



**Planning Board  
Regular Meeting Minutes  
August 22, 2017 - 6:30 PM**

**Town Hall**

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

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

**B. Approval of Minutes**

1. Consider approval of the July 25, 2017 Regular Meeting Minutes

A Motion to Approve the July 25, 2017 Regular Meeting Minutes was made by Joe Sailers and seconded by Stephen Swanick. The Motion Carried by a vote of 6 Ayes and 0 Nays. Board Members voting Ayes: Davis, Graffy, McClelland, Miller, Sailers, Swanick

Absent: Bankirer, Smith, Thomas

**C. Public Comments**

Item #3. Sheila Skelton, 11901 Everett Keith Road, Huntersville. Ms. Skelton stated they bought their house in 1995, and the landfill was supposed to be opened another year, and kept getting extended until 2018. She has gotten use to it, and the neighbor just sold their house and having issues. When there have been complaints about the road and the inspector is coming out is when they wash it. There was one man that did a good job. The road is never graveled right where they come out and mud is brought out. She has not had a clean car in 22 years. A paved road on the other side would be good, but when they (trucks) come out they bring the mud out. There is water standing in the road, and said she had pictures. They (Piedmont Grading) have done things to help, and she was not trying hurt them, but this has been going on for years. She and her husband mow Everett Keith Road (both sides) since they have lived there. They do that for the cosmetics of their property. She just had her house appraised. With the dump still opened she did not feel she could get it sold. It is a constant thing about the road. They wash it at night when everybody is sleeping and the next morning you drive right back through it. She called the Storm Water people because her neighbor has water from the dump going onto his property, and makes a marsh.

Item #3. John Lively, 11919 Everett Keith Road, Huntersville. Mr. Lively stated that he grew up in a family that owned garbage businesses, landscaping removal businesses, and even had a landfill that took in construction debris. As Sheila mentioned, everybody keeps saying that the road is clean. He bought his house in March 2013, and have asked for it to be washed when it gets bad, but hear, "yeah, we'll get; the truck is broke down". His wife called and spoke to Wayne (the owner). Mr. Lively believes they have bought the equipment to wash the road, but it is not getting washed. Whoever is telling Wayne they washed the road is lying to him. Mr. Lively plans on moving to Greenville, SC. There are pot holes in the road that have now been filled. He thought the landfill was closing in 2018. Whoever buys his house will have to deal with the same thing. He questioned who is going to make sure they stay in compliance with washing the road regularly. The future Everette Keith Road that will tie into Verhoeff Drive, and all the continuing development,

how will that affect the road and site plan?

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

1. **Rezone:** Request by Nickel Development Group, LLC to rezone 2.024 acres located along Sam Furr Rd. west of Birkdale Village from Highway Commercial Conditional District (HC-CD) to Highway Commercial Conditional District (HC-CD) to create a 78 unit age restricted apartment building. Parcel ID # 00537401

A Motion to Approve was made by Stephen Swanick and seconded by Joe Sailers. The Motion Carried by a vote of 6 Ayes and 0 Nays. Board Members voting Ayes: Davis, Graffy, McClelland, Miller, Sailers, Swanick

Absent: Bankirer, Smith, Thomas

Included in the Motion to Approve: The Planning Board recommends approval based on the plan being consistent with the policies H-5, H-9, and PF-2 of the 2030 Community Plan. It is reasonable and in the public interest to approve the rezoning plan because it will provide much needed senior focused development for our community. The approval will be contingent on the reduction to a four (4) story building.

Joe Sailers made a substitute Motion to include the conditions of the Motion to Approve with the building being moved 15' north to allow for the maximum amount of buffer on the west property line. The Motion did not receive a second, and failed.

