

**TOWN OF WEDDINGTON
REGULAR PLANNING BOARD MEETING
MONDAY, MARCH 22, 2010 - 7:00 P.M.
MINUTES**

The Planning Board of the Town of Weddington, North Carolina, met in a Regular Session in the Town Hall Council Chambers, 1924 Weddington Road, Weddington, NC 28104 on March 22, 2010 at 7:00 p.m., with Chairman Dorine Sharp presiding.

Present: Chairman Dorine Sharp, Vice-Chairman Rob Dow, Jack Steele, Scott Buzzard, Beth Masurat, Jeff Perryman, Janice Propst and Town Planner Jordan Cook and Town Administrator/Clerk Amy McCollum

Absent: None

Visitors: Scott Swimmer and Harry Swimmer

Item No. 1. Open the Meeting. Chairman Dorine Sharp called the March 22, 2010 Regular Planning Board Meeting to order at 7:07 p.m.

Item No. 2. Determination of Quorum/Additions or Deletions to the Agenda. There was a quorum. Mr. Jeff Perryman moved that the agenda be amended to add the following items:

- Legislative Update by Attorney Bill Brown
- Review of Board of Adjustment Ordinance Revisions – Attorney Bill Brown
- LARTP Update

Ms. Beth Masurat seconded the motion, with votes recorded as follows:

AYES: Perryman, Masurat, Propst, Steele, Buzzard and Vice-Chairman Dow
NAYS: None

Item No. 3. Approval of Minutes.

A. February 22, 2010 Regular Planning Board Meeting. Mr. Jack Steele moved to approve the February 22, 2010 Regular Planning Board Meeting minutes with the correction that was noted. Mr. Scott Buzzard seconded the motion, with votes recorded as follows:

AYES: Perryman, Masurat, Propst, Steele, Buzzard and Vice-Chairman Dow
NAYS: None

Item No. 4. New Business.

A. Legislative Update by Attorney Bill Brown. The Planning Board received a packet of materials regarding Senate Bill 44. Attorney Brown advised that he had attended a seminar on this topic recently at the School of Government. He stated, “This looks like a fairly simple statute intended to codify in the State Statutes the judicial standards and process in reviewing quasi-judicial decisions. Both Bill Duston with Centralina Council of Governments and Dave Owens with the School of Government think that this legislation has an effect on the way you the decision makers conduct your process. Substantial, competent and material evidence in the record is required for each key factual determination. This statute is saying that when the court reviews the record they are going to be combing through your record looking for substantial, competent and material evidence for each of your findings. The appealing party still has the burden of both bringing forth evidence and the burden of proof. The court is going to be looking at the

record much more carefully now. If you engage in the common practice of reciting the evidence at the end of the hearing you need to give that more attention and be more clear and detailed about the pieces of evidence that are relevant to that finding. It is going to tighten the rules about opinion evidence as opposed to fact evidence. It has been pretty widely regarded of an ability of an individual property owner to opine about what they think the value of their property is and how that has been affected. This statute is now tightening that rule up. For purposes of relying on that evidence and treating that evidence as competent, this statute is not going to allow that any more. If you are going to have an opinion on value of a residence or the impact on value, you are going to have to go through the process of having a study done by a competent appraiser or broker, or realtor who explains his or her education and background, their credentials to be qualified as an expert and looking at comps in the area.”

