



**Planning Board**  
**Regular Meeting Minutes**  
**February 28, 2017 - 6:30 PM**

**Town Hall**

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**A. Call to Order/Roll Call**

The Chairman determined quorum, and called the meeting to order.

**B. Approval of Minutes**

1. Consider Approval of the January 24, 2017 Regular meeting Minutes

A Motion to Approve the Minutes of the January 24, 2017 Regular Meeting was made by Joe Sailers and seconded by Jennifer Davis. The Motion Carried by a vote of 7 Ayes and 0 Nays. Board Members voting Ayes: Davis, Graffy, Miller, Planty, Sailers, Smith, Swanick

Abstain: Bankirer

Absent: Thomas

**C. Public Comments**

Item 2: Charles Rapp, 15834 Pineknoll Lane, Huntersville. Mr. Rapp stated his neighbors, the Huntersville Lake Norman residents, want to know if the sketch plan is in line with the completely vetted thoroughfare plan currently on the record with the Town of Huntersville, Mecklenburg County, in the State of North Carolina. It is an open question. The other part is a quote currently in the paper, "It is not unheard of for the Board to make decisions contrary to Planning Board suggestions, and it is not all that unusual with some last minute adjustments for the Board to find a way around Planning staff conclusions, but to do but while dismissing the thoroughfare plan years in the making in order to approve a request of a Commissioner is bound to raise eyebrows." So, we have a plan that has been thoroughly vetted from years ago that we are currently looking at, and making some changes to run right through the current roadway that has been planned from years ago. It's concerning, and would like for it to be considered, and taken under consideration for the Planning Board's decision.

Item 2: Troy, Purvis, 15928 Bayshore Drive, Huntersville. Mr. Purvis stated his neighbors asked him to come, and a number of others wanted to come. in the years past they actually filled this room out to the street with neighbors once they found out what was going on, and I really found out what was going on tonight. The problem is, as said, Highway 73 thoroughfare. Quick history, a number of the neighbors spoken to today; some of them got great deals on homes. One home is up to 1.5 million dollars and sold for \$800,000.00. Why? Because the first thoroughfare they had was running it right next to their properties. Vetting went through, a great deal of research, time, effort and hundreds of residents were down here, and at the time what was called Option 3 (the approved thoroughfare we have now), went on the books. As soon as that went on the books home sales started happening. Folks were able to sale their homes. Don't think that making a small change in this doesn't affect many things immediately the next day. It happens. The concern is with the actual location. If there was a location to put this facility none of us have a problem with the facility. I have always said that I don't have a problem with what a person does to their

property. If they own it, it is their property. The problem comes in when you have approved highways. In the past, highways have been approved, developments have gone through. What is the good of planning? Why did all that vetting go through? You need to hold the line and actually follow through on your plans. If there is a way to move this facility where it does not affect the approved Highway 73 thoroughfare, as listed, most of the residents don't have a problem. Their concern is with changing the Highway 73 thoroughfare. What we would like, as said today, if there is a way for more public input. If you need more public input we can get hundreds down here to tell you what they think. These are Lake Norman homes. Many of these homes are feeder homes into this area. This was vetted thoroughly years ago, and they came up with a good resolution for the Town of Huntersville and the residents and voters of Huntersville. If possible, I would like for you to deny this, unless and until it is changed or does not affect the approved Highway 73 thoroughfare. Any questions I can answer for you...because I have been involved in this a long time.

#### **D. Action Agenda**

1. **Tree Mitigation:** Request by CalAtlantic Homes to mitigate two (2) required, on-site tree-save trees.

A Motion to Approve was made by Stephen Swanick and seconded by Jennifer Davis. The Motion Carried by a vote of 8 Ayes and 0 Nays. Board Members voting Ayes: Bankirer, Davis, Graffy, Miller, Planty, Sailers, Smith, Swanick

Absent: Thomas

David Peete, Principal Planner (also referred to herein as "staff"), entered the updated Staff Report with an attachment from Landcare Innovations into the record, a copy of which is attached hereto as Exhibit A, and incorporated herein by reference. Staff described the request and what was previously approved for the Cato subdivision. Due to the Asbury Chapel extension/thoroughfare and site distances certain trees could not be saved. The applicant has proposed to contribute to the tree mitigation fund instead of mitigating as originally proposed. The contribution to the Town tree fund would be in the amount of \$2900.00, and staff recommends approval of this option.

