



## PLANNING AND NEIGHBORHOOD SERVICES DEPARTMENT

### PLANNING BOARD MINUTES

January 17, 2012

6:30 P.M.

The following members of the governing body were present:

Russell Whitehurst-Chairman, Patricia Cowan-Vice Chair, Kathy Broom, Sidney Sandy, Larry Miller and alternates Cathi Higgins and Jan Brown

Staff Members: Shelley DeHart, Rox Burhans and Helen Boich

**Call to Order:** Chairman Whitehurst called the meeting to order.

**Roll Call:** Gary Vaughn and Robert Rollins were absent.

**Approval of Minutes:** November 15, 2011 Approved

#### Public Items

**ZM 2011-003 Sun Valley Phase III Rezone:** A request to rezone one parcel (approx. 0.488 acres) from Single-Family Residential (SF-1) to General Business District (GBD). Applicant: Sun Valley Commons, LLC. Location: Sun Valley Commons Commercial Center on Old Monroe and Wesley Chapel Stouts Road. Parcel # 07090078

Senior Planner Rox Burhans presented the request. Mr. Burhans stated this request is to rezone approximately one half acre parcel from Single Family Residential to General Business District. The property is in a Village Center Overlay Zone and that will remain unchanged. The intent of the GBD district is to provide goods and services to the entire town with a wide variety of commercial uses creating appealing shopping environment for the community. The property is located on Old Monroe Rd near the Wesley Chapel Stouts intersection. The Valley Estates neighborhood is to the rear of the property. The property is surrounded by GBD zoning on the sides and the frontage is SF1. Mr. Burhans informed the members that when considering a rezone there are two elements to consider, what are the uses permitted in the proposed district, not only by right but by Special Use permit and is this proposal consistent with the Comprehensive Plan and the vision of this particular area. The property is in the Sun Valley Suburban Mix area. Village centers are an opportunity to create a sense of place and fulfill the vision of the Comprehensive Plan. The goal is to concentrate the commercial uses at the village intersections as well as outward from them.

Mr. Burhans stated for each Village Center there is a list of recommended land uses mixes. . The percent of retail currently is approximately 4.4%. The Comprehensive Plan recommends

2%. Obviously adding the ½ acre is going to further exasperate that difference. The Comprehensive Plan has a process for this. It states applicant should prepare market studies to indicate their proposals are justified based on the market conditions. The Moser Group prepared a market study and presented it with the application. It indicated the demands for retail and goods services far out sees the available supply area and the addition of the ½ acre parcel is justified within the Village Center. Mr. Burhans stated staff is of the opinions the Planning Board can make the findings in support of the rezoning. The findings were read into the record. As they relate to Quality of Life and Land Use. The proposed rezoning to GBD, within the Village Center, will help to promote a diversity of land uses and a better quality of life for our residents by providing opportunity to build out the village Centers establishing unique identities and providing goods and services as planned. Mr. Burhans stated, in terms of Land Use, the proposed rezone is consistent with vision of the community forum, providing a mix of uses within the intended Village use area including an analysis supporting its request to service our residents as well as residents in neighboring communities. It further promotes an opportunity to establish a more balanced tax base by promoting commercial development. The request for this rezoning reclassification is a reasonable request and is in the public interest because it promotes the goals of the adopted Indian Trail Comprehensive Plan in the areas of Quality of Life and Land Use and is consistent with the adopted plans within Indian Trail. Mr. Burhans stated staff therefore recommends approval to Town Council for the rezoning of the subject property from SF-1 to GBD.

Mr. Burhans stated the Planning Board should receive the report and public comment, make the required findings and recommend to Town Council approve as presented, approve with modifications, disapprove, or request additional information from staff to make a determination at a later time.

Member Cowan asked, in regards to the chart indicating Boulevards, if the percentage will change with all the proposed construction at the intersection. Mr. Burhans replied the Boulevards and Thoroughfares present the rights of way that are located in the Village Center, the full right of ways that were envisioned in the future road way improvements.

Public session was opened.

