

**MINUTES OF THE
SUMMERFIELD ZONING BOARD
SUMMERFIELD COMMUNITY CENTER
March 22, 2010
7:00 P.M. Public Hearing**

NOTE: The official minutes are a CD recording of the meeting. The following is a summary of the events of the meeting.

The meeting was called to order at 7:06.

2. INTRODUCTIONS:

Dick Fuelner, Vice-Chair

Ken Dunham

Trudy Whitacre

Rich Lovett

Alternates present: Kathy Rooney

Also Present: Nancy Hess

Carrie Reeves (seated)

Chris Anderson, Town Planner

Will Rozelle for Town Attorney

Carrie Spencer, Clerk

3. CONSENT AGENDA:

Mr. Feulner chaired the board in Ms. Hess's absence, and Carrie Reeves was seated.

Rich Lovett made a motion to accept the agenda, Ken Dunham seconded, and the agenda was passed unanimously.

Mr. Dunham made a motion to accept the minutes for the January 21, 2010 meeting as written, Mr. Lovett seconded, and the motion passed 4 to 0 with Ms. Reeves abstaining as she did not attend the meeting.

4. NEW BUSINESS:

A. Rezoning Case #02-10 AG to CU-RS40

Mr. Anderson referred the audience to the zoning display map. He pointed out the fact that the condition placed on the rezoning application is already prescribed by ordinance; therefore it does not represent a valid condition. He added that the applicant had written an email requesting the rezoning be changed to a straight RS-40 rezoning, but since the application has been submitted the board can begin to discuss the case as is. Mr. Rozelle stated that the case was sufficiently advertised to consider it as a regular rezoning. Chris presented the case from the staff report.

Public Hearing:

In Favor:

Bill Yearns, owner representative, spoke in favor of the request. Mr. Yearns is under contract with the owner, copy on file at Town Hall. He stated that the property had been used as a pasture, and that Mr. Huff has had it on the market for a couple years. He stated that he had not received any phone calls regarding the case. There will be on site septic and individual wells. There will be a Home Owners Association to maintain the open space.

When asked if there is any plan for the open space, Mr. Yearns stated that there is not since the open space has been, and will remain, a field and will preserve the scenic vista from the road.

Mr. Yearns pointed out an alternate road layout that he had given Mr. Anderson earlier today, pointing out that the open space is the same. He distributed copies of the revised plan to the board. Mr. Anderson confirmed that the display map reflects the revision. He added that DOT has given verbal approval of the proposal. He stated that the advantage of the alternate layout is that the lots are configured better.

When asked about a statement in the environmental inventory about a landscape buffer, Yearns stated that he will add a 20' landscape strip such as a landscape berm along Stanley Huff Rd. Mr. Feulner pointed out that the strip is not a condition of the rezoning. Mr. Yearns offered to return the application to conditional use in order to add the landscape buffer as a condition. Mr. Feulner stated that the board cannot consider the landscape buffer as part of the decision process, unless he wants to offer it as a condition. When he asked if he could offer it as a condition, Mr. Rozelle stated that he could. Mr. Yearns then offered the 20' landscape buffer as a condition and the board accepted.

When asked about a slope to the rear of the property, Mr. Yearns stated that the rear left section would be left as septic area. When asked about storm water runoff, Mr. Yearns stated that the county erosion control office would require appropriate measures to control the runoff.

Tom Huff, acting as attorney in fact for his mother's property. He stated that the property has been in the family since his great grandfather. He added that the sale of the property will provide assets to care for his 95 year old mother in a skilled care facility. When asked how big the original farm was, he described the approximate boundaries of the original property. Portions had been sold off to care for other relatives.

Betty Beard, 2812 Pleasant Ridge Rd, asked about the zoning of surrounding properties and Mr. Anderson clarified the zoning in the area. When asked if there would still be horses at the property, Mr. Huff stated that the other portion of the property with the red barn would remain a farm.

In answer to a question about nonconforming properties in the area, Mr. Anderson explained that the ordinance addresses rules and allowances for lots of record. Houses could be rebuilt on the lots as long as they are a lot of record.

