

PUBLIC HEARING and REGULAR BOARD MEETING of August 4, 2004, with Mayor Buck Trott and Commissioners Amy Patterson, Hank Ross, H. N. James, Alan Marsh, and Dennis DeWolf present.

Also present were Richard Betz, Lamar Nix, Larry Gantenbein, Selwyn Chalker, Jerry Cook, Kim Lewicki, Jim Lewicki, Amelia Pavlik, Lewis Doggett, Robert Tucker, Bob Wright, Bob Fisher, Bill Rethorst, Tom & Linda Clark, Peggy Foss, Bronce Pesterfield, and many others.

A. Public Hearing.

The Mayor called the Public Hearing to order at 7:00 p.m. and stated that the purpose was to receive comments from the public on a proposed amendment of the Zoning Ordinance and the Zoning Map. The Zoning Ordinance amendment included a new section 511, Nonprofit Visual Art Centers, which would permit art galleries in the GI District, subject to issuance of a Special Use Permit, as discussed at the June 2 and July 7 Board meetings. The Zoning Map amendment consisted of a proposed change in designation of the five-acre Lambert Chandler property on Oak Street, formerly the Crane stables property, from R-2 to GI. The Clerk reported that notice had been provided pursuant to law and all of the adjoining property owners had been notified by first class mail. The Mayor asked for comments from the public.

Lynn Deville said that she thought the proposal was a superior idea.

Peggy Foss agreed, but asked what would happen to the property if the Bascom-Louise Gallery, the organization which had initiated the petition for re-zoning, failed to raise the money. Zoning Administrator Larry Gantenbein explained that it would have to remain Governmental Institutional (GI) for one year, but then the Board of Commissioners could re-zone it to R-2 in its discretion.

Hearing no further comments, the Mayor closed the public hearing at 7:02 p.m.

After the hearing had been closed, Bill Rethorst asked what the property could be used for if it was sold while still zoned GI. Mr. Gantenbein said that only another art gallery or GI use could be approved for the property. Mr. Rethorst asked if the zoning could be conditioned on the Bascom-Louise Gallery obtaining title, rather than another other group. Mr. Gantenbein said he thought there was nothing to prohibit making the zoning change contingent on a future effective date.

B. Regular Board Meeting.

I. Call to Order.

The Mayor called the regular Board meeting to order at 7:05 p.m.

II. Approval of Agenda.

Copies of the agenda had been distributed by mail. Comm. James suggested to the Mayor that Item No. 2 under New Business, a decision on the foregoing re-zoning, be considered as the next item of business.

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

III. Approval of Minutes.

Copies of the minutes of the July 21 Regular Board Meeting had been distributed by mail.

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

Special Order.

The Board discussed the amendment of the Zoning Map and Zoning Ordinance in some detail. Comm. Patterson said she understood conditional zoning was not legal in North Carolina and wondered why this amendment would be legal. Mr. Gantenbein explained that contract zoning was not legal, but this was a form of conditional zoning, which was; the conditions for a nonprofit visual art center were spelled out in great detail. Comm. James asked if the effective date could be whatever date title is obtained for the property by the Bascom-Louise Gallery. Mr. Gantenbein said usually the effective date was a date specific, but if nobody objected it would probably be OK. However, if the deal fell through, only another nonprofit visual art gallery meeting all of the requirements could obtain a Special Use Permit. The Mayor asked Robert Tucker how much time he had to raise the money; Mr. Tucker replied October 15. Bob Fisher cautioned against unduly tying the hands of the gallery; they might be granted an extension to raise the money, for example, and he felt they should be given latitude to do so. Lewis Doggett asked if the amendment could specify that only the Bascom-Louise Gallery could be approved for the site; Mr. Gantenbein said he felt that would be contract zoning. Comm. Patterson expressed some concern over making the Ordinance amendment so specific; what if the deal fell through and they found another piece of property? Mr. Gantenbein said the language had been recommended at the Town's request; it could be changed but it would lessen the protection it afforded. Comm. DeWolf asked about the retail sales referred to in Section 511.4(D); he was told that retail sales would be "limited to items usually and customarily sold by visual art centers." Comm. James asked about the 70% built-upon limit in Section 511.4(C); he recalled that it was to include all parking areas. Bob Wright said that the recent stormwater legislation excluded permeable paving from the built-upon requirements; he felt the State was changing its interpretation on permeable paving. Mr. Gantenbein pointed out that if permeable pavers were used, the applicant would also have to use stormwater management techniques, which would offer more protection for the property. After some discussion, the Board agreed that the following phrase should be added to clarify this provision: "Parking areas shall be included in the built-upon area, whether constructed of impervious or pervious materials." Comm. James reiterated his desire to set an effective date tied to title, but said he was willing to approve the amendments if the rest of the Board did not agree.