John Ross, Eagle Engineering, came before the board. Mr. Ross is representing Sun Valley Commons LLC. Mr. Ross stated when Sun Valley Commons acquired the properties that are currently Phase III there was a purchase agreement that established the parcels that were to be acquired. He stated it was a clerical error on their part that the parcel of issue was not included at the time of the original rezoning. The good news it is out on the perimeter and did not affect anything that was in the process of current building. It is the intent that the ½ acre lot will be combined and brought into what is lot 14. It will not increase the number of lots.

There were no questions for Mr. Ross.

Amanda Faulkenbury, resident of Valley Estates, came before the board. Mrs. Faulkenbury stated she is against the rezoning request. The residents of the community are not against the theatre or the retail center. Ms Faulkenbury stated the residents want protection from the center. She stated the residents have met with the developer and have had to fight for a sufficient berm and wall to separate the subdivision from the center, now the front side of the subdivision is in

issue and the residents will have to go back to the developer and fight again. If they come in and add it to their existing acreage they can put fast food, a bar; there is already trouble hearing Bonfire from where they live. She asked the Board to either decline the request or approve it with severe conditions as to what can be placed there. Ms Faulkenbury stated what has tentatively and verbally agreed to, it is on the plans but there is not a written agreement from the developer, so the residents are waiting to see a berm with some kind of solid wall on top. They do not know what the wall is going to be constructed of. They would not agree, in the last meeting, all we got was you will get a wall, they cannot use chain link. She stated there is no written agreement, it is just a verbal and the residents are in a wait and see mode.

Mr. Burhans stated the approved plan, for the buffer against the residential properties, is 25 feet with a 4 foot high berm. On top of the 4 foot berm is a 6 foot concrete wall. There is supplementary plantings as well, these details are on the approved construction drawings for Sun Valley Commons Phase III. The intent is if the subject property would be rezoned included in the subject property those buffer arrangements would be carried forward along the sister frontages of the subject property.

Chairman Whitehurst asked what the catalyst would be to make sure what is on the approved plans gets built.

Mr. Burhans replied there is an inspection process as part of approving land development. In order to receive a certificate of occupancy from the Town a final inspection is required to make sure the proposed development matches the approved plans.

Member Higgins asked if the berm, the concrete wall and the 25 foot buffer is in the Town's approval documents. Mr. Burhans replied yes for the existing Phase III. The Town recognizes the Theatre and the retail is an intense land use therefore an intense treatment was recommended, approved and agreed to by the developer to help create that separation. Mr. Burhans stated the wall and berm treatment will be extended on to the parcel at issue.

Member Brown asked if there will be foliage on the berm. Mr. Burhans replied it will need to be stabilized so there will be ground cover and there are trees indicated on the approved plans.

Member Broom stated she has heard about this fight about the wall for awhile, where did the fight start and why was there a discussion about the wall if it was in the plans. She asked why did the residents feel there was not going to be a wall. Mr. Burhans replied he cannot speak to that, there are approved plans that reflect the berm and wall treatment. Ms Broom asked if the plans were approved before or after the residents had to fight for the wall.

Ms DeHart stated the residents met with the developer, in the UDO there are options for a developer in utilizing the buffer. The neighborhood came out very clear in the beginning they wanted a berm and a wall. There was an original plan that came in with a berm and a wall. Once there was financing and other issues with the developer the plans had changed to a different type of buffer. This is when the neighborhood met with the developer and made it perfectly clear, to protect themselves, they wanted the berm and the wall. That is what is approved on the plan today. The construction plans will need to be amended to reflect the berm and wall to the additional land. Ms DeHart stated any potential user for this property will be evaluated to determine if there would need to be any additional buffer, above the 25ft. required.

Member Broom asked if someone else buys up the other 4 or 5 lots along Old Monroe Rd would they be required to build a 4 foot berm with a 6 foot wall. Ms DeHart stated the zoning for the properties Ms Broom is referring to is residential. If they are bought and rezoned and she is still with the Department she would ask for the same treatment to protect the residents of Pickett Circle. She stated the department has been looking into tightening up buffer requirements to give a little more authority, at an administrative level.

