

PUBLIC HEARING and REGULAR BOARD MEETING of June 7, 2006, with Mayor Don Mullen and Commissioners Dennis DeWolf, Alan Marsh, Amy Patterson, H. N. James, and Hank Ross present.

Also present were Richard Betz, Bill Coward, Lamar Nix, Selwyn Chalker, Bill Harrell, Larry Gantenbein, Kim Lewicki, Mario Gomes, Bronce Pesterfield, Craig Justus, John Underwood, Clem Patton, King Young, Jim Mullen, Bill Basham, Rosemary Stiefel, Rick Siegel, and many others.

PUBLIC HEARINGS

The Mayor called the Public Hearings to order at 7:00 p.m.

A. Public Hearing - variance requests for road right-of-way, Old Edwards Inn, Satulah Park South and Satulah Park West.

Craig Justus and Bronce Pesterfield, representing Old Edwards Inn, were both sworn by the Mayor. Mr. Justus said that he had met with Comm. DeWolf since the previous meeting disapproving subdivision plats for Satulah Village West and South. Those meetings had prompted an application for a variance to reduce the right-of-way from 40 feet to 18 feet in order to create more open space between the residences and around the perimeter of the development and to make it look more clustered; he assumed the revised plan relying on the variance request would be considered later in the meeting. The reduction in right-of-way made possible the elimination of turnarounds and reduced impervious surfaces to 23.5% for Satulah Village West and 22% for Satulah Village South, and no credit was being requested for pervious pavement. The Planning Board had reviewed the request and had recommended approval by 7-1 vote.

There being no comments from the public, the Mayor declared the public hearing closed.

B. The Town Administrator reported that the applicant had requested that the public hearing on the variance request for road right-of-way and radius, D. E. Chandler Properties, Riverwalk Subdivision, be deferred until June 21.

C. Public Hearing - Amendment of Zoning Ordinance.

1. Section 115 - Slope Development Standards.

The Mayor asked for comments from the public; there were none. It was reported that the Planning Board had unanimously recommended adoption of the amendment.

2. Section 206.5 - Minimum Lot Size in B-3.

The Mayor asked for comments from the public. Craig Justus, already sworn, stated that Old Edwards Inn had a number of other properties in the B-3 district, and that he supported the 2004 amendment, prompted by the Scott Cole application, which permitted higher densities in B-3 for good reasons. He did not see why those principles should change. It was reported that the Planning Board had unanimously recommended changing the density to four per acre, not two per acre, and permitting multi-family development; Mr. Justus said his client supported the Planning Board recommendation.

There being no further comments from the public, the Mayor declared the public hearing closed.

D. Public sale of abandoned vehicles.

Informal bids had been requested pursuant to law on several abandoned vehicles which had been stored by the Town for a number of years. They were opened by the Mayor and read, as follows:

- ! David Leffler - 1984 Jeep Wagoneer \$50.00
- ! Gerald Pannabecker Jr. - 1984 Jeep Wagoneer 204.00
- ! Craig McCall - 1974 Ford Ranger XLT 26.50

There were no further bids, and the Mayor declared the public sale closed.

REGULAR BOARD MEETING

I. Call to Order.

The Mayor called the Regular Board Meeting to order at 7:12 p.m.

II. Approval of Agenda.

Copies of the agenda had been distributed by mail. The Town Administrator reported that Bill Basham had a parking proposal to present from the Chamber of Commerce under New Business. Comm. James requested that the Board discuss a request to provide materials for the school playground as discussed during a recent Finance Committee meeting, and the Board agreed to do so under Committee Reports.

MOVED BY COMM. MARSH, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO APPROVE THE AGENDA AS AMENDED.

III. Approval of Minutes.

Copies of the minutes of the May 17 Regular Board Meeting had been distributed by mail.

MOVED BY COMM. DEWOLF, SECONDED BY COMM. MARSH, AND UNANIMOUSLY CARRIED TO APPROVE THE MINUTES AS DISTRIBUTED.

Copies of the minutes of the May 31 Special Board Meeting had been distributed by mail.

