



Town of Summerfield – Zoning Board Minutes

Summerfield Community Center

August 27, 2012 | 7:00PM | 5404 Centerfield Road

*Zoning Board: Chair Nancy Hess
Jeff Davis
Dick Feulner
Kathy Rooney
Trudy Whitacre
Scott Houson (Alternate)*

The meeting was called to order at 7:00 pm by Nancy Hess, with the following present:

Zoning Board:

Nancy Hess, Chair

Dick Feulner

Kathy Rooney

Trudy Whitacre

Staff:

Scott Whitaker, Town Manager

Will Rozell for William Hill, Town Attorney

Bill Dustin, Interim Town Planner

Valarie Halvorsen, Town Clerk

CONSENT AGENDA

Feulner made a motion to approve the Consent Agenda including the meeting agenda. The motion was seconded by Whitacre and carried unanimously.

Whitacre made a motion to approve the minutes of the July 23 and July 25, 2012 meetings.

Rooney requested a correction to the July 23 minutes, noting the motion to approve the May 3rd minutes was made by Davis, not Rooney, as stated in the minutes. The Board was in agreement with the correction. The motion to approve the minutes was seconded by Feulner and carried unanimously.

NEW BUSINESS

- (A) Rezoning Case # 02-12 AG/SR to CU-HB/SR: The property is located at 4909 Auburn Rd, being Guilford County Parcel #0146155. This parcel, located in Bruce Township, includes approximately 1.78 acres.

Hess recused herself, stating she has a conflict of interest and would not participate in the deliberations or vote.

Interim Planner Bill Duston presented the case, stating the property is *not* in the Town Core TCD-M district as stated in the Staff Report. The request is to rezone from AG/SR to CU-HB/SR with one condition offered by the applicant: all uses permitted except Coin Operated Amusements. The applicant has stated that he would like to develop a medical complex, consisting of up to three one-story attached townhome-style units. The units would be brick. The site currently contains a one-story residence. Per the applicant, the residence will be razed and replaced by the medical complex.

Given that the site is surrounded by commercial zoning and is within close proximity of a number of existing commercial uses (e.g., Purgason's Summerfield Shopping Center and Summerfield Square), a rezoning to a commercial district is not out of line. Duston recommended an additional condition that the Town Planner review the site plan.

Feulner opened the Public Hearing at 7:15 pm

Proponents

Dr. Rod Brown, the applicant, says his current location is not very inviting to patients and he has found it difficult to acquire business property in Summerfield. He would like to construct a three unit townhome style doctor's office, occupying one third with dental or optometry in the adjoining units. The proposed structure will be consistent with current historical structures in the Town corridor. He feels that HB is the most appropriate zoning as surrounding properties are also zoned HB.

Feulner asked if the development conditions offered were binding. Brown stated he was willing to entertain additional conditions and wants to move the process along.

Carolyn Collins, 7504 Somersby Dr, stated the property belonged to her parents and she and her siblings were raised in the house. She feels the proposed use is appropriate, and notes that although the structure is historical, there was much remodeling over the years and many of the original interior elements have been replaced.

Don Wendelken, 3406 Windswept Dr, feels that Brown is trying to do the right thing and the proposal will improve the look of the property and benefit the Town.

Jerry Wright, 7514 Somersby Dr, agrees with Wendelken.

Opponents

Gail Dunham, 5805 Snow Hill Dr, stated the following: her feeling that the site is too small for the proposed use; is concerned with the environmental impact on the adjacent structures; that three offices will require much parking, well and septic; the questions she asked at the Open House have not been answered; and noted CVS drugstore has a perpetual easement on the property. Regarding the easement, she feels CVS should have signed off on the application prior to the matter coming before the Board.

Becky Strickland, 3220 Pleasant Ridge Rd, agrees with Dunham. She said the paperwork has Brown's name listed as the Applicant/Owner; while he is the applicant, he is not the current owner of the property. She stated the CVS drainage easement was purchased in 1998 and law requires notice to them, which is not indicated in the case documents. She feels rezoning to HB is out of character and feels LB or NB would be more appropriate.

Rebuttal

Brown stated the following: the deed records the CVS easement as .035 acres; based on the size of the property there was plenty of room for a 4500 square foot structure and associated parking, well and septic needs; he plans to attach to the existing septic; and he would like to keep his practice in the same general part of town as he is already established in the area and it is a good location for his patients.

