



PLANNING AND NEIGHBORHOOD SERVICES DEPARTMENT

PLANNING BOARD MINUTES

August 21, 2012

6:30 P.M.

The following members of the governing body were present:

Patricia Cowan, Cathi Higgins, Larry Miller, Sidney Sandy, Kelly D'Onofrio, Jan Brown, Alan Rosenberg and Cheryl Mimy

Staff Members: Shelley DeHart, Rox Burhans, Susan Didier

Call to Order: Chair Patricia Cowan called the meeting to order.

Roll Call Robert Rollins and Steve Long were absent.

Swearing in Ceremony: Notary Susan Didier swore Alan Rosenberg in as an alternate member of the Planning Board.

Public Items

ZT 2012 -004 Public Notice Amendment: request to amend Chapter 310 of the Unified Development Ordinance modifying public notification requirements. Applicant: Town of Indian Trail.

Planning Director Shelley DeHart presented the request to amend Chapter 310. The intent of this request is to enhance the public noticing requirements and to encourage public engagement in land use processes. Although this was initiated by staff this comes out of voiced concern from the public and Planning Board direction at a workshop held this past June. Public Hearing noticing is established in North Carolina Statutes 160A -364 & 384.

Resident concerns were the notice can be hard for some to understand. The public felt the notification should reach a larger number of residents if the issue is located within a subdivision. Concern was indicated in regards to which newspaper the notice be in and the Town should have a regulation that the developer or property owner be required to meet with adjacent neighborhoods in a community meeting quorum. Ms DeHart stated presently the Town meets all the current State Requirements for Public Notifications. She stated the Town does have the authority to address some of these issues administratively. The notice has been revised to be more understandable and informative. More detail has been provided regarding the issue with a definition of what the action is and the process. Being the Charlotte Observer has more readership the Town uses this paper for publishing the notices in the Wednesday Union County

Section. The Town website is also a vehicle for information. A change in the distance for notification does require an amendment to the Ordinance. At the workshop in June information was presented regarding the requirements for other jurisdictions in the area.

Rezone Notification Requirements					
Jurisdiction	Signs	HOA	Newspaper	Mail Out Notice	Additional Requirements
Indian Trail	Yes	No	Yes	Adjacent Properties	
Monroe	Yes	No	Yes	150 ft	Notification extends at discretion.
Waxhaw	Yes	No	Yes	300 ft.	Ordinance only requires adjacent.
City of Charlotte	Yes	Yes-those that are registered with the City	Yes	300 ft. With a registered HOA the notification is extended to 1 mile	Courtesy mailing 3 weeks after application. This notification included the date of an Open House Forum with staff. Legal by State req. ETJ.
Stallings	Yes	No	Yes	500 ft	
Mint Hill	Yes	No	Yes	Adjacent Properties	
Cary	Yes	No	Yes	400 ft	Ordinance only requires 100 ft Neighborhood mtg
City of Greensboro	Yes	No	Yes	600 ft	
Boone	Yes		Yes		
Rock Hill	Yes	Yes	Yes	300 ft	
Pineville	Yes	No	Yes	Adjacent Properties	
Weddington	Yes	No	Yes	300 ft	
Huntersville	Yes	No	Yes	250 ft	
Davidson	Yes	No	Yes	Adjacent and adjoining +100 ft	

Based on this information the Planning Board requested Staff to bring back an amendment that would extend the mailout notice to within 300 to 500 feet, expand notification area up to 1,000-ft if extraordinary impacts on nearby properties, notify known Homeowners Associations and allow Staff or the Board to require a neighborhood meeting if extraordinary impacts on nearby properties could possibly occur.

Ms DeHart stated there is concern regarding the cost to the applicant in expanding the mailout notification. The Town Attorney, in reviewing the draft ordinance, does not support the discretion of expanding the notification area, for legal purposes there should be one standard. It starts to become very complication when discretion is allowed. This could cause issue in the standing of most affected.

Ms DeHart stated the issue of required community meetings was originally proposed to be across the board in all applications. Input and information obtained from a community meeting cannot be included in any case that would be heard by the Board of Adjustment, being it is a Quasi-Judicial Board. Only a rezone application could require a community meeting since it is not heard by the Board of Adjustment. Ms DeHart stated the Town Attorney did not support a community meeting for even a rezone since any information stated at such a meeting could possibly be change due to the fact a rezone cannot be conditioned, the Board approves a rezone

on a list of uses allowed and the property could be sold and sub sequentially uses could change prior to development.

Ms DeHart stated Staff attempts to direct applicants to a Conditional rezone when there are concerns regarding the use. It is not always successful. Conditional zonings require community meetings and conditions can be placed.