MOVED BY COMM. MARSH, SECONDED BY COMM. ROSS, AND UNANIMOUSLY CARRIED TO APPROVE THE MINUTES AS DISTRIBUTED.

IV. Public Comment Period.

The Mayor stated that this was the time for public comments as required by law.

There were no comments from the public.

V. Reports.

1. The Mayor reported that he would be distributing scholarship checks Friday morning at Highlands School; nearly 60 scholarships totaling more than \$30,000 were being distributed this year. He also reported that he had cut the ribbon for the Fine Arts Center the previous weekend.

2. As reported earlier, the Finance Committee had discussed providing materials to Highlands School for improvements to the playground; the materials were already in stock.

MOVED BY COMM. JAMES, SECONDED BY COMM. MARSH, AND UNANIMOUSLY CARRIED TO PROVIDE MATERIALS FOR THE PLAYGROUND PROJECT.

3. Town Attorney Bill Coward was present but had no report.

4. Each Board member had received a copy of the Town Engineer/ Public Service Administrator's report for the month; Lamar Nix was present to review the report. He added that the new Wastewater Treatment Plant was operating very well, and that M. B. Haynes had completed its contract on changing out utility poles in Town.

5. Each Board member had received a copy of the Police Chief's written report for the month; Bill Harrell was present to review the report.

6. Each Board member had received a copy of the Recreation Director's written report for the month; Selwyn Chalker was present to review the report. Comm. Dewolf reported that he was working to get estimates on supplemental lighting in the gymnasium since the new roofing had eliminated the skylights.

7. Each Board member had received a copy of the Town Planner/ Zoning Administrator's report for the month; Larry Gantenbein was present to review the report. He reported that construction was down in recent months. He also reported that the County had appointed Tony Potts to the Town's Zoning Board as the ETJ representative. Comm. Ross asked him if he would be a regular or an alternate member. Mr. Gantenbein said he had requested clarification from the Institute of Government on that point, and would be getting input from the Zoning Board. The Town Administrator pointed out that the Town Board appointed both regular and alternate members; he felt it would be the Board's decision; he had assumed the County appointee would be a regular member. Comm. James agreed, and so did the Town Attorney.

Copies of the proposed B-5 ETJ Mixed Use District and the accompanying zoning map had also been distributed. The Board agreed to take the proposals under advisement. Copies of the minutes of the Planning Board's May 8 and May 23 meetings were also distributed.

8. Each member had received a copy of the Treasurer's Report for the month.

MOVED BY COMM. JAMES, SECONDED BY COMM. MARSH, AND UNANIMOUSLY CARRIED TO ACCEPT THE TREASURER'S REPORT.

9. The Town Administrator reported that the Board and all Town employees had been invited to a luncheon cook-out at Highlands Country Club on July 24 to tour the new clubhouse. He also distributed copies of a letter from Lance Hollars expressing concerns about his property in the ETJ.

He also reported that he had received a draft copy of the Pay and Classification Study conducted by Rebecca Veazey of the MAPS group through contract with the League of Municipalities. He and the Assistant Treasurer had reviewed the draft in some detail, and the Public Services Administrator and Mayor were in the process of reviewing it. He felt that the draft did not contain information on fringe benefits that he had understood would be provided, such as comparative information on the benefit of 100% employer-funded health insurance, which would make it difficult to make a decision on salaries. He also expressed a concern over substitution of a new personnel manual for the Town's current manual, which he had understood was to have been reviewed, not replaced. While the new manual had some good provisions, and the study as a whole made good recommendations about organizational structure, he felt that it would take a lot of time to study. He and the Mayor had discussed the presentation scheduled for June 14 in a special meeting and recommended cancelling and re-scheduling to a later date. The Board agreed.

Comm. Patterson said that the Finance Committee had also discussed the need for a revocable license agreement in order for two canopy posts at the Performing Arts Center to be located in the right-of-way of Chestnut Street. The Board agreed by consensus for the Town Attorney to prepare such an agreement.

