



TOWN OF WAYNESVILLE

Planning Board

9 South Main Street
Waynesville, NC 28786
Phone (828) 456-8647 • Fax (828) 452-1492
www.waynesvillenc.gov

Development Services
Director
Elizabeth Teague

Chairman

Patrick McDowell

Planning Board Members

Anthony Sutton (Vice Chair)

Marty Prevost

Robert Herrmann

H.P. Dykes, Jr.

Don McGowan

Ginger Hain

Jason Rogers

Susan Teas Smith

Regular Meeting

Town Hall, 9 South Main Street, Waynesville, NC 28786

Monday, October 21, 2019, 5:30 PM

A. CALL TO ORDER

1. Welcome/Calendar/Announcements
2. Adoption of Minutes
 - *Motion:* To approve minutes of October 1, 2019 as presented (or as corrected)

B. BUSINESS

1. Discussion and recommendations on:
 - Ordinance to regulate fences within the Town;
 - Clarification of Short-Term rental regulations;
 - Definition of Town homes, cottages and tiny home development.
2. Continuation of Board Discussion on the Comprehensive Land Use Plan Update Draft, "Chapter 5: Recommendations", pp 78-93.

C. PUBLIC COMMENT/CALL ON THE AUDIENCE

D. ADJOURN

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MINUTES OF THE TOWN OF WAYNESVILLE PLANNING BOARD

Special Called Meeting

Town Hall – 9 S Main St., Waynesville, NC 28786

10/1/2019

THE WAYNESVILLE PLANNING BOARD held a special called meeting on October 1, 2019, at 5:30 p.m. in the board room of the Town Hall, 9 South Main Street, Waynesville, NC.

A. CALL TO ORDER

Chairman Patrick McDowell called the meeting to order at 5:30 p.m.

The following members were present:

Patrick McDowell (Chairman)
Anthony Sutton
Marty Prevost
Robert Herrmann
Ginger Hain
Susan Teas Smith
H.P. Dykes, Jr.
Don McGowan

The following members were absent:

Jason Rogers

The following staff members were present:

Elizabeth Teague, Development Services Director
Jesse Fowler, Planner
Chelle Baker, Administrative Assistant
Attorney Ron Sneed

1. Welcome/Calendar/Announcements

Chairman Patrick McDowell asked if there were any announcements or changes to the calendar. There were none.

2. Adoption of Minutes

A motion was made by Board Member Anthony Sutton, seconded by Board Member Robert Herrmann, to approve the minutes of the August 19, 2019 board meeting as presented. The motion passed unanimously (8-0).

A motion was made by Board Member Susan Smith, seconded by Board Member Anthony Sutton, to approve the minutes of the September 5, 2019 board meeting as presented. The motion passed unanimously (8-0).

3. Approval of Order as presented (or as corrected) for Special Use Permit to locate a school within the Folkmoot Center Hazelwood Urban Residential District (H-UR) at 112 Virginia Avenue, PIN 8605-92-6127

A motion was made by Board Member Anthony Sutton, seconded by Board Member Robert Herrmann, to approve the order for the special use permit to locate a school within the Folkmoot Center Hazelwood Urban Residential District (H-UR) at 112 Virginia Avenue, PIN 8605-92-6127, as presented. The motion passed unanimously (8-0).

B. BUSINESS

1. Public hearing to consider an application for a Conditional District Rezoning and Map Amendment at 366 Russ Avenue, PIN #8616-40-3231 (legislative proceeding)

Chairman McDowell called on Ms. Elizabeth Teague, Director of Development Services to present the staff report. Ms. Teague advised the public that there was a sign-up sheet in the back of the room if anyone wished to comment.

Ms. Teague introduced the project as the Mountain Creek Plaza Apartment Complex located at 366 Russ Avenue, PIN 8616-40-3231. She advised this is the Russ Avenue Regional Center Commercial District and the applicant is Tribridge Residential with Mr. Patrick Bradshaw and Mr. Warren Suggs, P.E.s for Civil Design Concepts representing the applicant.