The following was part of the paperwork discussing Senate Bill 44:

2009 Legislation: S.44 (S.L. 2009-421)

- Codifies standards and process for judicial review of quasi-judicial land use decisions
- Effective for decisions made on or after January 1, 2010
- Definition by courts in N.C. – Includes land use decisions that involve fact finding and application of standards that involve judgment and discretion
- Typical decisions covered – special and conditional use permits, variances, appeals and interpretations
- Does not apply to rezoning even if single lot.
- Adequate record must be before the board at the time of decision
- Record includes application, supporting documents and exhibits, testimony at hearing (minutes or transcript)
- Substantial, competent, and material evidence in the record is required for each key factual determination
- Opinions only from experts, especially on property value and traffic impacts/public safety
- Distinguish factual and opinion testimony
- Expert testimony establish expertise and foundation for opinion
- Includes limits on “competent” evidence for making determinations on: impact of proposal on property values, impact of traffic on public safety, other matters that only expert testimony would be admissible under rules of evidence

B. Review of Board of Adjustment Ordinance Revisions – Attorney Bill Brown. Attorney Brown also reviewed with the Planning Board proposed text changes that he found in his review of Article VIII of the Code of Ordinances dealing with the Board of Adjustment.

Item No. 5. Continuation of Meeting. Vice-Chairman Rob Dow moved to continue the March 22, 2010 Regular Planning Board Meeting until after the completion of the Board of Adjustment Meeting. Ms. Masurat seconded the motion, with votes recorded as follows:

AYES: Perryman, Masurat, Propst, Steele, Buzzard and Vice-Chairman Dow
NAYS: None

Item No. 6. Reopen the Meeting. Chairman Sharp reopened the Planning Board Meeting at 8:10 p.m.

Item No. 7. New Business.

A. Public Hearing – Review and Consideration of Temporary Use Permit Application for DrumSTRONG event to be held May 15-16, 2010 located at 455 Providence Road, Weddington, NC 28173. Chairman Sharp opened the public hearing to review and consider the Temporary Use Permit

Application for drumSTRONG. Town Administrator/Clerk Amy McCollum swore in the following individuals wishing to give testimony: Scott Swimmer, Harry Swimmer and Jordan Cook. The Planning Board received the following memo from Town Planner Jordan Cook:

Mr. Scott Swimmer does submit an application for a Temporary Use Permit for the 24 hour musical charity event titled drumSTRONG. The event is to be held at Misty Meadows Farm located at 455 Providence Road. The property is owned by Harry and Marilyn Swimmer.

Application Information

Date of Application: 2/9/10

Applicant's Name: Scott Swimmer

Property Owner's Name: Misty Meadows Farm (Harry and Marilyn Swimmer)

Parcel ID#: 06153314, 06153315, 06153026A and 06153026B

Property Location: 455 Providence Rd, Weddington

Existing Zoning: R-CD

Existing Use: Farm

Proposed Temporary Use: drumSTRONG 24 hour Musical Charity Event

Property Size: 81 Acres

Event hours: Starting Saturday, May 15 at 12:00 noon through Sunday, May 16, 2010 at 5 pm

Additional information:

- Projected attendance is 1,500 attendees, services available for as many as 3,000.
- A copy of the Certificate of Insurance Liability has been provided to planning staff.
- The Mass Gathering Permit application has been sent to Union County Environmental Health and will be issued by the County on the day of the event. Staff at Union County Environmental Health has stated that they are reviewing the application with other county agencies.
- 24 hour security and traffic control will be provided by Union County Sheriff's Department.
- Fire, EMS, ambulance and medical personnel will be on site for the duration of the event.
- Portable bathroom facilities will be provided on site. All sewage will be self-contained and removed by professionals. Trash receptacles and a dumpster will be on site.
- Temporary electrical services will be provided by Union Power.
- On site parking will be available for approximately 800 vehicles. Additional parking will be available at Meadows at Weddington, Hunter Farms and Weddington Baptist Church (approximately 700 additional spaces) with the property owner's written approval.
- Applicant will be allowed two temporary off-premises special event signs in accordance with *Section 58-151 of the Town of Weddington Zoning Ordinance*.
- The organizers have stated that all sound and lighting from the event will abide by all Town of Weddington Ordinances. Amplified sound will be turned off by 11:59 pm on Saturday, May 15 and not begin again until 10:00 am on Sunday, May 16.
- The applicant received approval for a TUP in 2007, 2008 and 2009 for the same event.