MOVED BY COMM. JAMES, SECONDED BY COMM. ROSS, AND UNANIMOUSLY CARRIED TO ADOPT THE AMENDMENT OF THE ZONING MAP AND THE FOLLOWING AMENDMENT OF THE ZONING ORDINANCE:

* * *

1. In Section 208.1, after "the Town of Highlands and Macon County," add the words "or property owned by nonprofit visual art organizations as defined by IRS Code Section 501(c)(3)." After "the Highlands School property, add the words "the Bascom-Louise Gallery property."

2. In Section 208.4, add paragraph (D), "Nonprofit visual art centers."

3. In Section 501.1, add paragraph (R), "Nonprofit visual art centers."

4. Add the following new Section 511, Nonprofit Visual Art Centers:

"511.1 Definitions.

(A) Nonprofit visual art centers. Any visual art center funded by private donors and fees from visual art classes that is deemed to be nonprofit by the Internal

Revenue Service in accordance with IRS Code Section 501(C)(3). Failure to maintain nonprofit status with the Internal Revenue Service automatically and immediately voids the visual art center special use permit.

(B) Parcel location and size. Any parcel of real property owned by a nonprofit visual art center situated within the Government-Institutional Zoning District may be used for non profit visual art center purposes provided the parcel size is not less than five (5) acres.

511.2 Applicability.

Section 511 shall apply to the erection of nonprofit visual art buildings and to the conversion of existing buildings to nonprofit visual art use. Whenever the term "construction" or "erection" occurs within this Ordinance, the context shall include the conversion of existing buildings to nonprofit visual art buildings.

511.3 Location.

Subject to the provisions of this Ordinance, and other provisions of this Ordinance as may be applicable, nonprofit visual art buildings may be erected only on property situated in the Government/Institutional Zoning District that is owned by the nonprofit visual arts center.

511.4 Use, land utilization, building height, roadway access.

(A) A special use permit shall be required for the erection of any visual art building or the conversion of any existing building to visual art center purposes.

(B) The primary use of the premises as a nonprofit visual art center may not be changed except by rezoning the property for use in accordance with the applicable provisions of this Ordinance.

(C) The total built-upon area shall be limited to seventy percent (70%) of the parcel size. Parking areas shall be included in the built-upon area, whether constructed of impervious or pervious materials.

(D) No visual art center building may be erected that exceeds two (2) habitable stories, exclusive of basement and attic. Associated building usage shall include but not be limited to gallery space, classrooms, office space, dormitories for summer students and small retail shops. Retail sales on the property shall be limited to items usually and customarily sold by visual art centers.

(E) Primary pedestrian access and primary road access must be provided by the applicant directly from US 64/NC 28; or, from a public street that intersects US 64/NC 28 that is zoned for commercial use and complies with the Town of Highlands Subdivision Regulations, Appendix C: Road Specifications.

511.5 Application for permit to construct or convert.

Any application for nonprofit visual art center construction or use shall be considered an application for a special use permit and shall be processed according to the provisions of Section 501. Each application shall contain the following:

(A) A current survey of the parcel as prepared by a registered land surveyor or professional engineer licensed and authorized to survey real property in North Carolina. The survey shall indicate the metes and bounds of the parcel, the total area of the parcel computed by D.M.D., and expressed in square feet, the location of all public and private roads, the location of all public utility easements within the parcel or located less than fifty (50) feet from it, the location of all perennial streams and watercourses, and the names of all adjacent property owners.

(B) A complete set of the construction plans and specifications for each building to be erected upon the parcel, the plans to include a certification of an architect or professional engineer, duly licensed by the appropriate North Carolina authority, that the plans and specifications are in accordance with all existing building, electrical, plumbing, fire, and safety codes of North Carolina and any other authority having jurisdiction over the construction of buildings. The construction plans and specifications shall clearly state the total horizontal surface area of land occupied by the visual art center building and shall also disclose the measurements of building height.

(C) A complete site and landscape plan showing the perimeter of the parcel, the location of all proposed improvements thereon, the location of all existing improvements thereon that shall remain upon the parcel at the time construction is completed, and the location and description of all proposed landscaping improvements and all dimensions and measurements."