Ms DeHart stated the Town Attorney does support the amendment that is addresses in Section C. This allows notification to be sent not only to the determined distance but to the Homeowners Associated, it is a standard in State law being a HOA does have standing in an issue it is connected with. Ms DeHart stated there is a correction to Section 310.030C-the owner of the subject parcel of land,*(and) not or established Home Owner Associations* ~~abutting subject parcel~~ *that lie within 400 feet as measured from the exterior boundaries of the subject property.* Ms DeHart proposed this minor change. Staff recommends the removal of the language, per the recommendation of the Town Attorney, found in 310.030 H and asked for the Board to establish the minimum distance for notification, keeping the HOA notification requirement. She stated Staff is of the opinion the Findings can be made being the proposed amendment is consistent with 1.3.2 Land Use of the Comprehensive Plan, encouraging public participation and will enhance public noticing and information dissemination. Ms DeHart recommended a transmission of approval for the proposed UDO amendment to Council with modifications.

Member Miller asked what the difference was in the newspaper subscription. Ms DeHart replied she did not have the numbers but it was significant maybe 2/3rds more for the Charlotte Observer. Member Miller asked about the cost of mailings. Ms DeHart replied the cost is \$2.50 per notification. Mr. Miller stated it is his understanding any information at a community meeting goes to the Planning Department, the issue worked out and then it would come to the Board. Member Cowan stated she agrees with the attorney and it cannot be required for all rezoning, it is too strict to require. Member Sandy stated developers have been encouraged to have a community meeting in order to answer any questions and thus prevent a standing room only crowd at a Board meeting.

Member Higgins stated she agrees with Mr. Miller in that any rezone should have a community meeting. She stated she still does not understand why the Town Attorney does not support this. She asked if it is possible to require a community meeting if the rezone is changing classifications from residential to commercial. Ms DeHart stated the Board can request the item be continued directing staff to consult the Town Attorney and craft language that would address specific situations.

Member Sandy asked what distance was the median with the other jurisdictions. Ms DeHart replied 300. Mr. Sandy stated he does not want to put an undo expense on the applicant.

Member Brown stated the 300 feet would be more economical and the community meetings make it more transparent.

Ms DeHart stated the way it is drafted is notification would go to established Homeowners Associations if they fall within the notification area. She stated the attorney informed her, based on State law, that the Homeowners Association is considered to have standing if one of their

property owners is within the notification area. If they want to appeal a decision they are considered to have standing in the issue.

Member Cowan asked if the Homeowners Association is notified can this be in lieu of mailouts under that law. Ms DeHart replied no.

Member Higgins had concern with the radius. Ms DeHart stated the distance is measured from the external boundaries of the property, not the center. That is why it can be an odd shape.

Member D'Onofrio asked if any other jurisdictions require community meetings. Ms DeHart replied no except for Conditional Zonings.

Member Higgins stated the Wednesday Union County subscription numbers for the Charlotte Observer is 51,660. The Sunday numbers are 2500. The Enquirer Journal subscription number is 390. This is a considerable difference.

Public session was opened and closed with no one signed up to speak.

Member Brown stated he would like to hear the language from the attorney related to a community meeting requirement on a rezone if changing from one land use category to another.

Member Miller asked for the Board to come to an agreement on the distance. The consensus of the Board was 400 feet. Member Higgins suggested 500 if the rezone is residential to commercial.

Mr. Burhans stated there is no perfect number. If there are other houses in the neighborhood that are not included in the radius the Homeowners Association, being notified now, will have the information to pass on to any other or all other homes in the neighborhood.

Ms DeHart stated she will contact the Town Attorney to make sure there is nothing being selectively done in regards to distance for different issues.

Chair Cowan asked Ms DeHart to contact members, via email, with the answer.

Member Miller stated the problems could arise if there are different distance requirements. He stated the distance should be standard across the board and not show favoritism.

Member Higgins motioned to continue this item having Ms DeHart bring back more information from the Town Attorney with a consensus of 400 ft .

Member Brown seconded the motion

All members voted unanimously

ZT2012-005 Contractors Office Use: request to amend Chapter 520 of the Unified Development Ordinance regarding the ability for Contractors offices to have outdoor operations in the Downtown Overlay District. (O-DD) Applicant: Town of Indian Trail.

Senior Planner Rox Burhans presented the request. This would be subject to the applicant receiving approval of an SUP by the Board of Adjustment. To effect this change, because contractor's offices are already an approved use within the downtown overlay, all that needs to be done is to add an S in the use charts indicating outdoor operations require a Special Use Permit. An example of an outdoor operation is a utility contractor that needs a location to store pipe for sewer and water. A heating and air conditioner contractor may have a fleet of vans but does not let the employees take them home at night. A site contractor may have excavation equipment or a general contractor that may need to store some lumber. The reason for this amendment is the possibility of the Downtown Overlay District expanding in time and taking in more properties. The buildings in the downtown are more service in nature and suited for a contractor's office that may have a need for some outdoor storage.

Mr. Burhans stated there a possibly some properties along Unionville Indian Trail Rd that may be coming to the Planning Board for rezoning and there is a value in this amendment for the future changes that may occur.

Mr. Burhans stated staff is of the opinion the Findings can be made and the proposed UDO amendment is consistent with the following goals:

- 1.3.2 of the Comprehensive Plan – *Land Use*; the proposed UDO ordinance amendment will promote an expanded tax base by providing greater opportunities for Building Contracting/Construction Office uses within downtown Indian Trail in a manner that avoids potential land use conflicts with neighboring properties.
- 1.3.4 of the Comprehensive Plan-*Downtown Revitalization*; the proposed UDO ordinance amendment will help increase the viability of downtown properties by providing an opportunity for Building Contracting/Construction Office uses to have outdoor operations at appropriate locations.

