

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

**PRESENT:** Chair Steve Lee; Members Kress Query, Michael Ham, David Wieser, Kerry Lamson, and Gregory Lee; Alternate Member Jana Reeve; Town Attorneys Charles Buckley and Craig Buie; Youth Voice Peyton Gates and Matheus Sadovsky; Planning Director Kathi Ingrish, Senior Planner Jay Camp, Planner Mary Jo Gollnitz, Administrative Assistant/Deputy Town Clerk Shana Robertson.

**ABSENT:** Member Barbara Dement

**CALL TO ORDER**

Chairman Steve Lee called the meeting to order at 7:03 pm.

Chairman Lee welcomed the new Youth Voice members Peyton Gates and Matheus Sadovsky

Michael Ham motioned to add Jana Reeve as a voting member, seconded by David Wieser. The motion passed unanimously.

**APPROVAL OF THE MINUTES**

Mr. Ham had one grammatical correction to the minutes. Mr. Wieser motioned to approve the minutes of the September 27, 2016 meeting with change. Seconded by Kress Query and the motion was unanimously approved.

**Zoning Application 2016-650 – Matthews Festival Shopping Center (Portion Facing US74) 10410 E Independence Blvd, from Conditional To B1SCD and B-H(CD)**

Senior Planner Jay Camp stated that there were updates since the public hearing on November 14<sup>th</sup>. The applicant is requesting a rezoning from Conditional to B-1SCD and B-H (CD) as well as proposals to develop two new outparcels. Mr. Camp reviewed the NCDOT approved driveway access from Independence Blvd and the other accesses from Matthews Township Parkway. Concerns at the Public Hearing included the driveway location, pedestrian access, landscape, and building materials that will be used for new outparcels.

Keith MacVean of Moore & VanAllen, 100 N Tryon Street, Suite 4700, Charlotte, NC 28202 presented Power Point presentation that was emailed to Board members the afternoon of November 22, 2016. Changes include revised building elevations and brick building material for the BJ's Restaurant and Brewhouse, a new landscape drawing showing preservation of some existing landscaping, and added site plan details addressing pedestrian connections. Restrictions and terms of use were added to eliminate restaurants with drive-through windows, dormitories, crematoriums, mini-storage facility, pet cemeteries, fuel stations, and vending machines immediately adjacent to building overhangs.

Mr. MacVean reviewed that the site is sixteen acres and once fully developed will total 127,817 square feet for all buildings. There are two access points from Independence Blvd., one on Matthews Township Parkway at the traffic light and a shared access with the shopping center to the rear. Due to the Independence Blvd/ US74 widening project, the state will be closing the access closer to the Matthews Township Parkway ramp. A new driveway is being allowed by North Carolina Department of Transportation that will be 1,000 feet from the ramp. The addition of a right turn storage lane and a driveway extended median will force drivers to make a right into the driveway. Proposed greenway and pedestrian connections were displayed and updated BJ's Restaurant and Brewhouse footprint. Walkway connections with brick pavers for ease of identification were added and open space will be preserved. There will be a total of 746 parking spaces between the three areas. Mr. MacVean stated that they have been working with Carrabba's to address concerns with driveway placements and will have a shared parking count of 183 spaces. Mr. MacVean explained the addition of pervious concrete to address storm water and water treatment.

Alex Kelly from Tribek Properties, 2820 Selwyn Ave, Suite 425, Charlotte, NC 28209 was available to answer questions and concerns of the Board.

Mr. Wieser asked if the deceleration lane off of Independence would be for one or both entrances. Mr. Kelly stated that currently there is one in place and plans had been made to lengthen the lane for the second entrance. The deceleration lane will end with the extended driveway median.

Mr. Query asked about the difference in plans that were presented as they were not all showing the same layouts and designs for the blocked deceleration lane access. Mr. Kelly said that due to the time of turnaround not all the site plans had been updated to reflect what was presented but will be before Town Board decision. Mr. Query also asked if the applicant would consider a true brick material versus the proposed brick veneer saying that true brick is longer lasting. Mr. Kelly said that he would speak with the tenant. The property elevation for the second proposed out building will be resubmitted for approval at a later date.

Kerry Lamson described the flow of traffic from the access off of Matthews Township Parkway with the drive terminating at a stop sign behind the current Big Lots. He asked if there were any plans to improve that traffic flow. Mr. Kelly said several conversations had been made with NCDOT regarding options for that access but without the deconstruction of a building there was no solution at this time. Mr. Lamson added that there was nothing limiting the Home Depot and Harris Teeter shopping centers from these access points. Mr. Kelly stated that the shopping centers had a reciprocal access agreement with cross access. The applicant could approve wayfinding signs to direct pedestrians and drivers to the best route. Mr. Lamson said that a curb could also help.