Staff has reviewed the application and submitted documents and finds the Temporary Use Permit Application to be in compliance with the *Town of Weddington's Zoning Ordinance* with the following conditions:

1. Receive Union County Mass Gathering Permit;
2. Receive Certification from Union County Health Department;
3. Need written permission from property owners if using off-site parking;

The Planning Board received a copy of the following which is attached to the minutes as Exhibit A.

- Temporary Use Permit Application
- Temporary Use Permit Application Checklist
- Narrative
- Map of the Area
- Drawing Showing Layout of Event

Town Planner Cook read the conditions that were placed on the event last year from the Planning Board. He stated, “I have received a letter from Meadows at Weddington allowing the applicant to use their property for off site parking. The Mass Gathering Permit has been submitted and will be issued to the applicant the day of the event. The applicant has also submitted their information to the Health Department and it is currently being reviewed. We did not receive any complaints from the event last year.”

Chairman Sharp advised Mr. Swimmer that they are now allowed two off premise signs that are not to exceed 20 square feet. These signs can advertise and give directions to the event.

Chairman Sharp asked Mr. Scott Swimmer the following Findings of Fact:

The proposed temporary use will not materially endanger the public health, welfare and safety. Mr. Swimmer: It will not. The traffic will be controlled by the Union County Sheriff’s Department. This is a family-friendly event so very little activity that warrants any public safety issues should occur. Portable bathrooms are provided and trash receptacles are on site. The Wesley Chapel VFD will be present. CMC-Union and CMC-Charlotte will have staff at our first aid tent as well.

The Planning Board voted unanimously in the affirmative that the proposed temporary use will not materially endanger the public health, welfare and safety.

The proposed temporary use will not have a substantial negative effect on adjoining properties. Mr. Swimmer: No, it will not. Noise has been controlled by redirecting speakers. Parking and traffic is being handled by the Union County Sheriff’s Office.

The Planning Board voted unanimously in the affirmative that the proposed temporary use will not have a substantial negative effect on adjoining properties.

The proposed temporary use is in harmony with the general purpose and intent of the ordinance and preserves its spirit. Mr. Swimmer: The Town Planner has testified that the use meets the requirements of the Weddington Town Ordinances.

The Planning Board voted unanimously in the affirmative that the proposed temporary is in harmony with the general purpose and intent of the ordinance and preserves its spirit.

The proposed temporary use is held no more than three times (3) per year at any particular location. Mr. Swimmer: The event is held only one time a year.

The Planning Board voted unanimously in the affirmative that the temporary use is held no more than three times (3) per year at any particular location.

Vice-Chairman Dow moved to approve the Temporary Use Permit Application for drumSTRONG based on the testimony given and contingent upon the following conditions:

- Receive Union County Mass Gathering Permit
- Receive Certification from Union County Health Department
- Need written permission from property owners if using off-site parking
- Saturday - Have two police officers from 3:00 p.m. to 8:00 p.m.
- Sunday – have two police officers from 12:00 p.m. until officers no longer see a need for it
- As part of the application a temporary sign permit will be issued for a sign or banner not greater than 20 square feet to be located on the property
- Amplification will be turned down around 11:00 p.m. Saturday until 1:00 p.m. on Sunday

Ms. Masurat seconded the motion, with votes recorded as follows:

AYES: Perryman, Masurat, Propst, Steele, Buzzard and Vice-Chairman Dow
 NAYS: None

Mr. Harry Swimmer discussed another matter with the Planning Board. He advised them that an accident had occurred recently in front of his farm. Mr. Swimmer thought that Gardens on Providence was supposed to have a turning lane in front but it was never built. Mr. Swimmer asked that the Town look into this matter. Chairman Sharp advised that Town Planner Cook will review the plans for Gardens on Providence and research this matter.

