

MINUTES
ORANGE COUNTY PLANNING BOARD
MARCH 5, 2014
REGULAR MEETING

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54

MEMBERS PRESENT: Lisa Stuckey, Chapel Hill Township Representative; Herman Staats, At-Large, Cedar Grove Township; Paul Guthrie, At-Large Chapel Hill Township; Buddy Hartley, Little River Township Representative; Tony Blake, Bingham Township Representative; Johnny Randall, At-Large Chapel Hill Township; Andrea Rohrbacher, At-Large Chapel Hill Township; James Lea, Cedar Grove Township Representative

MEMBERS ABSENT: Peter Hallenbeck (Chair), Cheeks Township Representative; Maxecine Mitchell, At-Large Bingham Township; Vacant- Eno Township Representative; Vacant- Hillsborough Township Representative;

STAFF PRESENT: Craig Benedict, Planning Director; Michael Harvey, Current Planning Supervisor; Perdita Holtz, Special Projects Coordinator; Tina Love, Administrative Assistant II

OTHERS PRESENT: Beth Trahos, Mike Brough, Donna Easterlin, Don Easterlin, Brent Niemann, Louis Lannoue, Rich Kirkland, Gabe Cantor

HANDOUTS: *Email from Alice Gordon to Peter Eckhoff; Email from Louis Iannone to Michael Harvey; Memorandum from Michael Brough to Orange County Planning Board*

AGENDA ITEM 1: CALL TO ORDER AND ROLL CALL

Lisa Stuckey called the meeting to order.

Tina Love: The Board of Adjustment meeting for next Monday is cancelled but there will be a meeting in April.

AGENDA ITEM 2: INFORMATIONAL ITEMS
a) Planning Calendar for March and April

AGENDA ITEM 3: APPROVAL OF MINUTES
FEBRUARY 5, 2014 REGULAR MEETING

MOTION by Tony Blake to approve the February 5, 2014 Planning Board minutes. Seconded by Paul Guthrie.

VOTE: UNANIMOUS

AGENDA ITEM 4: CONSIDERATION OF ADDITIONS TO AGENDA

AGENDA ITEM 5: PUBLIC CHARGE

Introduction to the Public Charge

The Board of County Commissioners, under the authority of North Carolina General Statute, appoints the Orange County Planning Board (OCPB) to uphold the written land development

55 laws of the County. The general purpose of OCPB is to guide and accomplish coordinated and
56 harmonious development. OCPB shall do so in a manner which considers the present and
57 future needs of its citizens and businesses through efficient and responsive process that
58 contributes to and promotes the health, safety, and welfare of the overall County. The OCPB
59 will make every effort to uphold a vision of responsive governance and quality public services
60 during our deliberations, decisions, and recommendations.

61
62 **AGENDA ITEM 6: CHAIR COMMENTS**

63
64 Lisa Stuckey: I was notified that Home Occupations will be coming back to us in April.

65
66 Perdita Holtz: There was a BOCC meeting which is available on the County's website under Meeting Videos. We
67 thought this agenda was going to be full so we decided to put it on April's schedule.

68
69 **AGENDA ITEM 7: CLASS A SPECIAL USE PERMIT:**

70 To make a recommendation to the BOCC on a Class A Special Use Permit application
71 seeking to develop a solar array/public utility station on two parcels of property, totaling
72 approximately 52 acres in are, off of Redman Road between the railway and Interstate 85/40
73 in Cheeks Township. This item was heard at the February 24, 2014 quarterly public hearing.
74 **Presenter:** Michael Harvey, Current Planning Supervisor

75
76 Michael Harvey: Reviewed abstract.

77
78 Tony Blake: Were Ms. Wise's concerns addressed?

79
80 Michael Harvey: She has not responded to me. I have met with her three times since the public hearing to review
81 the site plan with her and I will meet with her again to review this item. Strata Solar has reached out to her on two
82 occasions where they said here are our responses, we would like to meet with you. I can't tell you whether she
83 agreed to that.

84
85 Paul Guthrie: Have there been any other letters since the public hearing?

86
87 Michael Harvey: No sir except this one.