In Opposition: none

There were no more speakers in favor or against the rezoning request and Mr. Feulner closed the public hearing.

Ms. Whitacre commented on rural view sheds: She referenced the current ordinance which dictates preservation of farmlands and rural character. The long range plan talks of scenic entryways into Summerfield, and Stanley Huff Pleasant Ridge Rd intersection is an entryway with the sweep of land on both sides of Stanley Huff Rd. She questioned the preservation of rural character with the use of the land as presented. She referenced Randal Arendt's book which suggests that you never face the back of the house to the road. She added that the subdivision does not seem to be compatible with the rest of the small houses on large lots on Stanley Huff with such vistas as the Scottish Highland cattle nearby. She felt that the subdivision would take away rural character even with the horses across the road since it would interrupt the sweep of rural vista.

Mr. Feulner stated that the condition proposed with the application should have included fewer lots. He agrees with Ms. Whitacre's concern with the backs of houses facing the road.

Mr. Dunham mimicked the concern with the backs of houses, adding that the proposal takes away from the continuity of the area.

Mr. Lovett felt that the rezoning application requires more detail about the conditions such as a description of the landscape buffer. Mr. Anderson stated that he felt the conditions now proposed meet the standard of the ordinance, at least opening up the opportunity for discussion of conditions. He added that a description of the landscape buffer will be included in a subdivision plan. Mr. Rozelle added that the board should remember which details are appropriate at which phase (rezoning vs. subdivision). He agreed that no further detail of the buffer is necessary at this time.

The layout of the open space was discussed. It was pointed out that there is no primary conservation area on the property. Ms. Whitacre felt that the open space should “sweep” up along Stanley Huff Rd from Pleasant Ridge. She felt that there is no creativity in the design to take rural vistas into account. Mr. Yearns felt that the houses you currently see along Pleasant Ridge Rd will still be seen and that the vista will look as it does now. In answer to a question, Mr. Anderson stated that without primary conservation areas the open space could be moved after rezoning, unless conditioned otherwise. Mr. Lovett expressed the desire to codify the configuration of the open space. Mr. Anderson suggested that the proposal, with the 20’ buffer along Stanley Huff Rd, represents the best possible configuration to preserve the view. There was discussion about what the ordinance allows in open space. Mr. Feulner stated his major concerns are the number of lots, the vista, and the preservation of the open space. There was concern that the homeowners will encroach on the open space, and that it is not protected since it is not primary conservation area. Mr. Rozelle stated that the board cannot dictate the disposition of the open space with such detail. Mr. Yearns felt that the location of the street and open space is fixed in stone with the zoning. Mr. Lovett asked for clarification as to the nature of the request as conditional or not.

The board took a five minute recess for the attorney to research the issue and the meeting reconvened at 8:33.

Ms. Whitacre stated that the proposal takes away the rural character and scenic vistas of the area. She made a motion to deny the rezoning based on the following goals of the Long Range Plan:

3. Preserve natural resources and scenic areas.
6. Promote the preservation of farmlands.

The motion was seconded by Ken Dunham, and passed 3 to 2 with Mr. Lovett and Ms. Reeves voting against.

Mr. Dunham reminded the applicant that the case would be heard by the Town Council at their April 13 meeting.

Ms. Hess suggested the board broaden their vision to surrounding areas in considering the location of open space. She would have liked to see it located in a spot that would provide connectivity with other existing open space. There was discussion about creating a conservation easement around the open space, and the issue of delineating it from private lot space.

B. Jordan Lake Rules: review of model stream buffer ordinance.

Mr. Anderson presented his request for the board to review a stream buffer ordinance that he had written after a state model. There was a suggestion that variances be granted by the state and not by the town. Mr. Anderson stated that he had passed a stream buffer course earlier in the month, and will be the town’s representative.

There was discussion about violating the ordinances and how to determine the intent of an infraction as “knowingly” or not. It was suggested that the intent applies more to clear cutting by development than to an individual cutting down a tree. There was a suggestion that a better deterrent would be to penalize a violator by taking land allowance rather than money.

Paragraph 7-6.5 was rewritten to clarify the intent of the exception. The first sentence will read: “This ordinance.....with the exception of forest harvesting and agricultural activities as well as activities conducted under the authority of the State.....or local units of government.”