B. Review and Consideration of Conditional Use Permit Application for the Addition of Eight (8) Tennis Courts at Weddington Swim & Racquet Club located at 4315 Weddington-Matthews Road, Weddington, NC 28104. The Planning Board received the following memo from Town Planner Cook:

Country Haven Swim and Racquet Club requests a Conditional Use Permit (CUP) for an additional three (3) tennis courts at Weddington Swim and Racquet Club located at 4315 Weddington-Matthews Road.

Application Information

Date of Application: February 24, 2010
 Applicant Name: GeoScience Group-Kevin Caldwell
 Owner Name: Country Haven Swim and Racquet Club
 Parcel ID#: 06-117-047
 Property Location: 4315 Weddington-Matthews Road, Weddington
 Existing Zoning: R-40, no zoning change required
 Existing Use: Weddington Swim and Racquet Club (13 tennis courts, swimming pool and 4,200 square foot building)
 Proposed Use: Same-Weddington Swim and Racquet Club (16 tennis courts, swimming pool and 4,200 square foot building)
 Parcel Size: 13.75 Acres

General Information

- A Conditional Use Permit (CUP) is required for “Country Clubs, fraternal, social and other civic organizations” in the R-40 zoning district. A Country Club is defined as “land and buildings containing recreational facilities, clubhouses and usual accessory uses, open only to members and their guests for a membership fee” in the *Town of Weddington Zoning Ordinance*. The proposed tennis courts are within the country club.
- The applicant is proposing to add three (3) lighted tennis courts and modify an existing five (5) tennis courts. Modification of the five existing tennis courts is to accommodate the addition of the

three new courts. The three new tennis courts will be located directly beside the existing courts on the site (see Site Plan and Demolition Plan for actual layout). These courts will be accessed by a new 5' sidewalk and surrounded by a 12 foot chain link fence.

- Tennis Courts are interpreted as “Accessory Uses”. Accessory uses are defined as “minor uses or structures which are necessary to the operation or enjoyment of a permitted principal use, and are appropriate, incidental and subordinate to any such uses” in the *Town of Weddington Zoning Ordinance*.

Minimum Standards for Tennis Courts (Accessory Uses) in R-40 Zoning District:

Minimum Front Yard Setback- NA-accessory uses are not permitted in the front yard

Minimum Side Yard Setbacks- 15 feet—proposed side setbacks are approximately a minimum of 30 feet

Minimum Rear Yard Setback- 15 feet—proposed rear setback approximately a minimum of 145 feet

- The proposed tennis courts comply with all minimum front, side and rear yard setbacks for an accessory structure in the R-40 zoning district as set forth in the *Town of Weddington Zoning Ordinance*.

Additional Information

- Screening and landscaping will be provided using existing, mature vegetation currently on site. The new tennis courts will be located no closer to the property lines than existing courts currently are, therefore no additional landscaping is necessary. Only six (6) trees internal to the site will be removed during construction. A natural/existing tree buffer (35 to 150 feet wide) will remain between the fenced tennis courts and adjacent properties. All proposed landscaping complies with the *Town of Weddington Zoning Ordinance*.
- The chain link fence surrounding the tennis courts will match the existing chain link fencing on site. The proposed fencing will be 12 feet high. *Town of Weddington Zoning Ordinance* specifically allows for fences to be greater than 8' high when surrounding a tennis court.
- The Lighting Plan is currently being reviewed by the Town Lighting Engineer.
- The applicant is required 123 parking spaces per the *Town of Weddington Zoning Ordinance* and has provided 125 parking spaces with an additional 4 handicap parking spaces; therefore complying with *Section 58-175* of the *Town of Weddington Zoning Ordinance*.
- No additional noise will be associated with the additional tennis courts. No new signage is proposed.

Conditions of Approval

1. Lighting Plan must be approved in accordance to Town of Weddington Lighting Ordinance;
2. USI Engineering comments to be addressed prior to construction;

Staff has reviewed the application and submitted documents and finds the Conditional Use Permit Application is in compliance the *Town of Weddington Zoning Ordinance* with the aforementioned Conditions of Approval.