VI. Old Business.

1. The Board discussed permits issued at previous meetings for use of Town right-of-way for construction activities by Old Edwards Inn on Church Street, which had expired on this date. Mario Gomes was present and said that the sidewalk would be constructed by the end of the month and the street would be paved after the Fourth of July.

MOVED BY COMM. JAMES, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO EXTEND THE PERMIT UNTIL JULY 5.

2. Board members had met on-site on May 31 prior to the Special Board Meeting and reviewed the sidewalks proposed by Charles Simmerson for the Werder property on Hickory and Chestnut Streets, as discussed at the May 17 meeting in conjunction with Condition Use Zoning; the sidewalk along US-64 had already been approved. Mr.

Simmerson was present and displayed his plans for the two sidewalks: the one on Hickory Street would extend to the driveway to his development, and the one on Chestnut Street to the end of the property; both were five-foot sidewalks with a two-foot planting strip adjacent to the edge of the pavement, rather than on the property line.

MOVED BY COMM. ROSS, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO APPROVE THE SIDEWALK PLANS AS PRESENTED.

3. The Town Administrator had consulted with the Town Engineer and proposed an amendment of the sidewalk specifications, as discussed at the May 17 meeting. The Board agreed to clarify the language in paragraph No. 1 as follows:

"1. Concrete sidewalks. Sidewalks that are identified as "Concrete" on the Master Sidewalk Plan shall be six (6) feet in width. Such sidewalks shall be designed pursuant to Town specifications with respect to thickness and curb and gutter, and shall whenever possible be located at the right-of-way line and at street level. **Sidewalks which are located in residential zoning districts shall be a minimum of five (5) feet in width. All sidewalks which directly adjoin the street pavement shall be provided with a minimum two-foot grass strip between the curb and gutter and the sidewalk.**"

MOVED BY COMM. JAMES, SECONDED BY COMM. MARSH, AND UNANIMOUSLY CARRIED TO AMEND THE SIDEWALK SPECIFICATIONS.

4. The Town Administrator had tabulated nominations submitted by Board members on various Boards and Committees. The Board discussed at some length appointments to the Planning Board. Comm. Patterson pointed out that one member lived both outside Town and outside the ETJ; Comm. James pointed out that the Board had appointed him and his term had not yet expired.

MOVED BY COMM. DEWOLF, SECONDED BY COMM. MARSH, TO TABLE THE DECISION ON PLANNING BOARD APPOINTMENTS. The motion failed, with Comms. DeWolf and Marsh voting "aye," and Comms. Patterson, James, and Ross voting "nay."

The Board continued to discuss the matter. King Young was present and said that John Cleaveland, whose term was expiring, had stated at the last meeting that he did not wish to serve again. Comm. Patterson said that she felt the intention of State law was that representation from out of Town should consist of residents within the ETJ, since they were the ones who had to live under the ETJ rules. Comm. James pointed out that there was only one opening tonight and he suggesting proceeding with making that appointment.

MOVED BY COMM. ROSS, SECONDED BY COMM. JAMES, AND UNANIMOUSLY CARRIED TO RE-APPOINT GINGER SLAUGHTER TO THE PLANNING BOARD.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. JAMES, AND UNANIMOUSLY CARRIED TO RE-APPOINT GINGER SLAUGHTER, ALLAN JAMES, AND RICK SIEGEL TO THE APPEARANCE COMMISSION.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. MARSH, AND UNANIMOUSLY CARRIED TO APPOINT DAVID WILKES TO THE ABC BOARD.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. MARSH, AND UNANIMOUSLY CARRIED TO RE-APPOINT JACK CALLOWAY TO THE SCHOLARSHIP COMMITTEE.

It was reported that Kitty Byers had resigned from the Advisory Committee for the Scholarship Endowment Fund.

MOVED BY COMM. JAMES, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO RE-APPOINT MARK THOMAS, STEVE CHENOWETH, AND HELEN SIMMONS TO THIS COMMITTEE, AND TO APPOINT WANDA DRAKE TO FILL KITTY BYERS'S UNEXPIRED TERM.