88
89 Lisa Stuckey: Everything has to go into the public record, either orally at the public hearing or in writing although we
90 can ask for clarification tonight.

91
92 Michael Harvey: This packet will be entered into the record when the quarterly public hearing is reconvened
93 including this email and any other emails as we move forward.

94
95 Lisa Stuckey: Do you need any feedback from us?

96
97 Michael Harvey: Only if you have questions you want staff or Strata Solar to respond to by the next meeting.

98
99
100 **AGENDA ITEM 8: ZONING ATLAS AMENDMENT:**

101 To make a recommendation to the BOCC on an application to rezone an approximately 12 ace
102 parcel of property located at 5908 US 70 East in Eno Township from Economic Development
103 Eno Low Intensity (EDE-1); Economic Development Eno High Intensity (EDE-2); and Lower
104 Eno Protected Watershed Protection Overlay to Economic Development Eno High Intensity
105 (EDE-2) and Lower Eno Protected Watershed Protection Overlay. This item was heard at the
106 February 24, 2014 quarterly public hearing.

107 **Presenter:** Michael Harvey, Current Planning Supervisor

108

109 Michael Harvey: Reviewed abstract.
110
111 Paul Guthrie: Who is operating the communications tower?
112
113 Michael Harvey: AT&T has an antenna on it and other telecommunication providers are located on it. I believe
114 Verizon has re-erected an antenna or either AT&T has changed out their existing antennas.
115
116 Lisa Stuckey: Those two rectangular pieces that look like a residence, is that part of a different lot? Would it be a re-
117 division of the property to sell it?
118
119 Michael Harvey: Correct.
120
121 Lisa Stuckey: The remaining property, what are the divisions?
122
123 Michael Harvey: The blue line represents all this property and the red line is the area to be rezoned.
124
125 Lisa Stuckey: There are three parcels. So those two smaller parcels could be sold at any time without dividing the
126 property.
127
128 Michael Harvey: Yes, if they choose to do so.
129
130 Tony Blake: So the 12 acres in question is the entire red box including the building and that building is not a
131 separate lot.
132
133 Michael Harvey: That is the legal description supplied by the applicant's surveyor. That is correct.
134
135 **MOTION** by Herman Staats to approve the Ordinance in attachment 2, approving the Rezoning Petition and approve
136 attachment 3 which is the Statement of Consistency with the Comprehensive Plan. Seconded by Johnny Randall.
137 **VOTE: UNANIMOUS**
138
139
140 **AGENDA ITEM 9: UNIFIED DEVELOPMENT ORDINANCE (UDO) TEXT AMENDMENT:**
141 To make a recommendation to the BOCC on an application seeking to amend Section 5.6.5
142 (A) (2) (b) Kennels (Class II) – Standards of Evaluation to reduce required setbacks for Class
143 II Kennels developed within the EDE-2 zoning district. This item was heard at the February
144 24, 2014 quarterly public hearing.
145 **Presenter: Michael Harvey**, Current Planning Supervisor
146
147 Michael Harvey: Reviewed abstract. What I will state and ask the Board to remember is our recommendation is still
148 unfavorable and if this Board is going to make a recommendation to approve the request, we have provided
149 language in Attachment 3 of this document that incorporates the Easterlin's request to amend the UDO in a manner
150 consistent with the UDO framework. If this Board is going to make an affirmative finding and recommendation, we
151 would ask you do it on the language contained in Attachment 3.
152
153 Buddy Hartley: Inside the black area, that area is used for the purpose of training dogs?
154
155 Michael Brough: A portion of that area is being used for the training of dogs.
156
157 Buddy Hartley: The building in the red box that is used for training purposes?
158
159 Michael Brough: Yes. It was constructed as a residence but it is not being used as that.
160

161 Michael Harvey: The staff was asked to provide a visual representation of the property that would meet the
162 appropriate setbacks as currently required. The Easterlins' are proposing this. We wanted to provide the Board with
163 what would comply and what exists.

