

# Minutes

## PLANNING BOARD AND BOARD OF COMMISSIONERS

### Joint public hearing

7 p.m. May 16, 2024

Town Hall Annex Board Meeting Room, 105 E. Corbin St.



### Present

Town Board: Mayor Mark Bell and commissioners Meaghun Darub, Robb English, Kathleen Ferguson, Matt Hughes and Evelyn Lloyd

Planning Board: Chair Frank Casadonte and members Cassandra Chandler, John Giglia, Sherra Lawrence and Saru Salvi

Absent: Planning Board: Vice Chair Hooper Schultz and members Jeannette Benjey, Robert Iglesias and Christian Schmidt

Staff: Planning and Economic Development Manager Shannan Campbell, Planner II Molly Boyle, Environmental Engineering Supervisor Bryant Green and Town Attorney Staff Lydia Lavelle

### 1. Call to order and confirmation of quorum

Mayor Mark Bell called the meeting to order at 7 p.m. and confirmed the presence of a quorum. He passed the gavel to Planning Board Chair Frank Casadonte.

### 2. Agenda changes and approval

Planner II Molly Boyle suggested to change item 4 on the agenda to "continue with the public hearing" since the hearing was opened on April 18<sup>th</sup> and continued.

Motion: Planning Board Member John Giglia moved to approve the agenda as amended. Planning Board Member Cassandra Chandler seconded.

Vote: 5-0. Motion passed.

### 3. Approval of minutes

Approval of the Joint Public Hearing minutes on April 18, 2024.

Motion: Commissioner Kathleen Ferguson moved to approve the April 18, 2024, minutes. Planning Board Member Cassandra Chandler seconded.

Vote: 10-0. Motion passed.

### 4. Continue with the public hearing

### 5. Public hearing items

A. Annexation and rezoning request for "Waterstone South"

Boyle reviewed the logistics of the hearing with the audience and then gave a presentation on behalf of town planning. She explained that most of the project site is within Orange County's planning jurisdiction with a small piece within town limits. The applicant is requesting to be rezoned as a Planned Development (PD) district, which allows variable uses and densities. The zoning requirements for a PD are specific to the project and the town and applicant can negotiate conditions.

The applicant proposes to develop the land in three phases. The proposed land uses are:

- 450 apartment units,
- 205 townhomes,
- 200,000 sq. ft. of medical/general office and outpatient services,
- 40,000 sq. ft. of neighborhood commercial, and
- 32 acres of open space.

Also, the applicant is proposing to make 15% of the market rate units affordable to those earning 80% of the median income.

Boyle reviewed the map of the proposed site, highlighting road access points and noting a conservation easement area. She summarized the considerations to be taken by the board when evaluating a rezoning request as stated in the Unified Development Ordinance (UDO). Boyle also asked the board to consider consistency with the town's Comprehensive Sustainability Plan (CSP).

Next, Environmental Engineering Supervisor, Bryant Green, presented for the town's Utilities, Public Works and Stormwater divisions. Green described the existing sewer infrastructure at the proposed site. He explained that the site has three sanitary sewer pumping stations nearby: Woodsedge Front, Woodsedge Back, and the Nazarene Pumping Station. However, the site has no frontage on a gravity sewer. The applicant is proposing to relocate the Nazarene station to the project site and abandon one of the Woodsedge stations. The net effect would be to replace two existing stations with one new station.

The developer hired an engineering firm to conduct a downstream capacity analysis of the existing sanitary sewer system and the impacts of the proposed development. The town performed its own analysis as well through a different consulting firm. Both analyses show that some downstream improvements may be needed. However, Green explained there are some potential alternatives, which he would cover under the "proposed conditions" portion of his presentation.

Green also reviewed the existing water infrastructure nearby. The project site is in the town's "south zone," and the hydraulic grade line is sufficient to serve the proposed site. Green also reviewed the staff-recommended conditions for Utilities, Public Works, and Stormwater.