Ms. Teague continued with the staff report and presented the background on the property stating that the applicant is requesting a conditional district rezoning in order to redevelop the property as an apartment complex. She advised that if this were approved it would amend the zoning map for the area identified in the Master plan to Russ Avenue Regional Center Condition District and would amend the Land Development requirements specifically as they apply to that property and as shown on the Master Plan. Ms. Teague reviewed the Town of Waynesville's LDS, Section 15.15.

Ms. Teague further explained that the Plan was reviewed by the Town's Technical Review committee on August 14, 2019 and revised plans and complete application were submitted August 26, 2019.

Ms. Teague submitted fulfillment of the hearing's notification requirements. She explained that the Mountain Creek Project is proposing to re-use the 8.8-acre shopping center site as a multi-family development to create 210 apartments. She advised that Multi-family is a permitted use within the Russ Avenue Regional Center District and multi-family over 8 units is considered a major site plan. She also advised that the applicant has provided an environmental survey, a master plan and elevations in accordance with the major site plan application requirements.

Ms. Teague reviewed zoning compliance and read the purpose and intent statement, Section 2.3.7 C for the Russ Avenue Regional Center District.

She stated that the project proposes a density of 24 units per acre within the required setbacks (2.4.2). The building will address an interior driveway of 25' in width that provides access to the development parking and maintains a through access to West Marshall Street and can accommodate emergency vehicles (4.3). The building will be four stories in height on all sides with a pitched roof and is compliant within the RA-RC district. Ms. Teague advised the development meets the Apartment Residential Building Design Guidelines and reviewed the compliance of LDS Chapter 5).

Ms. Teague advised that the developer is asking that garages be located as shown, which face the interior parking areas and are recessed from the alley but still face the alley thoroughfare. (5.8.4)

Connectivity and Infrastructure

Ms. Teague stated that the project proposes to re-locate and retain the existing through access using the existing connections to and from Russ Avenue and West Marshall. She advised that the developer is asking to redesign this as a 24' "alley" that is longer than the maximum block length of 500', at over 1070' in length, in order to maintain two points of connectivity on either side of the property with existing town streets (6.4.1). Board Members asked to see how they will be routing the alley and Ms. Teague showed this on the map. Chairman McDowell asked to verify that it would be below visible road grade when on Russ Avenue and not visible when on Walnut. Ms. Teague stated this was correct and explained the design look of the buildings with the alley way.

Ms. Teague informed the Board that the applicant has shown that they will provide a greenway easement and will work with the Town on alignment in accordance with the NCDOT Russ Avenue widening project and the Town's Greenway feasibility study (6.4.2). The Board asked questions about the greenway design elements regarding the property and adjacent property.

She advised that a transit stop was discussed with the applicant at technical review and staff recommends consideration for the location of a transit stop that is situated in consultation with Haywood County Transit be required as a condition of approval (6.4.3).

Ms. Teague advised that 24' pavement and a 5' wide sidewalk provided from Russ Avenue along the entrance in on the development parking area. Pedestrian facilities continue one side the length of the alleyway proving pedestrian connectivity to the greenway and between West Marshall and Russ Avenue. The applicant is allowing thru-traffic and exceeding the alley dimensional requirements at the request of Town staff for the purpose of safety and connectivity (6.6.2).

As part of the NCDOT Russ Avenue improvement project, Ms. Teague informed that the existing sidewalk along Russ Avenue will be replaced. The applicant is asking that any sidewalk design requirement the Town would impose along Russ Avenue be removed in consideration for the roadway project (6.8).

The applicant has provided peak hour trip generation data for proposed and previous uses per the ITE trip generation guidelines and it shows a decrease in traffic demand. Ms. Teague advised that the proposed daily trips for residential multi-family is still below the Town threshold of 3,000 cars per day and would not require a full Traffic Impact Analysis (6.10).

Ms. Teague reviewed current on-site utilities already present on site and advised that the Town water and sewer department confirmed that the Town has capacity to serve 210 new units at this location. She also stated that all major development must place utilities underground and met the Town and Duke Energy's standards (6.11).

She advised that the applicant has provided four new hydrants on the site that are in coordination with the Town's TRC staff and fire chief.

