



City of Mount Airy Board of Adjustment Meeting Minutes

July 6, 2017 – 5:30 PM
First Floor Conference Room, City Hall
300 S. Main Street – Mount Airy, NC 27030

Members Present: Elizabeth Martin, Chair
Mark King
Mary Botkin (Remote)
Luke Morrison
Sharon Gates
Rixie Gordon
Roscoe Easter

Member Absent: Rawley King
Tim Devore
Carlos Mabry

Staff Present: Andy Goodall, Jr., CZO - Planning Director
Hugh Campbell, City Attorney

Guest(s): Dr. Samuel Moore
Davis Ray, Wynnefield
Don Nielson, Attorney (Rep)

I. Call to Order

Chairwoman Martin called the meeting to order at 5:30 PM.

II. Election

Mr. Goodall asked the commission to nominate a Chairman. Ms. Gates made a motion to nominate Elizabeth Martin as Chairwoman. Mr. Morrison seconded the motion, which passed unanimously (7-0).

Mr. Goodall asked the commission to nominate a Vice Chair. Mr. Morrison made a motion to nominate Mary Botkin as Vice Chair. Ms. Gates seconded the motion, which passed unanimously (7-0).

III. Determination of a Quorum

With nine (7) members present, Chairwoman Martin determined there was a quorum.

IV. Approval of Agenda

Chairwoman Martin stated that the agenda had been previously approved.

V. Board of Adjustment Cases

2017-BOA- 02/2015

Before the hearing began, Chairwoman Martin Stated that ‘the hearing for consideration of 2017 Board of Adjustments 02/2015. The conditional use permit amendment is now in session and will focus on the application submitted by Jasper Pointe, LLC for the properties located at 100 Jasper Pointe Circle and the 400 block of West Virginia Street. The purpose of this application is for variance to the thoroughfare requirement of SR10 of the City of Mount Airy Zoning Ordinance. It precludes the existing conditional use permit and will need to be amended to reflect the change. If you feel any member of the board might have conflict interest in hearing please the case, please address the Board now prior to any testimony or information being presented.’

No Conflicts were addressed.

She continued by noting that ‘all parties who plan to testify in this case can come forward to be sworn in. Those who testify must state their name and address at the podium for the benefit of the board’s clerk. All material presented must be given to the clerk and will become part of the record. This board can only accept sworn testimony and no hearsay evidence is admissible.’

Andy Goodall presented the case for the city and was sworn in by Chairwoman Martin. Dr. Samuel Moore was sworn in as well.

Mr. Goodall then goes over the staff reports including each of actions to take place during the hearing. He then explains how the larger of the two properties being discussed was approved for rezoning in the spring of 2015 for the construction 60 unit apartment complex titled Jasper Pointe Apartments. In August of 2016 the project was awarded tax credits form the state to construct the project. Since then project has been through technical review with the city and has been approved. Part of that approval was that it needed to meet certain requirements that the city has for multifamily developments. If there is a development with 20 - 60 units, one access needs to be along a recognized thoroughfare. The city uses the county’s comprehensive transportation plan to mark them and North Franklin Road is a recognized thoroughfare.

Zoning permits have been issued by the city. In the process of reviewing, the building plans now. The developers have run into some issues with wetland on the property and crossing. Property to the North offered to sell in order to move the drive for property to Virginia Street

rather than to west on North Franklin Road. They would need to request a variance for the SR 10 requirement. Traffic impact analysis was provided in packets for the board. A notification was published in the Mount Airy News on June 16th and June 23rd. A notice was also mailed to the property owner, the applicant, and adjoining property owner on June 15th. As well as a sign posted on both sides of the property since June 15th.

Ms. Martin then requested that the Board accept Mr. Goodall's report and related exhibits into evidence. Mr. Easter made a motion to accept Mr. Goodall's Findings. Mr. Gordon seconded the motion, which passed unanimously (7-0).

Mr. Don Nielson, an attorney there on behalf of the applicant Wynnefield, then addressed the board. He also introduced Davis Ray an employee at Wynnefield. Mr. Nielson then went on to explain the variance that the applicant is asking for.

He stated that two years ago the Jasper Pointe project was unanimously approved by the commission. It met all the necessary findings for a conditional use permit and was compatible with the area however, while conducting their due diligence Wynnefield consultants found a small area that is considered a wetland under federal regulations. The area is directly across the access area and North Franklin Road. Mr. Nielson went on to explain if an area meets the qualifications of a wetland many regulatory requirements are triggered. If the project can still be built it is significantly more time consuming and expensive. Wynnefield then carefully looked at all its options and what other access points might work, without disturbing any wetlands. Mr. Nielson concluded that the access through West Virginia Street would work well, maybe even better than direct access on North Franklin.