Eric Chupp with Capkov Ventures, Inc. and Dan Jewell with Thomas and Hutton then gave presentations on behalf of the applicant. Chupp provided an overview of Capkov Ventures' development history. Jewell presented the master plan in detail, with particular attention to the overall concept of the design, density, and the proposed open space.

Jewell stated that the developer is committed to building the proposed water/sewer infrastructure to town standards. He stressed the proposal takes two old pumping stations off-line and would create a new pumping station. The developer would also pay for other improvements to the town's sewer system.

The road network would be built to public standards, and the developer would coordinate with town staff to determine appropriate street cross-sections. The applicant hired a firm to conduct a Traffic Impact Analysis as well, which included suggestions for road improvements off-site. NCDOT reviewed the analysis and agreed with the findings.

Jewell acknowledged that neighbors have expressed concern about the development and the loss of the existing woods/screening. The applicant is committing to protect the area of the project that is currently in

the county's Rural Buffer zoning district, as well as an undisturbed buffer of at least 100' off Scarlett Mountain Road. That green space to the south will be in a permanent conservation easement.

Chupp then continued the presentation by discussing potential community benefits. He went through a series of slides with excerpts from the town's Comprehensive Sustainability Plan, and he explained how the proposed project was consistent with each. He also reviewed the financial and economic analysis conducted for the project, as well as the developer's commitments to help upgrade the town's water and sewer infrastructure. Chupp concluded his presentation.

Planning Board member Saru Salvi asked for clarification on the proposed affordable housing integration, specifically the examples shown on the slides versus what is proposed in the text. Chupp explained the visual samples were examples from different projects and jurisdictions. For Waterstone South, the developer is proposing full integration of the affordable units. Thus, there would be no visible distinction between them and those that are market-rate.

Planning Board member Cassandra Chandler asked for clarification about the open space, specifically the amount required versus the amount proposed. Boyle explained that the applicant is proposing 32 acres of open space total, some of which is required stream buffer area. Chandler asked how much area was in stream buffer, and Boyle said the applicant would need to address that.

Public comment began with Cathy Williams, Orange County resident and president of the Stoney Creek Homeowners' Association. She thanked the boards and the applicants for their considerations of community and affordability. She noted that she was not speaking on behalf of her neighborhood. She explained that she is concerned about the potential loss of biodiversity. She understands the importance of development for the town. She asked that the town consider the way the biodiversity is protected when mixed used development sites are cleared for construction. She provided benefits of developing in a sustainable way. She acknowledged the applicant's efforts thus far but believes the proposal could be improved.

Jean Brooks spoke next. She is an Orange County resident who lives on E. Scarlett Mountain Road. She called the accuracy of the site survey into question. She also discussed complications with the existing Woodsedge Mobile Home Park, specifically that part of the Waterstone South project area was supposed to serve as open space for the home park. She also said that the mobile home park owner, Roger Dale Stephens, was not legally allowed to sell that area to the developer.

Brooks also explained her concern about increased congestion along Highway 86 and the proposed density. She said she did not think Hillsborough needed this level of development. She understands that progress will come, but she feels that this particular project is too big. She showed an undated comprehensive report of development standards for preserving rural character from Orange County, which depicted an archaeologically rich site.

Chandler asked if Ms. Brooks was aware of any legal documentation that supported her comments, specifically regarding the mobile home park and the report from Orange County. Brooks clarified that the report she was holding was called, "Residential Development Standards for Preserving Rural Character" by Orange County. She did not see a date on it, but she said it may be from 1994. She also told of letters she possessed from former Orange County commissioners about the mobile home park, but she did not have them with her.

Elizabeth Jenkins, a resident of the Woodsedge mobile home park, expressed her concerns about the impact on the schools and increased traffic congestion creating an unsafe environment for students. She said she was

also concerned about an increase in taxes. She said she heard it mentioned that there was going to be a debt increase on the Town of Hillsborough for the project, which would affect the taxpayers. She was also concerned about tree removal and requested wider riparian buffers.

Giglia asked Jenkins to clarify the additional costs to which she was referring. Jenkins pointed to the cost of building the new sewer pumping station as an example.