Civic Space

Ms. Teague reviewed that residential development within the RA-RC District requires 2% civic space. She advised that the applicant is providing 5,191 sf of passive open green space, 8,464 sf of recreational open green space that includes an outdoor pool, providing 3.5% civic and open space outside of the floodplain. She informed the Board that this does not count the 14,000-sf easement of green space they have provided. She also stated that they are asking for consideration for their proximity to a park. The applicant is offering to dedicate 3 parking spaces for public access to greenway and stream buffer. The property is within 40' of the Town's recreation Park and playground which is across West Marshall Street. Ms. Teague advised the Board that staff believes they have exceeded the 2% requirement but would recommend that an agreement with the Town on future greenway and fishing area easement, design and maintenance along Richland Creek be required as a condition of approval. (7.2-7.3)

Landscaping and Parking

Ms. Teague stated that the applicant is preserving the existing tree line between its property and WNC Storage but is removing trees along the connection to West Marshall Street where they are proposing a retaining wall along the property boundary. Planning Board Member Ginger Hain asked what it would be retaining. Ms. Teague advised that they would be bringing in fill for the project. The Board discussed street trees placement with the line of sight and safety issues.

Ms. Teague reviewed the bordering properties and districts and advised the Board that Type A Buffer yards would be required between the RC and NR/UR districts and the applicant is asking that the LDS section 8.4.1 requirement be waived in consideration for the project's location and existing context (8.4).

Ms. Teague advised that the applicant requests the street tree requirement along Russ be waived in consideration for NCDOT project design as their property area along Russ is within the NCDOT Construction easement (8.5).

Ms. Teague explained that in re-using the existing site, locations of proposed tree plantings within the parking lot have been impacted by the presence of existing utilities so that in some cases there are parking spaces are more than forty away from a shade tree. The applicant has asked to be allowed to plant the same number of trees that would be required but to be given flexibility in their location as alternate compliance (8.5).

Ms. Teague stated that addition parking lot screening should be required between the first parking space and West Marshall Street (8.6.1).

Parking and Driveways

Ms. Teague reviewed the required parking standard of 1.5 parking spaces per multi-family unit. She advised that for 210 units, 315 parking spaces is required, and that the applicant is providing 321 according to their drawing which would include: 8 ADA, 3 public spaces and 16 bike spaces (9.2).

Ms. Teague advised that as an apartment in the RC District parking adjacent to a right of way should only be one bay. She explained that due to the site and the way West Marshall Street ends at the entrance to the WNC Storage and the access to this property, the applicant is requesting this requirement be waived (9.3).

Ms. Teague stated that the following LDS Chapter 9 requirements (9.4.2) (9.4.4) (9.8) for parking and driveway meet the Town requirements. She further stated that lighting and signage for the parking lots, buildings and driveway entrances shall be submitted to Town staff for approval and must comply with Chapters 10 and 11 of the LDS.

Environmental

Ms. Teague informed the Board that portions of the lot fall within the 100-year floodplain and will require a floodplain permit and compliance. She stated that the development proposes to remove impervious surface out of the floodway and to bring in fill to elevate structures and parking lots one foot above base flood elevation. (12.3) Ms. Teague advised that the net loss calculations of impervious surface out of the floodway would exempt them from the stormwater management ordinance. She stated that they have submitted a stormwater management and drainage plan to manage roof and parking lot runoff that includes a swale along the railroad and Russ Avenue sides of the property as well as underground stormwater control measures at the low side of the property where it abuts the greenway and buffer area along Richland Creek. She informed that this provides stormwater control measures where currently there are none and reduces the overall impervious surface improving the existing conditions (12.5).

Consistency with the 2020 Land Development Plan

Staff feels this Conditional District request is consistent with the Town of Waynesville's 2020 Land Development Plan in that the proposed development. Ms. Teague stated that staff believes the project is reasonable and in the public interest following with the Town of Waynesville's Comprehensive Plan. She asked the Board if they had any questions.