164
165 Michael Brough: What we are making in the memorandum is that while that is an area that complies with the legal
166 requirements assuming the rest of the property was rezoned, there is a substantial portion of that property which
167 does not lend itself to the expansion of the exercise area. (Described map). There is an area they could build an
168 exercise area but that misses the point. From our perspective under the narrow circumstances this addresses, this
169 would be a very expensive proposition. What good does that achieve? It is multiple thousands of dollars. The point
170 of our request is it is a legislative matter when you weigh cost and benefits and the cost of this private business,
171 which serves a great purpose for the County and surrounding areas, is very high and the benefit is virtual non-
172 existent in this case. There have not been any complaints by either of the surrounding property owners and they
173 were notified of this amendment. It gets down to this question; those objections are essentially theoretical in context.
174 These properties will not be developed until sewer gets there. When it does get developed, it is hard to imagine this
175 area being developed in any way not a substantially intensive use. You have situation where you have a problem we
176 are trying to solve. We have come up with a solution that works and is narrowly drawn and has no real negative
177 impacts on any but provides a legal and practical solution that we have been trying to solve for years. There is a
178 legitimate distinction between why we are limiting this to EDE-2 when it makes no sense to have 150-foot setback if
179 the adjoining property is not intensively zoned for development or residential development. Those circumstances
180 maybe 150 feet is all right but when you have a situation like this, it makes no sense to have 150-foot setback.

181
182 Michael Harvey: This property here is split zoned, this portion is EDE-1 so the 150 foot setback would apply, this
183 portion is zoned EDE-2.

184
185 Michael Brough: Years down the road if this property were developed, anybody who moved there would already
186 know what is there.

187
188 Paul Guthrie: Where is the current exercise yard?

189
190 Michael Brough: In the blue lines.

191
192 Paul Guthrie: Is this considered necessary, that space now being used as an exercise yard is clearly smaller than
193 the total area of proposed change so is it the configuration of the terrain of that limits its use or are there other
194 reasons.

195
196 Michael Brough: There are buildings there and topographic issues in the lower part of the site that slopes. There is
197 an area that is flat and open. Whether that is one third or one half of that site that could be developed but while you
198 could have some exercise area it is very expensive and you are giving up acres of your site in the northwest corner.
199 There are two elements the costs of pulling down the fence and putting up a new fence and the other element is that
200 the 150 foot setback requires them to give up a substantial amount of property it amounts to acres of lands.

201
202 Paul Guthrie: Is this an enlargement or maintaining the same level of animals that are cared for? Will you be
203 increasing or maintaining the same level of animal care?

204
205 Michael Brough: The long term plan would be that the property would be consolidated and then divided to segregate
206 out a lot around the existing tower and the rest would be submitted for a special use permit covering all the remaining
207 property and the particular uses at that time would be to have an expansion into the area that would be permissible.

208
209 Paul Guthrie: I understand the cost argument but is it necessary to tear down the old fence or will you recycle the old
210 fence?

211
212 Michael Brough: I can't tell you.

213
214 Mrs. Easterlin: The cost I gave you was to use the existing fence.

