



## **BURLINGTON PLANNING AND ZONING COMMISSION**

**August 27, 2018 - 7:00 p.m.**

**Council Chamber, Burlington Municipal Building**

### **CITY MEMBERS:**

Richard Parker, Chairman  
John Black, Vice-Chairman  
Ryan Kirk  
James Kirkpatrick  
Nicole Enoch  
Nancy Rosborough (Alternate)  
Matthew Dobson (Alternate)

### **EXTRATERRITORIAL MEMBERS:**

Earl Jagers  
Bill Abplanalp

## **A G E N D A**

### **ITEM NO. 1:**

Call meeting to order.

### **ITEM NO. 2:**

Nomination and election of 2018-2019 Commission Chair and Co-Chair.

### **ITEM NO. 3:**

Approval of the minutes of the meeting held July 23, 2018.

### **ITEM NO. 4:**

Staff to present a proposed amendment to the City of Burlington Code of Ordinances Chapter 33, Subdivision Regulations, as it pertains to Fee-in-lieu for Sidewalks, Greenways and Bikeways.

### **ITEM NO. 5:**

Staff to present a proposed amendment to the City of Burlington Zoning Ordinance section 32.10.UU, Outdoor Storage, Display or Sales of New or Used Tires.



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

**July 23, 2018**

**Council Chamber, Burlington Municipal Building**

**CITY MEMBERS:**

Richard Parker, Present  
John Black, Present  
Ryan Kirk, Absent  
James Kirkpatrick, Absent  
Nicole Enoch, Present  
\*Nancy Rosborough (Alternate), Present  
Matthew Dobson (Alternate), Absent

\*Not Voting

**STAFF PRESENT:**

Amy Nelson, Planning Director  
Kelly Peele, Commission Secretary

**EXTRATERRITORIAL MEMBERS:**

Earl Jagers, Present  
Bill Abplanalp, Present

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

**ITEM NO. 2:** Approval of the minutes of the meeting held June 25, 2018, were unanimously approved.

**ITEM NO. 3:** Mr. Joe Kalo, to present an application to amend a Conditional Rezoning that was approved by the Burlington City Council on August 19, 2008 for the use of an Automobile Dealership and to rezone from O-I Office and Institutional District to CB-Conditional Business District to add the use of Auto Rentals and an Automobile Body and Fender Repair Shop. The property is located at 3860 Danbrook Road referenced as Alamance County tax identification number 106849 and being a portion of 106903

Vice-Chairman Mr. John Black recused himself from this item due to conflict.

Mr. Joe Kalo stated, I am an attorney with Pitman and Steel, here on behalf of Cox Associates, LLC. My client owns the Cox Toyota dealership at 3860 Danbrook Rd. which is highly visible from the interstate. We are requesting an amendment to the August 19<sup>th</sup>, 2008 conditional zoning to allow for the additional building that will do auto rentals as well as auto body fender and repair work. My client currently owns an adjacent piece of property which is color coded as blue and green on the site plan. What my client is asking to do is to amend the conditions for the yellow portion to allow for the body shop and also to move the zoning line over subject to those conditions because the connected property is O-I. Some historical background, you'll see that there is a letter provided from Rusty Cox, general manager of Cox Toyota just with the summary of the history related to the body shop. Since 2008, a gentleman named Charles Murray, who is the owner of

Patton's Collision Shop, uses an office at Cox to provide free body shop estimates to Cox's customers. These customers would get a rental car from Cox while Paton was repairing their vehicles. Mr. Murray has advised Cox that he will be retiring. That gives rise to the need for a new facility that will allow for a one stop shop at Cox Toyota. In addition this will also add to the employee cap by adding 80+ to 100+ employees. There would not be any impact on traffic because people would already be coming there to get estimates in the first place. In the handouts you can see what is going to be put out there. You will see an attractive front view that would be consistent with the existing dealership. Probably most importantly for you all and your perspective would be the photos of the fence design. There is a fence around the full rear of this property. The use conditions that had been proposed were that all of the repair work be conducted within the enclosed building. Another condition was that any damaged vehicles awaiting repair be enclosed on three sides by the fence that is depicted in the image. About the site plan, if you look at who is around, you have the interstate and Danbrook Road to the north, my client's property to the east, more of my client's property to the west, and the property to the south is a gentleman named Mr. Rayner who I understand has no problem with it. Some of the property down there is under development for apartments. I do not see that we would have any issues with adjoining property owners. If you have any questions I have both engineering and representatives from Cox here.

