

**MINUTES
PLANNING BOARD
TUESDAY, MARCH 22, 2016
7:00 PM
HOOD ROOM, MATTHEWS TOWN HALL**

PRESENT: Chair Steve Lee; Members, Barbara Dement, Michael Ham, Kress Query, David Barley, David Wieser; and Alternate members Gregory Lee and Kerry Lamson; Town Attorneys Charles Buckley and Craig Buie; Youth Voice Carley Newton; Planning Director Kathi Ingrish, Senior Planner Jay Camp and Planner/Zoning Administrator Mary Jo Gollnitz.

ABSENT: Member David Pratt

CALL TO ORDER

Chairman Steve Lee called the meeting to order at 7:00 pm.

Chairman Steve Lee noted that there was one regular member of the Board absent and that one alternate member can be added as a voting member for the evening. David Barley motioned to add Kerry Lamson as a voting member, seconded by Kress Query. The motion passed unanimously.

Chairman Lee stated that there is a request to add a Public Improvement Variance request for Pike Nursery as item #7 on the agenda. Mr. Query made the motion. Kerry Lamson seconded the motion which passed unanimously.

APPROVAL OF THE MINUTES

Barbara Dement asked that the third paragraph, second sentence on page five be changed to read: "She mentioned the berm on Rea Road between Hwy 51 and Ballantyne Commons is a good example of a constructed and planted berm screen." Mike Ham stated that he suggested that maybe construction of the internal trail could be an Eagle Scout project not Greg Lee. David Barley noted that in the last paragraph of page five, during that portion of the meeting, he had stated he would like to see in the future a defined tree save area not a suggested tree save area and requested that be added to the minutes.

Mr. Query made a motion to approve the minutes of the February 23, 2016 meeting as amended. Mr. Ham seconded and the motion was unanimously approved.

MOTION 2016-A – Amendment to Composite Bicycle & Pedestrian Plan

Planning Director Kathi Ingrish stated that the amendment is a proposal to add improvements into the Bicycle and Pedestrian Plan. This would eliminate a gap between Pleasant Plains Road and Weddington Rd. When NCDOT starts building the managed lanes on I-485, they will be building an interchange on Weddington Rd. A multi-use path on the adopted plan will require NCDOT to accommodate such in their design plans for the interchange. Ms. Ingrish explained that the blue dashed line on the drawings depicted a bicycle path in the Thornblade neighborhood and the red dashed line would be a multi-use path between Thornblade and Weddington Rd at edge of the interchange.

Chairman Lee asked if this is the proposed off ramp for the west bound traffic. Ms. Ingrish answered yes. She further stated that these are not exact locations rather a location somewhere in the vicinity. She stated that NCDOT would accommodate their designs for the paths.

Ms. Dement recommended approval of Motion 2016-A as it is reasonable and in the public's best interest because the changes complement the Composite Bicycle and Pedestrian Plan that was adopted in 2015 closing some of the gaps in connectivity for pedestrians and bicyclists. The motion was seconded by David Weiser. Chair Lee commented that this is great for the community. The motion passed unanimously.

MOTION 2016-1 – UDO Text Amendments

Planning Director Kathi Ingrish stated that the text amendment comprises a variety of corrections including definitions, prescribed conditions, reference numbers, parking requirements and removes the protest petition provisions because of changes in state law. She further noted there are changes to align with the state aesthetic bill and subdivision bond requirements.

She noted that after public hearing discussion, the cell tower provisions were removed because they are not necessary at this time. Ms. Ingrish provided revised school bicycle parking requirements. She noted that this may not be the final format but provides a way to accommodate the reduced bicycle parking when a school does not have a safe way to get the students to and from the school. The proposal gives a 5000 foot dimension to the school that triggers installation of bicycle parking.

Ms. Ingrish explained the different needs a college setting has versus an elementary school for bicycle parking. Chairman Lee asked if it hard to accommodate additional bicycle parking spaces in institutional uses. Ms. Ingrish stated that when you get into a few hundred spaces near a door that are unlikely to be used, is it practical.