Joe Sailers asked about Landcare Innovations quote with watering trees. The question was withdrawn after staff indicated the trees would not be planted, but used as the tree fund estimate. Hal Bankirer noted his disappointment. At the time of prior approval, the Board discussed leaving the patch of woods, and now that will not be the case. Staff noted that the triangle will be heavily treed with only a handful of trees that met the species criteria. There was no further discussion.

2. **Rezoning:** R16-09 is a request by Daniel Phillips, Madeline Phillips, and Helga Haddix to rezone 9.25 acres (portion of parcel #00902202, known as 14936 Brown Mill Road) from Rural (R) to Special Purpose Conditional District (SP-CD). The purpose of the rezoning is to allow the construction of a 80,091 sqft mini warehouse facility with 7,690 sqft of office/office flex. The rezoning is located near the corner of Beatties Ford Road and Brown Mill Road.

A Motion to Approve was made by Adam Planty and seconded by Jennifer Davis. The Motion Failed by a vote of 2 Ayes and 6 Nays. Board Members voting Ayes: Miller, Planty

Nays: Bankirer, Davis, Graffy, Sailers, Smith, Swanick  
Absent: Thomas

Discussion: The Chairman commented prior to staff's presentation given the back and forth of this application going between the Town Board and Planning Board, that if the Planning Board approves the Motion will speak for itself, but if denied the Motion should be very clear as to the reasons, and that staff give the Town Board the specified reasons in a slide presentation so the Commissioners understand the rationale. Staff agreed. Bradley Priest, Senior Planner, also referred to herein as "staff", entered the Staff Report into the record, a copy of which is attached hereto as Exhibit B, and incorporated herein by reference. Staff commented that on February 20, 2017, the Town Board saw several changes to the rezoning plan since the Planning Board had reviewed the plan in January, and referred it back to the Planning Board for recommendation. Staff showed the site through a context map showing NC73 and the alignment, Beatties Ford Road, and Brown Mill Road to show the surrounding area.

Staff gave an update for the plan, as follows: There are now two buildings, and one entire building is proposed to be office, and the other is proposed to be office and office flex, which it is being defined as office with accessory warehouse space. Essentially, it is an incubator space for small businesses for contractor offices and storage. Staff came to the opinion from most of the buildings on Brown Mill Road going from mini-storage facility which would have no opportunity to create a pedestrian oriented development to both buildings being office really helped to meet the intent of what the Beatties Ford Road Small Area Plan ("SAP") was intending to do. Is this a mixed use building, not really, but considering the circumstances in regard to utilities it makes sense to have flexible buildings with the mini-storage in the back with the utilities, and the offices along Brown Mill Road? Staff is satisfied with this portion.

Joe Sailors asked about pedestrian access from Brown Mill Road, parking, and the front door entrance facing the road. Staff responded that the plan has changed to office and it is accessible to the street. Brad Priest noted on the site plan there are four accesses to the street, and a note has been added for functional windows and doors. The pedestrians would be walking, and parking would be in the rear. Staff felt that pedestrian oriented development could be encouraged as long as the functional access operate, and people can walk to and from the facility.