215
216 Michael Brough: We have a cost estimate here that comes to \$55,000.
217
218 Craig Benedict: I will make some general comments as you deliberate on a legislative decision to change the
219 aspects of a zoning district EDE-2. If it is a general problem, you can address things generally. As a companion to
220 that if it a specific issue, try to address the problem specifically or isolated. Another moral (standard) is each zoning
221 districts has uses that are permitted by right. That is what the Planning Board and BOCC have determined that those
222 are the most appropriate uses that permitted by right. Those are the ones that are anchors of a zoning district.
223 Special uses do not have the same standing in a zoning district as a use permitted by right. Before you change
224 regulations, is there a way to change how things are operated or change location of buildings. Also, if you make a
225 change in this zoning district, could it ever be used to justify changes in another zoning district? The last thing is that
226 we do not base regulation changes based on what the land is on now; we based it on what the land is zoned or what
227 the future land use is.
228
229 Lisa Stuckey: Under this proposed text amendment, would the fence still need to be at least 25 feet from the
230 property line?
231
232 Michael Harvey: If this is approved, yes.
233
234 Lisa Stuckey: So the fence has to be moved.
235
236 Michael Harvey: The fence has to be moved or the Easterlins' will have to purchase additional property to make it
237 comply with the 25-foot setback.
238
239 Lisa Stuckey: The wording doesn't permit it to be close on the property line but always 25 feet.
240
241 Michael Harvey: When it is adjacent to property zoned EDE-2 the setback will be 25 feet.
242
243 Herman Staats: The blue line is the current fence; the black line is the setback in compliance.
244
245 Michael Harvey: The special use permit approved recognizing these structures as being part of the dog kennel
246 operation approved in 1986. It is the dog runs that create the problem.
247
248 Herman Staats: The setback refers to outside use or any use.
249
250 Michael Harvey: The ordinance states that the 150-foot applies to all buildings and outdoors exercise areas. There
251 was obviously a different interpretation in 1986. The rule does allow for the 150-foot setback to be waived if portions
252 where animals are housed are completely enclosed in the building. The interpretation that we have utilized since I
253 began work with the County in 2005 says that if all portions of the facility are in a building, no outdoor area at all, then
254 the 150 rule does not apply.
255
256 Tony Blake: So technically he is not in compliance.
257
258 Michael Harvey: I am not going to say this is non-conforming because I have a special use permit and approval that
259 says otherwise.
260
261 Buddy Hartley: The only place the animals are housed is in the original spot?
262
263 Michael Brough: The blue box with white areas is like portable carports.
264
265 Buddy Hartley: I am familiar with the area. You have more area for dog runs in the black box.
266
267 Michael Brough: There is area there but the problem is that it will cost thousands of dollars to do it. As you have
268 already pointed out, you have got buildings well within the 150-foot setback.

269
270 Buddy Hartley: If those are covered areas, they could be moved to the areas in black.
271
272 Michael Brough: The fence is an issue and then we have the issue of why are we taking away 125 feet out of the
273 ability to use their property when the adjoining property owners do not object.
274
275 Johnny Randall: The area of the existing fence that is on the property line, will that have to be moved anyway?
276
277 Michael Harvey: The Easterlins' will have to move the fence 25 feet or purchase additional property so the fence
278 complies with the setback.
279
280 Buddy Hartley: Either way it will be expensive.
281
282 Tony Blake: Have the Economic Development folks weighed in on this.
283
284 Michael Harvey: No.
285
286 Tony Blake: There should be a way to tweak things that are special cases without affecting every EDD (2) parcel in
287 the County. It seems this is not unreasonable in this instance. I don't see the benefit in enforcing this or putting this
288 type of burden on a small business.
289
290 Craig Benedict: In my comments, this is not about looking at one property. I am not specifically talking about this
291 use that is here but the long-term guidelines. We are not looking at someone's site plan when we are addressing
292 changing a zoning district that we should not even looking at. I am representing EDD (2) zoning everywhere.
293
294 Paul Guthrie: If the owners were to abandon the use and leave it there and not use it for anything, would you have to
295 tear the fence down?
296
297 Michael Harvey: If the area wasn't used as an exercise yard, then there would be no 150-foot setback.
298
299 Paul Guthrie: There would be no need to tear down that fence and move it?
300
301 Michael Harvey: That assumes that it is no longer utilized for the purpose that the Easterlins' want to use it.
302
303 Paul Guthrie: If they only had to erect a fenced area inside the black box that was sufficient to give the exercise they
304 want to give, would that change the financial impact?
305
306 Michael Brough: Even if you left the fence there you would have to re-fence another area. You are saying acres of
307 property and leaving it unusable. It would be cheaper to leave the fence there and not use that part of the property at
308 all and erect a new fence somewhere else on the property.
309
310 Mrs. Easterlin: The blue line around the outside, there are also several fenced in yards inside the area so we have
311 about nine yards.
312
313 Tony Blake: The way the amendments read there would need to be someone out there with them.
314
315 Michael Harvey: I have never seen a situation where the dogs were out there overnight.
316
317 Lisa Stuckey: We can't make them put them in.
318
319 Michael Harvey: Technically the UDO doesn't require it but animal services will mandate the animals have to be kept
320 inside in the evening. This ordinance does require an applicant get the appropriate Class 2 permit from Animal
321 Services in order to operate the kennel.
322

323 Lisa Stuckey: There is not another zoning that would be more appropriate that would have smaller setback.

324
325 Michael Harvey: The setback is related to the kennel. We looked at conditional use but we have language in the
326 UDO that states once we have adopted a development standard (i.e. a setback), it has to be observed.