Mike Ham stated that he was glad the cell tower language was removed from the amendment. He wanted to know how the Town is currently handling cell towers. Ms. Ingrish stated that the town has regulations in place that are approximately 15 years old. The technology has since substantially changed and staff realizes that updates are needed. There is a student assisting staff with updating text language and it is anticipated the changes will be ready this spring. Ms. Ingrish further noted that the text change would accommodate small cell sites and DAS systems that we do not address in the code today. The UDO currently discusses spacing and height of towers. The proposed text was to accommodate a state tower that has now been determined to be exempt from our ordinance. Mr. Ham said that he has concerns about cell towers going up on every block in town. He understands that there are state and FCC regulations that have to be dealt with.

Ms. Dement asked if anyone is going to the APA Conference because there is going to be information about underground wires at the conference. There are a lot of good things happening and options. Ms. Ingrish said that towers will not go away entirely. The Town has provisions for stealth applications such as in a steeple or bell tower as well as lattice type towers in commercial areas. There are currently five or six commercial towers in our community today. There is a large demand for data and whether that is serviced by more towers or repeaters we don't know. We need to add regulations for the new technology. Discussion continued on the future requirements needed to support cell phones and other devices. Chairman Lee noted that the Planning Board is interested in participating in the discussion regarding communication tower text amendments.

David Barley stated that cell towers could be located on transmission towers through town. Town Attorney Charles Buckley stated that there are regulations in place. He continued noting that each tower goes through a review process. Each time there is a cell tower public hearing it is in the nature of a quasi-judicial process and FCC has stated that you cannot deny a tower based on fears of emissions.

Kerry Lamson asked if the proposed bicycle changes would have any impact on the existing schools. Ms. Ingrish said that it would apply only to new school construction or changes at existing school sites. She did not feel that any of the existing schools would be impacted. Mr. Lamson wanted to know if the use of portable buildings counts toward classrooms. Ms. Ingrish stated that if it is a room where classes are held, then it is considered a classroom. Mr. Lamson wanted to know how the required additional bicycle parking would be handled if a portable building or classroom were added to an existing structure. Ms. Ingrish stated that the permitting process would handle this. Mr. Buckley stated that any application would be required to meet all of the UDO requirements.

Ms. Dement asked if there are any unintended consequences from these regulations if Matthews would separate from CMS. Chairman Lee said that he does live by a school that is connected by the greenway and the use of bicycles is not as successful as you would believe. Mr. Buckley clarified that these are use regulations not ownership regulations. Ms. Dement said she was concerned because the number of children attending the schools may increase. Mr. Barley said that this text change is for new construction.

Mike Ham made a motion to recommend approval of Motion 2016-1 in that it is consistent with the UDO and town transportation plans. Kerry Lamson seconded the motion. Ms. Ingrish asked for the Board to clarify which bicycle parking requirements they are recommending for approval. She noted that the text presented at the Public Hearing is different from what staff is currently suggesting.

Mr. Ham withdrew the motion.

Susanne Todd, with Johnston, Allison & Hord 1065 E Morehead St Charlotte NC 28204 spoke on behalf of CPCC. She stated that Ms. Ingrish sent the proposed text amendment discussing the 5000 linear feet bicycle friendly improvement requirements. She stated that they have reviewed the modification and appreciate the proposed criteria. She continued stating that they have concerns with the examples that were attached. They do not believe that the 5000 feet has a nexus to achieve bicycle ride ability from a destination to CPCC. She provided examples of how a development would meet the distance requirement of 5000 feet with public improvements but would not serve as a valid purpose for installation of bicycle parking. They are hoping to speak with Ms Ingrish to have a better understanding of the goal for the text change.

Ms. Todd continued stating that the up-fit requirement of one year was a concern. The "u" shape bicycle parking spaces are not difficult to install, however, the ordinance does require one-half of the spaces be covered. If there are improvements that trigger the requirements of the ordinance, they would be required to put in 145 covered spaces. She stated that it could be a significant cost to CPCC. She stated that a recent installation of covered bicycle parking at UNC Charlotte cost \$100,000. She continued explaining CPCC's funding process for any capital improvement project.