Bradley Priest further noted the changes for the septic field until connected to sewer, which a note has been added. Building #5 has changed to a climate controlled building, and parking has been added for that building. The other big change is the buffers. Additional landscaping has been added. Screening the utility facility has been discussed, and there is a limit on landscaping that can be done in that area. In the gas company's right of way, they will not allow anything over 4', and based on today's rendition of the site, the fence was shifted back and a specific tree (Emerald Arborvitae) was chosen. It is narrow, tall (15'), and evergreen. Planting it close together with the fence will provide a nice screen and at the same time stay outside of the gas right of way. The Fire Department is to the south and there will not be any landscaping or anything from stopping the Fire Department from getting out. As mentioned at the Town Board level, at the driveway, staff does not want there to be a site distance issue. Some of the landscaping and street trees, and the 80' buffer, might be pushed back to not conflict with site distance. Staff indicated the fence would be one foot back of the curb or asphalt of the driveway, with the Emerald Arborvitae being three feet.

Staff was asked about the buffers and indicated that they vary throughout the project, and most of the time it is 20'. It is 80' on Beatties Ford Road. Staff is satisfied with the buffers. What is required by Ordinance is 80', but can be amended through the rezoning process. On the south side there are utilities (gas, electric). There is very little buildable area in order to

have to screen anything, and that becomes the rationale. The 80' buffer will probably not serve a purpose in that area. The waivers are required wherever there is a reduction, and staff indicated the buffer widths around the project. The northeast buffer (20') was described, which lies next to Pet Paradise. That development has a 30' buffer on their HC-CD rezoning plan. The two buffers together makes a 50' buffer. There would be a 60' waiver requested for this area.

Staff indicated that elevations were updated, and a note has been added to the schematic, and will be changed during the design process. Another note has been added to say the rear building elevations along Brown Mill Road will be similar to the front in design materials. The difficulties is in not knowing what kind of tenants and where they are going to be, and where there are going to be doors, windows, and roll up doors for the warehouse flex space. The front elevations are pretty much set, but in the back it is not, but staff is comfortable with the notes added.

The remaining issue is the alignment of the approved thoroughfare, approved by the Town and by the planning organization. There are conflicts with the buildings, not just property. There was a discussion at the Town Board level about the thoroughfare alignment and staff showed a timeline for the process starting in 2007 through 2011 (see attached Exhibit). The thoroughfare is a planning document that decided where the alignment should go. The details of the study were also shown (see Exhibit) that looked at the different options. There were decision analysis models. Option 3 was the one that was recommended. There was a lot of time and effort in identifying that transportation route, and because of that, staff's recommendation is to not approve, because of the inconsistency with the approved comprehensive transportation plan. The plan is inconsistent with CD1 and CD5 of the 2030 Community Plan. On January 24, 2017, the Planning Board recommended denial and we are back again for discussion.

The Chairman noted that the applicant did not sign up to speak and will see if there is a question that might arise to require them to come forward. The Chairman called for questions. Adam Planty noted that NCDOT, on the realignment, is considering this as one of two options; either keep the existing alignment or do the realignment. In the Staff Report it says they have no opinion as to whether they are going to go either way. Staff responded, that at this point the Environmental Study is at the very beginning of the process. Mr. Planty commented that the site would not be a problem if NCDOT chooses to go with the original routing of the road, which staff confirmed, and NCDOT will not have results until 2018, or make a decision until 2019, to which staff confirmed. Mr. Planty noted that if NCDOT decides to go with the original alignment we have held up this project for 2 years, and staff responded, yes, the rezoning. According to the transportation planner, in the summer of 2018, we should have the ability to understand which way the State is leaning. Mr. Planty wanted to hear from the applicant.

The Chairman called for further questions. Jennifer Davis asked about the flex space change and accommodations for delivery trucks. Staff did not feel that delivery trucks were an issue, and felt the space was meant to be small business storage. If there are trucks, that would have to be reviewed for the type of business.

Mr. Sailors commented on how he thought the alignment would work; i.e. east and west travel lanes, and the current road would not be abandoned. Staff indicated his understanding of the alignment would be four lanes. Jack Simoneau, Planning Director, stated the alignment will be a multi-lane facility. The existing NC73 would remain a two lane facility that would tie into the new alignment. A map of the alignment was shown.

Catherine Graffy asked staff, regarding the front facing building and the additional office space, if parking that is shown is sufficient to accommodate the additional office space and the occupants. Staff replied, yes, and showed the note added to the plans that they will conform to all of the code. The Town has a low parking requirement, and there are 7-8 spaces that are required in that area.