The Planning Board also received the following:

- Conditional Use Permit Application

- Maps of the Area
- Site Plan
- Demolition Plan
- Grading, Drainage and Erosion Control Plan
- Site Details

Vice-Chairman Dow moved to send a favorable recommendation to the Town Council for the Conditional Use Permit Application for the Addition of Eight (8) Tennis Courts at Weddington Swim & Racquet Club contingent upon the following conditions:

- Lighting Plan must be approved in accordance to Town of Weddington Lighting Ordinance
- USI Engineering comments to be addressed prior to construction
- Previous conditions placed on the tennis courts at this location remain in effect

Mr. Perryman seconded the motion, with votes recorded as follows:

AYES: Perryman, Masurat, Propst, Steele, Buzzard and Vice-Chairman Dow
 NAYS: None

C. Review and Consideration of Proposed Text Amendments to B-1 and B-2 Zoning Districts to Make Them a Conditional Zoning District. The Planning Board received the following memo from Town Planner Cook and a copy of the proposed text change:

At the February 8th Town Council meeting the Town Council instructed staff to begin the process of rezoning all B-1 and B-2 zoned properties in Weddington. The Town Council asked that these properties be rezoned to MX (Mixed Use). The ultimate goal of these rezonings would be to allow any revisions to the already approved site plan to be legislative rather than quasi-judicial. There are currently 16.19 acres zoned B-1 and 7.87 acres zoned B-2, totaling 24.06 acres.

The proposed text amendments (attached) would essentially change B-1 and B-2 to B-1(CD) and B-2(CD), respectively. Changing B-1 and B-2 to Conditional Districts would then allow all modifications to existing uses to be legislative rather than quasi-judicial. Therefore accomplishing exactly what the Town Council requested.

Rezoning all B-1 and B-2 property to MX (as originally intended) would have made all existing uses immediately non-compliant.

In order to accomplish this, four (4) Sections of the *Zoning Ordinance* needed to be amended:

1. Amend *Section 58-5* to replace B-1 and B-2 with B-1(CD) and B-2(CD).
2. Amend *Section 58-56* (B-1) and *Section 58-57* (B-2) to reflect language in MX zoning district. All uses are now “permitted uses” because all projects have to go through the Conditional Zoning process (*Section 58-271*). CUP’s no longer exist in these Sections.
3. Amend *Section 58-271* to include B-1(CD) and B-2(CD) in the conditional zoning procedures and guidelines.

The following items were discussed:

- Whether the properties would have to be rezoned even with the proposed text change.
- Town Planner Cook advised that this stems back to the connector road being considered behind Town Hall and the Town Council's desire to be a part of the design and approval process and they cannot do that if it is a conditional use permit.
- This text change would also allow the Town Council to be involved with future plans for the area and for the process to be legislative instead of quasi-judicial which limits their involvement until it comes to a public hearing.
- The Council could still discuss issues relative to this property if it remains quasi-judicial but the vote on the matter would go to the Board of Adjustment.
- Town Planner Cook advised that B-1 and B-2 would no longer exist. He stated, "We do not want in five years someone to come in and be able to apply for a B-1 (CD) and B-2 (CD). MX standards are much stricter. Attorney Fox's and my suggestion is that at the end of B-1 (CD) and B-2 (CD) to say that any rezoning occurring after January 1, 2011 that is zoned B-1 (CD) or B-2 (CD) shall comply with MX design standards."
- Chairman Sharp discussed a statement that was found in the R-E zoning that states that the Town has no intention of creating any other of these districts elsewhere in the Town. She asked that a statement comparable to that be placed in the B-1 and B-2 zoning.
- The Planning Board asked that statements be added to the text that B-1 and B-2 would not be available for future use and some type of statement that if over 50% of the existing use is destroyed or changed making new construction come under MX standards.

