



**MINUTES OF THE BURLINGTON PLANNING
AND ZONING COMMISSION MEETING**

May 19, 2014

Council Chamber, Burlington Municipal Building

CITY MEMBERS:

Richard Parker, Present
John Black, Present
Early Kenan, Jr., Absent
Ryan Kirk, Absent
James Kirkpatrick, Present
Nicole Enoch (Alternate), Present
Margaret Stephens (Alternate), Absent

EXTRATERRITORIAL MEMBERS

Earl Jagers, Present
Rebecca Lashley, Absent
*Bill Abplanalp (Alternate), Present
Wendi Cash (Alternate), Absent

*Not voting

STAFF PRESENT:

Amy Nelson, Director of Planning and Zoning
Joey Lea, Zoning/Subdivision Administrator
Kelly Peele, Office Assistant

ITEM NO. 1: Chairman Richard Parker called the meeting to order at 7:00 p.m.

ITEM NO. 2: Minutes of the meeting held April 28, 2014, were unanimously approved.

ITEM NO. 3: Mr. Lawson Brown presented an application to rezone from R-15 Residential District to CB-Conditional Business District for the use of a Unified Business Development and CO&I Conditional Office and Institutional District for uses specified from the table of permitted uses under Office and Institutional zoning with the exception of boarding houses and veterinary offices. The property is located east of University Dr., south of South Church St. and west of Huffman Lane, as shown on Alamance County plat book 76 page 238 (City)

Mr. Lawson Brown stated, it's my pleasure tonight to be representing Ed Tam and Belleau Wood Development, LLC and their request to rezone the property consistent with the long range plan of the City of Burlington. There is approximately 7 acres that is being requested for rezoning. Approximately 3 acres is being left R-15 as a buffer zone, so there is only 7 acres, and it is the acreage that is directly across from the Waterford Commercial Development and it's at the stop light. In 2009 we brought before you approximately 18 acres which was 7 out-parcels and it included the Dereck House that is shown to the west of Huffman Lane. This property is zoned R-15 and is not a part of this request. At that time we had a mixed use development and part of it was O&I as it is at this time. Most of it was commercial and a lot of

it was actually abutting the neighborhood. There were 164 condominiums and 3-story buildings that was the original request. Mr. Collins, the entity that is joined in this request, was wed if you will, to the 164 residential units because that is what he develops. That is not a part of this request. In 2013 that request was not successful before the City Council. During that time we met with 12-13 neighbors from the Huffman Lane area on multiple times and we met with their attorney Joe Kalo multiple times as well and tried to work a satisfactory resolution with their concerns and we were unable to do so. Last year the second request that we had come through was approximately 12 acres, which is substantially more than the 7 acres that we bring before you tonight. It was a totally different request as well. The area that is being left R-15 in our present request, was designated in that plan as O&I, Office and Institutional with a 20,000 sq. ft., brick, 2-story building and had 4 to 5 out-parcels along with a planting buffer along Huffman Lane. We are asking for a small amount of the total 18 acres which is only 7 acres to be Conditional Business for the uses specified in the table of permitted uses, with the exception of those uses that we have specifically identified, and when we prepared these conditions in my office, like most documents, we put a version number on them. I'm currently working on version 14, so we have been working on them with the staff on this specific request for quite some time. In the Conditional Business portion there would be a maximum of 5 lots, none of the buildings will exceed 40,000 sq. ft. We will develop it consistent with 37.10.QQ, Unified Business Development, with the concession that there will be no convenience stores with gasoline pumps. That was a concern of the neighbors, and we have heard them. The other concerns of the neighbors were buffering and I will address that a little later. In addition to the Conditional B-2 uses that we excluded in the O&I portion of the property, we have one lot with a 6500 sq. ft. maximum building size and those uses in the Office and Institutional list of uses with the exception of boarding houses and veterinary offices. We didn't want dogs barking late into the night or some other sort of thing that would disturb not only the neighbors, but also disturb the folks who will be coming in once this is approved. In addition to those two things, we have specified a number of conditions, development conditions that adhere to the development of the landscape requirements per section 32.11A of the City Ordinance. The signs will be accordance with the Unified Business Development Ordinance per section 32.12.FF and the Western Loop Requirements. As you will recall from your experience on this board, and the training that you got when you came on the board, the Western Loop Requirements were more restricted than the general requirements throughout the rest of town. I will say that since we were here in 2013 the United States Army Core of Engineers has approved a Blue Stream Restoration Plan of the two pond areas. Both of those dams were critically in danger and will take a large amount of money, time and effort to cure that situation. These ponds have been a part of the blue stream restoration plan under the approved US Core of Engineers plan and have been drained and 140 ft. of the creek bed will be undisturbed. That is not a part of this request but that is in fact, the lay of the land to the north and north-west of this property. In addition to the R-15 as a buffer we are leaving, there is a 140 ft. blue stream restoration area to the north that would serve as an additional buffer for the property to the north. The storm water will be consistent with the city mandated standards at the time of development. The parcel located in the extraterritorial district will be annexed in prior to any issuing of the building permit. Also, prior to any issuing of the individual building permit, the Planning Director and the Technical Review Committee, must approve the individual site plan in writing. The applicant will also comply with all requirements for driveway elements from the N.C. Department of Transportation including, but not limited to, upgrading the traffic signals at the intersection of the Waterford Subdivision so that it will be a four way stop. A vast improvement turning into that property and coming out of that