Discussion: Jack Simoneau, Planning Director, presented the rezoning, and entered the Staff Report into the record, a copy of which is attached hereto as Exhibit A, and incorporated herein by reference. The Sam Furr Senior Apartment building was described for its location, surrounding zoning, and concerns with the height of the building from the public hearing. The developer just advised the Planning Director that they are willing to go to a four (4) story building (an example was presented), with 62 units. The site plan shows the narrow frontage on NC73 with a driveway into the site. The developer is asking for modifications: 1) building does not front a street due to the narrow lot (staff supports the modification), 2) parking is in the rear of the building (staff supports the modification), 3) pedestrian access to building from street (staff supports the modification), 4) the height has now been modified to four (4) stories and 44' (staff supports the modification), and 5) modification to the 20' buffer (staff supports the modification only in certain areas that are adjacent to the two ponds). Staff showed the elevations and cross-sections relevant to the townhomes immediately adjacent to the rear of the property. A letter from the Townhomes of Birkdale Village HOA, Inc. was shown and noted as being in opposition of the development due to the height, buffer, and the color scheme of the project. There was also a petition received with approximately 90 signatures opposing the rezoning.

Questions of staff: The 20' buffer in the rear of the property was questioned, and Mr. Simoneau explained there is 34' in the rear. The developer was called to podium. Jake Palillo (Nickel Development Group, 19520 W Catawba Ave #200, Cornelius, NC 28031) stated they are not opposed to it, but did not want to lose parking spaces. By reducing the unit count it gives additional parking spaces for those concerned, and there will more than likely be a retaining wall on that side, so it does not really matter about the buffer. Joe Sailers asked about sliding the building 15' south. Mr. Palillo stated they would lose parking spaces, and have 82 spaces now. Discussions were made with Mr. Sailers about the movement of the building, loss of parking and/or compact car parking, and the buffers. It was noted by

the Vice Chairman that her concern was not necessarily about the vegetation of the buffer, but the encroachment of the buffer and the adjoining apartment complexes. Mark McAuley (Principal and Director of Operations with ColeJenest & Stone, 10733 Cain Alexander Drive, Huntersville), explained their position about shifting the building down to allow for 20' on either side and the effects on the site plan. Mark McAuley commented that with 62 units and 82 parking spaces it is more than adequate parking. He also stated that the architectural style is not conflicting with Birkdale Village, as there are four story buildings, and the color of the roof adds character to the whole design of the building. Mr. Sailors went back to moving the building 15', the design of the parking, and offered suggestions. Mark McAuley noted that if they had to increase the buffer to 10'-20', the 34' buffer in the rear of the property would likely be reduced to 20', and it currently provides a larger buffer between the site and townhomes.

Discussion after Motion: Stephen Swanick explained his reasoning for the Motion, and the buffer modifications. The buffer in the rear is maximized for consideration of the townhomes, and there is a lot of vegetation and a retaining wall on the west side. Jennifer Davis noted that the plan was a challenging item due to the complexity of the site, public concerns, and height. She agreed with the developer about the architectural interest and diversity; however, the ordinance states the buildings need to blend with adjoining properties. The colors, depending on how well done, could look very nice.

2. **Special Use Permit:** This request is for the removal of the existing Special Use Permit (SUP) for the Birkdale Inn. Nickel Development is requesting the removal dependent upon the approval of R17-04 Sam Furr Senior Apartments.

A Motion to Approve was made by Stephen Swanick and seconded by Jennifer Davis. The Motion Carried by a vote of 6 Ayes and 0 Nays. Board Members voting Ayes: Davis, Graffy, McClelland, Miller, Sailors, Swanick

Absent: Bankirer, Smith, Thomas

Included in the Motion: It makes sense to remove the SUP so that the rezoning can move forward.

3. **Text Amendment:** TA17-05 is a request by Piedmont Wrecking and Grading Company, Inc. to amend Article 9.23.9 of the Huntersville Zoning Ordinance. The purpose of the application is to extend the closure deadline for existing LCID landfills.