Steve Lee asked how many students on average are there per classroom at CPCC. Kent Reid 1325 E Fourth Charlotte with CPCC stated that on average they have 28 to 32 students per classroom. Mr. Lee asked how many classrooms are at the Matthews campus. Mr. Reid stated that the new facility has 29 classrooms. Mr. Lee asked if there is covered bicycle parking at other campuses. Mr. Reid answered yes, where they can make them part of the buildings. They have not built a specific structure dedicated to cover bicycle parking.

Mr. Ham asked how many bicycle parking spaces were installed at the covered parking at UNCC. Jeff Smith with Bulla Smith Design Engineering 1347 Harding Place Charlotte addressed the Board. He stated that Hunt Hall at UNC Charlotte was the most recent dorm built. There was no code requirement yet they chose to add 30 covered bicycle parking spaces. They matched campus aesthetics of brick based, metal copings and tops, which cost just under \$100,000 for 30 spaces. Mr. Ham stated that CPCC would not have to go to that extent in order to meet the requirements in Matthews. Mr. Smith stated that other campuses will not go to that extreme. It would need to keep rain off the bicycles and there are other alternatives that are not so costly. There was further discussion on cost of covered bicycle parking and requirements for aesthetics.

David Weiser asked if the proposed new building design incorporates covered bicycle parking. Mr. Reid stated that they are in design development and would look for possible areas along the eaves, because they are already over budget. They would try to add onto a new building or existing buildings. Mr. Ham asked what it would cost to build 75 car spaces. Mr. Reid stated that there would not be any reduction of parking if bicycle parking is added.

Mr. Query state that he doesn't feel that covering the bicycle parking is unreasonable. Mr. Ham stated that we are looking at ways to get cars off the road. The upside far outweighs the one time cost.

Greg Lee asked if the CATS bus service runs out to the campus. Mr. Reid stated yes that the service recently started. Mr. Lee wanted to know if there was a shelter for the bus riders. Mr. Reid stated that there is a standard CATS shelter there.

Ms. Dement wanted to know how many bicycles are parked on campus now. Ms. Todd stated that Ms. Remerus spoke at the Public Hearing stating that she occasionally sees one bicycle. It is a difficult place to access with a bicycle even as much as we encourage the use of bicycles. Given the lack of expected use, of having half of 145 spaces covered spaces is a cost.

Mr. Buckley stated the Board needs to deal with the UDO proposed amendment items. The Board is being asked to consider the original text, the revised text or something different. This is a text amendment and is not site specific. Chairman Lee clarified that the paragraph under discussion is the red paragraph which is a revision presented by staff.

Mr. Query said that it is reasonable and this must be viewed for all schools. He continued stating that you will find more people riding bicycles when the cost of gas goes up. If this had been in effect when other schools were built there would be more children riding their bicycles to school. Mr. Lamson said that we are struggling with a variable that doesn't make good sense. He understands what staff is trying to do and some additional work may be necessary.

Chairman Lee understands that this is text that could be around for 20 years. If we don't accommodate bicycle parking they won't be used. Mr. Lamson stated that he is uncomfortable with the revised language.

Mr. Ham asked if the text paragraph in red is adopted, what would be the option for a school to come back to the town if they are not using or needing the bicycle parking. Ms. Ingrish said that they could ask for variance or text change to modify the requirements for spaces or timing. The reason that the change is proposed within this package is because the current requirement is too much for all the schools. Staff is trying to fine tune the requirements.

Mr. Query said that this is a living document that we are trying to make a compromise on. He feels it is better to err on the higher side of the requirements. He provided an example of how the text can be changed to accommodate the schools. Chairman Lee asked what CPCC would be required to install based on the red text. Ms. Ingrish stated that it would be one per classroom of the new building and that would be 29. She said that once the development in the one mile area would happen then they would have to install the additional spaces within one year, assuming the text has not been changed.

Ms. Dement stated that she is concerned that when we are reviewing text changes we have to take faces and name away from it. If the text doesn't match a specific institution or business then they need to come back to the board to have it addressed. We have to be forward thinking.