property will be a stop light at the developers expense. There will be a deceleration lane as you go north toward Elon or towards Twin Lakes that is mandated by the standards that the N.C.D.O.T. has. At the very southern end of the property is a right-in and we will reserve the right to have the right-in, right-out that N.C.D.O.T. has recently said they think is a good idea based on the site plan we have presented. There is a cross access to the O&I and the commercial parcels that we have shown. I want to talk a little bit about the buffering between Huffman Lane. There are 12-13 residences that are in the Huffman Lane area with Huffman Lane being only about 10 ft. wide and the right-of-way is 60 ft. in width. On the north side of this property there is 150 ft., plus the 60 ft., plus the depths of the lots to the individual houses, so there is at least 210 ft. that will be zoned R-15 on that end. On the south side it's more like 160 ft. This is an area that will remain R-15, which means any use in the R-15 area can be made of that particular property. That is entirely consistent with the R-15 for the residences across the street. Those of you that have gone out there realize as you come south on Huffman Lane, the last house on the left in particular, is about 6ft lower or maybe 10ft lower by grade. So, someone coming out of that front door looking up will have to look over the hill. Then they will be looking into a 60 ft. area and then they will be looking into a 100ft area and over the hill before they could see what was going on the property. We have worked very close with the staff and this request comes to you with a staff recommendation in favor of this particular request. As to the B-2 portion, that is a logical extension of existing conditional B-2 zoning across University Drive, and that is a principal that you and the council have followed in the past. The buffering for the residential side is more than enough to protect the existing residents. We are not going to disturb the sidewalks there and if we did then they would be restored. The tax base will increase; the water and sewer will be paid as it will increase as well. One of the things that have been a concern in the past has been the drinking water wells located on the property. We have researched this and we have Mr. Jo Hinton from ECS, which is one of the best regional water forms in the southeast. He is a licensed soil scientist and can speak to any questions that you might have. Basically, what our prior study shows is that there is no adverse impact on that. Historically we have evaluated the well records in that area for those residents and we know of no history with any problems with any of those wells, even after those ponds were drained. Generally with wells, issues can be surface water and we are below grade, so we will not be creating any problems with that. Mr. Tam at the Waterford street level did approximately 12 soil tests. He went down 15ft at that elevation, which is 622 to 624 ft., to see if the soil would be suitable to build on and no water was encountered. The wells are at levels of 630 to 645 ft. of elevation, so considerably higher then what we have here. Not only is Mr. Hinton here to answer any questions you may have, but also Tim Jennings, the engineer from Stuart & Associates is here.

Commission Member Mr. Earl Jagers asked, the south side of the entrance, did you know that there is a running stream in that area?

Mr. Lawson Brown stated, yes sir we did. If you see the extensive water and sewer lines there where the lower area is, we are not disturbing that area that is in the swell. We are going up to street level. It has been engineered to where we will stay away from the stream area.

Commission Member Mr. Earl Jagers asked, the crosswalk to the Lowes Food Store across the street, is that still going to be there?

Mr. Lawson Brown stated, yes we had specific discussions with DOT about this and the City staff. Yes, there will be a walking path. I assume that there also will be the pedestrian push button to cross the road.

Secretary Mr. John Black asked, do you know for certain about the pedestrian push button? I don't think anyone could cross without it there.

Mr. Lawson Brown stated, yes but we will make sure it is in the conditions.