Member Cowan asked if any properties are incorporated into the Sun Valley Phase III center will these properties automatically be under the requirements established for the center.

Mr. Burhans stated the buffer requirements come from the UDO. Regardless of the owner and whether or not it becomes part of Sun Valley Phase III it is the zoning that dictated the requirements of the buffer.

Member Broom stated she is understanding the answer to be no.

Chairman Whitehurst stated if the parcel at issue is rezoned the plans will have to be revised to include that parcel. The requirements that apply to the current Sun Valley project will also apply to the newly rezoned parcel. If someone independent of Sun Valley Commons purchases the remaining properties they will have to go through the same process of rezone and complying with buffer stipulations stated in the UDO.

Ms DeHart stated a rezone does not technically require a neighborhood meeting. They were held, in this case, because the neighborhood initiated them. Neighborhood meetings are mandatory with the Conditional zoning process.

Member Broom asked if the neighborhood had not become involved would there have been a wall barrier. Ms Faulkenbury commented... correct, there would have been scrubs and trees.

Member Higgins asked how thick the concrete wall will be. Mr. Ross stated he anticipates it will be 5 inches or greater, the details have not been worked out and the plans will be submitted to the Town once it has been finalized.

Mr. Ross stated they have complied all along with the ordinance with any type of buffering. The neighborhood spoke, the developer heard, there is a berm, there was a wall but even prior to that the developer would have met the requirements of the UDO.

Member Broom asked what the berm would have been if the neighborhood would not have become involved.

Ms DeHart replied there are three options in the UDO. It must be 25 feet in width, there can be a mix of small, medium and large trees with an average of 30 feet on center or a row of evergreen scrubs not less than 24 inches tall, to become at least 6 feet high in two years, or a solid brick, stone or stucco wall, vinyl fence 5 feet high.

Ms DeHart stated it was originally submitted, for review, as a berm and a wall. The developer requested a modification. Ms DeHart stated she is not sure the department received a design

with the change; the developer was not going to be able to do the wall. That is when the department encouraged the developer to meet with the neighborhood.

Michael Faulkenbury, resident of Pickett Circle, came before the Board. Mr. Faulkenbury stated on November 9<sup>th</sup>, 2010 he addressed Town Council regarding the need for safety in the Pickett Circle subdivision. Safety was not mentioned by the Town Council only the economic development of the Town and the tax revenue that would be gained with the development of Sun Valley Phase III. Traffic problems and the impact on adjacent properties was discussed at the October meetings of the Planning Board. Only a buffer of 25 to 50 feet with trees and vegetation was required. Mr. Faulkenbury stated the neighborhood fought for their own safety and security, no thanks to Indian Trail, except for Ms DeHart. Mr. Faulkenbury commented should not the neighborhood be informed of what will occupy the parcel in question, will it be a 24 hour fast food establishment or will the property become a grand entrance to the theatre complex, or will it be a bar with patrons leaving at 2 am yelling and screaming in the parking lot as in the case of the Bonfire Grill. Mr. Faulkenbury asked if the neighborhood will have to read about the future plans in the newspaper as they did in November 2010. He stated the last rezone had many mistakes that were made at the expense of the nearby residents and asked will history repeat itself again a second time. He stated if information is not given then wait for changes in the UDP to better protect the residents for future development. He asked for the members to take into consideration the residents of Pickett Circle. He stated if it were not for him and his neighbors there would have been no wall.

Public session closed.

Member Higgins asked if the adjacent property owners received notification. Mr. Burhans replied all of the Valley Estates residents were notified along with a copy of a list of uses permitted.

Member Higgins asked Mr. Faulkenbury when was he was first notified of the initial rezoning. Mr. Faulkenbury replied he noticed the sign beside the property. Only adjacent houses next to the property were notified, a total of about 6 houses.

Member Broom stated she is not comfortable with the numbers. There is too much retail in the area already.

Member Cowan stated it was known that the Town was going to change. It is all about finding the fine balance to get the needs for the residents. It is known this is a Village Center area and in the future they will be developed. She asked the good neighbor policy continue with the residents.

Member Broom stated the residents were not treated kindly and at what point does economic development become more important than the Town's residents.