Derrick Eads, a resident of Orange County who lives on E. Scarlett Mountain Road, spoke. He said that an existing Special Use Permit (SUP) from Orange County for the mobile home park had mandated that the mobile home park and associated open space were to remain in “unitary ownership.” So, that portion of the Waterstone South project area never should have been sold to Capkov Ventures.

Eads stated that on May 8, 2024, the Orange County Board of Adjustment approved a modification to the existing SUP that removed the unitary ownership clause and allowed the mobile home park’s open space to be reconfigured. He believes that decision will be appealed. He said that the residents of E. Scarlett Mountain Road bought property there in part because that adjacent land was supposed to remain open space. He believes the proposed density for the project is too high for the area. He felt the developer did not listen to the community when considering the proposed development. He expressed the negative impact ten years of construction would have on adjacent residents and wildlife. He concluded his comments. Mr. Eads was the last person signed up to speak on this item.

Boyle offered clarification about the existing mobile home park and the associated Special Use Permits (SUPs) with Orange County. She said that she and Tom King, Senior Planner, attended the recent hearing at Orange County, so she could speak on the subject. She explained that in the mid 1980s – 1990s, Mr. Roger Dale Stephens obtained two SUPs through Orange County to create the mobile home park in question. Even though there are two SUPs, the mobile home park operates as one. She said the SUPs required that the mobile home park and associated open space remain under “unitary ownership.” The SUPs also designated the required open space areas.

Boyle said that in the late 2010s, the mobile home park property was subdivided, which was permissible under state law. However, the sale of the subdivided property to Capkov Ventures violated the “unitary ownership” requirement of the SUPs. Capkov Ventures was not aware of the issue at the time of sale. Once they became aware, they approached the county. The county’s solution was to put the case before its Board of Adjustment, which handles Special Use Permit cases.

Capkov Ventures, Inc. applied to modify the existing SUPs for the mobile home park. Specifically, they requested to remove the unitary ownership clause and reconfigure the required open space for the mobile home park. The Orange County Board of Adjustment approved the proposed modifications on May 8, 2024.

Casadonte opened the floor for board members to ask questions and offer comments.

Hughes asked about the vote at Orange County’s Board of Adjustment meeting. Boyle said the vote was 3-2 to approve the SUP modifications.

Hughes also asked Lydia Lavelle with the Town Attorney’s office about how the SUPs might affect the annexation request with the Town of Hillsborough. He noted that residents might appeal the Orange County Board of Adjustment decision to Superior Court. He asked if annexation of the property by the town would nullify the SUPs. Lavelle said annexation would not nullify the SUPs. She said she would need to consult with Town Attorney Bob Hornik about how such an appeal would or could affect annexation.

Chandler asked if the applicant is asking the town to annex the site. Boyle said yes but clarified that the existing mobile home park was not to be annexed.

Casadonte asked Bryant Green if the Woodsedge Mobile Home Park is serviced by the town and how the park could be impacted by the project. Green explained that the mobile home park is an out-of-town water and sewer customer, and wastewater from the park would drain to the proposed new pumping station.

Giglia asked if the proposed development would put the sanitary system at 100 percent capacity. Green replied that the wastewater plant is at 62% capacity. The town's water situation has room for addition since the water plant has access to additional water sources and the town has completed a major expansion of the West Fork Eno Reservoir.

Hughes asked Green to respond to Ms. Jenkins' debt question from earlier. Green replied that water and sewer projects are funded by water and sewer revenue. The town does not use tax funds for those projects. When Green was discussing debt during his presentation, he said he was referring to revenue bonds, which the town issues in anticipation of future water and sewer rate revenue. That debt is used to build projects that will allow that revenue to come. The developer's proffer would reduce the amount of debt the town would need to issue in order to build the necessary water and sewer projects.

Hughes clarified that the applicant's proffer would potentially reduce the debt the town would need to issue. Green agreed that the town would need to issue less debt, although it would still need to issue some.