Commission Member Mr. Earl Jagers asked, all the rock on that one side, will there be a lot of blasting?

Mr. Lawson Brown stated, one rock of the twelve soil tests had a little something. We will do what is needed.

Mr. Billy Bryan stated, I am not a resident of Burlington but I do own property in the neighborhood on Glenview Lane. My biggest concern is the wells. I was at Alamance County Environmental Health today, and I was told that most wells are about 20ft-25ft below the elevation according to the County. I'm guessing at the top of Glenview Lane, I'm at about 650ft when the rest are about 642ft down, so that's 650 minus the 25 ft., that puts us down to 625 looking at these elevations. Since we are all on wells in this neighborhood, will this affect the water? From what I understand the City does not want to run water out to that neighborhood, so if the wells run bad due to this development what do we do? Is there a guarantee that the wells will not be contaminated, and if they are contaminated, what are the repercussions?

Mr. Joe Hinton stated, I'm a soil scientist with ECS. I have worked 23 years as a soil scientist with Rockingham County Health Department and I did septic systems and wells not only for single family residents but for multiple housing, lots, sub-divisions, as well as businesses, restaurants and also for the camp in Rockingham County. The wells in general will not be dewatered by this. Most of the contamination we found from either septic systems, were deliberate or accidental damage to wells. Wells can be contaminated easily just by touching the pipe and putting it back in the ground. You would get a contaminated reading from that source. The ones we worry about are the fecal readings, and that generally comes from septic systems. The type of rock you are talking about out there does not always have to be blown up. It could be ripped. I've done projects outside of Waynesville and they did not do any blasting up there. They did the ripping. That rock is considerably more tough than some stuff I have seen in Alamance, Rockingham, Guilford and this central area. There again I am not the geologist. I'm not the one that would determine that, I'm just saying that from my personal experience.

Chairman Mr. Richard Parker stated, we have been dealing with this since 2009. This is the 3rd time this has come up and the complaint that we hear from the surrounding neighborhood is that they are on wells and that is their only source of water, and they want to be assured that after this project is in there, they will still have some water. That is their biggest worry.

Mr. Joe Hinton stated, the actual development should not affect the water. It should not dewater the well or anything. I've dealt with wells that were 50ft from Hwy 220. In checking with the Health Dept., they

have had some issues but that was with fecal matter in the wells. Fecal matter does not come from development, but from the human intestines. If it's a fecal problem then that is different from any other form of contamination. I have dealt with Mr. John Fogelman in asking him to investigate and study this. His report said, that he found records of some of the houses back in the early 1970's and they have not had any dry wells in that area. I had to look at facts and research, and yes it can happen, but with research and my experience, dry wells will not happen here.

Commission Member Mr. James Kirkpatrick asked, you said earlier of the 12 tested only 1 recovered a rock. What depth was this rock found?

Mr. Ed Tam stated, it was 3ft and that one test was right where the signal is going. It was farthest away from the neighbors. The elevation for University Drive being 622, I believe we started drilling about 624. Within 3ft., we hit rock. That report was done in 2009.

Ms. Joan Nelson stated, I am one of the residents in the neighborhood on Huffman Lane. I live at 936 Huffman Lane, which is the first house when you drive in. I am probably the farthest from the developed area. I moved here in 1998 and I am the kind of person who researches a toaster for a week. So before we bought our house I researched what was going to happen on Church Street and University Drive before it was built. We were told it was going to be built as a parkway with very few cuts allowed in it and walkways and that sounded lovely, so with that assurance we bought our home. Since then we have seen that it has been chipped away at. What we're seeing happen here is that this is turning into a Huffman Mill Road and people said that they didn't want that to happen. This parkway is to help with the traffic for the Elon football games. It is lined with beautiful trees that are now being destroyed, and as a resident of Burlington I find that very sad. If we look at this development from a selfish point of view, the buffer is an improvement but we wanted to talk to Mr. Brown the other day and he refused to speak with us. Basically with all that lighting that we are already seeing and getting from the CVS sign and the Lowes Food sign, I can only imagine what it will be like once the development is built and the buffer now is smaller. We would like to know about the buffers and the wells. What we have been told already isn't very reassuring as home owners. If your answer is so set about the wells, then I would like a guarantee that our wells won't be distraught. We want foliage to block us from the road. I would hope that you listen to the residents of this community and take our needs and concerns into consideration. This is our investment and our home.