Hal Bankirer asked if the Storm Water Concept Plan had been approved, and staff indicated, no, sir. Mecklenburg County needs pond calculations, and that has not been submitted yet. Staff indicated that the other minor deficiencies are very small, and not concerned. Mr. Bankirer asked if staff saw this as spot zoning, and staff responded, no. Staff provided the surrounding zonings, and noted the two thoroughfares (Beatties Ford Road and Highway 73). Staff commented that on face value commercial belongs there and would fit with the area. Mr. Bankirer asked about the buffers, and if there was any other reason for a reduction other than making this fit, and staff replied that the 80' buffer leaves very little of the property as buildable. The majority of the waivers is to make it fit and get the use out of the property.

The Chairman called the applicant to address the two questions that have been posed. Robert Watson, 18903 Cove Side Lane, Cornelius NC. Susan Irvin, Attorney for the Applicant, 19726 Zion Avenue, Cornelius, NC. Lawrence Shaheen, Jr., Attorney for the Applicant, 7041 Quall Hill Road, Charlotte, NC. Susan Irvin stated that she would go through some of the issue raised and Larry Shaheen would answer questions on transportation. Ms. Irvin noted that the site is surrounded by the Pet Paradise (east side), and the Fire and Utility Stations (south side), and significant utility easements; commercial on the west side, and the street elevation and building along the north. The purpose of the buffering is to keep the surrounding properties from having any visual sight of the SP buildings, which are generally more industrial in nature. To talk about the intent of the Ordinance, this building (Pet Paradise) is 146' from the property line, and as staff mentioned, there is a Duke Power easement going through the middle, the Fire Station and the Transco easement, a utility station, and the nearest residence to the south is 500'. It was pointed out that Pet Paradise is a conditional rezoning that requires a 30' buffer, but in talking about moving that building this is the most likely location and will not be likely moved. A slide was shown to give a visual of the buffers. The buffers will be enhanced with double the amount of shrubs, and almost 50% more trees. Ms. Irvin gave the example of an approved cases in The Park – Huntersville (Kinnammon Park) with a 20' buffer on the adjoining NR property there was the 80' buffer and applicant proposed 25' and 35'. The total approved was a total of a 60' foot buffer. This case did not have expanded and enhanced planting like what is being proposed here. In discussions with staff what was wanted to do was to try to mimic that buffer with a 50' buffer, with enhanced plantings. That was considered comparable. The comment about spot zoning was mentioned, and the SAP does recommend intensification of zoning in this area. What you would see if this rezoning were denied would be that other properties would come in and ask for rezoning and under the SAP those would be reasonable requests, and would be approved. The only reason this property would not be is because of the potential realignment of NC73. As far as zoning goes, treating properties in the same area the same is preferable to singling out one property and treating it differently while all the other properties around it do get rezoned and their property values are improved and intensified. Another question asked was about the storm water calculations, and in talking with Jay Gibbons he said those would be done at the ordinary plan stage. The additional parking has been addressed with the note on the plan that talks about if there is a need for additional parking it will be added. The last question was about businesses to be there, and the applicant has interest from six office users. The same route that people will take to access their storage facilities will be the route that any one bringing storage (delivery trucks) to those units would

use as well. There is no difference in the use of the site. The surrounding area is considered rural commercial, with a gas station, the Grease Monkey and the Pet Paradise. There are civic components in the area with the Fire Station, and residential components. This is the definition of a mixed use area. The flex offices that have been added are for startup companies, entrepreneurs, incubators; people who need to have office space with storage.

