



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

August 28, 2017

Council Chamber, Burlington Municipal Building

CITY MEMBERS:

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

EXTRATERRITORIAL MEMBERS:

Earl Jagers, Present
Bill Abplanalp, Present

STAFF PRESENT:

Amy Nelson, Planning Director
Joey Lea, Zoning Administrator
Kelly Peele, Commission Secretary

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

ITEM NO. 2: Minutes of the meeting held August 28, 2017, were unanimously approved.

ITEM NO. 3: Mr. Scott Wallace to present an application to amend a conditional rezoning that was approved by the Burlington City Council on August 18, 2015. The request is to allow fences and walls that are located between the property line at the street and the building line to be taller than 4 feet as required by the City of Burlington Zoning Ordinance. The request is for the fences to be no taller than 7 feet and the walls will be no taller than 25 feet. The properties are located on the east and west sides of Cappelquin Way and south of South Church Street as shown on Alamance County tax map 3-27 lots 196, 228, 233 thru 247 and Guilford County parcel identification number 8844088319.

Mr. Scott Wallace stated, we are in front of you this evening to make a very minor adjustment in our view to the previously approved conditional rezoning that we have for our community on South Church Street. I want to start off by saying all the previously approved uses and conditions shall remain in effect. We have been working with staff for some time and we are coming before you this evening in regards to a few of our walls and a few of our fences that we have along South Church Street and some along Cappelquin Way. We have started some of these. I do want to go on record and say our wall signs will fully comply with the City of Burlington's sign ordinance. We are not asking for an amendment on the sign size, we are asking for an amendment on the wall height and the fence height. We didn't fully understand that there is a limitation on fences and walls within the 20 ft. setbacks that we had set during the conditional rezoning, we didn't think about it quite frankly. What we are here to talk about is what we want to do alongside Church Street. Before we got started, Rett Davies with New Life Society reached out to us and they wanted to partner with us and to help make sure we provided a first class

alluring entryway into Burlington from South Church Street from a landscaping process. From what I understand my partner with Keystone, Mark, met Mr. Davis out there and they talked about what Mark had planned, what the vision was on how we wanted to make a really beautiful statement for the City of Burlington alongside South Church Street. I don't want to speak for Mr. Davis but from the way it was talked about he said it sounds like you guys have it figured out and we appreciate what you all are doing, you don't really need our help because you are going to spend a whole lot more money than we would spend; we've seen some of your other work and we know how well of landscaping you do and you guys don't skimp on it. Like I said I don't want to speak for Mr. Davis or my partner Mark but generally that was the jest of it. That is generally what we want to do there. It looks really stark now because we had to stop work out there. In the packet you have there is a site plan with the fences and walls and some elevations that the end product will look like; even those elevations are stark because the landscaping hasn't been finished yet and it will soften it up as well as make it appealing. I would like to share some photos of the end products from other developments we have done here in Burlington and as well as Greensboro. We had many lengthy discussions with our neighbors in Waterford along the way when we got this rezoned. We are really committed and would like to provide a really nice community, provide nice landscaping that is very attractive.

Chairman Mr. Richard Parker asked, what towns are these in?

Mr. Scott Wallace stated, this is in the Town of Gibsonville. This is Savannah Glenn. This is Greensboro. This is the Eagle Point Community. Burlington Woods at Grove Park is 120 homes. We're really proud of our brick columns and fences because we believe things need to look very attractive.

Chairman Mr. Richard Parker asked, how tall are those fences?

Mr. Scott Wallace stated, 6ft to 7ft. plus or minus brick columns and 5ft to 6ft. fences 10 foot off the property line.

Chairman Mr. Richard Parker asked, those are 5ft. fences and 6ft. columns?

Mr. Scott Wallace stated, yes sir plus or minus.

Chairman Mr. Richard Parker asked, how tall is that tower?

Mr. Scott Wallace stated, I don't know exactly, it is about 20ft.

Chairman Mr. Richard Parker asked, before we ask any questions tonight, I would like to give the audience a chance to speak to this matter and then we will come back to you after a while, is that ok?

Mr. Scott Wallace stated, perfect.

Mr. Ron Strurgill stated, I live at 4114 Cashell Court, Waterford. My concern is not just with the fencing although I've heard it described a number of ways. I thought it was approaching Disney Land or somewhere like that, gaudy or whatever you want to name it. Other than the signage my concern is that Keystone operates on a philosophy of ask forgiveness rather than permission. I received good information from staff when I called in both times.