Chairman Lee asked about the pervious pavement and placement. Mr. Kelly reviewed the locations of the pavers. He explained that this was an advanced stormwater system that has been approved by Mecklenburg County Stormwater. This would allow runoff water to be absorbed into the pervious area and filtered into an appropriate area. Pervious areas will be placed within the natural slope of the land.

Chairman Lee asked if auto sales could also be added to non-allowed use. Mr. Kelly said that could be done.

Mr. Query motioned to recommend approval of rezoning and site plan in Motion 2016-650 subject to a recommendation to tenant's consideration to use of full sized brick versus brick veneer, deleting auto sales as a permitted use, and the placement of traffic flow plans approved by NCDOT in exhibit one presented as it is consistent with the current zoning and the Matthews Land Use Plan. Mr. Weiser seconded the motion and it was unanimously approved.

### **Public Improvement Variance Request – 2505 Rice Rd, Request to Waive Construction of All Street Improvements to Existing Street (curb, gutter, storm water drainage, widened pavement)**

Planner Mary Jo Gollnitz reviewed the location of the 6.588 acre tract of land along Rice Road. The property is zoned R-15 and the minor subdivision is being developed by right. The property is owned by Rice Road LLC. The applicant is requesting a Public Improvement Variance to waive the installation of curb and gutter along Rice Rd. The developer proposes to install a meandering sidewalk within a 20' frontage buffer of the subject property. The property is proposed to be subdivided into 7 lots that will meet R-15 zoning. Mrs. Gollnitz identified the future park and church on Rice Road and the existing curb and gutter that are currently in place, noting that there is not curb and gutter currently along the subject area. Public Works Director CJ O'Neill does not recommend approval of the variance request as all other subdivisions have installed curb and gutter as well as widened pavements along Rice Road. Mrs. Gollnitz stated that this is a Town road that was adopted into Matthews road system in 1998 from NCDOT. The cross section at the time were eleven foot travel lanes, fifteen foot center turn lane, two foot six inch curb and gutter, four foot planting strip, and five foot sidewalk. The cross section has been maintained by all new developments. Mr. O'Neill stated that the future park, across the street, will be required to construct the same cross section. The Planning Board's recommendation will go to the Board of Commissioners for final decision. Fire, Police, Public Works, Parks and Recreation, and Planning staff consensus is that a single access driveway to the property is safer than 7 driveways because the property is located on a curve in Rice Road.

Mr. Query stated that looking at Rice Road there is no curb and gutter located on that side of the street except near Sam Newell. Based on the lot shape, Mr. Query said he could see a hardship for the builder to place that much curb and gutter for the one driveway. He asked if a right-of-way could be set aside for possible future widening. Mrs. Gollnitz stated that the current right-of-way is 60 feet.

Mr. Ham did not feel that six and a half acres of land for seven houses was a hardship and stated that not wanting to put in curb and gutter also does not define a hardship.

Mr. Lamson asked what was there now and what the topography of the lots were. Mrs. Gollnitz showed current pictures showing a ditch line and stated that the lots were at grade level.

Mr. Query asked if the church was required to install curb and gutter. Mrs. Gollnitz stated that Walking by Faith is required to place curb and gutter but got Variance for Sam Newell. They have currently not started development. The other church on Rice Road was in place before the Unified Development Ordinance was adopted by the Town.

Mr. Query stated that he felt with just the curb widened, safety could be a concern. Motorists would feel they had more road than was available with the street going from wide back to narrow. Due to the curve, Mr. Query said he understands the single entrance but feels that adding curb and gutter just for the frontage of this subdivision could be dangerous.

Mr. Ham said the applicant has requested a Variance. This is not about changing the rules for the entire road. The requested Variance needs to be only applied to this property.

Mr. Query asked if there were options for funds to be set aside by the applicant for when the park improvements were built in order to get a discount in price for both. He felt if both were done at the same time, it may not be as much of a danger.

Mr. Lamson asked what the meandering sidewalk would connect to. Mrs. Gollnitz stated that there was nothing currently in place so the sidewalk will stop and start at property lines. Mr. Wieser asked if the sidewalk met Town ordinance and Mrs. Gollnitz confirmed that it did.

