date. Bob Proctor mentioned that his interpretation is that they are not allowed. David Collins noted that the condition says *major* modification, not minor.

Chip Muller asked Warren Mitchell about the concerns about the bike rack. Warren Mitchell noted that he thinks they have included ample bicycle parking. Staff indicated they should be covered and he agreed.

MOTION WAS MADE BY DAVID COLLINS AND SECONDED BY CHIP MULLER TO CLOSE THE PUBLIC HEARING. VOTE: AYES 4 (Richard Ellington, David Collins, Thomas Arnel, Chip Muller) NOES 0; ABSTENTIONS 1 (James Dingfelder) ABSENT/EXCUSED 1 (Brad Demicco)

James Dingfelder abstained from further discussion and voting due to a relationship with applicant and applicant's family.

David Collins noted they need to consider the recommendations from the Advisory Boards. Further discussion took place regarding possibly requiring a Phase I Environmental Impact Assessment. Richard Ellington said it is similar to reusing a piece of property that had been a service station. Bob Proctor said Hangers said they completed a study in 2000. Warren Mitchell asked whether the Board would be willing to find the condition complete if there are records that Hangers had one (a study) completed as recently as 2000. The Board further discussed the matter and ultimately agreed to the idea (on or after January 1, 2000, specifically).

Rewrites of proposed conditions 1, 2, and 6 were discussed. It was noted that Crepe Myrtle is included in the ordinance as a suggested planting. Appendix E-17 lists prohibited plants, while all others are

recommended for convenience because they are commonly locally available. The Environmental Advisory Board has noted that certain people feel that some species are being over planted in Carrboro. James Thomas mentioned that the Appearance Commission reviewed the proposed plants and did not object to them.

Chip Muller discussed the Phase I Site Assessment (Phase 1). Martin Roupe mentioned that it is very common during the sale of commercial property for a Phase 1 to be completed because prospective buyers want to know the status of the property.

Richard Ellington mentioned a desire to require the applicant to conduct a Phase 1 because it was requested by the Environmental Advisory Board. He doesn't think it is too extreme. David Collins suggested moving forward with proposed conditions 1 and 6 rewritten.

MOTION WAS MADE BY DAVID COLLINS AND SECONDED BY CHIP MULLER THAT THE APPLICATION IS COMPLETE AND COMPLIES WITH ALL APPLICABLE REGULATIONS. VOTE: AYES 4 (Richard Ellington, David Collins, Thomas Arnel, Chip Muller) NOES 0; ABSTENTIONS 1 (James Dingfelder) ABSENT/EXCUSED 1 (Brad Demicco)

Discussion then continued regarding proposed conditions. Suggested re-write of #6, PB was as follows: that the existing light fixture closest to the Village Square Townhomes' dumpster remain as is and that the other light fixture be converted to a cutoff light fixture. The Board also discussed the 'mutually-agreed upon conditions' placed on the cover sheet of the plans. It was stated that the applicant and neighbors at Village Square Townhomes had agreed to include nine (9) binding statements on the cover sheet of the adopted plans. The Board, applicant, and Dr. Robert Proctor (representing Village Square) briefly discussed the conditions.

MOTION WAS MADE BY DAVID COLLINS AND SECONDED BY CHIP MULLER THAT THREE (3) CONDITIONS BE ATTACHED TO THE PERMIT: Staff Recommendation #1 regarding the replacement of landscaping when and if necessary (as written), Planning Board's recommendation about lighting fixtures, as re-written in the paragraph directly above, and inclusion of project plans' cover sheet statements #1-4 and 6-9. (#5 deleted due to redundancy). VOTE: AYES 4 (Richard Ellington, David Collins, Thomas Arnel, Chip Muller) NOES 0; ABSTENTIONS 1 (James Dingfelder) ABSENT/EXCUSED 1 (Brad Demicco)

MOTION WAS MADE BY RICHARD ELLINGTON AND SECONDED BY DAVID COLLINS TO INCLUDE ONE ADDITIONAL CONDITION: THAT IN ABSENCE OF A PHASE 1 ENVIRONMENTAL SITE ASSESSMENT BEING CONDUCTED SINCE JANUARY 1, 2000, ONE MUST BE CONDUCTED BEFORE A CERTIFICATE OF OCCUPANCY IS ISSUED FOR THE NEW USE OF THE BUILDING. VOTE: AYES 3 (Richard Ellington, David Collins, Thomas Arnel) NOES 1 (Chip Muller); ABSTENTIONS 1 (James Dingfelder) ABSENT/EXCUSED 1 (Brad Demicco)

Attorney TC Morphis pointed out that evidence of completion of a study, one way or the other and in accordance with the condition, must be submitted to the Town. Chip Muller explained why he voted 'noe' by saying the study was not requested by the Town governance and he was not sure what the Town could do if something troublesome was identified during the study. Richard Ellington offered

that he proposed the condition as a matter of public health and safety. The Board continued to discuss the matter at some length.

David Collins moved that application be granted subject to conditions on worksheet. Moved by Thomas Arnel and Ayes: Chip Muller, Thomas Arnel, Richard Ellington, and David Collins. James Dingfelder abstained.