Mr. Brad Faucette stated, I live at 909 Dunleigh Drive, Waterford. We all are here for the same reasons. The City sets the zoning to keep people in check and it doesn't allow for someone to build something over another. We are all equal and we are all citizens.

Mr. Lecil Alexander stated, I live at 1042 Doolin Street, been here in Waterford since 2006; has been a great match for the City and for me. I have been a part of the Keystone negotiations since its inception. I would echo Mr. Sturgills comments on Keystones philosophy is ask for forgiveness and not permission. Our sign works, we don't need anything bigger.

Mr. Bruce Kowalski stated, I live at 1131 Dunleigh Drive. I live in the community as well but I represent the New Leaf Society. Rett and I work together at the New Leaf Society and I was the one who pushed Rett to discuss the landscaping because that is the biggest thing I was looking for whereas the landscaping would fit the community itself and also fit the corridor, the 70 Corridor, the University Drive Corridor, the Elon University Corridor, and everything the New Leaf Society is looking for but we were talking about landscaping only. Bret did debrief me on that particular meeting. Sounded like at that point they had it handled but did not want our help with landscaping. We have landscape architects and we have Rett Davis who has been with the county for years and years. We have all this talent and they didn't need it or ask for it; we were offering it. This was all about landscaping and had nothing to do with walls or fences. The walls and fence are not part of the community and they don't fit with the community.

Mr. Curtis Price stated, my wife and I live at 1048 Dunmore Drive in Waterford West. I've got 3 points I would like to make. The towers that are out there after talking to a lot of people they are huge and ugly. 25ft. towers are not appropriate for the neighborhood or the corridor coming into Alamance County. I don't think this is the first thing you want people to see. The signage violates the City of Burlington's height and setback requirements. I think those requirements are there for a reason; for visual esthetics and safety along the road way. I'm sure that the right-of-way is already wide enough but in the near future 70 is going to get widen to multi-lanes and that would mean the roadways would be even closer to these towers and all this stonework. Keystone knowingly did all this after being informed they were not permitted. We went through almost 2 years to get the initial rezoning request agreed to between Waterford and Keystone and during that period of time it is hard for me to understand that they just absentmindedly forgot to mention that they were going to put these walls and fences up. It appears to me that Keystone just rubbed it in the face of the City even after they were told to they didn't stop work.

Mr. Rich Landesberg stated, I live at 1340 Cappelquin Way. Keystone sent each of us a letter that they were seeking a very minor amendment to the zoning. The zoning calls for 4ft and this is 25 ft., this is not minor. We don't find guard towers in front of our community as a beautiful scene. We are all in agreement that we do not find this architecture compatible for our neighborhood. This is not an alluring asset and it is far from a very minor amendment in the zoning.

Ms. Mary Speight stated, my husband and I live at 4414 Nire Valley Drive in Waterford. I do want to commend Mr. Scott on the slides he presented. The architect is very pretty but at Waterford and at Church Street those humongous signs are inappropriate, they do not enhance anything. The signs are too big for that particular area.

Ms. Meredith Miller stated, I live at 1208 Lochshire Court with my husband and our 2 young daughters. This doesn't meet the code and the code is there to protect the community. If we allow all developers to build as they wish then ask for that to be changed I think that opens a can of worms that is not in the best interest of the City. They built without permits and did not stop work when asked to stop until it was mandated; that shows a gross disrespect to the City. We spent hours working with Keystone on what we felt was architecturally compatible with

Waterford and we both felt like we compromise and we were very specific on the types of things that were being built. To be honest I don't believe they forgot to mention this signage; we spent hours working with them and the signage was never brought up?

Chairman Mr. Richard Parker asked, let me get this straight, in all the conversations you had and all those stakeholder meetings, signage was never brought up? As a consideration did you ask about signage?

Ms. Meredith Miller stated, no sir. I do not recall if we specifically asked about signage. There was no signage on the plans. We asked questions like, what percentage of the structures would be stone, could there be other materials, how things needed to be created. We were very specific on our questions. I would say hundreds of hours but my guess is I personally spent thousands of hours working through this and it was never brought up. I can assure you our committee would have negotiated that with Keystone if it was ever brought up.