Board Member Robert Herrmann asked Ms. Teague about the Town's recommendation for civic space and an agreement on future greenway and fishing area easement, design and maintenance along

Richland Creek being required for a condition of approval, wanting to know if there was an estimated cost on that section of Greenway space. Board Members discussed this section of greenspace including design, maintenance, and cost. Board Member Ginger Hain asked about this condition and Ms. Teague advised they had already met this condition by agreeing to give the town the greenway easement. Discussion continued about whether the design, construction and maintenance of the space should be included or not in the requirement. Ms. Teague informed the Board there was a small grant from Haywood waterways to do a wetlands restoration on the edge of their parking lot that originated from the property owners', ie. the Linsky family, work with Haywood Waterways for stormwater management in the area and their interest in protecting the river buffer area and making it suitable for public use.

Chairman McDowell asked if there were any other questions for Ms. Teague. There were none. He called upon the Applicant to present.

**Patrick Bradshaw
Civil Design Concepts**

Mr. Patrick Bradshaw introduced himself, Mr. Warren Sugg both with Civil Design Concepts and Mr. Jacob Linsky with RFLP Mountain Creek LLC. He thanked the Board for the opportunity to present.

Mr. Bradshaw informed that there were 210 units multi-family units that included 1,2 and 3 bedrooms. There would be two 4-story buildings. He described Building 1000 as an "L" shaped building that would consist of 93 living units and Building 2000 as a "horse-shoe" building consisting of 117 units, a clubhouse and a leasing space. He described a deck and pool, patio area, clubroom, coffee-bar, fitness center, wi-fi, dog-spa, firepit, and grill area. Mr. Bradshaw also stated there would be 320 parking spaces that exceeds the spaces required by ordinance. Three of these parking spaces would be for access to Richland Creek and for the future Greenway. Mr. Bradshaw also stated that he believed this was a great redevelopment for Waynesville. He advised that he grew up in Waynesville and Russ Avenue has primarily served as a commerce corridor, and this project would be a great combination of current commercial with residential use. He spoke about a recent study of retail store closings and the opportunity presented of this proposal/redevelopment of BI-LO's closing. Mr. Bradshaw stated that this project is in line and consistent with the goals of the 2020 Land Development Plan. He also further reviewed the following project goals which he felt were met:

- High intensity Land use situated on almost 2 less acres of built-upon area that the existing BI-LO site occupies
- Storm water best management practices that are currently non-existent on the site
- Supports density- no cap
- Proximity to Downtown/ walkability
- Area comfortable for other modes of transportation (Pedestrians, bikes, mass-transit)
- Sidewalks throughout the development
- Dedication of land along Richland Creek for future Greenway to be constructed by the Town

Mr. Bradshaw stated that the developer is open to a signed transit stop. He advised that the developer is willing to provide the cut-through access from Russ Avenue to West Marshall Street.

- In-town location by the Town's park and recreation facilities.
- Encouragement of mixture between residential and commercial uses

Mr. Bradshaw asked the Board if they had any questions or comments.

Board Member Marty Prevost asked how the public would access the Greenway space. Mr. Bradshaw advised there were trailheads by the parking lot at the Town's picnic area, sidewalks from Russ Avenue or there would also be three public parking spaces allotted for this as well.

Discussion took place on the design aspect of the 6 ft fill, retaining wall, and site design. There was much discussion between the Board and the applicant about the street tree requirements and that the site plan did not provide street trees between the project property and Russ Avenue. Mr. Bradshaw pointed out that the construction easement proposed for the NCDOT project on Russ Avenue encroached onto the subject property and that there is an elevation difference and slope. Floodplain discussion took place between the Board and applicant. The applicant will be raising parts of the lot to meet the floodplain ordinance of raising structures to within 1' above the projected floodplain on the FIRM maps. They will be removing impervious surface and all structures to the outside of the floodway.

There were no further questions for the applicant.

Chairman McDowell opened the Public Hearing.