David Barley wanted a clarification asking that if a new 10 classroom building is added to a campus the requirements will apply. Ms. Ingrish answered yes. Mr. Barley asked if staff is comfortable enforcing these proposed requirements. Ms. Ingrish stated that staff would know when a new building would be built because of the review process. Mr. Barley continued stating that saying someone could ask for a variance is implying there is something wrong with the text. Mr. Ham stated that a variance is not easy to get. Ms. Dement said no one on this board takes this lightly. Mr. Ham stated that there will be specific parties that won't be able to meet this requirement.

Mr. Query asked for clarification that this is a reduction of requirements currently in our ordinance. Ms. Ingrish stated that that is correct. Chairman Lee stated that another amendment is possible. He feels that staff has provided a middle ground.

Mr. Query made a motion to recommend approval of the entire UDO changes including the new language for the bicycle parking standards submitted this evening by staff, which is the red type and the combination of amendments to the UDO are consistent with the Land Use Plan. Mr. Ham seconded the motion. Ms. Ingrish asked that the motion also clarify the deletion of the provisions of the cell towers.

The motion passed with a five to two vote. David Barley and Kerry Lamson were opposed to the motion.

Zoning Application 2016-642 – CPCC Expansion Site, CPCC Lane, From R/I and R-20 to B-3(CD)

Senior Planner Jay Camp provided a brief overview of CPCC's proposed rezoning request. He said that it is for a 365 space parking lot to serve a planned new classroom building at the campus. He showed the old alignment

for Tank Town Rd and the portion of the area to serve the classroom building. The building is planned for construction in 2018. He continued stating that the campus currently has approximately 4000 students. There was no feedback from the public hearing and there are no changes to the plan.

Ms. Dement asked if there are any maximum parking requirements in our ordinance before you are required to build a parking deck. Mr. Camp answered no. The UDO does incorporate the concept of parking rooms. There will be a large green space down the middle of the lot. Ms. Dement stated that there is so little undeveloped land left in Matthews that she does not like to see just a parking lot. Mr. Camp explained that they are no constraints at this time for land and staff does encourage structured parking if financials would work for the school.

Chairman Lee asked that Mr. Camp explain the B-3 zoning of minimum versus maximum height. The B-3 zoning was originally proposed because it would allow for a 50 foot classroom building height. Only parking is allowed based on the current conditional note.

Mr. Query asked if there would be a central area down the middle of the parking to allow for a protected walking area. Mr. Camp stated that not to his knowledge. He showed where a central crosswalk would be and the green area. It is human nature for one to take the shortest path. He is not sure that NCDOT would allow for a second crosswalk on a dead-end road.

Mr. Lamson asked if there is a tree save percentage for this zoning. Mr. Camp stated that there is. He believes it is 12%. For the time being the remainder of the property is wooded and they will be well over the requirement. If the balance of the property were to be developed there would be calculation requirements to verify that they meet the ordinance requirements. Mr. Lamson asked if there isn't anything that could be done now to define a buffer area. Mr. Camp stated that a conditional note requiring a buffer along I-485 could be suggested.

Mr. Lamson asked if the parking lot would be lighted, how tall the poles would be and if they will be down lit. Mr. Camp stated that they would have to meet the zoning ordinance lighting requirements. Mr. Lamson asked what the distance from the parking lot is to buildings. He is concerned about security with the longer walking distances. Mr. Reid stated that they provide video surveillance at all parking lots. The parking lot will have lighting and cameras are monitored by dispatch on a 24 hour basis. There will also be blue phones for security with the hot button.

Greg Lee asked why B-3 zoning is being requested versus the R/I zoning. Mr. Camp stated that R/I districts do not allow stand-alone parking lots. Mr. Camp stated that it was 500 feet from the edge of the right of way to the new building.

Mr. Ham commented that he wishes the language to be changed to percent of tree removal and not tree save. He stated that he looked at the elevation map and that it appears the land is level with current road; when you cut and grade what would the elevation be to the parking lot. Mr. Smith stated that the center of the parking lot is roughly 5 ft below the road elevation. There will not be a substantial amount of cut and fill. Mr. Ham asked if they could make a combination of impervious and pervious surfaces so the water could naturally run to where it needs to go. Mr. Smith said that the soil types are not as friendly as in the coastal region. He explained how the water runs and discharges. Mr. Ham asked that they look into the possibility of using pervious surface.