Whitacre asked why Brown was asking for rezoning to HB rather than LB. Brown feels HB is more in concert with surrounding zoning.

Feulner noted the .035 acre easement discussed is actually a NCDOT Right of Way easement. Rooney stated the HB zoning district has many permitted uses and the Board must be mindful of that; if the property is sold another owner or the current owner and applicant would be permitted all uses except any specifically excluded through conditions. Brown said he would offer additional exclusions as conditions. Rozell stated the applicant can offer additional conditions for the Board's consideration.

Addressing comments by Dunham and Strickland, Duston noted there are landscape buffer requirements, parking requirements, and the property owner signed the application.

Strickland stated the deed indicates the CVS easement is .25 acres, which is a large portion of the property and a significant issue. She feels there was a lack of notice to CVS which puts the town in a bad position.

Whitaker stated the notice to CVS was mailed July 11 and returned July 19 due to an insufficient address. He left a detailed message for CVS legal counsel in Woonsocket, RI on Friday and has not received a call back. He spoke with the store manager of the local CVS, discussed the matter with him, and invited him to attend the Zoning Board meeting. The manager stated the issue did not concern the local management. Whitaker said the Town made a good faith effort to notify CVS, following the requirements stipulated in NCGS 160A-384 and the Town's Development Ordinance.

Rooney asked Rozell to confirm that easements go with a property when ownership is transferred and that the site plan must accommodate the easement. Rozell affirmed. Rooney asked if the easement will affect what is built on the property and Rozell stated that was a possibility.

Feulner asked Rozell for his advice about continuing considering CVS did not receive the mailed notice. Rozell said the town made a good faith effort and the Board could continue; however, they may wish to continue until proper notice is given.

Speaking from the floor, Collins stated the easement was not purchased but rented by CVS and was never intended to be a permanent arrangement. Feulner stated it is a legal easement until CVS abandons it. Brown asked if CVS gave their approval could the matter be heard at a Special Call meeting rather than continuing another month if it could not be heard now. Rozell affirmed.

Whitaker described the notification requirements. The relevant information is hereby incorporated into these minutes:

From NCGS160A-384: "The procedures adopted pursuant to this section shall provide that whenever there is a zoning map amendment, the owner of that parcel of land as shown on the

county tax listing, and the owners of all parcels of land abutting that parcel of land as shown on the county tax listing, shall be mailed a notice of a public hearing on the proposed amendment by first class mail at the last addresses listed for such owners on the county tax abstracts.”

From the Town of Summerfield Development Ordinance, Article 9, section 1.2:

(A) Rezoning, Variance, Approved Waiver, Certificate of Appropriateness for a Major Work, or Watershed Modification: Whenever there is a request for a zoning map amendment, Special Use Permit, variance, Certificate of Appropriateness for a Major Work, watershed map amendment, watershed modification, or an approved waiver involving a parcel of land, the owner of that parcel of land as shown on the county tax listing, and the owners of all parcels of land adjoining and contiguous to that parcel of land as shown on the county tax listing, shall be mailed a notice of the proposed request or approved waiver.

1) Notice shall be by first class mail to the last addresses listed for such owners on the county tax abstracts.”

Whitaker stated this procedure was followed, with the mailed notice to CVS being returned for “Insufficient Address”.

Break from 8:07 pm to 8:12 pm to consult with attorney

Feulner stated the Town did mail notice to CVS at the tax record address as required by law, and took additional notification requirements. Therefore, it has been determined that the Town has met the legal notification requirements.

Brown offered to amend request conditioning it to allow all uses permitted in the district except the following: Shelter for the Homeless; Junked Motor Vehicle; Batting Cages; Billiard Parlors; Coin Operated Amusement (already conditioned out); Fortune Tellers; Astrologers; Go-Cart Raceway; Cemetery or Mausoleum; Day Care Center, Adult (5 or fewer as home occupation); Day Care Center, Adult (6 or more); Day Care Center, Child (5 or fewer as home occupation); Day Care Center, Child (6 or more); Psychiatric Hospital; Automotive Towing & Storage Services; Boat Repair; Car Wash; Clothing Alteration or Repair; Funeral Home or Crematorium; Kennels or Pet Grooming; Laundromat, Coin Operated; Laundry or Dry Cleaning Plant; Laundry or Dry Cleaning Substation; Refrigerator or Large Appliance Repair; Pawnshop or Used Merchandise Store; Service Station, Gasoline; Bus Terminal; Heliport; Railroad Terminal or Yard; and Taxi Terminal.