Now they had to go back to Mr. Goodall due to the zoning ordinance requirement of direct access to a major thoroughfare. Mr. Nielson stated that he wanted to be sure that the project would not create a negative traffic impact on West Virginia Street. To be sure it was addressed confidently; a traffic consultant out of Winston-Salem, Davenport firm, was hired to conduct a traffic study. The conclusion is that additional traffic will not be an issue. The access point on West Virginia and the intersection at West Virginia and North Franklin will both operate at an "A" or "B" level with "A" being excellent and "F" being failure. Mr. Nielson mentioned that there is a neighbor, Dr. Samuel Moore, whose primary concern is traffic. He also stated how the application and the staff report show possible responses to focus more variance on this path to make (16:00). Mr. Nielson also made note that the speed limit on West Virginia Street is 25 mph and the average daily traffic is 487 vehicles per day (this accounted for AM and PM rush hour traffic). He also mentioned that since the project was previously approved he did not include information on Jasper Pointe however; Mr. Ray or he could answer any questions.

Mr. Easter asked if a road was still located near the site and also asked another locational question. His questions were affirmed by Dr. Moore.

Mr. Nielson stated that wherever the access to the property is located, it will be affecting someone. They would like to make it as compatible as possible.

Mr. Nielson then went on to explain the four findings needed to get a variance and the response to each one.

1. *Unnecessary hardship would result in strict application of the ordinance. The original plan would cross a wetland thus increasing the cost and time to complete the project.*
2. *The hardship results from conditions that are peculiar to the property. The wetlands are peculiar to the property and not common to the general public.*
3. *The hardship did not result from actions taken by the applicant or the property owner. Wynnefield didn't create this hardship, the natural typography and federal regulations created the need for this variance.*
4. *The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved. The whole project was already found to be in spirit with the ordinance. They believe the davenport study fully addresses the traffic issue. The study shows no negative impact on the traffic along West Virginia Street and no issues with regard safety.*

Dr. Moore asked who was negligent that they fell in the wetland.

Mr. Nielson replied that it wasn't anyone's negligence and that a through due diligence the wetland was discovered. He explained how a wetland cannot be determined with the naked eye.

Dr. Moore explained how the project had been approved 2 years ago and that he felt that this work of finding the wetland should have been conducted before any permits were issued. He stated how they are ready to start building however, this is holding them back. He felt this issue should have been considered before other steps occurred.

Mr. Nielson explained how the development and construction process are both lengthy processes that require all kinds of moving parts. The wetland report was finished in the fall of 2016. He agreed that it may have been done quicker however; it was part of the normal process. There was not any attempt to get around anything it was just an unfortunate situation with no intentional delay.

Mr. Davis Ray the financing application does not require an environmental study. He also referred back to Mr. Nielson's statement that wetlands are not always visible at the surface. He explained how an environmental study is not completed until they know a project is going forward. The area is not surrounded by wetlands one just showed up there.

Dr. Moore stated that as he understood, by going through the wetland it would create unnecessary hardship. He referred to the traffic study that an average 487 cars pass through the area in a 24 hour period. Dr. Moore expressed his concern for the safety of children in the neighborhood. He explained how people already speed down the road and an additional 60 cars per day would further determine safety in the area. He also said that the study may have

been done during the week however; he questioned the study and thought the busiest day is actually on Sunday. He explained how his neighbor, who has several kids, may move due to the increase in traffic. He asked the developers if they valued working in a wetland or children's lives more. Dr. Moore explained also that many other drivers would traverse down West Virginia Ave. since it would create a shorter route. He also felt the entrance should be moved down the road so that traffic would not be coming all the way down the road.

Mr. Nielson explained how the traffic created from this residence would have to exit onto some road. He reconfirmed that this is only a 60 unit apartment building and not an industrial or other type of business. He offered to share the traffic report with Dr. Moore and also explained that that it shows that the additional traffic would not burden West Virginia Street. Mr. Nielson also emphasized that the speed limit is 25 mph and that he would hope that Dr. Moore would report it if there is an issue with speeding. He also stated that traffic calming measures, such as speed bumps, could be put in place either by the client or the city. Mr. Nielson said this would actually be safer for residents to exit on West Virginia as opposed to the original proposal on a curve on North Franklin. It would be more dangerous to have an exit on a more heavily traveled street. Mr. Nielson stated they have no reason to believe the new residents will be violating any rules. He reemphasized they could put in a couple speed bumps and put up signs to slow down drivers and remind them there are children in the neighborhood. Mr. Nielson said they expect there will be children living there so, the new residents would want to protect their children as well. Wynnefield only had a few options, for this already approved project, and West Virginia was the best option.