John Black of 605 Springbrook Rd, Charlotte, NC 28217 addressed the board. Mr. Black stated that this is the first property he has developed and does not do this for a living. He said that he is nearing a point where he has much invested and may have to sell the property as a single family lot as it would be a financial hardship to continue.

Mr. Ham asked how the requirements were met to request a Variance. Mr. Black stated that with any more expense added, the development would not be worth pursuing. Mr. Ham said that he would still have reasonable use of the property. One single family residence would still be considered a reasonable use.

Mr. Query disagreed and felt the hardship from the application of these regulations would prevent the owner from making reasonable use of the property. Additionally he was concerned with the safety of widening the blind curve and motorist potentially running out of road. Mr. Query asked if Mr. O'Neill could provide a cost estimate to add curb and gutter for future installation.

Mr. Query asked Mrs. Gollnitz if it was mandatory for one shared access or if Mr. Black could return to adding seven separate drives onto Rice Road. Mrs. Gollnitz stated that all departments felt that safety was a concern with the seven driveways and one shared was the result of Town staff review.

Chairman Lee pointed out that past problems developed when improvements were not made at the time the property was rezoned or subdivided.

Mr. Ham stated that reasons needed to be very good to ask that rules don't apply to one that apply to everyone else. He did not feel this request constituted approval.

Mr. Lamson stated that not enough information was given to show a hardship or safety issues. The applicant did not define a hardship or what the costs were. Suggestions could have been made to bundle in with the park and get a break but no justification was given. If there were road work projects in the future that would have made this a waste of money or bad investment then the request would be understandable.

Jana Reeve asked when the ordinance was adopted, if consideration to the speed around curves was addressed. Mrs. Gollnitz stated that these public improvements are standard for all subdivisions. Anytime a tract of land is subdivided curb, gutter, and sidewalk are required. There are four State exemptions including: right-of-way dedication, a parcel is greater than ten acres, a parcel is less than two acres being divided into three lots/or less into 2 lots, and a recombination of previously subdivided lots.

Ms. Reeve asked if adding the curb would add more road to give the feel of two lanes. Mr. Query said that it does add and that is what creates a safety concern. He asked if money could possibly be set aside. The Town could look at cost and possibly doing both sides when the park is constructed. Mr. Query asked Mrs. Gollnitz if this could be deferred to look at both pricing and safety. Mrs. Gollnitz and Town Attorney Charles Buckley both confirmed that there was no time frame so it could be deferred. Mr. Buckley added that the hardship was that the applicant did not have the money to comply with the public improvement. Asking him to set aside money would not remedy the hardship of not having the finances.

Youth Voice Peyton Gates stated that she shared the same concerns of Mr. Query regarding the safety and curb being a possible issue.

Mr. Black added that the tax revenue from seven home sites would be greater than revenue from a single site.

Mr. Ham said that if safety was a concern then that should be looked at separately by staff or the Council but that was not a condition for the request being submitted.

Mr. Lamson asked if staff has looked at the safety concerns with the addition of curb in the subject area. Mrs. Gollnitz stated that what had been looked at was the seven driveways off of Rice versus the single shared access. Mr. Lamson added that it would have helped if a review and safety concerns were reviewed. Mr. Lamson asked if safety was one of the four exceptions for a variance. Mrs. Gollnitz stated that it was not.

Mr. Query asked how much curb and gutter would expand the paved area. Mrs. Gollnitz stated it would be seven and a half feet to the subject property's side of the road. She read Mr. O'Neill's comments of "all other subdivisions along Rice Road have installed curb and gutter as well as widened pavements." Mr. Ham stated that it would be worse if the Town did not require as it would cause the road in future to be wide in some areas and narrow in others.

Mr. Ham motioned to recommend denial of the Public Improvement Variance Request based on the lack of support for the variance requirements and it was not consistent with the Town's Land Use Plan. Ms. Reeve seconded the motion and it was approved six to one with Mr. Query in opposition.

#### **ADMINISTRATIVE AMENDMENT, Continuation from Last Month – Aldi, 555 W John St, Building Expansion**

Mr. Camp summarized last month's meeting, the UDO's administrative amendment processes, and presented the new revised site plans. The applicant decided not to seek changes to the "Williamsburg" design language from the conditional zoning plan. Aldi wanted to get approval of this building design and confirmation that it meets the intent of the original design requirement. The front and left side elevations had been modified in response to comments received from Planning Board last month. Architectural details included some features of the previously referenced Waxhaw prototype, contrasting brick details, a water table, parapet height change on the right side of the building, and some brickwork changes to the overall front of the building. Changes are also now proposed on the left side to integrate the new design on that more visible elevation. Mr. Camp added that Staff did recommend approval.