Brown further stated he is restricted by law from disturbing and active septic area and will not do so, and noted he offered the conditions voluntarily.

Speaking from the floor, Candy Wright 7514 Somersby Dr recommending leaving the adult day care options as permitted uses.

Speaking from the floor, Dunham asked what address the CVS notice was mailed to. Whitaker read the address provided by Guilford County GIS: “WEC 98-H-27 LLC; ATTN OCCUPANCY EXPENSE; WOONSOCKET, RI 28950”.

Brown omitted Day Care Center, Adult (5 or fewer as home occupation); Day Care Center, Adult (6 or more); Day Care Center, Child (5 or fewer as home occupation) as exclusions.

Speaking from the floor, Strickland read from page 2 of the property deed: "Notices. All notices, demands, and any and all other communications which may be ore are required to be given to or made in connection with the Agreement shall be in writing and shall be deemed to have been properly given and delivered if given or delivered by hand, by a national overnight delivery service or sent by certified mail,...at the address shown below... and the address shown below is Revco Discount Drug Centers, Inc; c/o CVS Corporation; One CVS Drive; Woonsocket, RI 02895". She asked that Mr. Rozell call Mr. Hill and let him know the deed specifies the address to which notice should be sent.

Rozell stated the Town followed the ordinance and statute requirements.

Feulner closed the Public Hearing at 8:21 pm

Board Discussion

Feulner advised the Board that council deemed it appropriate to continue deliberations. There was brief discussion about property size, site plan review, and the non-binding nature of the development conditions offered by the applicant.

Whitacre made a motion to approve Rezoning Case #02-12 AG/SR to CU-HB/SR located at 4909 Auburn Rd, which is approximately 1.78 acres including the conditions offered by the applicant. Feulner offered a friendly amendment requiring that the site plan be reviewed by the Board before it is accepted by the Town; Whitacre agreed. The amended motion was seconded by Rooney and passed with a vote of 3 to 0.

Break from 8:25 pm to 8:35 pm

Hess rejoined the Board, reconvening the meeting at 8:35 pm.

- (B) Rezoning Case #04-12 AG to CU-RS-40: The property is located about 900 feet north of the intersection of Strader Rd and NC Hwy 150, at 7418 and 7419-7467 Strader Rd, being Guilford County Parcels #0148023 and #0148006. These parcels, located in Bruce Township, include approximately 19.17 acres. The parcels are owned by Tolin Properties, Inc and David and Teresa Tolin.

Duston presented the case, noting the applicant is proposing new residential development on tract #1 and has offered the following conditions: 1. All lots on tract #1 will access the subdivision road. No driveway access for lots from Strader Road; and 2. Tract #2 will be used for the existing residence and off site septic purposes.

Hess asked why the septic was located on Tract #2; Duston responded that Tract #1 cannot accommodate the septic and the applicant wished to maximize the number of lots on the property. Hess asked if the applicant was given information about primary and secondary open space requirements and Duston affirmed.

Hess opened the Public Hearing at 8:45 pm

Proponents

David Tolin, 7418 Strader Rd, has a home on Tract #2. He stated the family has been approached by timber companies and developers, but they prefer to develop a family oriented community on the property which will add value to Summerfield and increase the tax base. Regarding the septic location, Tolin stated due to condition of the soils, septic will be pumped to Tract #2, with some conventional and some panel systems.

Brent Sievers with Fleming Engineering, 700 Carnegie Place in Greensboro, stated the septic will be off site Special Purpose Lots. Feulner asked how placing 14 lots on a property with that elevation could be done without it looking like "Anywhere USA". Sievers stated the Tolins were planning on 10 lots of 40,000 square feet each with custom homes.

There was discussion about total number of allowable lots on the property (14 on the total acreage), open space requirements, and streams.