Mr. Robert Bradley stated, my name is Robert Bradley and I live at 4104 Limerick Drive in Waterford. I was on the original committee for Keystone and there was no mention of something going up around there that would be such a monstrous event as this. Just like everybody else I think they are going around the rules and regulations that we all have to follow and the fact that they have been doing this for some time now as they showed projects. They knew what the rules were but did it anyway.

Chairman Mr. Richard Parker asked, anyone else have anything else to say? Alright Mr. Wallace you can come back up and answer questions now. When did your engineer draw these plans?

Mr. Scott Wallace stated, our engineer drew up these plans after we got started. My partner does the signs and once things are graded he determines how landscaping, wall and fencing are.

Chairman Mr. Richard Parker asked, he didn't think to check with the Planning staff?

Mr. Scoot Wallace stated, all the photos I shared with you earlier we did not get permits for any of it. Right or wrong we feel sadden with all the comments about this and we didn't intend to do anything like that. Right or wrong in this situation we are going to go above and beyond what the requirement is and so we don't notice the requirements sometimes.

Chairman Mr. Richard Parker asked, check with Joey first before starting a project. Joey has it all in a book; he has all of it in a book.

Mr. Scott Wallace stated, I understand what you are saying Mr. Parker.

Chairman Mr. Richard Parker asked, is it true that you were asked to stop building and didn't?

Mr. Scott Wallace stated, we were trying to get the project moving. We've got over \$100,000 in trees that we have invested in. We understand it looks stark at this juncture. I understand that the way it looks now it is not very attractive. I'm really dumbfounded and don't know what to say. We've gotten so many rave reviews on past projects and never expected the comments we have received on this. We didn't think about signs back then because we had so much other things going on. The signs will be in compliance with the City's ordinance. We are not asking for an amendment on the sign just on the walls and fences. I will point out the amendment will apply along the entrance on Church Street not on Cappelquin Way because we are well out of the building setback. What we are talking about is this entrance at South Church Street as well as some future fences and walls.

Chairman Mr. Richard Parker asked, that doesn't answer my questions. So these fences are just segments?

Mr. Scott Wallace stated, yes we will do heavy landscaping in between them to provide to the commitment we had back with Waterford in 2015. What you see here is generally three columns and two fence sections. Between each one of these fences and column sections will be heavy landscaping and berm. It was important to our neighbors not to have vehicular access one way so what we did was just provide a pedestrian/golf cart entrance along this way here. We are just trying to make this attractive, no signage whatsoever.

Chairman Mr. Richard Parker asked, how tall are those towers on McKellen Way going into the Villa's section?

Mr. Scott Wallace stated, the sign is going to be around 4-5 feet off. From here to here is 4 foot 6 inches and to the top of the copper roof is 8ft 6inches.

Commission Member Mr. Ryan Kirk asked, with the current plans does the fence sit on top of the berms or is it going to be at the berm level and come down to the fence?

Mr. Scott Wallace stated, generally it will be on top or near the top; the landscaping will be on top as well and down below it.

Commission Member Mr. Ryan Kirk asked, will it be continuous along the whole stretch?

Mr. Scott Wallace stated, yes sir and it will be heavily planted. We want to have a seemlier buffer that is at our other locations throughout Burlington.

Commission Member Mr. Bill Abplanalp asked, did you just say that the fence will be on top of the berm?

Mr. Scott Wallace stated, yes it will be on top of the berm or near the top of the berm.

Commission Member Mr. Bill Abplanalp asked, how high is the berm?

Mr. Scott Wallace stated, it varies in different places; on average 6 ft. plus or minus. They will not be by themselves, they will have heavy landscaping. The appeal we are trying to create is the whole being fenced in but with the landscaping in front of it and large trees along the top to really provide the visual buffer.

Chairman Mr. Richard Parker asked, you say the sign on Church Street across from the cemetery is in compliance?

Mr. Scott Wallace stated, yes sir it is outside of the building line.

Zoning Administrator Mr. Joey Lea stated, they are in compliance based on the size of the signs themselves not the wall. Each subdivision is allowed a total of 64 sq. ft. of signage. Single-family subdivisions can divide that up between entrances but the total amount of signage for the subdivision cannot exceed 64 sq. ft. The signs that they have on the walls will not exceed 64 sq. ft.

Chairman Mr. Richard Parker asked, the signs are in compliance but he is trying to say the height is compliance too, is that correct?

Zoning Administrator Mr. Joey Lea stated, what he is referring to is the wall itself. The wall at Cappelino is in compliance because it is outside of the setback. The walls at the entrance off of South Church Street are not in compliance because they are within the setback.