**Barbara Norris
Waynesville, NC 28786**

Ms. Norris introduced herself and stated that she felt she would be the most impacted from the business standpoint. She informed that she owned WNC Storage and the five buildings on the side of the RR on West Marshall Street and that she had approximately 200 customers. Ms. Norris advised that her customers travel through West Marshall Street or through the BI-LO parking lot and that she had received verbal assurance from the Applicant that they would allow her customers to still have access on the public strip through their property which she stated was critical for her because without the Applicant granting this access her customers would be stuck on a cul-de-sac and it would be a real problem for her. Ms. Norris told the Board that her concerns were the access to the property for her customers and the safety of her customers. She spoke of the driving in and out of the area and how she felt drivers had to be careful at the intersection. She advised that she understood about the Applicant cutting the trees. She stated that 210 units equaling 500 people being excited about going to the recreation park and if those drivers weren't keeping a good lookout while driving then she would be concerned for their safety along with the working Railroad that comes through 3-4 times per day that has an up and down signal.

Ms. Norris also stated that she had concerns with the 210 units having the possibility of 25% having pets, and one of the pet-friendly amenities being a dog-spa and not an on-site dog-park. She stated that this concern; therefore, was the possibility of an exasperation of her already current problem, of pet waste. She explained that there was only one receptacle and no place to put the waste bags and currently she was experiencing problems with it being left on her vehicle. She stated calculations of dogs that she felt would be accessing the properties and felt the applicant should have to provide receptacles and maintain pet waste pick-ups. Ms. Norris also stated that the property at the top of the Greenway she did not feel was twenty feet of easement and she described where she felt the property line was centered. She then advised the Board that she did not see how she could allow an easement across her property if her concerns were not being met and she was excusing herself from the conversation. She asked the Board if they had any questions and invited them to come down and look

at the property. She stated that the Applicant had it staked and she had it re-surveyed but felt they had it close but would be willing to show the Board what she was talking about.

Chairman McDowell asked if there were any questions for Ms. Norris. The Board thanked Ms. Norris and discussed the NCDOT project timeline. Ms. Norris informed that she did have 4 commercial tenants with tractor-trailers that will leave because they will not be able to make the turn from Walnut Street on West Marshall Street.

The Board asked the Applicant if he would like to address this.

Mr. Bradshaw stated that the Applicant had addressed many concerns and tried to take each concern singularly. The most recent concern of pets and pet waste had been new as of 11 am this date. He had not a chance yet to advise Ms. Norris that the developer being pet-friendly had informed that they were willing to place a bag pull stations and pet waste receptacles as many as possible and even circulate them onto Ms. Norris' property if she wished. Mr. Bradshaw stated that this was not a distance-landlord relationship so what does not get picked up by residents in the development, the development itself would pick up. Mr. Bradshaw informed the Board that he felt the developer was working in good faith with Ms. Norris and her counsel, and they mutually need things from each and has been an ongoing conversation.

Planning Board Member Susan Smith asked if there would be on-site management, so that if an adjacent land owner had an issue developing, in the spirit of the community, it would be addressed. Mr. Bradshaw advised yes, and it would be addressed in real-time.

Chairman McDowell asked for any other public comment.

Martha Shepler
Not in Waynesville, NC

Ms. Shepler stated that she does not live in Waynesville but that she was very curious about this development as an opportunity for her to move into town. She advised that she had not heard anyone address the Russ Avenue noise or the Railroad for the apartment dwelling or said anything about what kind of people will be living there or what their preferences would be. She stated that she believed there would not be enough parking and she spoke about her neighbor who had 6 cars. She informed that her main concern was that there was no room from Russ Avenue to the building for noise abatement. She stated that she would not rent that spot.

Chairman McDowell asked if there was any other public comment and there was none.

Planning Board and Ms. Teague had discussion while referring to aerial maps over the West Marshall right-of-way town street and how much of the street was town maintained and its current state.

Chairman McDowell asked if there were any additional questions for the applicant or Ms. Teague and there were none.

The Planning Board moved into their own discussion. Planning Board Member McGowan advised that he felt this was a great project for the town. He stated that it intensifies growth where they wanted it to be and housing was needed. Chairman McDowell advised that the project was going to be at market

value. Board Member Herrmann asked if there was an estimate of rental costs or apartment sizes. Applicant Mr. Bradshaw stated that they had 140- 1 bedrooms, 58- 2 bedrooms and 12- 3 bedrooms. Mr. Bradshaw also advised that the applicant felt the Town's parking ordinance from a design perspective was a good number of parking spaces.