Mr. Ray stated that it took time to determine where this alternative site access would be located. He said there was a suggestion to move it up on North Franklin Street however; the increased traffic at that location would be more dangerous than the currently proposed location.

Mr. Easter asked how much problem would it be to fix the crosswalks and establish a light there.

Mr. Ray said they would work with the city and the DOT in any way they could.

Ms. Martin asked Dr. Moore if he would like to give more citizen testimony other than what he had already done.

Dr. Moore asked what kind of units they would be. When told that the applicant had low income units elsewhere, he stated that would be an issue for him.

Mr. Goodall stated that they were not there to debate the use. The use has been approved and who lives in the houses has nothing to do with zoning. You are looking at the merit of a multi-family whether they are rentals, ownership, low or high income housing. We are looking at just the driveway and whether or not the facts have been provided to approve the variance to come out the north end of the property or not.

Dr. Moore elaborated on his knowledge of safety issues for those living on West Virginia Street. He really emphasized how much he valued the safety of children and how added traffic would greatly decrease for the children in the neighborhood. He spoke out that signage wouldn't increase the safety along the road since most people would ignore them. He doesn't like that the proposed access drive is adjacent from property that he owns. Dr. Moore would like the access to be located elsewhere. He feels it is not a safe location for the access drive.

Ms. Martin asked Dr. Moore to locate on a map where he thought would be a better access.

(40) Mary? brought up the point that down to the other end of West Virginia Street, toward Pine Street, is a dead end. She also mentioned there are other apartments just down the road from where the proposed access lane would be located. She has been down there and observed that there is not much traffic coming in and out. Ms... said that is not like a shopping center would be built there, it is just a cluster of homes. She doesn't think there would be much traffic coming out of those apartments compared to those being proposed.

Dr. Moore said she was correct in saying there wasn't much traffic onto West Virginia from the current apartments. He said that the property has another access lane and that the one on West Virginia Street seldom used.

Ms. Martin asked what the cost would be if the entrance by where the wetlands are used, as opposed to the current proposed location.

Mr. Nielson said there would a savings of \$450,000, if not constructed in the wetland area. There better situation for erosion control and drainage on West Virginia. Piping would be needed at the originally proposed location.

Ms. Martin asked Dr. Moore how close the church he was referring to was to the proposed access.

Dr. Moore said it is very close, less than a quarter of a mile.

Ms. Martin stated that citizen's testimonies had been received both supporting and opposing.

Mr. Campbell asked Mr. Neilson to speak more to the public safety of the proposed access drive with regards to the traffic study and addressing concerns mentioned by Dr. Moore.

Mr. Neilson explained how the increase of 487, per the traffic study, would equate to only 1 car every 3 minutes. He emphasized, even during rush hour, it would not be a lot of traffic. He spoke up regarding the safety of having residents exit onto West Virginia as opposed to North Franklin. He said since the speed limit is 25 mph along West Virginia and is not on a curve, it would be much safer for the residents and children that will be living there. He then stated that the 60 units are recognized as a need by the city and access to it is a must. Mr. Neilson also

stated that Wynnefield can not directly do anything about people speeding on West Virginia but, they could request temporary added Vigilance on the road. He also said he respects Dr. Moore's firsthand knowledge of traffic but, they had a special traffic study done, state statutes were followed, and they had expert testimonies. He restated his talking points and said how it is safety from an environmental point of view as well as traffic. He said there is no evidence that these new residents will be speeding through, it would just be speculation. Mr. Neilson said they would be glad to work with Dr. Moore and the city to get whatever signs, lights, speed bumps, ext.

Mr. Campbell asked Dr. Moore if he had any further questions.

Dr. Moore said he was under the impression that everything had been approved and he was just there to be heard. He said he was just there to give his opinion. He thanked them that his voice could be heard. He then said he did not receive a letter that was supposed to be sent to all those in the area so, he was previously unaware of the project.

Mr. Goodall spoke up to say it was sent out a copy of the first-class letter was in the packet.

Dr. Moore said the letter could have been sent but, got lost in the mail. He only found out about the project when the signs went up.

Ms. Martin asked if there were any more cross examinations or rebuttal, of which there were none. She then asked Mr. Goodall to summarize the evidence that were presented.

Mr. Goodall stated that everyone had the evidence that was presented in their staff packets. This included the staff report, variance application, and attachments conditional use permit with attachments which includes the traffic study as well as the wetlands report. It shows the existing driveway coming off of Franklin, the amended site plan showing the drive coming off of West Virginia as well as the ordinance for the original approval of the rezoning with a zoning map for reference. He then said you have what has been presented to you by Dr. Moore, Mr. Neilson, and Mr. Ray.

Ms. Martin asked the board if they need to have any further discussion.