327
328 Johnny Randall: Is the six-foot high chain link fence required?

329
330 Michael Harvey: Yes. If they want to suggest alternative fencing, we could discuss it. This is a dual review process.
331 Orange County Planning and the Board of Adjustment are reviewing it.

332
333 Tony Blake: What other General Use Zoning District designations could this possibly effect.

334
335 Michael Harvey: None. There could be an extensive reinvestigation of the viability of 150-foot setback in other non-
336 residential zoning districts. This only impacts all the property-zoned EDE-2.

337
338 James Lea: Wouldn't it also impact all Class 2 kennels?

339
340 Michael Harvey: They would have to come back to the Board of Adjustment and amend their existing approved site
341 plan to take advantage of the reduction if it were approved.

342
343 Michael Brough: Regarding that last questions, kennels are permissible in a number of different district but this was
344 limited to the EDE-2 district and further limited to properties that are zoned EDE-2 district. Let me address the
345 general as opposed to the specific. I concur with what Craig has said but in this situation it does that, is there any
346 why you have property that is zoned to a district that allows a 25 foot setback for some of these intensive uses, how
347 does it make sense this use requires a 150 foot setback. What is the point of a 150-foot setback? The main part of
348 our argument is that it doesn't make sense to have a 150-foot setback for a kennel use when it is in an EDE-2 district
349 adjoining property that is zoned for intensive use. This is a policy that is of general applicability to the circumstances
350 we have made it apply to. Does this ordinance make sense in the context in which it applies? We would submit it
351 does not. The ordinance is designed to serve public interest and there is not a public interest in this.

352
353 Lisa Stuckey: The 150-foot setback would apply to all Class 2 kennels in the County?

354
355 Michael Harvey: Yes.

356
357 Craig Benedict: What are some of the adverse impacts that come forward for special use permits. The four general
358 categories are noise, dust, vibration and odor. When things are enclosed in a building, most of the impacts go away.
359 These are what you need a wider type of buffer for. It has been determined that 25 feet because of the noise factor
360 was not a distance that would protect those adverse impacts from imparting upon adjacent property.

361
362 Perdita Holtz: May I add one thing to provide clarification. Even if you are a manufacturing facility and theoretically
363 can locate 25 feet away, there are other standards in the UDO that you have to comply with if you do make dust or
364 noise or vibration so you may be able to go to the minimum setback if you are a pretty benign manufacturing
365 operation but you may be required to locate further away so those impacts of noise, vibration, dust, or odor do not
366 cross the property line. There are standards in the UDO that other uses have to comply with that may require that
367 they move further away from the property lines than the minimum setback requires.

368
369 Michael Brough: That gets down to the final question. There have not been any complaints since 2005. You are
370 dealing with a theoretical concern. These folks have a real problem that you can solve.

371
372 Andrea Rohrbacher: Even though Mr. Brough has stated there have been no complaints on this property, I know of
373 another property in Orange County, in the Town of Carrboro, where there is a complaint because there is less than
374 150 foot distance.

375
376 Johnny Randall: Just because there are no complaints, we don't know why.

377
378 Lisa Stuckey: We have two options in terms of proposed changes. Doesn't anyone want to move on Attachment 2
379 or if we are going to consider this would it be Attachment 3? I would like to get Attachment 2 off the table if this is not
380 a viable option. We are taking Attachment 2 off the table. Attachment 2 was what Mr. Brough had written.
381 Attachment 3 language is what Michael Harvey wrote. Is there anyone who would like to make a motion?

382
383 Craig Benedict: Attachment 3 is to approve the change.

384
385 James Lea: This would apply to all Class 2 kennels?

386
387 Michael Harvey: This only impacts kennels potentially in the EDE-2. When you have an EDE-2 and you want to put
388 a kennel on it, if it surrounded by EDE-2 zoning, the setback is 25 feet.

389
390 Paul Guthrie: Is the recommendation of the staff that we vote no on that?

391
392 Michael Harvey: Our recommendation is to deny the request. If you are going to approve it, use the language in
393 Attachment 3.