Citizen stood and asked for a question. Chairman McDowell advised that the public comment had been closed, but they would allow.

Unknown Citizen

Unknown Citizen stood and stated that they owned a rental property for years behind the Burger King and they never had problems with renting even with the traffic. They were wondering if this project would have an effect or cause problems now with their rental with so much traffic coming in.

Chairman McDowell advised that he did not think so with the previous commercial properties that were in there before, BI-LOs, Los-Amigos, and Kim's Pharmacy traffic volume would have been much higher then the expected residential traffic. He stated he did not feel like this traffic would be an increase and additionally with the Russ Avenue upgrades to help handle traffic flow better.

Planning Board Member McGowan spoke of the Greenway and asked about the benefit this would have for the Applicant.

The Applicant was asked to address the Greenway. Mr. Bradshaw advised that the applicant felt this was an ample accommodation to provide real space by pulling development out of the floodway by proving to the town what would be a very critical piece to the Greenway connection and felt they were a participating partner in this. He advised that associated with designing this piece of Greenway would be three different regulations:

1. Streambank setback imposed by the Town of 30 foot off the edge of the water
2. Trout buffer enforced by the State of NC that's 25 feet off the top of the creekbank
3. Floodway which is a FEMA enforced policy

Mr. Bradshaw continued that all compiled it was the Town's idea to develop the Greenway at that location and the developer wanted to pay homage to that but didn't feel like it was their responsibility to perfect that. He also stated that a town would have a better chance of navigating those regulations as opposed to a private developer.

Chairman McDowell agreed with Mr. Bradshaw that it has been the Town's project. He stated that they as a Board had not asked previously for an Applicant to pay for it because there's no regulation to say an Applicant must give us the land. Attorney Ron Sneed advised that Chairman McDowell was correct, and this was not something the Town can mandate. Ms. Teague informed the Board that the spirit of Waynesville's greenway planning has been to add value to adjacent properties and not to force a particular route. The greenway plan seeks to provide alternate routes and cooperation.

Planning Board Member Ginger Hain asked Mr. Bradshaw about the railroad noise. Mr. Bradshaw advised that there would be sound insulation design on all sides. Planning Board Member Marty Prevost asked if all the 1 bedrooms would be in a particular location and Mr. Bradshaw advised they would be blended throughout.

Board Member Ginger Hain advised that she felt this was a very important project for the town and met many of the criteria. She told Ms. Teague that this was a very thorough presentation. Chairman McDowell stated that he felt this was the best example of infill they have had in a long time. Board Member Hain agreed.

A motion was made by Board Member Anthony Sutton, seconded by Board Member Bucky Dykes, that the zoning amendment is approved and is consistent with the Town's Land Use Plan because it concentrates commercial with residential development along transportation corridors allowing for a mix of uses, infill development in the Town of Waynesville as an alternative to continued outward expansion, provides an attractive range of housing opportunities and neighborhoods, provides pedestrian access in conjunction with new development, and implements the Richland Creek Greenway Plan. The motion passed unanimously, all ayes (8-0).

A motion was made by Board Member Anthony Sutton, seconded by Board Member Robert Herrmann that the zoning amendment is reasonable and in the public interest because the project re-uses and improves an existing commercial site promoting the orderly growth, development and enhanced land values of the Town and introduces high residential density along a major transportation corridor within a Town Regional Center District. It also reduces impervious surface within the floodplain, increases the stream buffer and greenspace along Richland Creek and helps the town with build out of our greenway system. The motion passed unanimously, all ayes (8-0).

Ms. Teague confirmed with the Board that the approving of the zoning amendment was the approving of the variances the applicant had asked for and the site plan would regulate that particular site. The Planning Board agreed.

2. Continuation of Board Discussion on the Comprehensive Land Use Plan Update Draft, Chapter 5

The Planning Board agreed to discuss Chapter 5 in two separate sections. They would discuss the first section at the next Planning Board Meeting.

D. ADJOURN

With no further business, a motion was made by Don McGowan, seconded by Ginger Hain to adjourn the meeting at 7:53 p.m. The motion passed unanimously, all ayes (8-0).