Chairman Mr. Richard Parker asked, let's go back over the blue and green. Go over that again a little slower. What is in the blue? Why do you want to move that line out?

Mr. Joe Kalo stated, the reason we need to move the O&I line, where the blue is, is because we need to move that conditional business over so that we can have that access driveway there because it is being used with connection to this use. Their other property would remain green.

Chairman Mr. Richard Parker stated, lot #3 would just be smaller but still green.

Mr. Joe Kalo stated, exactly.

Chairman Mr. Richard Parker asked, Mr. Kalo, the pond that is out there between the two sections, is that a stormwater pond?

Mr. Joe Kalo stated, yes it is.

Mr. Brent Cockrum stated, it is an existing barrier. There are a couple of different ponds. Are you talking about to the left of the grey area?

Chairman Mr. Richard Parker stated, yes.

Mr. Brent Cockrum stated, that whole area is to remain undisturbed.

Chairman Mr. Richard Parker asked, is it a retention pond?

Mr. Brent Cockrum stated, no, it is not currently. It is just a marsh area. We are proposing a new retention pond.

Chairman Mr. Richard Parker asked, that will be behind the parking area that is shown on your map?

Mr. Brent Cockrum stated, yes.

Chairman Mr. Richard Parker asked, any other questions from the commission?

Commission Member Bill Abplanalp asked, just to be clear, the wrecked vehicles will be behind a fenced in area?

Mr. Joe Kalo stated, that is correct. There is a co-park facility that is on highway 70 that this fence is based on because of positive feedback. It is in the Haw River/Mebane area.

Commission Member Mr. Bill Abplanalp asked, and the rentals will be in the parking area?

Mr. Joe Kalo stated, correct.

Commission Member Mr. Earl Jagers asked, on the map where you are crossing the driveway, is that going to affect the pond in anyway?

Mr. Brent Cockrum stated, the intent is that there is an existing gravel drive there and we intend to pave the existing gravel drive.

Planning Director Mrs. Amy Nelson stated, our comprehensive plan was written as an overview that does not specifically go down to the parcel level. It is designed to give us freedom in making judgement calls. This is a use that has been in place for years and the request to add onto that use is not going to be anything out of scale of what is already there. Staff has no problems with this whatsoever.

Commission Member Mr. Richard Parker asked, so this type of business is acceptable in this type of zoning?

Planning Director Mrs. Amy Nelson stated, it is. Just because, usually when you go to a car dealership these days there is typically some kind of repair service available. So since this is so common now, we have no problems with this and staff recommends approval.

Commission Member Mr. Earl Jagers stated, I move we recommend approval of this request based upon consistency with the Comprehensive Plan. This action is reasonable and in the public interest in that the amendment is compatible with existing land uses in the area. Commission Member Mrs. Nicole Enoch seconded the motion. The Commission unanimously voted to approve the rezoning.

**ITEM NO. 4:**

Mr. Conrad Carter to present an application to rezone from CB Conditional Business that was approved by the Burlington City Council on June 2, 2009 for the use of Towing and Storage of Impounded Vehicles, to B-2 General Business. The property is located at 1784 East Webb Avenue referenced as Alamance County tax identification number and being a portion of 134527.

