

REGULAR BOARD MEETING of April 4, 2007, with Mayor Don Mullen and Commissioners Alan Marsh, Amy Patterson, Hank Ross, H. N. James, and Dennis DeWolf present.

Also present were Richard Betz, Bill Coward, Lamar Nix, Bill Harrell, Josh Ward, Sonjia Stewart, Kim Lewicki, Jim Lewicki, Linsey Wisdom, Eric NeSmith, Jeff Weller, Tony Potts, George Mathis, Mario Gomes, Billy Clarke, Don Chandler, Henry Lyngos, Ray McPhail, Will Stolz, Louis & Judy Michaud, Gary Nicholson, Fred Jones, William Morris, and others.

A. PUBLIC HEARING - Zoning and Subdivision Ordinance amendments on clustering, equipment sheds, and non-conforming uses.

The Mayor called the public hearing to order at 7:00 p.m. There were no comments from the public.

B. PUBLIC HEARING - Variance request for Smathers/Rainwater Subdivision for road radius, grade, and shoulder.

The Mayor called the public hearing to order at 7:01 p.m. There were no comments from the public.

C. REGULAR BOARD MEETING.

I. Call to Order.

The Mayor called the meeting to order at 7:02. p.m.

II. Approval of Agenda.

Copies of the agenda had been distributed by mail. The Clerk requested that two additional items of New Business be added: set dates for Spring Cleanup and consult with Gary Nicholson on applications for employment in closed session.

MOVED BY COMM. MARSH, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO APPROVE THE AGENDA AS AMENDED.

III. Approval of Minutes.

Copies of the minutes of the March 21 Regular Board Meeting had been distributed by mail.

MOVED BY COMM. DEWOLF, SECONDED BY COMM. MARSH, AND UNANIMOUSLY CARRIED TO APPROVE THE MINUTES AS DISTRIBUTED.

IV. Public Comment Period.

The Mayor stated that this was the public comment period required by law. There were no comments from the public.

V. Reports.

1. The Mayor reported that he and other officials would be meeting the next day with Rep. Heath Shuler to discuss needs of the area.

2. The Finance Committee agreed to meet at 5:00 p.m. on April 17 to discuss the FY 07-08 budget.

Comm. Ross and Comm. DeWolf had met and evaluated proposals from Camille Alberice, Sorin & Fisher, and Dungan Nequette for the Town Hall architectural study. The Board agreed to place this matter on the agenda of the April 18 meeting; the Clerk was asked to provide copies of the proposals to each Commissioner.

Comm. Dewolf reported that work was progressing on the porte-cochere at the Civic Center and the final painting of the Community Building.

3. Town Attorney Bill Coward was present but had no report.

4. Each Board member had received a copy of the Town Engineer/ Public Service Administrator's report for the month; Lamar Nix was present to review the report. It was reported that the sidewalk on Fifth Street had been completed.

Comm. Ross felt that when driveways for new businesses were constructed, old curb cuts should be removed; it was agreed that an amendment to the Zoning Ordinance would be drafted and sent to the Planning Board for review.

5. Each Board member had received a copy of the Police Chief's report for the month; Bill Harrell was present to review the report. He informed the Board that the grant for the K-9 dog had been denied. The Finance Committee agreed to discuss this at its upcoming meeting.

6. Each Board member had received a copy of the Recreation Director's written report for the month; Selwyn Chalker had not been able to attend the meeting, but had attached the list of recommended summer part-time employees for his Department.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. DEWOLF, AND UNANIMOUSLY CARRIED TO APPROVE THE PART-TIME EMPLOYEES.

7. Each Board member had received a copy of the Interim Zoning Administrator's written report for the month, accompanied by minutes of the Zoning Board minutes of March 14 and the Planning Board meeting of March 26. Josh Ward, the new Planning & Development Code Official, was also present; he had started work the previous day.

8. Each Board member had received a copy of the Treasurer's Report for the month.

MOVED BY COMM. JAMES, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO ACCEPT THE TREASURER'S REPORT.