A Motion to Deny was made by Stephen Swanick and seconded by Catherine Graffy. The Motion Carried by a vote of 5 Ayes and 1 Nays. Board Members voting Ayes: Davis, Graffy, McClelland, Miller, Swanick

Nays: Sailors

Absent: Bankirer, Smith, Thomas

Included in the Motion: The denial is based on the amendment being inconsistent with the best practices for evaluating a continued operation of LCID landfills. It is not reasonable and in the public interest to amend the zoning ordinance because a SUP is preferred for adherence with precedent and allowing community input.

Discussion: Bradley Priest, Senior Planner (also referred to herein as "staff"), presented the text amendment, and entered the Staff Report into the record, a copy of which is attached hereto as Exhibit B. Staff gave a brief overview, and noted that Piedmont Grading is the only

Land Clearing and Inert Debris ("LCID") landfill in Huntersville. The applicant applied to push back the sunset date another ten (10) years (March 3, 2028). The LCID, as it exists in a nonconforming situation, had until December 4, 2016 to come up to code, or close down. There are conditions noted: 1) driveway needed for the facility be paved for 100', 2) landscaping along the frontage, 3) installation of gravel for the driveway exiting the facility, and 4) regular cleaning of the public right of way from the exiting driveway to the nearest street intersection. Staff is in favor of the continuation of the landfill. It is recommended that the Special Use Permit ("SUP") be used for several reasons, one of which it involves public input, and has been used before with the Greenway Waste landfill on Holbrook Road.

Susan Irvin, Attorney at Law (19726 Zion Avenue, Cornelius), briefly gave points to the public hearing. The landfill is for disposal of land clearing and inert debris, which are natural materials. This is the only nonconforming LCID in Huntersville. It has operated herein for 32 years, and was originally in the County and validly operating under the County until the Town annexed the property and rezoned it to a classification that did not include this use. The landfill does not accept materials with chemicals added. The SUP that was used for Greenway Waste was not for a LCID facility. The LCID property cannot be redeveloped or removed. The average acceptance is about 75,000 tons per year of LCID, and homeowners inside and outside of Huntersville use this property, including its commercial neighbors, builders and developers. The Bryton development used the facility in November of 2016 with 16,980 tons of LCID, and in December, 20,820 tons. Ms. Irving further listed other users of the facility, including the Town of Huntersville, and since 1985 the Town and NCDOT have both used the facility. Other facilities are available in the area, but have limited hours, and take limited amounts of materials. In talking about the SUP process, she and staff disagree on the numbers for what would be required, and showed an estimated amount of \$100,000. In talking with staff about the SUP process, and realizing the complications, it was thought to extend the existing permit for 5 years. When going to the Advisory Board it was recommended to go 10 years with the conditions mentioned, to which the applicant agreed. The facility has a valid LCID permit from the State of NC, and the permit renewal and closure plan is approved by the State with regular inspections (site security, hours of operation, signs). The owners are very careful and clean the road whenever it is muddy. The facility is shut down when it is raining so they do not have trucks coming in and dragging mud out. The main issue heard from two (2) neighbors has to do with where the driveway is located. Since, NCDOT has been contacted about moving the driveway further away from the neighbors, and to have a better flow through the project. NCDOT indicated three (3) things to be aware of, 1) site distance from Hambright Road, 2) transmission line on south side of the site, and 3) driveway has to be at a 90° angle coming in. The permit is being worked on with NCDOT.

Public comments were made. See above section.

Questions for staff were made concerning any material disagreement with Ms. Irvin's presentation. Staff noted that Ms. Irvin has a lot of statistics about the landfill, and staff agrees that it is a value to have this facility in Huntersville. Staff disagrees with the hardship that a potential SUP would impose. A Traffic Impact Analysis ("TIA") would not be required. The delta has been measured and there are no new trips. The cost of plans is minimal, using a past example for the crematorium using an 11x17 photocopy of the commercial plan. In staff's opinion, the SUP does not need to be complicated. It is a specific review; walk the site, getting a plan that is available and putting notes on it. The intent is not to put a hardship on the applicant, but to have a full understanding and move forward. Staff does not feel that the applicant's estimate of \$100,000 is accurate for the SUP process. Also, the Planning Director has the ability to make suggestions and recommendation through

the SUP process. It was also asked about the text amendment using more generic and broad language for a future facility, if any. Staff indicated it is easier to address a site specific portions of the plan on a SUP application. A text amendment should generally be broader, and the specifics to this plan would not be normally included in the ordinance. Staff would recommend that LCID be added with the C&D existing landfills can operate in the existing zone with the issuance of a SUP. With a SUP there is no sunset date.