Chelle Baker, Administrative Assistant

Patrick McDowell, Chairman

Town of Waynesville Planning Board Staff Report

Subject: Discussion to consider whether to adopt a text amendment to the Land Development Standards which would regulate fencing within the Town of Waynesville.

Ordinance Section:

Applicant: Development Services Department

Meeting Date: October 21, 2019

Background

The Board of Alderman has requested that the Planning Board to discuss the possibility of drafting an ordinance to regulate fencing within the Town of Waynesville. Currently, the Town of Waynesville does not have an ordinance regulating the types of fences that are constructed in the Town. Planning staff has researched fencing ordinances in Western North Carolina and throughout the state and found common themes that exist within such fence ordinances including:

1. Materials permitted and prohibited in fence construction.
 - a. Some towns adopt design standards in their fence ordinances and only permit fences to be built with certain materials such as wood, wrought iron, or products created to resemble these materials.
2. Permitted and prohibited location of fences.
 - a. Some towns adopt ordinances that permit different types of fences depending on their location. For example, some towns only permit chain link fences in the back yard and prohibit fences in the front yard in some districts.
3. Permitted height of fences.
 - a. Some towns prohibit the height of fences. For example, some towns might prohibit fences higher than 7 feet in the back yard and 3 to 4 feet in the front yard
4. Fencing permitted for bona fide farms.
 - a. It is common for bona fide farms to be exempt from fencing ordinances due to their need to protect their livestock from roaming off their property.

Most ordinances that were researched by Planning staff included regulations like those mentioned above, but these regulations tend to exist in the spirit of new development buffering and screening requirements.

Statement to the Town of Waynesville Board of Aldermen

Introduction

We would like to address a recent Board of Aldermen meeting as well as a front-page article in the Mountaineer newspaper concerning a situation with a parcel of property, which is located at 233 Eagles Nest Road in Waynesville and is owned by Mr. David Acosta.

History

Let's be perfectly clear why this has become an issue... Mr. Acosta is using his property as he sees fit, and within the law. People are angry at him for something they assume he got away with, abusing his dog, even though Mr. Acosta was never charged with, nor convicted of any violation. Animal Control, who was contacted multiple times to report the supposed abuse or neglect, came to the house each time, was welcomed in, and never substantiated any of the allegations. The Code Enforcement office was contacted multiple times for supposed violations. Mr. Acosta always welcomed in whomever showed up, explained his actions, and was never obstinate or unreasonable when discussing the complaint. He always tried to comply with all ordinances, as well as state laws.

The special interest group 4 Love of Animals/Chain Free has made it their mission to make Mr. Acosta's life miserable. He has been called a 'scumbag' among other things. They make derogatory and untrue statements about him and his property. In addition to the Facebook page of this group hurling insults at him, Mr. Acosta also received a handwritten note saying he is disgraceful, has no respect for his property, and doesn't appreciate having a home. After literally years of enduring scrutiny for false reports, caring for his mother before her death, raising two kids of his own as well as his little sister, seeing vehicle after vehicle slow down and stare at his house multiple times a day, Mr. Acosta had had enough. He was angry. He was protective of his kids. He was out of work with a severe work-related injury. He let the grass grow. When Code Enforcement showed up with a complaint, he mowed the grass and put up a mesh fence... a privacy mesh screen and t-posts that were given to him by a family member who was as worried as he was about his children's safety. It was a last resort to keep people from staring at his kids as they played outside, to prevent calls about imagined violations, and to stop the online shaming, insults, and harassment. Of course, the insults then turned to how Mr. Acosta could have spent his money on putting up a "proper" fence.

With all of these crimes being committed against Mr. Acosta, after all of the harassment and the continual insults and phone calls about false violations, all of which caused him and his family to fear for his children and his property, his only retaliation was to not mow his grass and put up a mesh fence.

Then the Board of Aldermen got involved after town hall was "pummeled" with complaints about the fence, according to an article in the Mountaineer. Now the Board is considering adopting ordinances to restrict the use of everyone's property concerning fences, doghouses, and inoperable vehicles... strangely enough, these are the exact issues that instigators have long been hounding Mr. Acosta about.