9. The Town Administrator distributed copies of a petition concerning ETJ in Horse Cove received from Luther Turner, Kimberly Turner, John Flippen, and Barbara Flippen; copies of a letter written to Macon County as requested at the previous meeting requesting funding for the Town's School Resource Officer for FY 07-08; copies of a letter to Macon County from the Recreation Committee requesting \$500,000 in Recreation Funding, plus an additional \$50,000 for exercise equipment, for FY 07-08; and a report from D. Brian Kruger on the Riverwalk project.

VI. Old Business.

1. Each Board member had received a letter dated March 27 from Robert Nass requesting clarification of Board action of February 28 designating some of his property B-5; the letter indicated that he had understood that three additional lots were to have been designated B-5. Copies of the minutes of the February 28 meeting were distributed, together with a map showing the lots in question. The Board agreed by consensus that the intent was that the

additional lots were not part of the B-5 zoning and were to remain residential.

2. The Town Administrator reported that the Planning Board had reviewed a petition for re-zoning submitted by William and Susanne Morris for property on NC-106. from R-1 to B-5; they had recommended denying the petition, but instead zoning the property B-4. Comm. Ross asked about the procedure; B-5 zoning had been requested but B-4 recommended. He was told that Mr. Morris had been at the meeting and had agreed to the B-4 zoning. Mr. Morris was present and said that he preferred B-5 zoning but would accept B-4 zoning. Comm. Marsh pointed out that this property could be used as a home occupation under the new amendment on the agenda later. Mr. Morris said that the Jones property across the road had been zoned B-5, but it was pointed out that only part of that property was B-5. Comm. James said he thought this would set a precedent whereby others would request the same thing.

MOVED BY COMM. MARSH, SECONDED BY COMM. JAMES, AND UNANIMOUSLY CARRIED TO DENY THE PETITION FOR RE-ZONING.

VII. New Business.

1. Each Board member had received copies of the clustering, equipment shed, and non-conforming use amendments to the Zoning Ordinance, subject of the public hearing earlier in the meeting. Comm. Patterson felt that a provision requiring that open space remain natural and undisturbed should be included in the clustering amendment, and in modifying the proposed provision the Town Attorney noted some other ways to clarify the language.

MOVED BY COMM. JAMES, SECONDED BY COMM. DEWOLF, AND UNANIMOUSLY CARRIED TO DEFER THIS ITEM UNTIL THE NEXT MEETING, AND FOR THE TOWN ATTORNEY AND TOWN ADMINISTRATOR TO REVIEW THE CLUSTERING AMENDMENT IN THE MEANTIME.

The amendment on equipment sheds had been reviewed and the Planning Board had recommended approval.

MOVED BY COMM. ROSS, SECONDED BY COMM. MARSH, AND UNANIMOUSLY CARRIED TO ADOPT THE AMENDMENT TO THE ZONING ORDINANCE (SEE BELOW).

The non-conforming use amendment had been reviewed and the Planning Board had recommended approval.

MOVED BY COMM. ROSS, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO ADOPT THE AMENDMENT TO THE ZONING ORDINANCE (SEE BELOW).

* * *

EQUIPMENT SHEDS

Add the highlighted words to Section 201.3(A)(2) and 215.3(A)(2) of the Zoning Ordinance:

"(2) Any customary accessory outbuildings appurtenant to single-family dwellings, including private garages and non-commercial buildings such as greenhouses and workshops. Outbuildings for the storage of tractors, lawnmowers, and similar equipment for the care or cultivation of property may be constructed on vacant lots subject to issuance of a Zoning Certificate. In addition, not more than one camping trailer, motor home, or similar recreational vehicle may be parked by any property owner on his own property, provided that it is not occupied, not connected to any water, sewerage, or power supply, and is parked within applicable setback lines. This provision shall not apply to trailer parks, whether or not the property is being used for a conforming or for a permissible non-conforming use."