Bell recognized the applicant's attention to the Comprehensive Sustainability Plan. He asked if a partner had been selected to manage the affordable housing component. Chupp replied that they have not selected a partner yet.

Bell asked Planning and Economic Development Manager Shannan Campbell how the town's tax revenue would be affected if a nonprofit organization rented or owned the proposed commercial space. Campbell said that portion of the development would be market driven. She acknowledged that if a nonprofit entity, such as UNC Health, obtained the space, the town would not gain commercial tax revenue from it. Bell said that Hillsborough is concerned about the commercial-to-residential ratio of its tax base since residential development in town has been booming.

Giglia asked the applicant for the proposed residential occupancy of the development. Chupp estimated about 1,500 at full build-out based on the proposed number of units and an assumed density factor of 2.5 people per multi-family unit.

Chandler asked the applicant to address the impact on the Cates Creek basin and the environment. Chupp explained the proposed development surpasses the town requirements for green spaces. Chupp explained how Capkov Ventures has a history of incorporating sustainable practices into their developments such as native plantings.

Commissioner Evelyn Lloyd emphasized the need for restaurants and asked the applicant to also consider a hotel based on the hospital needs. Chupp replied that he has spoken with a restaurateur. Chandler and Giglia added the need for a grocery store.

Hughes asked the applicant if the development's roads would accommodate a school bus. Chupp said yes and that the roads would be public streets.

Ferguson asked Boyle to underscore requirements in the Unified Development Ordinance (UDO) that may address some of the public's concerns regarding clear-cutting and tree protection. Boyle said that the construction drawings for the project will need to comply with UDO standards on landscaping, screening, stream buffers, and tree protection. The town does not allow clear cutting.

Ferguson highlighted bioswales in another area of town as an example. Campbell relayed that green infrastructure conditions could be placed on the project.

Chandler asked how the proposed development will impact the schools. Campbell stated that public schools in the area are actually seeing a decrease in enrollment, so capacity is not an issue at this time.

Giglia shared his concern for the traffic impact on Old NC Highway 86. Green said that off-site improvements will be required and that both NCDOT and the town will be evaluating the need for improvements as the project develops.

Bell inquired about the easement required from UNC for a greenway. He said it appeared that the annexation would not be possible without it because without that strip of land, the annexation would be non-contiguous. The town is already at its maximum allowance for satellite annexation. Boyle replied that the strip of land in question can be annexed, it is just not clear at this stage how exactly the strip will be used. It could be for a greenway connecting to the UNC property, if UNC allows that. Alternatively, the strip may just serve as a utility easement for the water line. Campbell said that planning staff has recommended a condition that the developer approach UNC about an access easement for a greenway.

Robb English stated that he wanted to see that greenway access, and that it was a critical component in his decision.

Member Darub asked if connectivity between Waterstone South and the existing mobile home park had been discussed. Chupp replied that it has not been discussed, but a connection is possible. He said one of the easements for the pumping stations could serve as an access point. English agreed with Darub, saying he wanted the mobile home park to benefit from the improvements. Chupp said he would continue to reach out to UNC to discuss.

Casadonte asked for any further questions. Hearing none, he asked for a motion to close the public hearing.

## **6. Close the public hearing**

Motion: Ferguson moved to close the public hearing. Giglia seconded.

Vote: 10-0. Motion passed.

The Board of Commissioners and the mayor were excused, and the Planning Board recessed for five minutes. Hughes and Lloyd stayed.

The Planning Board reconvened at 9:15 p.m. and discussed whether they wished to continue their meeting or table the items until next time. The Planning Board decided to continue with the meeting.

## 7. Planning Board recommendations

### A. 128 W Margaret Lane rezoning

Casadonte reviewed the application specifics and asked if the board was prepared to vote. Members of the board expressed concern over the rezoning request.