Opponents

Rick Lindsay 7417 Strader Rd, expressed concern about the following: septic-he stated the tracts only perked for 1 home in the 1970s; water supply-adjoining Somersby neighborhood has experienced water problems; aesthetics-Strader Road is rural with big tracts; open space-where will it be located?

Todd Sheppard, 7512 Somersby Dr, said the property contains a wooded/natural area and the last pristine stream in Guilford County which feeds the Haw River and subsequently Jordan Lake. He is very concerned about the environmental impact of the proposed development, particularly the effect on wildlife and water quality. He noted the Tolins have a right to develop their property and suggested a less dense zoning, noting decreased density would alleviate well and septic concerns somewhat and would be more in align with the rural character of the area.

Doug Young, owner of 7422, 7428, and 7430 Strader Rd, shared information about his property, highlighting perk issues. He feels the proposed septic would drain directly onto his property, and is concerned with the environmental impacts of the proposed development.

Jerry Wright, 7514 Somersby Dr, is concerned with the traffic impact and feels the development would be inconsistent with the current rural character of the area.

Candy Wright, 7514 Somersby Dr, expressed concerns with erosion and well capacity, and feels Summerfield does not need additional development.

Rebuttal

Brent Sievers stated Guilford County has experienced, professional staff to evaluate the proposed septic and noted well problems experienced by some residents could be due to the depth of their wells.

Doug Young stated he had to drill a second well on his property and had Guilford County evaluate his soils but still had septic problems.

Hess closed the Public Hearing at 9:44 pm

Board Discussion

Whitacre asked about the wetland area and applicability of the Jordan Lake Rules. Rozell stated the Jordan Lake Rules had been put on hold by the state legislature until 2013, so they were not a consideration in this matter.

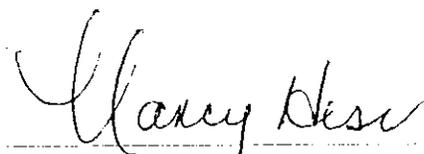
Feulner feels approval of the rezoning the property to RS-40 would be in opposition of the Comprehensive Plan Objective regarding preserving the rural character of Summerfield. Rooney noted Tolin stated 8 to 10 homes were planned while 14 are allowed. As one is already there that leaves a maximum of 13, but the open space requirement would leave 12 acres available for subdividing, so the maximum number of homes would be 11.

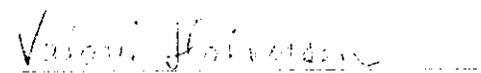
Hess asked about RR zoning density; Duston responded the minimum lot size in that zoning classification is 60,000 square feet. Rooney noted that would allow approximately 9 lots. Hess stated RR does not have open space requirements as RS-40 does. Tolin offered to condition the rezoning to a maximum of 10 lots. Hess asked Sievers why the wetland area was not addressed on the environmental inventory and Sievers stated an in depth evaluation had not been done yet.

Whitacre stated the Zoning Board must consider the impact of the rezoning request on surrounding property. She stated the area is rural with newer homes blending in well with older homes and is representative of what people mean when they talk about rural character. She further noted the lay of the land is rolling and sloped which may present some difficulty in building in a manner that keeps the rural character of the area.

Whitacre made a motion to deny the rezoning, based on Policy Area 3 of the Comprehensive Plan - Community Character Preservation. The motion was seconded by Feulner. Rooney stated she does not share the "your property is my view" mindset and feels 10 homes was appropriate and not out of character with the surrounding area. Hess agrees with both sides but is inclined to vote against the rezoning due to the density. Rooney says based on open space requirements and the existing home on Tract #2, Tract #1 would likely only be allowed 9 lots. Whitacre has environmental concerns noting the need to be sensitive to what is already developed in the area and the goal of rural character preservation. Feulner feels the rezoning does not align with the goal of preserving rural character and feels a vote to approve the rezoning is a vote against the Comprehensive Plan. He stated the property could be developed in a less dense manner. Feulner called for a vote. The Board voted 3 to 1 (Rooney opposed) to deny Rezoning Case #04-12 AG to CU-RS-40 based on Policy Area 3 of the Comprehensive Plan - Community Character Preservation.

With no further business before the Zoning Board, a motion was made at 10:17 pm by Rooney to adjourn, seconded by Hess and carried unanimously.


Nancy Hess, Chair


Valarie Halvorsen, Town Clerk