Chairman Mr. Richard Parker asked, Mr. Brown could you speak about the lighting? Are these the down lighting fixtures?

Mr. Lawson Brown stated, it will be down lighting. It will adhere to the Western Loop Lighting Plan which is more restricted than generally you would see. We did an extensive light study in 2009 and the neighbors were not satisfied with that. We want to adhere to the downward lighting plan. I have met with the neighbors and their lawyer since 2008. Last time we met with them they wanted a \$250,000-\$350,000 wall built because of what we were doing. I met with their attorney last Thursday afternoon. My client could not be there so I said I preferred not to meet with his clients without my client present. We have met with them until we're pretty much exhausted. We think that this is a great alternate to what we had here

before. Is it perfect? No. But I asked Mr. Hinton, based upon his education and experience, would this development have an adverse impact on the breaking water wells at those homes and he said no. I mean is there a guarantee? No, but that's the best we can do. He is the second or third engineer that we've employed and the City engineering staff has looked at all the information and said there's not an issue with the drinking water wells because of this development.

Ms. Regina Gonzalez stated, I'm one of the neighbors and I live way down on the very end, where it starts to triangle down. I'm probably one of the most affected by all this. We bought our home in 2007 and I have 2 little girls. We bought on the end of a dead-end road, tucked away in a really neat neighborhood. What the developers are saying is we're going to be great neighbors and we're going to get along and you are going to like this, but what is really going on is they are ripping the right side of the neighborhood out. They are giving us no separation. They are giving us a buffer, but let me explain that buffer. I am terrified some days because in front of me there is a small abandoned little house. I have had to call the police before because cars will come down my road and down my driveway to turn around since it ends at my house. People come because it is a dead-end street. The house is vacant and I'm scared that squatters will move in there. I had to call the police one time before because people were stealing the AC unit off the house. That land you said you have been developing and trying since 2009 has not been touched one time. I have to go and mow about 15 to 20 feet back to make sure my car can get down the road and so my kids can ride their bikes, or walk on the road. They give us all these promises, but if you look at the plan it's could be, would be, should be. We did meet with them, and Ed Tam made the comment about bringing water to Huffman Lane if that's what we wanted, and he would bring in an 8 inch main. We don't need an 8 inch water main since that would be too big for our 13 houses. We have to think about our lively hood. Western Loop has gone a completely different way then what we were told development wise. We are asking all this for the safety of our family's. We are ETJ in that area. I have called both City and County many times and they both tell me to call the other. No one wants to take responsibility and help us. I'm the one that ends up cleaning up the trash, debris and I mow some on that property since no one wants to claim it. There has to be some security for us as a neighborhood. We are invested in Burlington. Lawson Brown said earlier that they are only asking for a small amount but we are emotionally and financially invested in this neighborhood; so no it's not a small amount you are asking of us.

Mr. Lawson Brown stated, I don't know if we have ever made any promises to the neighbors at all. Mr. Tam has told me nobody from the City or County or any of the neighbors have ever asked him to do anything out there ever. Mr. Hinton has assured me that precautions will be made so no one will fall at any point over an embankment. We will adhere by all rules and regulations about lights. Our plans are not to protrude over to the neighboring lands. There will be a retaining wall at 10ft being the highest point and it will slope down to zero. At any time that it exceeds 3ft there will be a fence for safety.

Mr. Ed Tam stated, there were negotiations, but no promises made when dealing with the neighbors. I have email documentation asking for certain things. In negotiations you each give and take. They asked for a water-sewer line that cost about \$250,000 and I said if I could get certain things in return, then yes, I would consider doing this. The reason for me saying I would bring in an 8 inch water main was not just for the 13 houses, it would also be what is needed for the development.

Zoning/Subdivision Administrator Mr. Joey Lea stated, staff believes this is consistent with the Land Use Plan. There is a mixed use component with the residential behind it, although that is not part of the rezoning and it has a potential for multi-family development. It is consistent with its surrounding and with the project that is across the street, "The Shoppes at Waterford", which is also zoned conditional business. With that, Staff is recommending approval.