Boyle summarized the options for the rezoning proposal. She explained that the applicant was requesting to rezone to Neighborhood Business, a general use zoning district. However, if the board was not amenable to that, the applicant was willing to opt for a conditional zoning district instead. She explained that the property in question was currently zoned as a special use district, and that the General Assembly no longer allowed those. Under state law, existing special use districts are now treated as conditional zoning districts that happen to have special use permits. In essence, the property in question already is a conditional zoning district, so the board could amend the allowable uses under the conditional zoning or just rezone the property to the Neighborhood Business general use district instead. Boyle asked Lavelle to confirm if her summary was accurate, and Lavelle confirmed that it was.

The members then discussed the necessity of rezoning and the effects on future ownership and use. Campbell replied that, currently, the applicant is limited to the uses allowed under the existing special use permit.

Casadonte reiterated the options before the board for consideration and recommendation. Campbell shared the types of uses allowed under the Neighborhood Business general use zoning district, as well as the proposed uses under the conditional zoning alternative. She noted that the zoning carries with the land, so sale of the property would not affect the zoning.

Casadonte asked if the board was willing to vote. Lawrence wished to abstain, but Lavelle replied that she could not abstain since she did not have a conflict of interest.

Motion: Chandler motioned to deny the rezoning requests for 128 W Margaret Lane. Giglia seconded.  
Vote: 3-2. The motion passed.

### B. Unified Development Ordinance (UDO) text amendment: Home occupations, accessory dwellings and short-term rentals

The board reviewed the text amendment. Boyle reported that Dani Black with the Tourism Development Authority had expressed concerns at the public hearing about the short-term rental regulations and that Ms. Black wanted the regulations vetted further. Boyle explained that the Planning Board had two versions of the text amendment to consider: one with the short-term rental regulations and one without.

Chandler said she recalled conversations at the hearing about private roads versus public roads. Boyle said that related to the regulations on accessory dwelling units (ADUs). She explained that the intent of the text amendment was to create more opportunities for ADUs and home occupations, but that the scope of the text amendment kept expanding. She said the current UDO does not allow ADUs on private roads and that staff was not proposing changes to that requirement at this time. She suggested that staff could research the viability of allowing ADUs on private roads and bring those findings back to the Planning Board at a later date.

Boyle noted that a resident had signed up to speak on this item. She noted that the public hearing was closed, so the Planning Board did not have to allow further public comment. However, the board could do so if it wished. Casadonte recognized the resident to speak.

Sean Kehoe addressed the board. He is the chair of the Board of Adjustment, but he was just speaking as a Hillsborough resident. He owns property on a private road and expressed his desire for the town to allow ADUs on private roads.

Motion: Giglia motioned to a) recommend approving the version of the text amendment *with* the changes to short-term rentals and b) have staff research the viability of ADUs on private roads and bring the findings back to the Planning Board at a later date. Chandler seconded.

Vote: 5-0. Motion passed.

### **C. Historic District Design Standards updates**

Cambell reviewed the updates. Cambell reported that at the public hearing, Mayor Bell had suggested a slight change in wording, specifically changing the language under “Ordinary Maintenance and Repair” to say “applicants *shall* consult with staff” instead of “applicants are encouraged to consult with staff.”

Motion: Salvi motioned to accept the text changes with the minor change suggested by Mayor Bell. Chandler seconded.

Vote: 5-0

## **8. Updates**

### **A. Board of Adjustment**

The Planning Board representative to the Board of Adjustment, Robert Iglesias, was absent. The Board of Adjustment Chair, Sean Kehoe, was attending the Planning Board meeting as a resident, so he offered an update. He said there was nothing new to report. Tom King, Senior Planner and staff support to the Board of Adjustment, was also in attendance. He gave a brief update on Collins Ridge.

### **B. Parks and Recreation Board**

There was no Parks and Recreation Board update.

### **C. Staff and board members**

Hughes reported the town skate park was under construction.

## **9. Adjournment**

Motion: Lawrence moved to adjourn at 9:45 p.m. Giglia seconded.

Vote: 5-0. Motion passed.

Casadonte recognized Chandler’s service on the Planning Board.

Respectfully submitted,



Molly Boyle  
Planner II  
Staff support to the Planning Board

Approved: August 15, 2024