Dr. Moore asked to make a statement in closing. He restated how it would be hard for him to rent the neighboring property to a family with children thus creating a hardship for him.

Ms. Martin then asked for any more comments or discussions, of which there were none. She then declared the public hearing closed so they could proceed into the finding of fact.

Mr. Goodall stated that the finding of fact for the variance are on pages 2,3, and 4. They are on the application as well as the staff report. With a variance you need a 4/5 supper majority of the board to approve each finding of fact and then to vote on the case. If one of the finding of fact in this case are determined a negative then, the whole case is turned down. In this case all

7 vote need to be in favor of the findings. If approve we would then move to the conditional use permit for the site plan change. Conditional use permits only require a majority vote; only 4 votes would be needed to approve that.

Mr. Goodall then read the following findings of fact:

1. "Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property."
2. "The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance."
3. "The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship."
4. "The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved."

Mr. Goodall asked the board to go through each one and make a motion, second, then vote on each finding of fact. He said if each one passes 7-0 then they will vote on the variance as a whole if not, they will stop there.

Ms. Martin then read the first finding of fact. Mr. Morrison made a motion to approve the finding of fact. Mr. Easter seconded the request, which passed unanimously (7-0).

Ms. Martin then read the second finding of fact. Mr. Easter made a motion to approve the finding of fact. Mr. Gordon seconded the request, which passed unanimously (7-0).

Ms. Martin then read the third finding of fact. Ms. Botkin made a motion to approve the finding of fact. Mr. Easter seconded the request, which passed unanimously (7-0).

Ms. Martin then read the fourth finding of fact. Mr. Easter made a motion to approve the finding of fact. Mr. Gordon seconded the request, which passed unanimously (7-0).

Mr. Morrison asked if the board could make a recommendation to the city to address the traffic concerns around the church that Dr. Moore spoke about.

Mr. Goodall replied that you have the ability to put conditions on your approval. The applicant would have to agree to those conditions. He could not guarantee that the public works

department would put in the traffic calming devices on the road but, said you could certainly make the recommendation. He then gave an example where a recommendation made to the city for roadway improvements was agreed upon. Mr. Goodall said if the city board does not agree with the recommendations, then it will not happen. Mr. Easter said that he feels the city is very receptive and will do a good job. Ms. Martin then asked how likely it would be that speed bumps are put in place since; they don't exist anywhere here in the city.

Mr. ? (1:03:36) said, for work on a public street it would involve an analysis by public works, the fire department, and public safety about impeding the flow of emergency vehicles. He said speed bumps on the private property would be controlled by the applicant. He said he felt it was unlikely for the city to put in speed bumps since they don't exist anywhere else in the city.

Ms. Martin asked if there were any more comments. She address Dr. Moore saying that she understood his concern and agreed with him somewhat however, she was working on behalf of the city.

Mr. Goodall said that the next order of business was to vote to approve the variance since all of the findings past.

Ms. Martin asked for a motion to adopt the findings and approve them. She then asked if anyone wanted to add conditions.

There was discussion on the likely hood of speed bumps being approved and put in by the city. Mr. Goodall said that it speed bumps would be very unlikely. Ms. Martin suggested mentioning the safely concern, that people are speeding through the neighborhood, at the public forum for the city board.

Mr. Easter made a motion to approve to approve the facts of finding. Ms. Botkin seconded the request, which passed unanimously (7-0).

Mr. Goodall said since the drive had changed from North Franklin to West Virginia they needed to reapprove the findings for amending the conditional use permit.

Ms. Martin read, "that the use will not materially endanger the public health or safety of locating where proposed and developed according to the plan." She advised the board to look at the applicant's responses to the amendment.

Ms. Martin asked for a motion to accept this amended part of the conditional use. Mr. Easter made a motion to approve; Mr. Morrison seconded the request, which passed unanimously (7-0).

Mr. Goodall read number two "that the use meets all the conditions and specifications". He also said there was a note about thoroughfare access that will be removed due to variance.

Ms. Martin asked for a motion to remove the thoroughfare verbiage from number two. Mr. Morrison made a motion; Mr. Easter seconded the request, which passed unanimously (7-0).

Mr. Goodall stated that finding 3 through 9 will not be change and can be approved as is.

Ms. Martin asked for a motion to keep the finding as is. Ms. Gates made a motion to approve; Mr. King seconded the request, which passed unanimously (7-0).

Ms. Martin asked for a motion to approve the conditional use permit and site plan. Mr. Easter made a motion to approve; Mr. Gordon seconded the request, which passed unanimously (7-0).

VI. Adjourn

With there being no further discussion, the meeting was adjourned at 6:45PM by a motion made by. seconded the motion, which passed unanimously (7-0).