Ms. Todd asked that a condition be placed on the site plan stating that they are complying with the current ordinance requirement for bicycle parking. They are showing 10 per classroom for a total of 290 with half being covered. They would like to incorporate the new text amendment requirement into the existing site plan.

Mr. Ham recommended approval of Zoning Application 2016-642 CPCC Parking with the addition of a condition that the bicycle parking standards so stipulated in the new UDO changes be applied if adopted, and finds the request is consistent with the UDO and plans for education and transportation. Mr. Query seconded the motion and it carried unanimously.

Administrative Amendment - Windsor Square Roundabout Design Revisions

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Planning Director Kathi Ingrish presented the Administrative Amendment for Windsor Square. She stated that the roundabout is in the Windsor Square Shopping Center near the gas station. She showed a drawing with the easement requirements for the driveway access. She continued describing the area in detail. She noted that the gas station property was purchased from the shopping center and there is an easement agreement in place for ingress and egress to the gas station. She continued noting that there are two driveways for access in and out near the roundabout area. They wish to make changes to the easement area in order to create new access points. The roundabout was created with specific design requirements as part of a previous conditional zoning action. Therefore any revision has to go through some Town approval process. It does not rise to the level of a full rezoning action. This is an Administrative Amendment that the Planning Board may make a decision or it can be forwarded to the Council for action. The Town Council is aware of this issue.

Mr. Ham stated that he is confused because the gas station has three access points to a parking lot. Ms. Ingrish stated yes that is correct. Chairman Lee stated that the access point is so close to the roundabout that it seems risky.

Mr. Wieser wanted to know if there would be access to make a left hand turn into the gas station. He believes that is dangerous. Mr. Ham stated that the current access is access into both parking lot and gas station.

Anthony Fox with Parker Poe Adams & Bernstein 401 S Tryon St, Ste 3000 Charlotte addressed the Board. He stated that Craig Mueller with Windsor Square and the engineer will also be assisting with information regarding this case. Mr. Fox stated that part of this is to restore the access prior to the roundabout. He provided background regarding the curb cut along US 74. There is conflict between the owners of the Exxon Service Station and the shopping center. He continued stating that there is parking before the entrance to the service station. Part of the request is to restore the easement and correct the situation.

Craig Mueller representing SC Windsor Square LLC 1814 Windsor Sq. Dr. Matthews stated that he agrees with the concerns the Board has already noted. There is an access point in a different location; however it is not a legal access point that benefits the Exxon Station. He continued noting that they could eliminate that access point. The easement agreement does provide the gas station with the right to access the entry point along the drive.

He showed the easement agreement area and access points on the site plan. He stated that the gas station is not willing to work a compromise for the situation. He understands that the dispute is not the Board's issue. They are here today to restore the access rights and clear up the easement agreement. There was a curb cut that was moved for the roundabout to be installed and mitigate any safety issues.

Chairman Lee asked if there is any plan to block that access point outside the easement agreement. Mr. Mueller answered no. Mr. Ham said that he is uncomfortable because of the left turn access. He would be more comfortable if this were a right in right out only. He noted that he feels it is a dangerous. Mr. Mueller stated that he does not know if that would resolve the issue. Chairman Lee clarified asking Mr. Ham if he is suggesting a pork chop. Mr. Ham said yes because of safety issues. Chairman Lee asked if the gas station is asking for a specific design movement in the easement agreement. Mr. Mueller stated no they are not. The shopping center is trying to move the new curb cut as far away from roundabout while keeping it in the easement area. He provided some additional background on the easement agreement. Discussion continued on where access currently exists, options, and concerns about safety in allowing full movement.

Mr. Lamson wanted clarification that the applicant was asking the board to solve a problem he has with the gas station owner on an easement. Mr. Mueller answered yes. Mr. Lamson asked what recourse the shopping center has if this issue is not solved this evening. Mr. Mueller stated that they could be sued. Mr. Ham asked if there is another option to solve this by having a more permanent agreement. Mr. Mueller stated that they have offered this and the gas station turned it down.