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IV. Reports.

1. The Mayor thanked Comm. Patterson for chairing the previous meeting so that he could attend a Boy Scouts of America function featuring the founder of Habitat for Humanity.

2. Comm. Ross thought that the Public Works Committee needed to schedule a meeting to discuss recommendations of the Trash Can Subcommittee and other items. The Committee agreed to meet at the Town Hall at 8:30 a.m. on Tuesday, August 17.

3. The Town Administrator reported that the Town Attorney had informed him the N. C. Supreme Court had not yet made a decision on whether to review a petition for discretionary review from the Bowery Road landowners; the next date for release of a decision would be August 13.

4. Each Board member had received a copy of the Public Services Administrator's written report for the month; Lamar Nix was present to review the report.

5. Each Board member had received a copy of the Police Chief's written report for the month; Jerry Cook was present to review the report. Chief Cook also reported that he had received grants for the Tasers budgeted for this year; he had drafted a policy for their use to be included in the Police Personnel Policies, and it would be sent to the Town Attorney for review. He also requested permission to apply for grants to obtain a new MDT laptop computer so that all of the vehicles would have one, and to replace one that had become defective; the cost would be about \$1200 each, but the grants would pay for 90% of the cost.

MOVED BY COMM. DEWOLF, SECONDED BY COMM. MARSH, AND UNANIMOUSLY CARRIED TO AUTHORIZE APPLICATION FOR THE GRANT.

6. Each Board member had received a copy of the Recreation

Director's report for the month; Selwyn Chalker was present to review the report. He reported that the roof repairs had been completed by the contractor but the roof was still leaking. Comm. DeWolf said that the roofer had indicated he would come back and complete the work.

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.

8. Each Board member had received a copy of the Treasurer's Report for the month in the new format provided with the new accounting software. He said that they were still refining it, and would include the balance sheet in future reports.

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

9. The Town Administrator reported that training was continuing in the Town Office for the new utility billing and accounting software, which was going well. He displayed a copy of the new bills which were in the process of being mailed for the month. He also noted that the Staff in the Town Hall had been doing an outstanding job and had been working long hours.

He also said that he had received information on applications from non-profits from Christy Kelly, and he felt that the Finance Committee could meet now to discuss the applications referred to it some time ago. The Committee agreed to schedule a meeting soon and notify the press of the time and date. Lewis Doggett asked about this meeting, and he explained that the Committee would be making a recommendation to the Board, which would be an agenda item; both meetings were open to the public.

He also submitted for information copies of a job description for a GIS/Field Technician that he had prepared, and said that he intended to advertize for the position this month; the position had been approved with the FY 04-05 budget.

He also reported that a plan had been prepared for Church Street and Fourth Street by Bronze Pesterfield, pursuant to the July 21 meeting, and several Board members had reviewed it. The plan did not conform in several respects, but a revised plan had been submitted earlier in the day that conformed to the decisions of the Board at that meeting.

V. Old Business.

1. The Board discussed the permit issued at previous meetings for use of Town right-of-way for construction by Old Edwards Inc. Comm. James said he felt the permit ought to be revoked. Work was still continuing on Fourth Street and he understood it was to have been completed by now; he felt the public was really being jerked around.

Bronze Pesterfield said that the delay was due to the design change approved at the previous meeting, which also now included a slotted drain which in his opinion would be a better material; this material would not be delivered until Friday. He also said that heavy rains and a leak in the basement had delayed the work. The Mayor said that he thought the work definitely needed to be completed before the D.O.T. paved the road, and Mr. Pesterfield said that he had been coordinating this work with D.O.T. officials. The Town Administrator said that he had spoken to David Trapp, Project Superintendent with McCarroll Construction, and he had confirmed that the work on Fourth Street would be completed in ten to fourteen days after arrival of materials this Friday. He had also spoken to him concerning pallets of slate and stone along the south side of Church Street extending outside the area approved by the Board; he had been told that the material would be removed the next day.

He also said that he had spoken to the Police Chief and merchants on Fourth Street and they felt the parking enforcement remained improved.

MOVED BY COMM. ROSS, SECONDED BY COMM. DEWOLF, AND UNANIMOUSLY CARRIED TO APPROVE CONTINUATION OF THE PERMIT ISSUED AT THE PREVIOUS MEETING UNTIL AUGUST 18. Comm. James commented that this was the last time he would vote to continue the permit if work continued on Fourth Street beyond that date.