394
395 **MOTION** by Andrea Rohrbacher not to adopt the change. Seconded by Johnny Randall.

396 **VOTE:** 6 Yes 2 No (Paul Guthrie, Tony Blake).

397
398 Mr. Easterlin: We serviced 100,000 dogs in the last seven years. Someone has to take care of those dogs and we
399 have to have room to do it. We are not going to have dogs we cannot let out. I want you to understand we have
400 really done a job. My wife goes to work at 7:00 a.m. I just can't understand why when we take care of these
401 animals.

402
403 Lisa Stuckey: It is clear we were all struggling with this. We make a recommendation and the final decision is made
404 by the BOCC.

405
406 Craig Benedict: If you are voting on something, it shouldn't be about one person's property. That is why we have
407 such odd feelings. I tried to separate what is on the ground to what the general rules of decision-making are by
408 legislative bodies so it doesn't reduce itself.

409
410 Paul Guthrie: I appreciate your comments but the legislative procedure is both. It is matters of policy and impact and
411 the decision made in committees and every place I have been involved, both apply. When we come to a decision to
412 vote for or against a recommendation, it is a balancing act.

413
414 Tony Blake: We lack the tools to make the right decision. It was all or nothing. In this case, I think their argument is
415 on but the problem is we can't make specific exceptions. We need the ability to do that.

416
417 Michael Harvey: With all due respect, that is not this Board's role and function. That is the function of the Board of
418 Adjustment.

419
420 Tony Blake: They were denied that avenue.

421
422 Michael Harvey: They were not denied anything; even their own attorney admitted it was not viable.

423
424 Lisa Stuckey: Maybe it should be. Maybe under these circumstances these people should have the opportunity to
425 continue their business but no one after them. If the business is sold, etc. I can see a situation where that area was
426 filling in and developing and someone wanting to put in a restaurant there and then those dogs would be a problem.
427 What do you do?

428
429 Tony Blake: We do allow a use to exist that has existed prior to the zoning change and it seems that it existed prior.

430

431 Michael Harvey: The previous users had a special use permit.

432

433

434 **AGENDA ITEM 10: COMMITTEE/ADVISORY BOARD REPORTS:**

435 a. Board of Adjustment

436 Michael Harvey: There was no meeting this month.

437

438 b. Orange Unified Transportation

439 Paul Guthrie: We will meet in a couple of weeks with a main focus of continuing to focus on rural transportation projects. The BOCC representative on Triangle Transit will take a message saying what Orange County needs to be doing for its rural transportation. The first project will be discussing with Triangle Transit over the Mebane express route whether it runs strictly on the interstate or it might get down on a road to pick up people at a reasonable distance.

443

444 Craig Benedict: Even though the population is 55% Chapel Hill/Carrboro and 45% Hillsborough and Orange County there are more senior citizens in that 45% of the County than in Chapel Hill/ Carrboro. We are trying to provide access to quality public transportation.

447

448 Tony Blake: Since Perdita presented the Eno EDD Small Area plan, that is screaming for transit.

449

450 Perdita Holtz: That was the Efland Small Area plan.

451

452 Tony Blake: Is there any movement to bring these people together and help the landowners to see the vision?

453

454 Craig Benedict: We are trying to create a hub in Efland. We are working on an East/West transportation route from Mebane, Efland, Hillsborough and Durham. We think Efland is the key. We will still have remote small van service in rural areas.

456

457 Tony Blake: It is also bringing people into the area too.

459

460 Paul Guthrie: I would suggest the budget the president sent to congress will rekindle the discussion on the expenditure of transportation of all kinds. If we could get the Hillsborough rail station established, I am pretty sure Amtrak would sign on soon and it would give us a place to make a regional transit hub to connect various transportation services to change.

464

465 Michael Harvey: We would like to express our thanks to Buddy Hartley for chairing the Quarterly Public Hearing.

466

467

468 **AGENDA ITEM : ADJOURNMENT**

469

470 **MOTION:** made by Paul Guthrie to adjourn. Seconded by Tony Blake.

471 **VOTE: UNANIMOUS**

472

Pete Hallenbeck, Chair