Mr. Fox stated that this is an Administrative Amendment for the site plan and has been reviewed by Matthews staff with little comments. The only concern was getting fire equipment through the roundabout. The existing curb cut will remain open and provide additional access to the gas station. Mr. Fox stated the he hears the board's concerns regarding traffic safety. They could add signage which would state "no left turn out".

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Greg Lee asked if the fire and police have commented on this issue. Ms. Ingrish said both fire and police had the same concerns about traffic going through the roundabout and existing traffic from the gas station. Greg Lee asked if someone from the gas station was present to speak this evening. Mr. Mueller said no.

Mr. Query asked if the applicant could make changes to the access. Mr. Mueller said that the easement area has to have access. He continued explaining what they have reviewed. He said that the engineer is comfortable that a left out does work. Mr. Query said that he would only consider a right in right out only. A sign does not work. Chairman Lee said consistency and reasonable does not fit in this case. He continued noting that this could be forwarded to the Town Board. Mr. Query said that he would deny this unless the applicant is willing to change the proposal.

Mr. Mueller stated that the changes in the parking lot redesign was spurred by getting access off of Independence and securing JC Penney as an anchor tenant in 2010. He continued providing some additional background on the shopping center development.

Mr. Fox stated that his client is restricted to provide ingress and egress within the easement area. He understands that adding the signage may not be sufficient, but if they added a road hump to slow traffic leaving the roundabout that would be a way to avoid accidents. Mr. Ham asked if the gas station was part of this in 2010 and why has it taken six years to come to this point. Mr. Mueller said he does not know the answer. He was not present when the agreement was made.

The Board and Mr. Mueller further discussed options for making the access agreement palatable and safe for all. Mr. Lamson asked if they could remove all the parking spaces along the easement agreement and were there any other options. Mr. Mueller said that the gas station must agree to the changes. Mr. Fox said that the gas station owner is enforcing the current easement that he has. He is not willing to amend the agreement because he feels there is a violation. Mr. Mueller presented additional solutions for the easement access. Mr. Ham brought forward suggestions to resolve the issue. Discussion continued on providing a resolution.

Chairman Lee asked if Mr. Mueller was in a position to make changes this evening. Ms. Ingrish provided a resolution removing some of the parking spaces and redesigning one curb. Mr. Mueller and Ms. Ingrish discussed how the change could solve the problem.

Mr. Query asked Attorney Buckley if this board has the right to defer a decision and have this come back to them. Mr. Buckley said yes, this is not a zoning petition so there is no time limit. Mr. Fox said they have heard the Board's comments and if you want to defer this until the next meeting they are agreeable to this. Mr. Mueller would prefer that it stay with the Planning Board.

Mr. Weiser asked if they would have an agreement with the gas station at that time. Mr. Buckley stated that is a civil matter and not for this board to be concerned with.

Chairman Lee said that if they work with staff and addressed the safety concern the Board would be glad to review the amendment next month.

Ms. Dement stated that at the top there is ingress and egress across from the current access agreement area. She wanted to know what the distance of those curb cuts were from the roundabout and if that has caused any problems. Mr. Mueller did not believe there were any safety issues in that location. There was additional discussion regarding traffic through the shopping center.

Mr. Barley asked that the Town engineer or other professional engineers review options provided by the applicant. Mr. Buckley suggested that a history of accidents on the access that Ms. Dement mentioned also be provided. Mr. Mueller stated that they will look into additional options and other comparisons that may resolve the situation.

Mr. Query made a motion to defer a decision until next month when the applicant can bring alternate solutions/ options to the board. Barbara Dement seconded and it carried unanimously.

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Public Improvement Variance – Pike Nursery SWIM Buffer

Senior Planner Jay Camp provided some background on the Pike Nursery Public Improvement Variance request. He said that SWIM buffers are a water quality initiative that Mecklenburg County put into place and Matthews adopted in 2000. They are meant to help with runoff during heavy rain events. Matthews does not typically allow impacts to the SWIM buffers. Greenways, sewer projects, perpendicular crossings such as driveways, bridges and streets are allowed. The property rezoning was approved in December 2015 and Pike Nursery has purchased the property. They are currently going through the permitting process. They are finalizing the easement agreement with the Town for driveway access. The issue brought to staff is that there are concerns about SWIM buffer impact of approximately 8 ft. on the side closest to Levine Center and 10 ft. on the side toward NC 51.