Chairman Mr. Richard Parker stated, I understand what you are saying. If we deny the request tonight, they sign at Cappelino would stay.

Zoning Administrator Mr. Joey Lea stated, had he built this in compliance with our regulations we wouldn't be here tonight. The walls can be built they just have to be built outside of the setback.

Chairman Mr. Richard Parker asked, he could tear down the ones off of South Church Street and move them back and have the same look and same towers?

Zoning Administrator Mr. Joey Lea stated, that is correct.

Commission Member Mr. Ryan Kirk asked, is it a 20 foot setback or 25 foot setback?

Zoning Administrator Mr. Joey Lea stated, the staff report says 25 ft. but it is actually 20 ft. The 20 ft. was approved through the conditional rezoning. Normal setbacks along the streets for a townhome development is 25 ft. but they were approved for 20 ft. The fences and those walls are still within the setback area of 20 ft.

Scott Wallace stated, we gave or dedicated the land to DOT for South Church Street. You can see in this section from here to here we dedicated that not too long ago in a plat to DOT.

Commission Member Mr. Ryan Kirk asked, the height is 4 ft. for fencing and for walls both with a 22 ft. tower is 18ft. above regulations?

Zoning Administrator Mr. Joey Lea stated, correct. Our ordinance states that a fence or wall between the street line which is the right-of-way and the building line, which is the setback, can not exceed 4ft. in height.

Commission Member Mr. Ryan Kirk asked, can you help me interpret this? This is along a curve on South Church Street and a 22 ft. tower could impact sight lines but here it looks like on the plan that the DOT would approve this in terms of being able to see the curve, that sight line is not a concern?

Zoning Administrator Mr. Joey Lea stated, it has to be out of the sight-line easement.

Commission Member Mr. Ryan Kirk asked, is that being met presently?

Zoning Administrator Mr. Joey Lea stated, to my knowledge that is correct.

Commission Member Mr. Ryan Kirk asked, I-70 expansion is that in anywhere in the planning stage? Would this have implications in the future?

Planning Director Mrs. Amy Nelson stated, that is in the distant future. Anything that is in the right-of-way and which side of the road they chose to build on is unknown at this time. They dedicated the right-of-way for future expansion.

Commission Member Mr. Ryan Kirk asked, a lot of speakers talking about signage but really it's not the signs, it's the towers that is the primary concern. It seems like the fencing is not a big concern because really it is the towers in my opinion and the tower that is at the entrance from South Church Street is the main concern here?

Chairman Mr. Richard Parker stated, that is what it sounds like. Have a seat Mr. Wallace let's hear what the public has to say concerning some of your comments.

Mr. Rich Landsberg stated, my first question is for y'all in the room which is can somebody be in compliance if they build something without a building permit?

Zoning Administrator Mr. Joey Lea stated, the initial answer to that is no. Anything that is built without a permit has to be brought into compliance now if it is built to regulations you just need to obtain the permit.

Mr. Rich Landsberg stated, this is the first I have heard about a fence. There is going to be a 6-10 foot berm with 6-10 feet of vegetation on top of it; I don't know where a fence on top of that enters the equation.

Mr. Ron Sturgill stated, Mr. Wallace talked about a golf cart route off of Cappelquin Way. My recollection is that particular little road was not in the original plans. The Fire Department got concerned because there was no way for an emergency vehicle to get in there to that one section. Therefore they wanted a small road for emergency vehicles gated so the emergency vehicles had access to it. Now Mr. Wallace says it is a golf cart route and a pedestrian route.

Mr. Curtis Price stated, this was the first time I have seen the walls on either side of the emergency exit there. There was a lot of discussion between Waterford and Mr. Wallace that it would be a locked gate and emergency vehicles only would have access to open it. In fact I have already had to complain to Keystone due to construction traffic coming thru that entrance already coming from one side to the other. They now have a temporary gate up, a pasture gate to keep traffic from coming through. It is wide enough that if you don't put a gate there which is part of the agreement I believe then people will use it to drive on. This was never the intent. When they first submitted the application I had Joey send me a copy, it was being withdrawn and revised for tonight's application. The original drawing they submitted showed Crestwell Drive still being the entrance to the Villas with monuments on each side, that change was made very early on in our discussions with Keystone. To say there was not any implication of signage up until this point either someone pulled out a very old map and drew signage on it or the signage was there a long time ago and we just never saw it.