MOVED BY COMM. DEWOLF, SECONDED BY COMM. ROSS, AND UNANIMOUSLY CARRIED TO RE-APPOINT MILDRED WILSON TO THE CEMETERY COMMITTEE.

VII. New Business.

1. The Board reviewed a variance request submitted by Old Edwards Inn for Satulah Village South. Comm. James said that he did not favor granting variances. Comm. Patterson agreed; she felt that there was no hardship in this case, and granting a variance would open the door for everybody to negotiate for what they wanted. Comm. Marsh asked the Town Attorney what the standard should be for granting a variance. Bill Coward pointed out again that his firm had a conflict with the applicant and he could not represent the Board in this case, but pointed out that the standards were enumerated on the variance application form.

Craig Justus said that the applicant had presented a plan for clustered development several times, and it had become apparent over a four-month period that the 40-foot road right-of-way and setbacks defeated the purpose of clustering. The application and the new plan was an effort to create a better clustering product and had been pursued at the request of a council member. He felt the Board would have the ability to grant the variance, noted that there had been no opposition at the public hearing, and hoped that this would end the dispute with his client. He said that he agreed with Comm. James, but felt that the Board had greater flexibility in granting subdivision variances; for example, the Board had recently approved a variance on the basis of vegetative buffering.

Comm. DeWolf said that he had watched the process of the redevelopment of design of these projects, and each time the density had been stepped down; he felt that the door should be opened to allow this kind of discussion, and said that he had facilitated it for that reason. He felt that these two developments with less than 24% built-upon were an improvement over the 70% built-upon permitted for commercial development.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. JAMES, TO DENY THE VARIANCE.

Comm. Ross said he felt the clustering ordinance begged to be re-written; he felt that it made sense to reduce setbacks in a clustering setting. Comm. Patterson reiterated her statements at previous meetings, that she felt the clustering provision permitted a density of no more than two per acre. She felt that if the Board wanted to change the Ordinance, then it should do so, but she did not think it should give away variances; it would be opening Pandora's Box. Mayor Mullen said that he understood what she was saying, but he thought this would be a way to come to a compromise over these two properties, to put this behind us; obviously the Ordinance needed changing, but he felt this issue needed to come to some conclusion. Comm. DeWolf said that whether this was the way to get there or not, he felt it was important that the houses be moved farther apart and closer to the road; it was a design decision based on the property.

Comm. Ross then suggested that the Board read through all of the four conditions and the applicant's written arguments. The Mayor proceeded to do so. Comm. Patterson did not think a hardship was created; the applicant could still make reasonable use of the property. She also felt that there was nothing peculiar about the property. Bronce Pesterfield said that the project would reduce overall built-upon and provide stormwater controls, which would ultimately improve water quality downstream. She asked if the loop-road, described by Mr. Pesterfield as a cul-de-sac with a pond in the center, would be large enough for fire trucks. Town Engineer Lamar Nix said he had no problem with it.

THE MAYOR CALLED THE QUESTION AND THE MOTION CARRIED. Comms. Patterson, James, and Marsh voted "aye," and Comms. DeWolf and Ross voted "nay."

The Board then reviewed the variance request submitted for Satulah Village West.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. JAMES, AND CARRIED TO DENY THE VARIANCE. Comms. Patterson, James, and Marsh voted "aye," and Comms. DeWolf and Ross voted "nay."

Mr. Justus then said that his client had prepared another set of plans for both of these properties, in the event that the variances had not been granted, which he believed met the standards of the Ordinance without requiring a variance.

Comm. Patterson said that she felt the Board needed an expert who could discuss the law in this matter, and she had taken the step of retaining a law firm in Raleigh who could do just that; she proposed putting off any further decision until the Board had had an opportunity to discuss this with that law firm.

Mr. Justus then presented the second set of plans, beginning with Satulah Village West. Mr. Pesterfield explained that the driveways had been reduced to single-lane and much of the impervious areas in the turn-around had been eliminated. The plans showed 30 residences, a 40-foot right-of-way, no credit for pervious pavement, dedicated open space, and a total built-upon of less than 24%. It resembled the first plan submitted but contained less separation from the property line around the perimeter. Mr. Justus pointed out that the reduction in lot size had been placed in dedicated open space. He contended that the plan would comply with the Ordinance without a variance.