2. The Board discussed a stone wall constructed along the north side of Spring Street, below Old Edwards Inn's Spring Street Cottages, which it had been reported at the previous meeting encroached into the Town's right-of-way at its western end; the sidewalk in front of the wall also did not meet the six-foot width requirement. Bruce Pesterfield stated that the wall had been constructed that way because of a grade change; he submitted a drawing showing the wall relative to the right-of-way, and explained that the sidewalk would be widened to six feet when a curb and gutter was completed. Where the wall encroached, the drawing indicated a proposed narrowing of the sidewalk to four feet in width along a ten-foot section, permitting diagonal parking with a 16-foot stall depth, the same as that approved for Church Street. The four-foot width could also align with a sidewalk of the same width along the adjoining Methodist Church property which would save several trees in the future. He admitted that the wall did encroach into Town right-of-way, and said that he would have to fall on the mercy of the Board. He pointed out that the property owner had given up some property for the wall and that no parking spaces would be lost. The proposed sidewalk would be brick, as originally approved.

Comm. Marsh asked if there were plans to continue the sidewalk around to Fourth Street at the eastern end, as promised. Larry Gantenbein said that this connecting sidewalk had come up early in the approval process when underground parking was being proposed for Spring Street; an offer had been made to extend the sidewalk around the corner, and the question had been raised whether it would be brick or concrete, which had precipitated the review of the Master Sidewalk Plan. The offer had been verbal, and he had found no record of it in the minutes. The Mayor said that Mario Gomez and George Wiggins had personally told him they would agree to install the sidewalk.

Comm. Marsh asked if he would consider extending the sidewalk eastward along the Church property; Mr. Pesterfield stated that he could not say.

MOVED BY COMM. DEWOLF, SECONDED BY COMM. ROSS, TO ACCEPT THE ENCROACHMENT ON THE RIGHT-OF-WAY PURSUANT TO THE PLAN SUBMITTED. Comms. James and Marsh said they did not agree with accepting the encroachment. Comm. DeWolf felt there were some areas where the Town could throttle down sidewalks for trees and similar situations; Comm. James disagreed, and said the Town could not lose any parking; Comm. DeWolf pointed out that no parking would be lost with this plan. Comm. Patterson said that she hated to have them coming back for permission after the wall had already been built; she felt that the Board was in the position of constantly having to say, "OK, we'll let it go," and she asked how many times the Town would have to let it go. Bill Rethorst commented that this would continue to happen until the Board said "No, you can't do it anymore."

The Mayor called the question, and it did not carry; Comms. DeWolf and Ross voted "aye," and Comms. James, Marsh, and Patterson voted "nay."

MOVED BY COMM. JAMES, SECONDED BY COMM. PATTERSON, THAT THE WALL BE CONSTRUCTED AS ORIGINALLY APPROVED BEHIND THE RIGHT-OF-WAY LINE.

Mr. Pesterfield asked if the original plans could be reviewed. Town Engineer Lamar Nix then produced the plans and the Board reviewed them in some detail; they showed a straight wall behind the right-of-way line, a two-foot planting strip, and a six-foot sidewalk, as approved by the Board on November 19, 2003. Mr. Pesterfield explained that they had been unable to install the planting strip due to the size of the footing; he also pointed out that the wall would be very costly to remove.

The Mayor called the question, and it carried unanimously.

VI. New Business.

1. The Board discussed requests for architectural proposals for the Town Hall; \$5000 had been included in the FY 04-05 budget for a study. Each Board member had received a memo prepared by the Town Administrator providing excerpts from the May 19 meeting, comments prepared earlier by Comm. DeWolf, and an e-mail he had prepared in June outlining some of his ideas. Comm. DeWolf suggested that a subcommittee be established consisting of himself and the Town Engineer to establish a program for approaching architects; he suggested that the architects could suggest a cost for the study.

Comm. Patterson asked if Staff should be asked to provide information on what would be needed over the next 20 years; Comm. James said he felt an architect might know more about needs than staff. Comm. Ross agreed, and felt that it was important to gather all available information so that an architect would have a clear understanding of what to produce. Comm. James said he thought the study should include an inventory of other possible sites. Comm. Ross suggested that the Committee could be a subcommittee of the Public Works Committee.