NON-CONFORMING USES

Replace Section 110(A) of the Zoning Ordinance with the following::

"(A) Non-conforming uses. The lawful use of any building or premises at the time of the enactment of this Ordinance, or immediately preceding any applicable amendment thereto, may be continued even though the use does not conform with the provisions of this Ordinance, under the following conditions.

(1) A non-conforming use may not have its use changed to another non-conforming use.

(2) A non-conforming use may not be re-established after its discontinuance for a period of twelve (12) consecutive months. If the discontinuance of the use is caused by damage from an unintentional fire or other natural disaster, then the building in which the use is located may be repaired and/or reconstructed and the use may thereby be re-established provided:

(a) Repair or reconstruction is initiated within twelve (12) months and completed within two (2) years of such damage. "Initiated," as used in this section, shall mean the actual installation of building materials or demolition in preparation for such installation. "Initiated" shall not include placement or storage of building materials, surveying, or other activities in anticipation of or related to such actual installation or demolition. "Completed," as used in this section, shall mean the issuance of a Certificate of Compliance in accordance with this Ordinance.

(b) The total built-upon area may not be increased, nor the setbacks extended, beyond those of the original building, except in conformance with this Ordinance.

(3) A non-conforming use may be expanded, notwithstanding the foregoing provision, by an increase in size of the building in which the use is located, or by extending the use to an additional building or buildings on the same property, only upon issuance of a Special Use Permit in accordance with this Ordinance."

* * *

2. Each Board member had received a copy of a preliminary plat from McPhail Properties Inc. & The Stolz Companies for a subdivision on the Smathers/Rainwater property on Hudson Road, together with an application for a variance to be able to use the existing driveway as the access road. The Town Administrator reported that the grade, curve radius, and shoulder width for the road did not meet subdivision road standards, but the Planning Board had recommended approval, contingent on widening the curve so that vehicles could pass without crossing into the other lane. The water, sewer, and electrical plans had not yet been submitted for approval. The Town Engineer said that a garbage truck had been taken to the road and it had been determined that it could negotiate the curve, and it was similar in wheelbase to emergency vehicles. Comm. Ross commented that, as he had stated in earlier meetings, he thought the Town's design criteria for roads for small subdivisions was too strict; he would prefer narrower roads. Ray McPhail and Will Stolz then reviewed the plat and the variance request in some detail; the application had answered in writing the four criteria in Section 206 of the Subdivision Ordinance.

MOVED BY COMM. JAMES, SECONDED BY COMM. ROSS, AND UNANIMOUSLY CARRIED TO APPROVE THE PRELIMINARY PLAT AS PRESENTED, CONTINGENT ON APPROVAL OF WATER, SEWER, AND ELECTRICAL PLANS, AND TO GRANT THE VARIANCE REQUEST.

3. It was reported that the Planning Board had completed work on a proposed amendment expanding the definition of home occupations and permitting them in all residential zoning districts. Comm. Marsh said that he would prefer that the amendment apply only in the R-1-ETJ district; Comm. James said he had understood that was all they were working on. The Board agreed by consensus to defer consideration of the amendment until the April 18 meeting.

4. The Town Administrator reported that, according to Section 303(E) of the Subdivision Ordinance, the preliminary plat for Riverwalk Subdivision had expired on November 2, 2006. Billy Clarke was present on behalf of Riverwalk LLC and said that, in reliance of approval in 2005, the subdividers had proceeded with work; he requested extension of the preliminary plat, and also requested that the subdivision be phased. Seven phases were indicated by colored markings on a plat which had been prepared by Reece, Hoopes, and Fincher; a letter had been received from Bronce Pesterfield objecting to the use of his plat. Comm. James said he thought that the main road would have to be