Secretary Mr. John Black stated, I'm listening to everybody's emotional feelings and I can appreciate the emotions. There are several things that I have heard tonight that I'm not comfortable with and then there are something's that I heard that I am comfortable with. The first thing seems like the condition of the water. I've heard that perhaps if you do have some blasting, there's a very slim chance of messing up the water. When you are talking about peoples water rights, these are sound arguments that have gone back to the 1800s. Water rights are very important. If I lived in the adjoining neighborhood I would not feel comfortable with someone saying there's a chance of messing up my water but you doubt it will happen. I know one of the Commission members said that the rock can be ripped out and not blasted, but there's a lot of thinking there. I think people would like assurance that there won't be any blasting and that it will be ripped. The question is, if a septic tank is ruptured, or several septic tanks rupture and the water gets contaminated, then what happens? I don't think that they want to hear we didn't think that would happen. Someone not having water is not ok. The lights are a concern. If you rip down some trees and build a 10ft fence you will still be looking at a light across the street from a sign. So maybe buffering with landscape will help block lighting and signs. Mr. Tam said he has looked into bringing water to the neighborhood and how high the cost would be; maybe this is something that can be worked out together by splitting the cost or something. The people that live in the surrounding neighborhood have to understand that this property will be developed at some point. Now you have someone that is emotionally attached to this project as you are, so maybe you all can come together and figure out something. Right now I just don't think that heads are prevailing here. I understand Mr. Brown not wanting to talk without his client present. There needs to be some compromises instead of finger pointing back and forth. Water, safety, and lights are big concerns. I don't feel comfortable bringing this to a vote. I know you all have worked hard on this project for a long time, but there still needs to be some things sorted out.

Chairman Mr. Richard Parker stated, my thoughts on this project are this; residential and commercial have been married together for decades. All over we have residential and commercial that live side by side. So to think that this would never be commercial is not realistic. It is part of Burlington's future plan for this corridor, to have a commercial element to it. It seems to me this neighborhood is higher and further away from commercial than a lot of neighborhoods are. There are a lot of neighborhoods that back right up to commercial. The Shoppes at Waterford across the street butt right up to Waterford; there is not a fence stopping people from coming and going between the two places. To try and separate yourself and say you just don't want commercial is not reasonable. These developers, in my mind, have gone out of their way to give you almost a football field size buffer between the commercial and the residential area. We have to look at land use on this commission and in my opinion this is a good land use. I agree with the staff and I am prepared to vote in favor of this tonight if we have a motion.

Commission Member Mr. James Kirkpatrick made a motion to recommend approval of the rezoning. Commission Member Mr. Earl Jagers seconded the motion. The Commission voted 4 to 1 to recommend

approval of the rezoning. Voting to approve the rezoning were Enoch, Kirkpatrick, Parker and Jagers. Voting against the motion was Black.

This was a City item.

ITEM NO. 4: Staff to present proposed amendments to the City of Burlington Zoning Ordinance Section 32.2A.D(2), Western Loop Overlay District Exterior Lighting Standards.

Zoning/Subdivision Administrator Mr. Joey Lea stated, in the Western Loop Corridor the lighting requirements are way more extensive than what we have for lighting. There is a formula in the ordinance that is supposed to be used to calculate foot candles. It's based on the lumens of the light fixture. The lumens are the intensity of the light. Our ordinance requires that if you are a certain distance from the street property line that you cannot have more than 2 or 3 foot-candles at that point, based on the distance of the lumens. Then we discovered that the formula in the ordinance is wrong because part of it was left out. The formula as it is written does not work. It is $F=L/D^2$. Foot-candles equal lumens, divided by the distance squared. There is supposed to be 4π in that formula. Our request is to change the nonworking formula to the working formula of $F=L/4\pi D^2$.

Chairman Mr. Richard Parker asked, does this reduce the lighting in foot-candles?

Zoning/Subdivision Administrator Mr. Joey Lea stated, it makes it work. We had an engineer from Duke Power call the other day and they were trying to figure out the requirements for the lighting and they said the formula didn't work. I said yeah, I know, you have to add in the 4π and he called me back and said it worked that way.

Commission Member Mr. James Kirkpatrick made a motion to recommend approval of the proposed text amendment change. Secretary Mr. John Black seconded the motion. The Commission voted unanimously to recommend approval of the proposed text amendment change.

Director of Planning and Zoning Mrs. Amy Nelson stated, please go to the City's website and fill out the Comprehensive Plan surveys. That is where you can tell us what you want to see for the City of Burlington. Please have your friends and family do them as well.

There being no further business to discuss, the meeting was adjourned at 8:10p.m.

Richard Parker, Chairman

John Black, Secretary