The Chairman summarized the amendment with a ten (10) year extension, and with four (4) conditions, but staff is preferring to switch this to a SUP, with an unlimited time for closure. Staff confirmed. Staff was asked the projected fill date, to which staff does not have. It is dependent on the economy, and what debris is brought in and the recycling ability. The State Permit may have it in 7 or 8 years.

Comments about the road were made, and staff indicated this would be a code enforcement issue if it is in the zoning limits. The remedy now would be to contact the County or State for inspections. If road cleaning was part of the SUP, or in the text amendment to have regular cleaning of the public right of way, that will become a Town zoning enforcement issue. Jack Simoneau, Planning Director stated that “regular cleaning” is problematic and vague, and referred to the current ordinance. Ms. Irvin stated they would be willing to change the definition of the “regular cleaning”, and further noted that there are lots of businesses in Huntersville that do not have a SUP. Discussions were also made about the location of the driveway, and Ms. Irvin identified the new proposed driveway for the one entrance and exit driveway, which is further away from the Skelton’s property. The southern driveway has a site distance issue when exiting, and will not be used. The paving on the existing driveway is 50’, and it is proposed for the new driveway to come in at a 90° angle, meet the site distance, avoid the transmission line, which will address the concerns. The driveway will be paved 100’, which is the better solution to remove the mud from truck tires. The water runoff was questioned, and Ms. Irvin noted the regulatory requirements around the landfill, and storm water improvements cannot be done on the landfill (BMP, detention facilities), and are not permitted. The water runoff area was located on the site, which may go over the road during a heavy rain, because of the pipe under the road.

Discussion after the Motion: Concerns were expressed for an SUP. The landfill serves a valid purpose. The neighbors need to be taken care of and not harmed. There may need to be mechanisms to protect their rights and interests. The SUP put more teeth in the enforcement. It was also noted that the text amendment has been through discussions with staff and the Advisory Board, to which compromises by both were made. Additionally noted, the SUP removes a sunset date. If the applicant brings a SUP through the process, the Planning Board would like to see conditions for the driveway improvements as herein discussed. There were no further discussions.

4. **Rezone:** Request by Charles Guignard to rezone 0.33 acres located at 503 S. Old Statesville Rd (south of Mt. Holly-Huntersville Rd.) from Neighborhood Residential Conditional District (NR-CD) to Neighborhood Residential (NR) to remove an existing multifamily overlay. Parcel ID # 01907202.

A Motion to Approve was made by Jennifer Davis and seconded by Stephen Swanick. The Motion Carried by a vote of 6 Ayes and 0 Nays. Board Members voting Ayes: Davis, Graffy, McClelland, Miller, Sailors, Swanick

Absent: Bankirer, Smith, Thomas

Included in the Motion: It is consistent with the 2030 Community Plan, and is reasonable and in the public interest to approve the rezoning, because it is inline with the adjoining properties.

Discussion: Jack Simoneau, Planning Director, presented the request and entered the Staff Report into the record, a copy of which is attached hereto as Exhibit C, and incorporated herein by reference. The brief history of the rezoning was given from 1992. The zoning for the surrounding property is Neighborhood Residential ("NR") and allows single-family and duplexes. Staff supports the general rezoning. Currently the duplex unit, with the conditions, are that there will be no exterior modifications made to the building. There have been no complaints from neighbors about the rezoning. The proposed NR district allows for modifications. There were no further questions, or discussion.