Mr. Scott Wallace stated, I want to assure the neighbors and the City that we are fully prepared to continue to develop this community as we have agreed to with our neighbors and staff. We are not looking to change anything that we have not agreed to. We try to do the right thing and will continue to meet all the obligations we have agreed to.

Vice-Chairman Mr. John Black asked, if these columns here are damaged who pays for them?

Mr. Scott Wallace stated, Keystone would pay for them until the property is the homeowners.

Vice-Chairman Mr. John Black asked, then they would be taking care of these?

Mr. Scott Wallace stated, yes along with the landscaping and any other amenities.

Vice-Chairman Mr. John Black asked, when I came here tonight I thought this was going to be quiet simple but it's not. Mr. Wallace there is no doubt in my mind that you are attempting to do what you think is right as far as something alluring. I think that maybe in your mind you decided to keep building and you thought if you could get the trees and stuff in there everybody would see this and go "oh, I see your vision". It doesn't matter because it doesn't appear to be their vision. If there has been as many meeting as I have heard there has been I would have thought by now you as a group would have come together and been in agreement. It doesn't appear that way. I'm sorry Mr. Wallace that you didn't fully understand the zoning laws. I'm really sorry that you didn't think about it. I understand this is one of those things that in the past maybe you put up these other structures, these other walls, these other towers with your buildings in Burlington and did not have a zoning permit for that and perhaps it is because they fell within the legal junctions that were allowed and there was no reason to come back at you and say "oops" or we could have said hey you really should have gotten a permit although they do meet our guidelines. I don't know that. All of this being put aside, these walls, had they been built where they should have been we wouldn't be here. I can understand going back to the last couple meetings we have had, we have looked at ordinances, people wanted bigger signs then they should of had and our group going along with that, staff recommended changes although they were outside the guidelines for the last 2 times I can remember but that does not set the precedent for this. This was done before hand. I look at the people out here and I see this and I'm telling you I know plenty of places that would die to have something like this but it might now be everyone's cup of tea. The thing is we shouldn't be talking about this. When you are talking about the walls going up I really think there needs to be some homework done, some mending done. I think you have some homeowners here that really love the product otherwise they would be putting up for sale signs; they would be getting out of there. I think they are pleased with where they are at; I think it is just a matter of y'all getting together and agreeing to something that they can live with to show the public.

Chairman Mr. Richard Parker stated, the thing that worries me Mr. Wallace is if this goes on and gets approved then the next developer is going to come through and do what you have done in several cases and say well you let them do that over there so why don't you let me do this over here. I just think this is a dangerous precedent to approve this; I'm going to vote against this. Let's here staff's recommendations.

Zoning Administrator Mr. Joey Lea stated, staff's recommendation is to deny the request. That's not predicated on the fact they did not get a building permit, it's basically the locations of the fences and walls. If we would have been consulted prior to this we would have advised that they be placed outside of the setback area where they would comply. Our recommendation to deny is based on the location and the fact that location is in violation of the ordinance.

Vice-Chairman Mr. John Black asked, were there any phone calls about this?

Zoning Administrator Mr. Joey Lea stated, we received a total of 10 calls. They were planning on coming last month but we didn't have all the adequate information and the signs went up and about 2 days later the signs came back down. Working with those in the neighborhood homeowners association everybody was pretty much informed of what was going on. When the signs went up we had gotten about 6 phones calls and about 4 when they went up a second time but by that time everybody had already heard about what was going on. Of those calls no one had anything nice to say.

Commission Member Mr. Earl Jagers made a motion to deny the amendment request. Commission Member Mr. Bill Abplanalp seconded the motion. The Commission unanimously recommended denial of the amendment request.

Chairman Mr. Richard Parker asked, is there any more business to come before the board?

Planning Director Mrs. Amy Nelson stated, yes sir. We are working on our Unified Development Ordinance and hope to get ball rolling on that pretty quick. We need the input of this commission and would like to invite all of you to attend our advisory committee meetings. I will bring you the information about where we are with the UDO so you won't be hit with it all at once. The advisory committee will be talking with the consultant during this. You will be involved with a lot of valuable information, if you are able to attend these meetings. You don't have to be there but we wanted to open this up to this committee. We will let you know well in advance so you can hopefully work this in your schedule.

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

Richard Parker, Chairman

John Black, Vice Chairman

Kelly Peele, Secretary