Mr. Conrad Carter stated, I would like to locate my business, Alpha Environmental Management, at 1784 E. Webb Avenue. Alpha Environmental is a Professional Engineering Corporation assisting industrial clients with their air permitting issues with both NC Divisions of Air Quality and the US-EPA. I am a Professional Engineer in NC. I am requesting that the zoning be changed back to B-2 for my office. All the surrounding property on Webb is zoned in B-2 or I-2. According to the Zoning Ordinance section 32.9, my planned use as an engineering office is consistent with office use. I understand that the fence is an issue as it is taller than 4 feet. The current owner, M&M Properties of Alamance County and I are willing to drop the fence height to 4 feet along Webb Avenue and Border Street. According to Zoning Ordinance 32.10.G. Fences and Walls, 4' fences are permitted in B-2. The existing fence is a valuable security feature that I want to retain. This property is very attractive and I will keep it up to the highest standard. I will coincidentally store company vehicles and several personal vintage cars at the property. They will be stored indoors and will not be a nuisance. My wife and I are both professionals and have served on many civic and governmental boards during our professional life over 30 years in Albemarle, NC. We understand the need to maintain property values and to be great property owners. Thank you for your consideration.

Chairman Mr. Richard Parker asked, why don't you remove the fence?

Mr. Conrad Carter stated, it is there and it is a good security feature. I have computers, documents, parts, I would like for it to be as secure as possible. It's there and I would like to keep it if I could.

Chairman Mr. Richard Parker asked, but you will lower it?

Mr. Conrad Carter stated, yes.

Chairman Mr. Richard Parker asked, are there other businesses along Webb Avenue that have fences around them?

Mr. Conrad Carter stated, yes.

Chairman Mr. Richard Parker asked, are there any questions from the commission? Anyone from the public who would like to speak to this matter? What is it from the staff that we should know?

Planning Director Mrs. Amy Nelson stated, the Comprehensive Plan, again as a general overview, calls for the area to be residential and neighborhood commercial. It was rezoned in the past for the purpose of an automobile storage facility. That is why they had the 6' fence, to protect their investment. This particular use does not need a fence of this nature and prior to this meeting we had heard that they are not going to change, so we were recommending that this fence be removed or lowered. We were originally recommending denial, but if the fence were to be lowered or removed we would recommend approval and we would have to make that a condition.

Chairman Mr. Richard Parker asked, so you have offered this condition of making the fence 4 feet, would you please state, for the record, that you are willing to make this a condition.

Mr. Conrad Carter stated, yes I would make this a condition.

Chairman Mr. Richard Parker stated, so we have a condition to lower the fence to 4 feet.

Commission Member Mr. Earl Jagers stated, according to the conditions that were stated, I move we recommend approval of this request based upon consistency with the Comprehensive Plan. This action is reasonable and in the public interest in that the amendment is compatible with existing land uses in the area. Commission Member Mr. John Black seconded the motion. The Commission unanimously voted to approve the motion.

**ITEM NO. 5:**

Staff to present a proposed amendment to the City of Burlington Code of Ordinances Chapter 33, Subdivision Regulations, as it pertains to Fee in-lieu for Sidewalks, Greenways and Bikeways.

Planning Director Mrs. Amy Nelson stated, city staff is bringing a few changes to you to try and put some teeth into our current ordinances. We are trying to encourage greenways, sidewalks, and bike paths throughout the city. In some cases, applicants would prefer the option of a fee in-lieu instead of installing it themselves. So that is what this is all about, just some minor changes; we have worked it through the legal department and they have approved.

Chairman Mr. Richard Parker asked, who sets the fee?

Planning Director Mrs. Amy Nelson stated, the transportation department would do that. They have calculations that they run, they have plans that they check and make sure that is required in some areas because in some areas it is not required, and then they are able to run any calculations as necessary.

Chairman Mr. Richard Parker asked, so if the sidewalk would cost \$5,000 then the developer would pay that amount to the city to build the sidewalk.

Planning Director Mrs. Amy Nelson stated, generally when a community has a fee in-lieu process, that is not just for the applicant who would want to put that off and have the city build it for them later, the city will often times hold onto that money until they have enough coming into an area that they can either install a long section of sidewalk or when it is the best time to do it.