5. **Special Use Permit:** SUP17-03 is an application by the Charlotte-Mecklenburg Board of Education for a Special Use Permit at Bradley Middle School, 13359 Beatties Ford Road (Parcel # 01308105). The purpose of the permit is to allow the installation of a commercial communication tower on the property.

A Motion to Approve was made by Joe Sailers and seconded by Stephen Swanick. The Motion Carried by a vote of 6 Ayes and 0 Nays. Board Members voting Ayes: Davis, Graffy, McClelland, Miller, Sailers, Swanick

Absent: Bankirer, Smith, Thomas

Included in the Motion: It is reasonable and does not pose an injurious effect on adjoining properties, and finds that the character of the neighborhood or the health, safety and general welfare of the community will be minimized. This decision is supported by the fact if you travel Beatties Ford Road you have no service, and we need it. The lights shall be removed from the tower, appropriate screening of the property (8'), and an engineered statement on the fall zone.

Discussion: Bradley Priest, Senior Planner (also referred to herein as "staff"), presented the Special Use Permit ("SUP"), and entered the Staff Report into the record, a copy of which is attached hereto as Exhibit D. The SUP is for a commercial communication tower behind Bradley Middle School, which is in a residential district. The area and location of the tower was shown, and the site plan. There is a leased area around the tower with the Charlotte-Mecklenburg Board of Education. There is a distance of 333' from the property line, and 465' from the nearest home adjacent to the property, which are within the established setbacks of the ordinance. Staff showed the elevation of the tower (160' tall), the landscaping plan, and noted that many of the requirements are being met. Staff showed the area with all cell towers, and wanted documentation of need for a new tower at this location, over colocation, to which the applicant is willing to provide. Staff showed the non-functioning lights on the tower, and requested the lights be removed. There are shields on the tower for the mechanical area, and staff is not certain if they need to be there other than for screening. An engineered fall zone requirement needs to be met. The planting height of the trees need to be 8', not 3' at installation.

Bonnie Newell, with Berkley Group, 19000 Davidson-Concord Road, Davidson, presented the application for the SUP. The tower industry has skyrocketed with the use of data. It continues to amaze everyone in the industry. There is a great deal of growth (includes health and safety), increase in productivity, and efficiency in the wireless wave. CMS and Berkley Group have worked together on this site for a long time. They are sensitive of the

community. There was a community meeting and over 4000 adjacent property owners and students of the school invited. The demand for wireless and cell towers continues to explode, and this is like a highway in the sky and the need for more towers is needed. Ms. Newell noted that Verizon is on all existing towers shown by staff, and often they are less than a mile and a half apart. With the expansion of use and data the towers are needed. Ms. Newell presented a map to articulate the need, and included that voice and text takes very little space, but data takes a massive amount of space and capacity. The tower at Bradley Middle School is needed, and currently the only tower proposed at this time. The access to the tower is through school property, and they will not be on the property during school hours unless there is an emergency of safety and/or weather. The area will also be gated. There is an access road to the tower area, to which they will maintain. An engineered fall zone will be provided to staff. A monopole is a single pole, the safest and least obtrusive, and a low maintenance tower. The neighbors want a monopole, and the light pole was preferred over the monopine. It is requested to do a single monopole, as permitted, which will be seen by kids in the gym, and the public at football games. There will be multiple companies on the pole, which should work for all four major carriers. In finding of facts; the use will not endanger the local citizens, and Berkley Group considers it the fifth utility in essential communication as it improves the Town. The plans will be fine-tuned for the few items that are missing. There is no distinction in property values with towers. The use is in harmony with the area and other uses for infrastructure. The lights on the pole can and will be removed as staff requested.