completed before phases could be approved because the developers had agreed not to use Cullasaja Drive for access. Mr. Clarke said that was correct, but he said that agreement had been made before knowing about the location of the sewer force main and the need to close the road intermittently when it could not be accessed from US-64. Henry Lyngos, Project Superintendent, said that he expected the main road to be completed in ten days. Billy Clarke also said that he had met on site with Brian Kruger, Richard Betz, and Scott Houston and discussed the two Notices of Violation issued for soil erosion problems; all of the items in the NOV's had been addressed, and an interim amended soil erosion plan had been submitted as agreed. The Town Administrator verified that this was correct, and said that there were no outstanding items in the NOV's that he had issued; at the same time, an updated plan in permanent form would have to be submitted. Mr. Clarke said that State Land Quality Section official Mell Nevels had also inspected the site the previous week and had made several suggestions; they had all been carried out. He also said that a permit had been received from Division of Water Quality approving restoration work in the central drainage corridor. Mr. Clarke also requested that the Board set a hearing for a subdivision setback variance in order to re-locate three houses along Cullasaja Drive, and he briefly described the nature of that variance using two drawings that had been prepared.

MOVED BY COMM. JAMES, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO APPROVE THE EXTENSION OF THE RIVERWALK SUBDIVISION PRELIMINARY PLAT UNTIL NOVEMBER 5, 2007.

MOVED BY COMM. ROSS, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO SET A PUBLIC HEARING FOR THE REQUESTED VARIANCE FOR MAY 2.

Comm. Patterson asked about the expiration of the time period permitting work to occur on weekends in violation of the Town's noise regulations; the Town Administrator agreed to research the minutes and report back.

5. The Town Administrator reported that a recent increase in seating approved for Rib Shack restaurant by the Zoning Board had resulted in re-counting of all of the parking spaces on the property, revealing only 30 spaces for the valet parking; approval for the two parking spaces on Main Street expired the next day and it had been agreed that 40 spaces would be provided. The Board discussed the matter at some length, and agreed that the ratio of parking per valet spaces needed to be reviewed; in the meantime, consensus was that approval should be extended.

MOVED BY COMM. JAMES, SECONDED BY COMM. ROSS, AND UNANIMOUSLY CARRIED TO EXTEND THE VALET PARKING UNTIL DECEMBER.

6. Each Board member had received the proposed budget for the Highlands Fire Department; the main features were two part-time employees (\$106,000 with benefits) and replacement of the 1990 rescue vehicle (\$300,000) in FY 07-08. The Town Administrator pointed out that the proposed fire tax rate was 0.009, still the lowest in Macon County.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. DEWOLF, AND UNANIMOUSLY CARRIED TO APPROVE THE BUDGET.

7. The Town Administrator said that three years ago the Board had agreed to designate one of the weeks for the annual Spring Cleanup as a week to instead clean streets in the downtown area; he recommended doing so again. The Board agreed by consensus to designate the week of May 21 as Spring Clean-up, and to have public works employees clean the streets in the downtown area the week of April 23.

8. MOVED BY COMM. MARSH, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO GO INTO CLOSED SESSION PURSUANT TO G. S. §143-318.11(A)(6) TO CONSIDER APPLICATIONS FOR EMPLOYMENT, AND PURSUANT TO G. S. §143-318.11(a)(3) TO CONSULT WITH THE TOWN ATTORNEY ON LITIGATION. The Board, Town Administrator, and Town Attorney adjourned to the adjoining conference room with consultant Gary Nicholson.

- A. The Board reviewed applications for the position of Planning & Development Director with Gary Nicholson.
- B. The Board consulted with the Town Attorney on the County ETJ lawsuit.

C. The Board consulted with the Town Attorney on the Riverwalk litigation.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. ROSS, AND UNANIMOUSLY CARRIED TO GO INTO OPEN SESSION. The Board returned to the meeting room.

VIII. MOVED BY COMM. PATTERSON, SECONDED BY COMM. MARSH, AND UNANIMOUSLY CARRIED TO ADJOURN.

There being no further business to come before the Board, the meeting was declared by the Mayor to be adjourned at 9:20 p.m.

Richard Betz, Town Clerk