MOTION WAS MADE BY DAVID COLLINS AND SECONDED BY THOMAS ARNEL THAT THE APPLICATION BE GRANTED SUBJECT TO THE CONDITIONS AGREED UPON BY MAJORITY VOTE. VOTE: AYES 4 (Richard Ellington, David Collins, Thomas Arnel, Chip Muller) NOES 0; ABSTENTIONS 1 (James Dingfelder) ABSENT/EXCUSED 1 (Brad Demicco)

MINOR MODIFICATION: Review of Special Use Permit for Chapel Hill Tennis Club

Three (3) representatives of the Tennis Club were present: Rich Green, Alan Rader, and Doug Kopec. Chapel Hill Tennis Club has applied for a minor modification to its Special Use Permit for the purpose of adding “platform” tennis courts to the facility located at 403 Westbrook Drive. The permit, if approved, will allow the construction of two such courts. The staff requests that the Board of Adjustment review, deliberate, and make a decision regarding the special use permit minor modification request.

Marty Roupe noted that Jeff Kleaveland worked on this project but could not attend tonight’s meeting. He then presented details of the project. Speaking attendants were sworn in by Thomas Arnel. David Collins asked for explanation as to why the request is categorized as a minor modification. Marty Roupe explained the applicable provisions of the LUO. Because of ADA code, it is necessary to convert one existing parking space to meet handicap-accessibility standards. The applicant held a neighborhood information meeting and did hear from one neighbor. It was noted that the Tennis Club has been at its present location since 1967 (R-10 Zoning District) and that a Special Use Permit was issued for the use in 1987.

Floodplain is located on the site, but the platform tennis courts are proposed in a location not encumbered by floodplain.

Existing nonconforming situations on the property were noted and discussed. Specifically, multiple lights on the property include unshielded cobra heads on salt-treated poles (basically a typical street light). Chip Muller asked how to judge these nonconformities and whether they need to be modified to meet current standards. Marty explained that in the past the Town’s LUO did not directly address how to treat such situations. The LUO now directly speaks to the situation and allows the permit-issuing authority to decide whether the matters have to be addressed. Staff’s recommendation regarding the lights is to retrofit the fixtures with a shielded product, but not to require full replacement of the entire pole (i.e.: reducing to current 15-foot height limit). Discussion briefly turned to comments offered by a neighbor regarding a stormwater pond. It was pointed out that the pond in question is artificial and was put in place specifically to capture stormwater. It was further noted that the proposed platform courts are not expected to affect the stormwater drainage situation in any significant way.

Discussion returned to the topic of lighting. Chip Muller asked is there any way to retrofit the existing cobrahead lights. The applicant suggested that they cannot easily be retrofitted and further pointed out

that the staff was more concerned, in this particular situation, with replacement of the barn lights. The applicant periodically answered questions about the platform tennis courts. Richard Ellington asked whether the applicant was willing and able to comply with staff's recommendation related to the wall-pack lights. The applicant pointed out that lowering the lights would result in a need to place more light bulbs around the site (less area covered per light, as fixture height is lowered).

Chip Muller asked about the cost to replace the cobrahead lights without changing anything further about the poles or wiring. The applicant was unsure and noted that they had not researched this specific matter in any detail. The applicant stated that they would be willing to expend some amount of money to bring the lights to current requirements, but that they were concerned that the parking lot especially at night retains enough light for a safe environment. Ultimately, the applicant stated that they are willing and able to replace up to four (4) of the barnstyle lights.

The Board then discussed possible conditions they would include if they adopt the resolution approving the proposal. It was generally agreed that proposed conditions 3 and 4 were straightforward and should be included as written.

MOTION WAS MADE BY CHIP MULLER AND SECONDED BY THOMAS ARNEL THAT THE PUBLIC INPUT PORTION OF THE MEETING IS HEREBY CLOSED. VOTE: AYES 4 (Richard Ellington, David Collins, Thomas Arnel, Chip Muller, and James Dingfelder) NOES 0; ABSTENTIONS 0, ABSENT/EXCUSED 1 (Brad Demicco)

MOTION WAS MADE BY JAMES DINGFELDER AND SECONDED BY THOMAS ARNEL THAT THE FOLLOWING CONDITIONS BE INCLUDED AS A PART OF THE RESOLUTION: STAFF #1 AS WRITTEN; STAFF #2 RE-WRITTEN TO: REQUIRE A THIRD REPLACEMENT OF A BARNSTYLE LIGHT, WITH THE ADDITIONAL LIGHT BEING LOCATED IN THE VICINITY OF THE LOWER PARKING LOT ADJACENT TO THE INDOOR COURTS. THE APPLICANT ALSO HAS THE OPTION OF REMOVING THE SUBJECT LIGHTS INSTEAD OF REPLACING THEM WITH SHIELDED LIGHTS, DELETE THE 2ND SENTENCE REGARDING LOWERING THE HEIGHT TO A 15-FOOT MAXIMUM; ALL REQUIRED CHANGES MUST BE COMPLETED PRIOR TO MARCH 31, 2007 (CONFIRMED BY TOWN STAFF). ALSO #3 AND #4 AS WRITTEN BY STAFF. VOTE: AYES 4 (Richard Ellington, David Collins, Thomas Arnel, Chip Muller, and James Dingfelder) NOES 0; ABSTENTIONS 0, ABSENT/EXCUSED 1 (Brad Demicco)

Chip Muller expressed that he would prefer to receive additional information on the costs to retrofit before voting, but chose to vote for the project anyway, noting that no complaints have been received.

OLD/NEW BUSINESS

ADJOURN!