Adam Planty noted he had a question about the transportation issue. Mr. Shaheen thanked the member for their question and commented that in terms of the alignment of NC73, it is important to remember the two options that NCDOT has with this issue; are both aligned with price tag, and in dealing with the ultimate decision of where to build this, are the utility easements. The second option that was used for this thoroughfare through this property is going to impact three very important easements the first of which is the Duke Energy easement. That easement will involve the moving of several high energy towers, the cost of which is unknown. We are reaching out to Duke Energy to figure out what the actual cost will be. The second is the Transco pipeline, which will be expensive as it is not only one crossing, but two. We have reached out to Transco to get the specific cost on that alignment. The third is the Piedmont Natural Gas cost. That will in itself increase the cost of this new option thoroughfare expedientially considering adding in the civic cost of the city of having the Huntersville Fire Station torn down. At the end of the day given the new alignments from the CRTPO, the look at cost is going to ultimately take a far more weighed approach from the new representatives there and it is important to remember that even though this is the option that was proposed there have been several changes over the course of time. The current Lincoln County division has approved the widening of NC73, while this division has not. That does not mean that it will move forward at some point; however, there has been a significant look at more cost effective and more cost impacted ways to build roads in this region, and it is primarily very important to remember that just because there is a line on a map does not necessarily mean that you cannot say yes and approve this use. This current Town Board has done so most recently with the EPCON rezoning. With that Mr. Planty, does that answer your question, and is there anything else you would like to discuss? Mr. Planty asked for Mr. Shaheen to go further into *Kirby*. Mr. Shaheen noted that most recently the North Carolina Supreme Court issued a decision in *Kirby vs. NCDOT*. That decision primarily dealt with the Map Act and the cost of the hindrance of individuals' property and the way NCDOT at the time did not think it was responsible for the fact that in holding up an individual's land they actually had an impact on that individual's land value. With a unanimous decision by the Supreme Court, was that NCDOT was liable in an inverse condemnation claim to the increase in value to the landowner. As such, NCDOT became liable for any individual piece of land that was held up by any type of Map Act, or street alignment. Mr. Shaheen understood that Bob Blythe, Town Attorney, has issued his opinion and respects his opinion, but thinks that the new Order from the NC Supreme Court has very clearly stated that any governmental entity that attempts to use any type of optional planning ordinance to hold up development or use or increase in value of an individual's land can potentially be held liable in an inverse condemnation claim. As such, he stressed the members understand this, and while emphasizing the new case law changes the nature of how these processes are done there is in no way any reservation at all from his point saying that you cannot vote yes on this project. Ms. Irvin added that in speaking with Mr. Shaheen and the Town Attorney, as she would not propose to advise the Planning or Town Boards, they both agreed that it is within the power of the Town Board to approve this rezoning despite the fact that there is a thoroughfare possibly going through the property. She noted the applicant has tried to address every comment made by the staff, as they were extremely detailed in their comments. One of the reasons this plan continues to change is to make sure that every staff comment is satisfied, and the only one that cannot be satisfied is that there is a proposed thoroughfare that goes through there if at some point NCDOT wants to do that. Ms. Irvin

suggested that the zoning be approved and the project be built, and if at some point in the future the road does go through (no one can stop the road from going through here), that condemnation power is ultimate. The public authority has the right to put the road through there despite the fact that this rezoning occurred, and despite the fact that this project was built. By approving this project you are not stopping the public authority from condemning. She urged the Planning Board to look at all the other elements and the amount of work staff has done, and it comes down to addressing every comment, with one remaining; the potential for a roadway in the future.

Hal Bankirer commented that the Staff Report indicates there are 38,045 square feet of office and flex, and thought he saw a different number from Ms. Irvin's presentation. Ms. Irvin stated it is actually double that; 38,045 in one building, and 38,045 in another building.

Adam Planty made a Motion to Approve. The request to rezone is consistent with the following policies of the 2030 Community Plan; CD2, T6. The request to rezone is inconsistent with policy CD1, and CD5; however, based on the legal opinion of the Town Attorney, and his interpretation of *Kirby, et al vs NCDOT* the proposed alignment does not constitute a legal restriction on the use of the property but the future alignment can be taken into consideration. NCDOT is considering two options; the current alignment, or realignment, and currently has no preference or opinion for either. That the current alignment chosen with the proposed development without any conflict. Additionally, it would be contingent upon Mecklenburg County approving the storm water concept. Therefore, it is in the best interest of the citizens to approve the storage facility as a much needed storage for residents who reside in homeowner association communities that place restrictions on storage. It is also in the best interest of the current property owner to not hold their property in hostage without just compensation for a road alignment which may or may not take place. Jennifer Davis seconded.