Kress Query asked if the county had ruled on this request. Mr. Camp stated Director of Water Quality Rusty Rozelle was not in favor of the proposed impact to the SWIM buffer. Chairman Lee asked if the county has provided any opinion on the proposed mitigation. Mr. Camp stated that they would prefer this area be stabilized and left alone.

Mike Ham asked when the applicant got the rezoning approval did they state that they would be coming for a variance. Mr. Camp stated that no they did not. There was a difference in calculation based on how these areas are treated in Matthews versus Charlotte. Mr. Camp said that there is a perception in Matthews that you bulldoze first and then ask for forgiveness. The applicant is currently held up in permitting.

Ty Shaffer with Robinson Bradshaw 101 N Tryon St Charlotte addressed the board. He stated that they appreciate the staff and Planning Board adding this to their agenda. John Carmichael also with Robinson Bradshaw, Mike Chapman with Pike Nursery, Chase and Carlton Burton with Burton Engineering are all present. He showed the overview of the property. He continued stating that the rezoning request was approved in December 2015 and is now zoned B-1(CD). The goal is to develop and operate Pike Nursery on the site. He explained that Armstrong Garden Center Inc. is the parent company. He showed the site plan and described the overall site constraints. There are significant topographical challenges that are driving this variance. He noted that 37% of the site is taken up by buffer and 27% is used for tree save. The applicant is requesting a recommendation that they be granted a public improvement variance from adherence to the applicable SWIM buffer in two locations. They believe these are necessary in order to use the site.

He continued stating that the applicant has worked with the engineers to provide a mitigation proposal. There are no stream impacts. He noted that they are requesting relief from UDO Section 155.704.2.C. The applicant is requesting to install retaining walls and to modestly expand the fill into the SWIM buffer at two locations. The ordinance does allow for variance requests. The standards for granting the variance are listed in Section 155.712. He reviewed the guidelines for granting the variance request.

Carlton Burton 4233 Denbigh Dr. Charlotte stated that he takes full responsibility for the issue regarding the buffer. They have worked with Rusty Rozelle over the years on several issues. He continued stating that Charlotte and other municipalities do not have the variance process in their ordinances. In Charlotte they can negotiate with you. He overlooked this. It was on the rezoning plan and we anticipated being able to negotiate. They had an initial meeting with the County and it was not caught at that time. This is an important piece and that is why they are here.

He showed the Board the two areas that are in question. He showed that the end of the parking lot and pipe are together. They were looking to add the retaining wall in order to plant a required tree for parking. The wall was 8 to 9 feet and once this issue was discovered, they reduced the wall to 3 to 5 feet in height. They have also reduced the parking by using compact spaces. They are not in favor of compact spaces but they are the furthest away from the store.

Mr. Burton then discussed the area near the greenhouses. He explained the typical product and how the greenhouse size has been reduced. He further described the original proposed wall and path along the back of the site for circulation. There would be plant display with a number of trees in larger containers. They would like

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to place curb along the perimeter in order to pipe the runoff into the sand basin for filtering and treatment. They do need outdoor storage.

He continued explaining how they are working with Mr. Rozelle's office on solving the issues. They currently have an impact with fill. He understands that Mr. Rozelle would not support encroachment into the buffer. They will work with Pike to come to a solution. He further described the area and requirements of Matthews UDO. He noted that there is a 10' impact to the upland zone and the SWIM buffer is 35'.

He continued describing the overall site plan. He stated that they will be approximately 8' into the buffer in another location. They plan to place trees outside which would be 3 deep over 10 feet in length along the back that will be for sale. It is not a buffer but this is unusual because of the product on site.

He continued stating that all roof water will come down into pipes and go into the basins. He showed the mitigation plan. They will work with Rusty Rozelle for any mitigation that is acceptable to their group. They feel that they have a good plan. He stated that if this is not approved there are monetary considerations. They have already lost approximately 25% of greenhouse space. They would lose parking and have to place parking in the loading and dumpster area. They are trying to keep the loading area as clear as possible.

