

**MINUTES OF THE
SUMMERFIELD ZONING BOARD
SUMMERFIELD COMMUNITY CENTER
August 24, 2009
7:00 P.M. Public Hearing**

The meeting was called to order at 7:06 pm by Chair Nancy Hess

2. INTRODUCTIONS:

Nancy Hess, Chair
Dick Feulner, Vice-Chair
Trudy Whitacre
Richard Lovett
Alternates Seated: Kathy Rooney

Michael Brandt, Interim Town Planner
Blair Carr for Town Attorney
Carrie Spencer, Clerk

3. CONSENT AGENDA

Dick Feulner made a motion to approve the minutes of the July 27, 2009 zoning board as corrected, Rich Lovett seconded, and it passed 4 to 0. Ms. Rooney abstained as she had not attended the meeting.

4. OTHER BUSINESS:

A. Discussion of ordinance text amendments

Comments from Mr. Dunham were distributed to the board in his absence.

Ms. Whitacre asked the board to consider instating a public hearing requirement for subdivision waiver requests. Mr. Brandt explained why subdivision waivers are currently not public hearing matters: Our ordinance is a prescriptive ordinance, which establishes rules that must be followed (including specific subdivision standards). Since the ordinance cannot predict all potential requests, it has provisions for waivers and variances. It is not a public process since the ordinance already represents public opinion. With a waiver, the public good becomes the responsibility of the zoning board, who must decide if the waiver is in keeping with the ordinance. The public is generally not versed in the ordinance and it is difficult during a hearing to focus public discussion on the technical merit of the request.

At a Board of Adjustment hearing; expert testimony can be applied to the process, which is an opportunity for participants to interpret the ordinance and answer the questions necessary to satisfy the waiver.

In answer to a question, Brandt stated that the BOA is more appropriate for a quasi-judicial hearing because they receive specific training in quasi-judicial procedure.

It was suggested that the zoning board has more background and history with watershed modifications. Brandt remarked that board members can change, and the BOA will get the training they need to address any cases they would see. He asked the board to consider each board's function: The zoning board is concerned with overall land development while the BOA sits in judgment of specific actions and situations which the ordinance does not always cover.

It was suggested that watershed modifications are tied to overall development and therefore represent a broader issue. Brandt suggested that if you always get the same request for a waiver, there's probably something wrong with the ordinance. He offered the example of the many requests to waive the requirement for a single easement serving a single lot, and suggested that it may be better to change the ordinance to allow it as long as certain criteria are met. He added that five or six years ago the requirements for a minor watershed modification were stepped up to be more like major modification requests and that maybe those requirements should be reviewed when the ordinance is under revision for Jordon Lake Rules.

Brandt asked the board what good a public hearing would do if the zoning board can't do anything with the information. It was suggested that the hearing would reveal details about the character and type of community surrounding a waiver request. It was alternately suggested that all those issues should be addressed when a property is rezoned.

Brandt read Article 7-1.11: findings required for watershed modifications as an example of the process to test standards.

Ms. Carr suggested that the burden of proof of the standard is on the neighbor, who must provide facts that support required criteria. Brandt suggested that many of the potential facts that neighbors want to bring out are not germane to the waiver. He added that if there are issues the board feels are important to all properties under consideration for waivers, such as changing the character of a neighborhood or causing pollution, then those issues should become a requirement for waiver approval.

It was suggested that the stricter nature of the BOA would make it better suited to satisfy concerns about public input.

It was suggested that since the zoning board influences the writing of the ordinance, they are best suited to know the intent of the ordinance. Ms. Carr pointed out that the BOA also has experience since they must interpret the intent and spirit of the ordinance for every case they hear, and they decide cases the zoning board does not see.

There was a question as to whether the zoning board can look at a case first, and then recommend it to BOA if appropriate. Brandt stated that if the zoning board is reviewing every case to ensure certain information is covered, they are acting as staff. In answer to another question, Brandt stated that the zoning board would not be able to remand just certain cases to the BOA or Town Council.

Ms. Carr reminded the board that the zoning board cannot be sued as a body, while the BOA can be sued as a body.

Ms. Carr informed the board that BOA cases are posted and noticed, with direct notice to adjacent neighbors.

It was suggested that a person's feelings about an issue should not be pertinent, but that decisions should be based on fact. Brandt was asked about subdivision cases that included a waiver, and he stated that either a decision would have to be made about the waiver first, or the subdivision would be looked at first with a decision contingent upon the waiver. He was asked about waivers as part of rezoning cases, and stated that a rezoning request asks if a location is appropriate to a requested use and size. Modifications requests ask a separate specific question. He suggested that if it is known that a waiver or modification will be required, the zoning board can approve a rezoning conditioned upon BOA's approval of the waiver or modification.

Brandt suggested that the ordinance required by the Jordon Lake Rules can establish alternative best practice criteria to meet the intent of watershed standards.

In answer to a question, Brandt stated that the BOA would be trained in watershed modifications if they will hear those cases. He also reminded the board that the town has engineer's expertise to help.

The following direction (in italics) was given to staff for changes to text amendments:

Subdivision

WHAT: Require that entire attached dwelling structure be completed before any one unit can be occupied

WHY: *to avoid people living in incomplete structures.*

HOW TO GET THERE:

Address the question of enforcement through a building inspector such as withholding Certificate of Occupancy until all units are completed.

Consider bonding the rest of the structure that is attached but not yet completed.

Other subdivision:

Bond the completion of subdivision roads to NCDOT standards.

BOA Requests

WHAT: Change ordinance for accessory structures on larger lots (4-5.2 (A))

WHY: to allow more leniency where current ordinance is impractical to the nature of the property

HOW TO GET THERE:

Use AG min lot size as standard,

Allow accessory structure to be in front of principal structure for lots with a min. 120,000 sf

Require design standards similar to the primary building OR require buffering with landscaping setbacks

WHAT: Remand Subdivision Waiver approval authority to BOA (5-12.1)

WHY: because of the quasi-judicial nature of the process

HOW TO GET THERE:

Change the ordinance to make BOA the approval authority for subdivision waivers.

Discussion of other amendments was continued to the next meeting.

B. Updates from the Planner

Mr. Brandt stated that there are now 12 applicants for the town planner position. He has sent them questions to answer, and plans to conduct interviews in early September. He asked if there was interest in serving on an interview committee. Ms. Hess stated that she will be out of town from Sept 9 to 23. Mr. Lovett said that he would be available. Brandt added that the interview committee will consist of 2 zoning board members, himself, Ms. Spencer, and the finance officer Ms. Luther.

Mr. Lovett made a motion to adjourn, Mr. Feulner seconded, and the meeting adjourned at 9:20.