The Chairman called for discussion of the Motion. Adam Planty stated that he is well aware of the options, and was very involved with the Town Commissioners back in 2011 when this was considered. During that time he looked at all the options and cost involved, and felt none of them were good. In fact there was a split decision. In moving forward, there is a current court case of *Kirby* that Mr. Blythe interpreted and also Mr. Shaheen spoke of. While Mr. Blythe acknowledged that it referred to the Map Act and corridors. We can state that this is an alignment, it could or could not actually be considered, but in the spirit of what is a corridor or alignment the spirit of the law is that we are holding land and restricting this owner from getting compensation, and we don't even know if it is going to be improved. We are looking at summer of 2018 to study, and summer of 2019 to maybe or maybe not approve. Even the Staff Report said if it is not approved it will not be an issue. Mr. Planty again stated they are holding the property hostage, without compensation to the landowners for this property for over two years in which time this developer could go elsewhere. So, we are restricting use of his property. Further, there is a lack of storage in Huntersville. Mr. Planty commented on his personal experience of storing a 29' travel trailer and HOA communities that restrict storage. Mr. Planty further commented that originally he voted against this the first time it came through, but that was based on the elevation plan and the buffer. The developer has addressed everything the Board brought up. This is a very unique property surrounded by so many easements, and cost a lot of money to move power lines, gas lines and go through a Fire Station, which are more reasons why the realignment will cause issues. Based on Mr. Blythe's opinion that he gave to us, Mr. Planty is not taking the realignment into consideration when approving this facility.

Stephen Swanick could not disagree more strongly with a lot of the points heard so far. The

realignment plans has been on the books for a long time, and was here long before this development was thought of. If the Planning Board starts going against the long range transportation plans it raises the question of, what is the point of even putting planning on the books? Our developments need to be thoughtful in respect to the plans that have been developed that a lot of time and money went into. The comments were made about the cost for the realignment, and staff showed the comparison of the three options. In carefully looking at the dollars the realignment was actually cheaper, and he hoped the easements were taken into consideration at that time. Until there is more data everything is hearsay. At the Town Board meeting it was heard that this is a great development, and there is a need for this, and will be lost if following the existing transportation plan. How many other potentially great development were never proposed because those developers chose to play by the rules of the existing long term planning. Mr. Swanick cannot support and plans to vote against the motion, and plans to raise a counter Motion to defeat this just because he have plans and a vision for Huntersville, and this flies against that.

Joe Sailers commented about the 146' between the site and Pet Paradise, and explained that he thought the reason was because of the new Vance Road extension. It has been said that the applicant has addressed everything, but the main thing was the 80' buffer around the entire piece of property and they do not have that, but do have a 20' and 15' buffers. The eastern side of the property is full of right of ways. Mr. Sailers suggested to shrink the buildings and downsize to get to the 80' buffer and meet the requirements of the ordinance. Mr. Sailers is still concerned about the trucks delivering to the site, turn around space and traffic on Beatties Ford Road. Also, he has concerns with the court threat, the storm water plan and timing of its approval, and should be approved before it goes to zoning and planning. Staff commented that historically it has, and usually the concept plan is done at sketch. They are waiting to do it at construction phase. Staff felt it would be approved, and it is just a matter of when. Mr. Sailers noted that it was no different from the thoroughfare scenario; we do not know that it will be approved. Mr. Sailers stated his intent was to vote no, because hundreds worked on the thoroughfare plan for years and it has been vetted. The cost analyst was shown in the models, which are just estimates until contract time.