Chairman Lee asked if he could address the mitigation plan. He understands that the site has constraints on all sides. Mr. Burton stated that there is no piping in the buffer only 800 or 900 sq. ft. of asphalt and the retaining walls. Chairman Lee stated that you are capturing the runoff in the basins on site. Mr. Burton stated that the buffers do provide filtering and stream bank protection. That is the reason for the natural vegetation.

Mr. Ham stated that he was concerned by the letter that without the variance you would not be able to provide the 30000 sq feet of greenhouse. The courts have consistently said that the town has to allow for a reasonable return on property. It bothers him that before the purchase all the due diligence should have been done.

Mr. Barley asked how many parking spaces are provided on site. Mr. Burton answered that it is 75. Mr. Barley asked how many are required. Mr. Burton stated 75. Mr. Barley asked how much greenhouse space they would lose if the variance was not granted. Mr. Burton stated approximately 1,700 square feet.

Mr. Lamson asked if they could run the greenhouse parallel to the buffer instead of pointed toward the buffer. Is there a possibility or option to change this? Mike Chapman 3555 Kroger Blvd Duluth GA 30019 spoke to this. He stated that the greenhouses have purloins, which are the bottoms of the gable ends that have to go from column to column. It is a square system and to make the angle end would be difficult. Mr. Lamson stated that it is approximately 6' infringement and if you are storing large trees in that area, if you cut 2' off, does that remove you from the buffer. Mr. Chapman stated that there is some flexibility but that you have to maintain 12' lengths on the buildings. They continued to discuss options for reducing some of the greenhouses. Mr. Burton stated that the structural engineers for the greenhouses did review this.

Mr. Burton noted that they have already mitigated and they take the concerns of this board and Council seriously. There will be no runoff leaving the site. Mr. Lamson asked for clarification of the tree in the front. Mr. Burton stated that the tree is to meet the requirement of the UDO to have a tree within a certain distance from every parking space. Mr. Lamson was concerned about placing a wall in the buffer in order to place one tree. Mr. Burton noted that they wish to be a good example for the Town in what is planned. They wish to keep the tree in that location.

Chairman Lee explained that this board will only provide a recommendation to the Town Board and this dialogue is helpful.

John Carmichael stated that this is a unique site. It has two streams with SWIM buffers on both sides and a highway overlay district. He understands that there is a 25 foot drop from the Levine Center down to the property. He continued discussing the difference between the granting a variance from a Board of Adjustment and the standards set out for this Public Improvement Variance. He did point out that they have met parking compliance. They have tried to provide a solution without asking for the variance. If the variance is denied, they do have a solution for parking however it is not optimal. There is no design solution for the greenhouses.

Mr. Query said that he does appreciate that this is a hard site to develop. The town has been trying to get someone to development this property for a while. He doesn't have a problem with the variance. Steve Lee asked what the surface was under the greenhouses. Mr. Chapman stated that it is asphalt.

Mr. Carmichael asked that the recommendation note that the variance would be subject to mitigation set by Mr. Rozelle's office or greater. Mr. Buckley stated that whatever Rusty Rozelle requires the applicant will comply to. Mr. Lamson stated that he feels a nursery would be the best to keep runoff under control.

Mr. Ham said that he likes Pike Nursery and is glad they will be locating there. However he doesn't like a variance request after the initial approval of a site. Chairman Lee believes that they have been very transparent. A nursery seems to be a good use for the site.

Mr. Buckley stated that this board makes a recommendation and that at least one of the four variance standards in the ordinance be included in the motion.

Kress Query recommend the Town Board grant the public improvement variance based on the relationship of the property to natural topography or to the nature of adjoining properties warrants relief from the standard in question and that is a true statement. Secondly the difficulty or hardship from the application of these regulations would prevent the owner from making reasonable use of the property and that is truly applicable. Barbara Dement seconded. The motion carried six to one with Mr. Barley opposing.

ADJOURNMENT

David Weiser made a motion to adjourn the meeting which was seconded by Mike Ham. The motion passed unanimously. The meeting adjourned at 9:40 pm.

Respectfully submitted,



Mary Jo Gollnitz
Planner/Zoning Administrator