Chairman Mr. Richard Parker asked, so this money would go into a separate fund?

Planning Director Mrs. Amy Nelson stated, yes.

Commission Members Mr. Earl Jagers stated, I am not sure how I feel about giving money to the government just to put in a box. I am not in favor of that. In our neighborhood, we are building Lidil. They are going to put in a bike path and a sidewalk. What if they come to you and want to give the city the money to build it. I am not trusting that. I do not trust that, that money will go somewhere and we will not get the sidewalks.

Planning Director Mrs. Amy Nelson stated, that is fine, I understand that. That money is set aside, it cannot be used for anything else.

Commission Member Mr. Earl Jagers stated, yes but my walking trail out there that I want to walk on past Lidil won't be developed until I'm old and can't walk anymore.

Planning Director Mrs. Amy Nelson stated, that particular project has already been approved and is in process.

Commission Member Mr. Earl Jagers asked, so it has to be approved ahead of time? They can't come back and try to have the city build it?

Planning Director Mrs. Amy Nelson stated, correct.

Vice-Chairman Mr. John Black asked, to put what he is saying into a context that I can understand, the money is set-aside for Lidil, they decide to buy out and take this option, so the money is set aside for a time. Is money guaranteed to go to Lidil a year later? Let's say another project on the other side of town needs some sidewalks, do you take that money out from the Lidil project and go across town? Or is that Lidil money guaranteed to go toward the project it came from?

Planning Director Mrs. Amy Nelson stated, that money has to be spent on that site or in the immediate vicinity of that site. It is in that area.

Commission Member Mrs. Nicole Enoch asked, how is it going to be enforced? Is there going to be a time limit?

Chairman Mr. Richard Parker asked, I could see that if we took money for this parcel and then did not do anything in that parcel for 10 years, is that money still going to be there?

Commission Member Mr. Earl Jagers stated, also consider inflation too.

Planning Director Mrs. Amy Nelson stated, see this is a situation where the transportation department can use their discretion to say that this sidewalk is needed in the vicinity of this project, but it will help people get to this park or wherever else. It has got to be right in that vicinity.

Chairman Mrs. Richard Parker asked, so the sidewalk in front of Lidil, as we are talking about, could never come to pass if they wanted to move the money over to Joe Davidson Park.

Planning Director Mrs. Amy Nelson stated, we would not move it to the park in that scenario. It would have to be for pedestrian access. The park already has facilities. But it would not take the money and use it for a city project.

Chairman Mr. Richard Parker asked, what I am saying is building a sidewalk to Joe Davidson park instead of putting it in front of Lidil. Are you saying that they could move it over and put it in front of Joe Davidson to provide access for Joe Davidson and not put anything in front of Lidil?

Planning Director Mrs. Amy Nelson stated, the transportation director is the one that determines where the money gets placed. But it is in that immediate vicinity. Say there is a street and you have sidewalks on the plan for both sides of the street and you have a

small gap on one side, the money from the fee in-lieu may want to take that money and fill in that gap to complete the sidewalk.

Commission Member Mr. Earl Jagers stated, this year's dollars are different than what next year's dollars are going to be. I cannot say what it is going to be, but as much as I love sidewalks, the trust in the Department of Transportation is what I'm worried about.

Chairman Mr. Richard Parker stated, it says within 5 years.

Commission Member Mr. Earl Jagers stated, they give you \$50 today, what is \$50 going to be worth in 5 years?

Vice-Chairman Mr. John Black asked, what kind of fund would the money be set aside in? Will it gain interest? I also do not understand the definition of close proximity. I am not in favor of this. If a sidewalk is called for, then it should be.

Planning Director Amy Nelson stated, we did look at other communities.

Chairman Richard Parker asked, does this need to be approved tonight? I would like transportation to come in and tell us more about this. I think there is more that needs to be clarified.