Mr. Anderson stated that the town would adopt the ordinance late in the year, after review by the state.

Mr. Anderson clarified the fact that he will review site plans to ensure they meet the stream buffer ordinance before the zoning board sees it. He added that the town engineer, Cavanaugh and Associates, can also be called upon for review.

Ms. Whitacre suggested more detail be added to measure the “top of the bank” in the description of Zones of the Riparian Buffer on page 6. She suggested that the size of the buffer changes with the slope of the bank could require a larger buffer. Mr. Anderson suggested the use of the point of rested vegetation (where plants no longer grow) to determine the top of the bank, and demonstrated the concept with a diagram. It was suggested that the diagram be included in the ordinance.

A couple of examples of subdivisions with lots that meet streams were discussed.

In answer to a comment from the board, Mr. Anderson stated that the Jordon Lake Rules will apply to the entire town, and areas located within the water supply watershed subject would still be subject to ordinances that are stricter for that area.

The disposition of the violation money was clarified with the language in “Civil Penalties” beginning on page 29. There was discussion about the town’s authority to change the amounts of penalties, and Mr. Anderson stated that the amounts in the ordinance were included in the model. It was suggested that care be taken to review the rest of the ordinance to reduce conflicts in definitions, and Mr. Anderson referred the board to the language on page 3 which solves inconsistencies.

There was a question of retroactivity. Mr. Anderson stated that only new development would require 50 foot buffers. Mr. Lovett suggested that retroactivity can only apply to developments with water quality improvements built after 2000. There was a question of the town takeover of the 100 foot buffer along the Haw, and if the town would have to restore the streams there. Mr. Anderson suggested that the stream buffer ordinance only applies to new development. The town would have to comply with the ordinance for any property acquired after the ordinance is adopted. Valid Site Plans that have been approved but not developed, would be subject to page 32 as a vested right.

It was suggested that Section 7-6.14 Definitions needs to be renumbered to include “Perennial stream” (currently part of definition “O”) as a separate definition.

Mr. Anderson asked the board for its vote of confidence on the ordinance before it goes to the state for review. The state has 60 to 90 days to review it. Should the board suggest changes later, a revision process is outlined on page 31.

It was suggested to include a statement in 7-6.13 Revisions to this Ordinance that gives the town authority to make decisions that result in stricter requirements, without state approval.

“The initial submission will comply with..... (the 60 days of receipt/90 days of receipt)..... Any changes after the initial adoption may only be more stringent than the baseline already established and may be at the discretion of the town.” Mr. Dunham pointed out that the language in the beginning of the ordinance does not allow the town any discretion to make revisions. There was concern that the town has authority to change most other standards to be stricter, but this ordinance does not seem to allow it. There was concern that the state is dictating rules, while the town is mandated to enforce them.

Mr. Anderson will submit the ordinance tomorrow after making the changes suggested by the board regarding the town getting Criminal Penalty monies, Revisions to the Ordinance, and other typographical errors.

OTHER BUSINESS:

Mr. Anderson informed the board that the map correction error case from their last meeting was approved by the council.

Mr. Anderson stated that he has looked into requests made by the board at their last meeting:

- The 100’ trail easement along the Haw River will be discussed during the budget process.

- Trucks and trailers behind Southern States: There is not an issue of impervious surface, but the location of the vehicles is not a part of the development plan. They agreed to push them further back from view. They will also look at parking spaces taken by outdoor storage to get the site back to the plan that was approved.
- He is working on distributing sign ordinance information and talking to individual businesses in the town to address sign issues.

Mr. Rozelle stated that Mr. Hill agreed with the idea of not appointing any more alternates to the board.

Mr. Anderson informed the board of a rezoning request for a property owned by AJ Rose on Summerfield Rd. Mr. Dunham and Ms. Rooney will not be at the April meeting.

Mr. Lovett will not be available for the end of June.

Mr. Feulner made a motion to adjourn, Mr. Dunham seconded, and the motion passed unanimously. The meeting adjourned at 9:55.

Dick Feulner, Acting Chair

Carrie Spencer, Clerk to the Board