MOVED BY COMM. JAMES, SECONDED BY COMM. ROSS, AND UNANIMOUSLY CARRIED TO ACCEPT COMM. DEWOLF'S OFFER AND TO APPOINT HIM AND THE TOWN ENGINEER AS A SUBCOMMITTEE TO THE PUBLIC WORKS COMMITTEE TO BEGIN GATHERING INFORMATION. Comm. Patterson said that she would like to see the information gathered by the end of the year.

2. Each Board member had been provided with a memo from the Town Administrator outlining the main elements of a Macon County Multi-Jurisdictional Hazard Mitigation Plan, prepared for the County by PBS&J, which the Town had been ask to approve; the plan itself was also presented for review, and it was reported that Macon County and Franklin had already approved it.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. MARSH, AND UNANIMOUSLY CARRIED TO ADOPT THE PLAN.

3. As discussed at the July 7 meeting, the question of a "pole shed" or temporary structure had been referred to the Planning Board; that Board had recommended amending Section 1002 of the Zoning Ordinance to add the following words to the definition of "building": "pole sheds and other open walled buildings." The Board discussed the amendment with Larry Gantenbein, who fielded questions concerning tents, small outbuildings, and similar structures in the Zoning Ordinance.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. JAMES, AND UNANIMOUSLY CARRIED TO SET A PUBLIC HEARING TO RECEIVE COMMENTS ON THIS PROPOSED AMENDMENT OF THE ZONING ORDINANCE.

4. Copies of a letter dated July 29 from Donald Mullen, President of the Highlands Community Child Development Center Inc. (HCCDC) had been received by each Board member, and a drawing of the east end of Church Street and the HCCDC property was presented. Bob Wright was present and explained that the HCCDC needed to move its construction trailer onto the right-of-way of Church Street from August 9 through October 1 to allow construction of underground utilities; three parking spaces would be occupied. He also discussed a second request for construction of a sidewalk and retaining wall east of the driveway, which would require the use of six or seven spaces; Mr. Wright was uncertain when this second project would begin, but it would take between five and six weeks. The ten-foot retaining wall behind the sidewalk was on HCCDC property and had already been approved by the Appearance Commission and the Zoning Board. Comm. James moved approval of both projects, then withdrew the motion. Comm. Ross expressed some concern over the second project and the lack of a firm time period; he also felt the HCCDC should be held to the same standard of periodic review as OEI for use of right-of-way for construction.

MOVED BY COMM. ROSS, SECONDED BY COMM. MARSH, AND UNANIMOUSLY CARRIED TO APPROVE USE OF THE RIGHT-OF-WAY ON CHURCH STREET FOR THE CONSTRUCTION TRAILER, CONTINGENT ON REVIEW BY THE BOARD AT THE AUGUST 18 AND SUBSEQUENT MEETINGS.

5. The Town Administrator reported that the new garbage truck had included a lifting mechanism for loading a 96-gallon wheeled trash can, and several of the cans had been ordered as a pilot project for commercial businesses. They had proven very popular and had made possible the elimination of at least one dumpster; one the advantage was that they could be easily moved from a storage room to the curb without blocking parking or taking up the space on the right-of-way that a dumpster occupied. The cost was a little over \$60 each, and the manufacturer reported they had an average life-space of ten years. He recommended setting a monthly fee of \$5.00 for lease of the trash cans.

MOVED BY COMM. JAMES, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO SET A MONTHLY FEE OF \$5.00 FOR LEASE OF THE 96-GALLON TRASH CANS.

Comm. DeWolf expressed a concern about businesses leaving the cans on the street; Comm. Ross agreed. The Town Administrator read a section of the Solid Waste code (12-6[D]), which required "all receptacles shall be removed from their positions adjacent to the street or sidewalk after the contents have been emptied on that same day." He said the provision could be enforced if a problem developed.

6. Comm. Marsh asked that the Board place for discussion on the agenda of the next meeting possible clarification of what level of construction would require a commercial property to install a portion of the Master Sidewalk Plan; he wondered if remodeling would require it, for example. The Town Administrator read the applicable section of the Zoning Ordinance; construction of the sidewalk was required "whenever a new commercial building is constructed." He said this would mean a new building or an addition to a building requiring a Special Use Permit; Larry Gantenbein agreed. Comm. Marsh withdrew the request but asked the Board to think about the provision.

VII. MOVED BY COMM. JAMES, SECONDED BY COMM. ROSS, AND UNANIMOUSLY CARRIED TO ADJOURN.

There being no further business to come before the Board, the meeting was declared adjourned by the Mayor at 9:15 p.m.

Richard Betz, Town Clerk