Plans for Satulah Village South were then presented. It, too, was similar to the previous plan, with reduced impervious surfaces; it showed 16 residences, a 40-foot right-of-way, no credit for pervious pavement, dedicated open space, and a total built-upon of less than 24%. Mr. Justus said that he felt the Town's attorney, Bob Long, was competent to interpret the Ordinance. He disagreed with Comm. Patterson; he felt that the amendment of the Ordinance in 2004 referred to the 6000 SF density in the "underlying zoning district," and this plan was well under that density.

MOVED BY COMM. ROSS, SECONDED BY COMM. DEWOLF, TO APPROVE BOTH PLANS AS PRESENTED.

Comm. Patterson said that she did not think the Board had intended to permit more houses than the watershed regulations allowed. She again asked for 30 days to allow somebody better-versed than the Town's previous attorney to take a look at it.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. MARSH, TO TABLE THE MOTION FOR THIRTY DAYS.

Comm. Ross commented that if the Board asked for another lawyer's opinion, he didn't know where this would end. The Town Administrator asked if, under Robert's Rules, the second motion was allowed while the first was still on the table. Comm. Patterson said a motion to table had precedent over the first motion. Mr. Justus said that Comms. Ross and DeWolf would have to agree with the motion in order to table the issue. He added again that Bob Long had been practicing for 35 years and was more than competent to advise the Board.

THE MAYOR CALLED THE FIRST QUESTION AND THE MOTION CARRIED. Comms. Ross, DeWolf, and James voted "aye," and Comms. Patterson and Marsh voted "nay."

2. The Board then considered the amendment of the Zoning Ordinance regulating slope development, Section 115, subject of a public hearing immediately preceding the meeting. Comm. Marsh said he thought the Town needed something in place now, but should consider making the regulations tighter in the future. Mr. Gantenbein said the Planning Board was working on that but wanted these regulations on the books this season.

MOVED BY COMM. MARSH, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO ADOPT THE FOLLOWING AMENDMENT OF THE ZONING ORDINANCE, EFFECTIVE IMMEDIATELY:

Add the following new Section 115, Slope Development Standards.

"The following requirements apply to all new construction where the footprint of the construction is situated on a slope greater than 30%. No development shall be undertaken that increases the surface runoff reaching adjacent or surrounding property as a consequence of the development.

(A) Surface runoff shall be controlled onsite by implementing one or more NCDWQ approved Best Management Practices. Approved BMPs include bio-retention areas and rain gardens, infiltration trenches and wells, level spreaders and riparian buffers, reinforced grassy swales, and riprap. The owner/builder shall include both temporary and permanent site specific BMPs on the site plan.

(B) In addition to practices as may be required in paragraph(A) of this Section, wire backed silt fencing shall be installed on the downhill periphery of any area of disturbed earth. The fencing shall extend a minimum of twenty-four inches above ground with the bottom of the fence buried six-nine inches below ground on the uphill side of the fence and packed down to prevent blowouts. For heavy runoff areas, bales of straw may be required in conjunction with the silt fencing. Silt fencing shall be installed immediately following tree removal and before earth is disturbed. Silt fences shall be maintained throughout construction until the disturbed area is stabilized with permanent ground cover approved by the Watershed Administrator.

(C) In addition to practices as may be required in paragraph(A) of this Section, driveways must be roughed-in prior to the start of construction including appropriate, installed BMPs and a binder coat of asphalt applied to the driveway surface for the duration of the construction. Completed driveways must be paved with asphalt or concrete. Driveways longer than 45 feet may require one or more cross driveway water traps with grates that direct the stormwater runoff to an approved BMP such as a rain garden or infiltration system."