There being no further business to discuss, the meeting was adjourned at 7:30pm

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**Richard Parker, Chairman**

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**John Black, Vice Chairman**

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**Kelly Peele, Secretary**

# ITEM #4

## PROPOSED AMENDMENTS TO THE CITY OF BURLINGTON CODE OF ORDINANCES, CHAPTER 33, SUBDIVISION REGULATIONS.

### Amend section 33-5 as follows:

#### Add:

m. Fee In-Lieu: A payment made to the City as an alternative to actual construction of a required improvement.

### Amend 33-8 as follows:

#### Add:

- (i) Fee in-Lieu of Required Sidewalk, Greenway/Bikeway and Roadway Improvements: Where the installation of sidewalks, greenways/bikeways and/or roadway improvements, is required by an ordinance or adopted plan of the City (Pedestrian Plan, Greenways and Bikeways Plan, Transportation Plan or other like plans) the Planning Director shall consult with the Transportation Director to determine if the installation of such improvements would conflict with a city, state, or federal roadway project that is planned or programmed to begin construction within five years of the proposed improvements. If such a determination is made, the developer may be required to submit a fee in-lieu of such installation. Fees submitted in lieu of required sidewalks, greenways/bikeways and/or roadway improvements must be in the amount of the entire estimated cost including design, construction and administration of the sidewalks, greenways/bikeways and/or roadway improvements based on current prices as determined by the City Engineering Department.

All fees collected by the city pursuant to this subsection shall be deposited in a City restricted fund to be used for construction of sidewalks, greenways/bikeways and/or roadway improvements on the site, or in the street right-of-way in the vicinity of the site and is a continuous extension or augmentation of the infrastructure network represented by the site requirement for which the fee is collected.

### Amend Section 33.8.(d) as follows:

#### From:

##### (d) Sidewalks

1. Concrete sidewalks shall be installed as follows:
  - a. Where required by City Council in special circumstances or in accordance with a duly adopted sidewalk plan.

#### To:

##### (d) Sidewalks, Greenways and Bikeways

1. **Sidewalks, Greenways and Bikeways shall be required as follows:**
  - a. Where required by City Council in special circumstances or in accordance with a duly adopted sidewalk plan **or greenway and bikeway plan.**

# ITEM #5

## PROPOSED AMENDMENTS TO SECTION 32.10.UU, OUTDOOR STORAGE, DISPLAY OR SALES OF NEW OR USED TIRES OF THE CITY OF BURLINGTON ZONING ORDINANCE.

### **Amend section 32.10.UU(1)(a) as follows:**

#### **From:**

- (a) Tires must be stored in a completely fenced in area concealed from view from a public street and from all adjacent property through screening. Examples of acceptable screening shall include: 1) Solid brick, block (excluding cinder block) or wooden fencing; 2) chain link fence with slats or mesh fabric specifically designed for use with chain link fencing that meet or exceed an eighty (80) percent obscenity standard. All fencing shall be a minimum of six (6) feet in height.

#### **To:**

- (a) Tires must be **stored in a completely fenced in area** concealed from view from a public street and from all adjacent property through screening. Examples of acceptable screening shall include: 1) Solid brick, block (excluding cinder block) or wooden fencing; 2) chain link fence with slats or mesh fabric specifically designed for use with chain link fencing that meet or exceed an eighty (80) percent obscenity standard; **3) continuous opaque vegetative barrier of non-deciduous, evergreen trees or shrubbery**. All **screening fencing** shall be a minimum of six (6) feet in height **including vegetative barriers at planting**.

### **Amend section 32.10.UU(2) as follows:**

#### **From:**

- (2) Outdoor display of tires shall be permitted provided they are located within ten (10) feet of the principal structure, excluding non-enclosed canopies, on the premises and not within required setbacks or buffers. A maximum of twenty four (24) tires may be displayed and they must be placed in racks in an upright position.

#### **To:**

- (2) Outdoor display of tires shall be permitted provided they are located within ten (10) feet of the principal structure on the premises, **excluding non-enclosed canopies** and not within required setbacks or buffers. A maximum of twenty four (24) tires may be displayed and they must be placed in racks in an upright position.