Catherine Graffy commented that as shown in the Staff Report, Article 11.4.7d, states that "in considering any petition to reclassify a property that the Planning Board in its recommendation and the Town Board in its decision shall take into consideration..." any comprehensive plans, strategic plans, corridor plan, or land use policy. To vote in favor of this in light of the fact that we would not be taking that plan into consideration flies in the face of that Town Ordinance, as well as the State. It sets a terrible precedence for this Board. Also with the buffer issues, and a couple of other items that in approving, we would be setting a precedence future developments and decisions. In terms of taking the property, or delaying this property, the number of years that have already transpired since the transportation plan has been on the books, and now 1-2 years away from further study and want to make a decision to alter what is on this property, again, would be a poor timing choice on the Board's part. Should the road development go to the State, and the State takes eminent domain of the property, the property would then have a higher value because of the buildings and incurring additional costs to the taxpayers, and we knowingly gave approval to the development. The Board would be negligent in that aspect. If the person owning the property wanted to develop under the current zoning, there would not be a problem, but to change the zoning, flies in the face of the transportation plan; it is negligent and totally irresponsible. She would vote to deny the application.

Jennifer Davis noted that she has gone back and forth on this, and respects staff's time, and the owner working with staff to make this as accommodating for the Board as possible. This



project has changed over the last few months. Her hang-up is the roadway. She did not have a full understanding if it would go through, or if it's a proposed plan, an approved plan, and has been called several things throughout this decision. There are buffering issues and believes staff is working with the applicant to make that work to approve. She tends to agree with Mr. Planty in holding up the development on a road that is proposed to go through it. She is leaning towards approval.

Hal Bankirer voiced his opinion, and intends to vote against approval. Respecting the comments about the approved alignment has actually not been selected yet by NCDOT as one of two options. It is approved as far as the regional transportation, and that needs to be respected. Cost; to the degree of whether they were available or a part of the decision matrix. If this was the only issue he would probably vote to approve, and it would be irresponsible when talking about the State paying more money if this is developed. Being a taxpayer he doesn't want to pay more money. There is flex space, office space and mini-storage, and everything is accessible. The comment about the trucks going in and out is apropos. Small businesses with roll up doors is to move large or heavy objects, and something has to transport those objects either in or out. That becomes an issue, and did not feel there has been a lot of attention paid in the site plan as to how that would work. Understanding the office and flex space being a later addition, and perhaps due to the recognition of the applicant that it was necessary; however, for this to be purely a mini-storage facility and not meet the spirit of the intent...In reading from the SAP, "new mixed use, retail, and office center should be located at the north NC73, and south, Mt. Holly-Huntersville Road, and this corridor can have hamlet centers. A hamlet can be defined as a discernable place with a focal point and boundary that maintains and fosters primarily residential, institutional; i.e. places of worship, schools or recreational activities, 50% or more of this land is dedicated to open space, either as a preserve or reserve, it is organized in accordance with pedestrian scale, its boundary is in agricultural or natural area. This does not fit that definition. The size of the office center and flex space is 5.8% of the space and although that might meet the spirit of a mixed use development it does not meet the intent; it is too low. It is not pedestrian oriented, as discussed, and is not walkable. The buffer reduction are usually approved if there is a legitimate reason to do so. Concerning the storm water concept plans there have been, at times, approvals made with conditions and this sketch plan is somewhat challenging. The staff has indicated that CD1 and CD5 of the Community Plan are in contravention of approval, and Mr. Bankirer that policies H2, H3, H4, H8 and policy CD3 all mitigate against approval, to which he and staff may disagree. Parking poses an issue, and could not remember the last time that the Board approved a sketch plan without looking at the parking lot and spaces. The review of parking spaces is a requirement for a sketch plan, and saying they will figure it out later is not apropos, not correct, and not in accordance with the requirements, to which he and staff may disagree. For all of the reasons, putting the thoroughfare aside, he did not think this fits. He is sensitive to the fact that the applicant has tried to get this right and meet the requirements of the Ordinances, but these issues are still outstanding. There are too many to counteract any pushing the argument aside, and certainly the alignment. He plans to vote against approval.