3. The Board then considered the amendment of the Zoning Ordinance regulating residential density in the B-3 zoning district, subject of a public hearing immediately preceding the meeting. It had been pointed out that the Planning Board had recommended a density of four per acre and also multi-family development as a permitted use in B-3. Comm. Patterson felt that the Board needed to think carefully about turning commercial areas into residential areas; where would future commercial growth go? She also noted that the theme of the Land Use Plan was to keep commercial development downtown. Comm. Marsh suggested a joint work session with the Planning Board. Comm. DeWolf felt that the amendment should be looked at in conjunction with the Zoning Map. Comm. Ross said he would like to look at the map as well, but he felt two per acre was too strict; he did not want to remove residential development as an option in B-3. Mr. Gantenbein said the Planning Board had wanted more multi-family and density within walking distance of the downtown area, and they also felt there was an excess of commercial property in Town. He felt a work session would be a good idea. Comm. James thought that, in the meantime, the Board should consider a moratorium on residential construction in B-3. The Town Attorney said that a moratorium could not legally be considered tonight. Comm. James then proposed adopting the amendment tonight, with the understanding that it might change, then scheduling a meeting with the Planning Board to discuss it.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. MARSH, AND UNANIMOUSLY CARRIED TO ADOPT THE FOLLOWING AMENDMENT OF THE ZONING ORDINANCE, EFFECTIVE IMMEDIATELY:

Amend section 206.5, minimum residential lot size and width, from 6,000 square feet per family to the following:

"Minimum lot size: 6,000 square feet per family for incidental apartments permitted pursuant to Section 206.3(A)(3); 22,000 square feet per family for all other single-family residences."

4. The Board considered the sale of several abandoned vehicles, subject of the public sale and opening of bids immediately preceding the meeting.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. MARSH, AND UNANIMOUSLY CARRIED TO SELL THE ABANDONED VEHICLES TO THE HIGH BIDDERS: THE 1984 JEEP WAGONEER TO GERALD PANNABECKER FOR \$204.00 AND THE 1974 FORD RANGER TO CRAIG MCCALL FOR \$26.50.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. MARSH, AND UNANIMOUSLY CARRIED TO AUTHORIZE THE TOWN ADMINISTRATOR TO SELL THE REMAINING ABANDONED VEHICLES FOR SCRAP.

5. Bill Basham was present from the Chamber of Commerce and said that the Mayor, Comm. DeWolf, and Town staff had met with merchants earlier in the week to discuss two-hour parking in the downtown area. Each Board member had been given a copy of a "Free Parking" pass which visitors to Fredericksburg, Virginia were given by the Visitors Center, and he proposed distributing similar passes in Highlands, good for one day, on a trial basis for 30-days. The Visitors Center would monitor and distribute the passes. He also asked that the Board consider replacing signage in Town which directed visitors to unregulated parking. Comm. James commented that you might as well do away with two-hour parking.

MOVED BY COMM. DEWOLF, SECONDED BY COMM. PATTERSON, AND CARRIED TO APPROVE THE PROPOSAL ON A TRIAL BASIS FOR 30 DAYS. Comms. DeWolf, Patterson, Marsh, and Ross voted "aye," and Comm. James voted "nay."

6. Town Attorney Bill Coward requested that the Board go into closed session to discuss potential litigation.

MOVED BY COMM. MARSH, SECONDED BY COMM. DEWOLF, AND UNANIMOUSLY CARRIED TO GO INTO CLOSED SESSION PURSUANT TO G. S. §143-318.11(A)(3) TO CONSULT WITH THE TOWN ATTORNEY ON POSSIBLE LITIGATION.

All present left the room except the Clerk, the Town Attorney, and the Zoning Administrator.

The Board consulted with the Town Attorney on a possible violation of the Zoning Ordinance.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. MARSH, AND UNANIMOUSLY CARRIED TO GO INTO OPEN SESSION.

VIII. MOVED BY COMM. ROSS, SECONDED BY COMM. MARSH, AND UNANIMOUSLY CARRIED TO ADJOURN.

There being no further business to come before the Board, the meeting was declared adjourned by the Mayor at 9:25 p.m.

Richard Betz, Town Clerk