Mr. Weiser asked if there was issue with the signage and if that had also been addressed. Mr. Camp stated that 80 square feet was the Town standard and that would be approved at a staff level by both the Town of Matthews and Mecklenburg County.

Mr. Lamson asked to review what was current side by side to what was being proposed. He stated that the new revised elevation was dramatically different than what was in place currently.

Mr. Query said that he had been asked by a few Town Commissioners and the Mayor to refer the Aldi Administrative Amendment to the Town Board of Commissioners for review and decision as it had a history of controversial zoning when developed.

Mr. Query asked about the windows as he was told by an architect that they were not windows but a reflective material.

Spencer Schimmel, Aldi Marketing Director of Real Estate, 1985 Old Union Church Rd, Salisbury, NC 28146 stated that they are actual windows on all sides. The windows located on top are called spandrel windows that are glass but cannot be seen through. Mr. Query asked if the wall would support with nothing behind and Mr. Schimmel confirmed that they would.

Mr. Query stated that because of the request from Council he felt this needs to be referred to them but he wanted to note that he did not see a Williamsburg design element. Mr. Schimmel stated that the design elements met Town code. All requests had been addressed such as breaking up the brick, adding stone, and removing unflattering windows. Mr. Query said that elements that were asked for at that time were addressed. Town Council had a concern if design was truly Colonial in their opinion.

Chairman Lee stated that to defer or refer this would possibly cause a hardship for the applicant. All changes and suggestions were addressed but out of respect for the Board of Commissioners, it is a gateway building into Downtown Matthews. Chairman Lee said that he would have voted in favor of what was presented both at the current meeting and the meeting on October 25<sup>th</sup>.

Mr. Ham said that he would vote in favor to approve. He added that when first presented, he did not feel there were enough Williamsburg elements in the design. He stated that he now feels that there is not a clear definition in the Town code and the Board could be asking too much. The Applicant had done everything that was asked of him from the previous meeting.

Chairman Lee asked the Planning Board members how they felt about referreing this to the Town Board as requested. Explanation was given to members of the past development conflicts with the property and adjoining parcels. Designs were presented and approved as Colonial Williamsburg design but was not built to meet those conditions. Mr. Lamson asked if the other two properties were compliant with the Williamsburg condition. Planning Director Kathi Ingrish stated that they have elements with what was consistent at the time. Mr. Lamson clarified that there was no direct definition on what Williamsburg styling was in the code just a note in the site plan conditions. Mr. Buckley said that based on conditional zoning the Board of Commissioners would vote on what that definition would be.

Mr. Lamson stated that Aldi was here because they want to benefit the community and the Town.

Ms. Gates stated that in order to get a definition of what Williamsburg design is, consultation with an architect or someone whose job was to know that styling would be appropriate.

Majority of the Planning Board members had reservations about referreing the decision to Town Council and felt that it could be approved at the current meeting. Chairman Lee stated that based on the history of the site, location in Town, and the conditional zoning it was understandable that Council would want input.

Mr. Ham stated that this could have been approved a month ago and asked Mr. Query if this was mentioned by the Town Council at that time. Mr. Query stated that it was. By informal show of hands, six Planning Board members would approve the Administrative Amendment as presented tonight.

Mr. Ham said that if the Board wanted it referred then he will oblige but wanted to make it clear that the applicant had done everything asked and if the Town required the applicant to adhere to a colonial Williamsburg design, that design would need to be specified in Town code.

Mr. Query moved to refer the Aldi Administrative Amendment to Town Board based on Council members' request with the Planning Board recommending approval based on what was presented on November 22, 2016, and asked that the Board consider taking "Williamsburg" off wording in condition. Mr. Lamson seconded and the motion passed unanimously.

### **Reschedule December Meeting Date**

Members discussed dates to reschedule the December 27, 2016 Planning Board meeting. The Board agreed to reschedule to Tuesday, January 3, 2017 at 7:00 pm.

### **ADJOURNMENT**

Mr. Ham motioned to adjourn. Seconded by Ms. Reeve and the motion passed unanimously. The meeting adjourned at 9:08 pm.

Respectfully submitted,



Shana Robertson  
Administrative Assistant/ Deputy Town Clerk