Town Planner Cook will work with the Town Attorney on concerns raised by the Planning Board. This item will be on the next Planning Board agenda for discussion

D. Discussion of Recommendations to Change the Future Land Use Map. Chairman Sharp advised that at the Town Council Retreat the Town Council asked the Planning Board to study whether or not to designate any additional land in the downtown area as business/commercial on the Future Land Use Map in the Land Use Plan.

Vice-Chairman Dow did not participate in the discussions since his property is adjacent to the area being discussed.

The Planning Board discussed the plans developed for the downtown area by HadenStanziale. Chairman Sharp advised that a property cannot be rezoned to MX unless it is designated as future MX on the Future Land Use Map.

The Planning Board unanimously agreed that they did not recommend changing the Future Land Use Map in the Land Use Plan to reflect any additional business/commercial zoning unless there was some type of overall vision for the area.

E. LARTP Update. Mr. Perryman discussed an article he read in the Union County Weekly regarding MUMPO's response to the LARTP plans. He stated, "The article says that MUMPO had completed their five (5) year review and that the LARTP did not arrive in time for them to consider any of those projects and they would be considered in five years. The list of proposed projects is going to remain the same with nothing that was included in the LARTP plan. In addition to that they talked about that they were so short of money even the projects they currently have they are looking at 2020 and 2025 as projected start dates. The best use of the LARTP for the different towns to use is as a planning tool to show where to preserve right-of-way for future use."

Town Planner Cook stated, "The LRTP (Long Range Transportation Plan) is only amended every three to five years. The LARTP was not completed in time to be included in the LRTP. The LARTP is currently

being implemented into the CTP (Comprehensive Transportation Plan). That is a big step. We are on the CTP. You may be added to the LRTP depending on a ranking system on how regionally significant your project is to the area.”

Item No. 8. Update from Town Planner. The Planning Board received the following update from Town Planner Cook:

- The Helms Property Conditional Zoning Rezoning Application and Land Use Amendment will be on the April 26, 2010 Planning Board agenda.
- Union County Public Schools (UCPS) has completed the abatement work on the two houses located on the school property on Cox Road. Providence Volunteer Fire Department (PVFD) is currently picking dates that will work for their burn instructor and finalizing all paperwork with the Union County Fire Marshall’s Office and SPCC. Once the burn is complete, UCPS will hire a contractor to remove the remaining debris from the property. The timing of the burn and debris removal will depend largely on the weather.
- The following Text Amendments will be on the April 12, 2010 Town Council agenda for public hearing and consideration:
 - 1) Board of Adjustment Text Changes
 - 2) Accessory Family Dwellings (Mother-in-Law Suites)
 - 3) Stormwater Management Checklist
 - 4) Essential Services Setbacks
 - 5) Temporary Signage
- Town Attorney Anthony Fox is currently reviewing the following proposed Text Amendments: Bonds and Letters of Credit
- The Certificate of Compliance was issued for the Church of Latter Day Saints on February 17, 2010.
- The Zoning Permit for the Telecommunications Tower at 3016 Twelve Mile Creek Road was issued on March 5, 2010.
- Construction is complete on the permanent signs at Weddington Corners Shopping Center and Citizens South Bank.

Item No. 9. Other Business.

A. Report from the March 8, 2010 Regular Town Council Meeting. The Planning Board received a copy of the March 8, 2010 Regular Town Council Meeting agenda as information.

Item No. 10. Adjournment. Vice-Chairman Dow moved to adjourn the March 22, 2010 Regular Planning Board Meeting. Mr. Perryman seconded the motion, with votes recorded as follows:

AYES: Perryman, Masurat, Propst, Steele, Buzzard and Vice-Chairman Dow
NAYS: None

The meeting adjourned at 9:45 p.m.

Dorine Sharp, Chairman

Attest:

Amy S. McCollum, Town Clerk