Member Cowan replied when the unemployment number goes really low. There are not enough businesses for the residents to support their families.

Member Broom stated the Town should be thinking about 20 years from now. Chairman Whitehurst replied the Town is with the 20 year Comprehensive Plan.

Mr. Burhans commented on how this request relates to the Comprehensive Plan. The subject property is within a Village Center Overlay, an area that is envisioned to have a diverse mix of commercial uses. The neighbors of the adjoining areas should be protected, hence the 25 foot buffer and wall. The area has been planned with significant community input, that this should be a very important village center environment. Mr. Burhans stated, referring to Ms Broom's comment this not being consistent with the Comprehensive Plan as it relates to too much retail, that the applicant was asked to prepare a market study, prepared by experts to analyse the demands for goods and services in the community verses the number of businesses, and the study reported the area is significantly underserved. The report is in the staff report. It is specifically written into the UDO to allow applicant to do this when the numbers are different.

Member Broom asked who will pay for all the transportation problems that will be in that area. There is more impact than that.

Mr. Burhans stated a traffic study was prepared for the development and identified proposed mitigated improvements that the flow of traffic is done in an efficient and safe manner. The improvements are being coordinated with the Town, the developer and DOT to implement the improvements.

Member Broom asked who paid for the study. Mr. Burhans stated the Town paid for the study.

Member Brown stated there must be managed progress that satisfies everyone. He stated a 4 foot high berm with a 6 foot high wall and landscaping will give privacy and protection.

Member Cowan stated she is glad to have the retail instead of another neighborhood with 1000 homes because there is nowhere for the children to go to school.

Member Broom stated the residents are not with the development. Chairman Whitehurst replied, with the Comprehensive Plan there was a lot of public input that identified these areas and what the residents wanted.

Member Higgins stated she is of the understanding the members are to decide if this rezoning request meets the goals of the Comprehensive Plan. She stated, in her opinion, it does because the overlay zone and the Village Center calls for commercial development in those areas. She stated she is all for protecting the residents; twice she has had the same experience. Ms Higgins stated property notification is important. She recommended for future large development areas that the developer is required to meet with the adjacent property owners. Ms Higgins credited the Moser Group for the community outreach meetings. She stated she was impressed with the interaction between all the parties involved in the issue. Ms Higgins stated she believes the residents are not convinced the berm and the wall are not going to happen. Ms Faulkenbury stated she will believe it when she sees it. Ms Higgins stated she is confident the Town will assure the residents that this will happen and expressed her dissatisfaction that there was a mistake with this parcel being left out of the initial rezone. She stated she has been involved with Planning for 20 years and she does not believe she has seen a mistake like this before. She stated she supported the recommendation for approval in 2010 and this is not much different than what was known then. She will support this but would like to have something in writing that the berm and wall will be installed.

Mr. Burhans stated, with a conventional rezoning there can be no attached conditions. This is a rezoning from SF1 to GBC, there can be no conditions attached to it. The applicant's intent, if the property is rezoned, that the parcel will be combined with the larger Phase III tract. The revised development plan will reflect that addition and the buffer treatment around the residential frontages.

Member Miller asked the developer to assure the Faulkenbury's that if this is approved that the berm and the wall will be constructed. Ms Broom stated that would have to be in writing. Chairman Whitehurst stated that is a condition that cannot be put on the rezone. Member Broom stated the members could vote against it until the plans are modified.

Mr. Burhans stated the plans cannot be modified until the land is properly rezoned to a commercial category. Any type of assurance or guarantee cannot be attached to this proposed rezoning.

Member Cowan asked the Faulkenburys if they are representing themselves of the neighborhood. Mr. Faulkenbury stated they are represented in the neighborhood.

Mr. Ross stated, in referencing Mr. Millers comment, that on behalf of Sun Valley Commons LLC he assures all the conditions precedent to Sun Valley Commons Phase III will carry over to the parcel that, if rezoned, will be incorporated into lot #14.

Member Cowan motioned to recommend approval to Town Council of ZM 2011-003.

Member Higgins seconded the motion.