Staff indicated that a monopole design is fine, and the ordinance, as far as camouflage, it is a requirement to painting it to blend in. It is not required to have faux tree branches (monopine), nor is it being recommended. The monopole cannot be lit. There is a park next door with tall lights, and collocation may be good there as opposed to a standalone fixture. Ms. Newell was asked what she is recommending, to which she suggested the monopole. She noted they are going 5G up to 8G, and a monopole allows it to happen quickly. The Town will want to be there for the latest and greatest. There is a program with CMS to install poles on its sites (Meyers Park, Providence High, Quall Hollow Middle, etc.). With the topo in this area (the school is at 731' and the tower site is at 704'), it will not be as visually seen, and it is one-third of a mile away from the neighborhood across Beatties Ford Road

6. **Text Amendment:** TA17-06, a request by the Town of Huntersville to amend Article 3.2.1 Rural, Article 3.2.2 Transitional Residential, Article 3.2.5 Neighborhood Center, Article 3.2.6 Town Center, Article 3.2.7 Highway Commercial, Article 3.2.8 Campus Institutional, Article 3.2.9 Corporate Business, Article 3.2.11 Transitional Neighborhood Development Districts, Article 3.2.12 Passenger Vehicle Sales, Article 3.2.13 Transit Oriented Development – Residential, Article 3.2.14 Transit Oriented Development – Employment, Article 7 Part B Open Space, Article 8.1.4, and Article 12.2.1 General Definitions of the Huntersville Zoning Ordinance to modify Open Space criteria and associated definitions.

A Motion to Approve was made by Jennifer Davis and seconded by Joe Sailors. The Motion Carried by a vote of 6 Ayes and 0 Nays. Board Members voting Ayes: Davis, Graffy, McClelland, Miller, Sailors, Swanick

Absent: Bankirer, Smith, Thomas

Included in the Motion: It is consistent with the 2030 Community Plan, it is reasonable and in the public interest to amend the zoning ordinance because it provides greater flexibility within the Open Space requirements. " Forestry" to be added prior to the word "etc." in the Agricultural section of the text, as well as increase tree species on the four court type of

space. Jennifer Davis made a Motion to Strike the increase tree species from the original Motion.

Discussion: Alison Adams, Senior Planner (also referred to as "staff"), entered the Staff Report into the record, a copy of which is attached hereto as Exhibit E, and incorporated herein by reference. An overview was given for the Open Space ("OS") text amendment, which has been in process for several years, and initiated by the Planning Board. The proposed changes were given. There are four types of OS; agricultural, natural, recreational, and urban. It is being proposed to add OS labelled "common", and allowing 25% water quality features within the urban OS. Article 7 is organizational clean up. Article 12 is the definition section, and is also clean up. The urban open space types is another major change, which includes community garden, greenway, pedestrian passage, promenade and a woonerf. The amendment is in keeping with the 2030 Community Plan, and promotes the preservation of open space, and well as good quality design.

It was asked if the amendment would cause unintentional consequences for potential abuse. Alison Adams commented that staff has actually prescribed it more specific, and gave an example of agricultural being named as common open space without a definition from the ordinance. It was questioned if forestry should come under agricultural, since trees are a crop in the State forestry program. Staff responded that it is contextual based on the project being reviewed. There are provisions in the ordinance that deal with forestry and forestry clearing as it relates to subdivisions. If in the OS, and left as forested area as an agricultural entity a developer would get credit, but there is a provision in the storm water ordinance that if it is actually forested then you cannot develop for three years. Jack Simoneau, Planning Director explained the agricultural purposes with forestry, which can be a renewable resource for funding an HOA. The OS easement will always remain on the development, and can be farmed, timbered, or left natural. It was suggested that Forestry be mentioned as an option, and the proposed text mentions it as natural area. Staff confirmed she would look at that section. Another question was asked about the four courts using only one tree species, and felt it was limited. Staff indicated that is current language that has not changed in the proposal. The thought process is uniformity of the trees. Staff will outline all comments of the Planning Board in the recommendation to the Town Board.

The Chairman called for a Motion. Prior to the Motion the Vice Chairman thanked the subcommittee and staff for the work on the text amendment. There was no discussion after the Motion.

## **E. Other Business**

1. Adjusted TIA Results Reporting Format

For discussion at a later meeting.

## **F. Adjourn**

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

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Chairman or Vice Chairman



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Michelle V. Haines, Board Secretary