This UDO ordinance amendment is in the best interest of the public because it creates regulations establishing the appropriate location and procedural review for outdoor operations associated with Building Contracting/Construction Office uses within the Downtown Overlay District.

Member D'Onofrio expressed concern with how this will fit in with the direction of the downtown overlay being for parks and that Carolina Courts is coming in.

Mr. Burhans stated it is important to look at a downtown community from a broad perspective from the stand point that older downtowns like Indian Trail once served many uses and businesses. There are different types of buildings. Staff is of the opinion this ordinance amendment be appropriate, in certain instances, where a building is well suited for a contractors offices, which are already allowed, and have the service yard capacity to have an outdoor operation. Mr. Burhans stated this would make it allowed in the Downtown Overlay base districts of General Business and Regional Business, both of which are not technically in the downtown district as of this date. There are only three properties that this ordinance would technically apply to as of today. They are on the northeast end of Indian Trail Rd. Mr. Burhans stated staff is trying to look forward to the future in where the downtown boundaries may grow or other properties might take use of this, they are on the fringe of the downtown they are not on the main thoroughfares.

Member D'Onofrio stated the direction of the downtown seems to be going to an entertainment type.

Mr. Burhans stated Indian Trail Hardware has outdoor storage and it a vital part of downtown. This amendment would require a Special Use Permit approval by the Board of Adjustment.

Member Brown asked about the screening for such a business. Mr. Burhans stated there are landscaping and screening requirements in the UDO.

Ms DeHart stated the required Special Use process looks at a request on a case by case basis. This process requires a public hearing and notification to adjacent property owners. The Board of Adjustment has the authority to put conditions on the request to ensure it will not have an impact. The petition can also be disapproved by the BOA.

Public session was opened and closed with no one signed up to speak.

Member Miller motioned to recommend to Town Council approval.

Member Sandy seconded the motion.

All members voted in favor.

ZT2012-006 Wholesale Vehicle Sales Use: request to amend Chapters 520 and 530 of the Unified Development Ordinance regarding location of heavy and light equipment sales/rental uses (wholesale). Applicant: Town of Indian Trail.

Mr. Burhans presented the request to amend UDO 520 to permit wholesale auto sales in all commercial districts. There is also a secondary amendment, as part of this; to amend UDO 530 as a housekeeping measure to ensure that heavy equipment sales uses continue to be subject to Chapter 7150 use standards. Mr. Burhans stated the wholesale auto sales, heavy or light are strictly an office use only, as defined in UDO 1610. There are no onsite sales, storage or repair and prepping allowed. It is strictly an office for the business. This would entail adding the letter P to all the commercial districts use table. Regarding the housekeeping Mr. Burhans stated that under the commercial categories there is a note instructing you to **(see Chapter 7150)**. This Chapter contains requirements related to the retail category of auto sales or heavy equipment sales and it addresses site acreage and display area. In the industrial district that same citation was not there for the heavy equipment and rentals. Mr. Burhans stated they are incorporating this correction in the modification.

Mr. Burhans stated staff is of the opinion the Findings can be made.

The proposed UDO amendment is consistent with the following goal:

- 1.3.3 of the Comprehensive Plan – *Land Use*; the proposed UDO ordinance amendments will help promote a greater mix of land uses by enabling Wholesale Heavy and Light Equipment Sales/Rental uses to locate in all business and commercial zoning districts. The proposed amendments will also expand the tax base by increasing the number of potential locations these uses may locate within Indian Trail.

This UDO ordinance amendment is in the best interest of the public because it establishes regulations ensuring Wholesale Heavy and Light Equipment Sales/Rental uses are permitted in the appropriate Indian Trail zoning districts. The amendments also correct an error within the UDO that will ensure the vehicle sales lot standards apply in the industrial zoning districts.

Member Miller stated there is a business on Sardis Church Rd in Sardis Industrial Park that was allowed to have show vehicles or sale vehicles. Ms Cowan stated it was internet car sales. Mr. Miller stated he does not believe they are doing what they said were suppose to be doing. He stated vehicles are out front of the building all the time and they are suppose to store them inside the building. How does this relate to what is being proposed.

Mr. Burhans replied he is not quite familiar with the business. This request is strictly for office, there would be no display of cars allowed. This is for administrative functions only. The scenario Mr. Miller is speaking of would not be permitted as a wholesale category.

Ms DeHart stated the business Mr. Miller is speaking of is continuously being checked on. They went in prior to many changes in sections of the UDO. They are not in compliance and if they want to continue business there they must go before the Board of Adjustment for a Special Use Permit.

Public session opened and closed with no one signed up to speak.

Member Sandy motioned to recommend approval to Town Council.

Member Mimy seconded the motion.

All members voted in favor.

Other Business-None

Planning Report-None

Adjournment

**Town of Indian Trail
Planning Board**

_____ **Chair** _____ **Date**

_____ **Secretary**