All members, with the exception of Member Broom, voted in favor.

**ZT2011-011 Text Amendment Chapters 530 and 1620:** A request to amend Chapter 530 to enable ancillary service type uses to be located within Business Parks in the LI District and 1620, General Definitions, to comply with associated terminology. Applicant: Town of Indian Trail; Location: Light Industrial Zoning Districts.

Senior Planner Rox Burhans presented the request stating this is a request to reexamine the Light Industrial District sections 530.010 District Description, 530.020 Use Table, 530.040 Applicable Regulations, and 1620 General Definitions of the UDO. The intent is to enable Ancillary Service Uses within business parks in the Light Industrial district. An Ancillary Service Use provides services to business park employees or to the businesses themselves such as:

- Mailing, Copying, and Blue Print Services
- Employment Agency
- Secretarial Services
- Telephone Answering Service
- Dry Cleaning, Shoe and Apparel Repair
- Day Care Center
- Bakery
- Health Clubs/Fitness
- Delicatessen
- Restaurant (no drive thru)

Mr. Burhans stated that nearly all would be permitted by right with the one exception being Day Care Centers. This Use would be subject to a Special Use Permit (SUP) approval by Board of Adjustment to ensure a more comprehensive review due to sensitive nature of use. This would include an opportunity for public comment.

Mr. Burhans stated staff is recommending applicable standards regarding the size of all Ancillary Service Uses to be limited to 20% of total built square footage in park. An example is Industrial Ventures. This park has approx. 1m sq. ft. of building space. Ancillary service uses would be limited to 200k sq. ft. The intent is to maintain industrial/major employment character of business parks.

Mr. Burhans stated, regarding Day Care, staff is recommending four supplementary standards:

- Separate industrial and day care vehicular access, parking, and circulation areas,
- Provide safe pedestrian circulation route between day care parking area and building,
- May not locate adjacent to an existing industrial use that would create light, noise, odor, traffic, or other conflicts, and
- May not locate within multi-tenant building.

Mr. Burhans stated a definition for the term Business Park will be added to Section 1620 of the UDO. It will read as follows:

- *A defined area of land with multiple employment-generating establishments in fields such as manufacturing, processing and assembly, warehousing, distribution and service enterprises, office, and ancillary service establishments. Business parks are typically defined by common or shared development features that may include, but are not limited to architectural design, landscaping, signage, roadway access, stormwater management, and other features. A single, standalone building located outside a park environment would not be considered a business park.*

Mr. Burhans stated staff is of the opinion the Findings of Fact can be made and read them into the record.

1. The proposed UDO amendment is consistent with the following Comprehensive Plan goals:

**Goal 1.32 Land Use: A quality mix of different land uses while avoiding land use conflicts with neighboring properties and surrounding municipalities.**

The proposed text amendment will encourage a mix of complimentary land uses within Indian Trail's Light Industrial Zoning District.

**Goal 1.3.2 Land Use: A more balanced tax base by promoting the development of office parks, businesses, retail centers, and industrial parks.**

The proposed text amendment will encourage a more balanced tax base by expanding the permitted land uses within the Light Industrial Zoning District.

2. This UDO amendment is in the best interest of the public because it promotes the goals of the adopted Indian Trail Comprehensive Plan and strengthens Indian Trail's business parks by permitting a mutually-supportive mix of land uses.

Mr. Burhans stated staff is recommending approval of the request.

Member Broom asked if car sales are allowed in Light Industrial business parks. Ms DeHart replied general sales are not allowed but there is the ability to sell boats, equipment and other type of sales.

Member Higgins recommended the term daycare be changed to childcare. Childcare is licensed in North Carolina, not daycare. Mr. Burhans replied staff will look into that.

Public session was closed.

Member Cowan motioned to recommend approval to Town Council. Ms Cowan stated a request for staff to modify language regarding day care to reflect the State definition.

Member Sandy seconded the motion.

All members voted in favor.

**Other Business-None**

**Planning Report-None**

**Adjournment**

\_\_\_\_\_ Chairman \_\_\_\_\_ Date

\_\_\_\_\_ Secretary