There was no further discussion. The Chairman called for a vote (see above).

Full Motion to Deny: Joe Sailers commented that the Motion to Deny should include staff's recommendation of the conflict in the CTP Plan, which is on page 8 of the Staff Report. Hal Bankirer made a Motion to Deny. The Planning Board finds that the rezoning is not consistent with the 2030 Community Plan, and the Beatties Ford Road Corridor Small Area Plan. It is not reasonable and not in the public interest to rezone this property, because does not accommodate the approved future road improvement; it is not consistent with mixed use

development pattern called for in the adopted plans, nor does it conform to the Zoning Ordinance in regard to the buffering. It also poses security issues within the site; proposes traffic challenges for trucks entering and exiting for flex space use; only provides 5.8% of office flex space, which does not meet the intent of a mixed use development even though it might meet the spirit; it is not pedestrian oriented; the storm water concept plan has not been approved; parking lot and/or parking spaces for office and flex space use have not been provided on the sketch plan in accordance with the Ordinance; and in addition to the Community Plan policy CD1 and CD5, it does not meet the requirements of policies H2, H3, H4, H8 and CD3. The Motion received a second and a vote was called (see above). There was no further discussion.

A Motion to Deny was made by Harold Bankirer and seconded by Stephen Swanick. The Motion Carried by a vote of 6 Ayes and 2 Nays. Board Members voting Ayes: Bankirer, Davis, Graffy, Sailors, Smith, Swanick

Nays: Miller, Planty  
Absent: Thomas

## **E. Other Business**

### **1. Discuss membership term limits**

The members expressed their opinions and ideas about term limits:

- Leave it up to the Town Board to appoint and/or reappoint
- No less than 3 terms with a break in between if reappointed
- Several appointments to meet development project process
- Individual has option to serve or not to serve again
- New members with new ideas may give more diversity
- ETJ membership is one representative for that entire area

The Chairman polled the Board in favor of 3 full terms and any unexpired term (maximum 11 year, 11 months); 4 in favor. The Chairman polled the Board for three 3 year terms with one year off before considered for reappointment; favored. The Chairman requested the matter be placed on the March 28, 2017 Agenda for discussion and vote.

### **2. Discussion for deferring recommendations**

The Chairman expressed his concern that the Zoning Ordinance calls for only one opportunity for the Board to defer. Within the last 6 months there have been problematic applications, and additional authority is needed without having to ask the Town Board to hear the matter and send it back. It is cumbersome with the back and forth. The State and Town Board give the Planning Board authorities, and it seems reasonable to allow the Board an additional deferment. It was this way until 3-4 years ago, and the Planning Board could defer twice. The Planning Board should solicit the Town Board for an ordinance change. The members noted that a lot of applications are not complete by the time of the Planning Board meeting, which should be grounds to defer. An example of parking lots and spaces not in a Sketch Plan was mentioned (Article 11.4.3(b)(m)). Plans need to be complete, with minor redline comments the exception, so the Board can make recommendations to the Town Board. The Chairman noted that when making a motion and stating that an application is complete with all applicable regulations and ordinances, the Board is saying they have

examined the application, rezoning and/or sketch plan and agree that they have met all requirements. This is a commitment being made to the Town Board. If there is a plan that is submitted, resubmitted and adjusted many times, even as late as the day of our meeting, what does that say about the Board's ability to do its very best job. The Planning Board needs to have provision to be able to send the applicant back for further work/completion.

Joe Sailors asked about the past action of the Town Board, and Jack Simoneau noted that the Town Board was concerned at that time that the Planning Board kept deferring items and holding second public hearings.

The Chairman suggested, upon the members being in favor, to propose the Planning Board have a second deferral option. If a plan requires more than that it would be appropriate to send it to the Town Board to tell them the application is not ready and request the Town Board remand the matter back. The Board was in favor.

**F. Adjourn**

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

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Chairman or Vice Chairman

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Michelle V. Haines, Board Secretary