Fence Ordinance

The town of Waynesville has survived for 209 years, since it's incorporation in 1810, without a fence ordinance. Now, after all these years, Alderwoman Julia Freeman states, "We have to have some sort of regulations on these." Alderman Gary Caldwell said, "I would definitely agree." Why would these aldermen think that they know better than all the previous town administrators? Maybe there's a reason we don't have an existing fence ordinance... because it would infringe on our rights as Americans and as citizens of North Carolina. Maybe it's because a majority of residents don't want a fence ordinance. Section 1 of the North Carolina Constitution states that citizens have the right to "life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness." Telling a resident that he or she can only erect a certain type of fence based solely on aesthetic value, when no deed restrictions were stated in the deed when purchased, and no harm to the public is prevented; is denying that resident their liberty, the enjoyment of the fruits of their labor, and their pursuit of happiness. We do not purchase property with the intent to use it the way the Town of Waynesville dictates on the whim of a special interest group.

Alderman Gary Caldwell said, "What if that fence blew over on a bunch of kids or blew out in the street and caused an accident? It is a safety issue." If the Board of Alderman want to disguise this obvious violation of our rights by saying that there is a safety issue, then we suggest they regulate ANYTHING that can 'blow over on a bunch of kids' or 'blow out in the street and cause an accident.' Trash cans, lawn chairs, patio tables, toys, decorative planters, clotheslines, trees, bushes, and much more comes to mind. Actually, let's begin with political signs that are simply pushed down a few inches in the ground

with small gauge wire. It is much more likely that they would be caught in a wind, blow into the road, and cause an accident by obstructing someone's view than it is for Mr. Acosta's well-secured privacy screen to do so. If we are going to protect the entire town from possible imagined dangers, we have a lot to legislate before we start infringing on the people's rights of security and privacy on their own property. Mr. Caldwell also expressed concern that "fences that totally obscure the front of a house could also make it difficult for police to keep tabs on well-being." Is Mr. Caldwell seriously insinuating that our Fourth Amendment Rights stated in the United States Constitution should be violated?

Police do NOT have the right to "keep tabs" on us inside our home or on our property without being invited in. Anything they can see from the road is fair game, but we still have the right to restrict their view on private property by closing our curtains, closing our doors, erecting a privacy fence, or building a brick wall if we choose. What would Mr. Caldwell suggest next? That we not be allowed to have solid front doors? That we be required to install see-through glass doors so that the government can make sure we're not doing anything it doesn't approve of? Maybe outlaw curtains? Government, whether it be federal, state, or local, cannot legislate that everyone has the right to view what goes on inside the boundaries of private property. That's simply ludicrous.

Alderman Leroy Roberson expressed concern that if Mr. Acosta was using his fence in an effort to hide junk, that would be "inappropriate in a residential area." Mr. Roberson needs to be reminded that there is already an ordinance about that. He should call Code Enforcement. Mr. Acosta will welcome the appropriate official in behind the fence to see if he is in violation of any junk ordinance.

Before the Board of Aldermen discuss whether or not an ordinance should be enacted that fences be "see-through" or restricted to 4-foot tall, we would like to say this: We put up fences for one reason....to keep unwanted people and pests out therefore keeping our family and property safe. We put up privacy fences for one reason....to protect our privacy, which we have a right to do. A 4-foot tall, see-through fence is no protection at all from someone who wishes to do harm to our families, and would violate our right to privacy, possibly sparking a civil rights lawsuit for the people to defend their rights against a government that wishes to violate those rights in order to bow to an elite minority.

And just as a side note...Anthony Sutton and Chuck Dickson will definitely have our votes. Thank you, gentlemen, for standing up for our rights and freedoms!

Doghouse Ordinance

If the Board of Aldermen intend to enact an ordinance that no doghouses be allowed in front yards, we only have two questions. First, if a resident decides to stake a dog on a lead in the front yard to protect their home, a perfectly legal and acceptable activity (hence the title 'guard dog',) then is that dog exempt from having to have a shelter? Secondly, are there going to be new ordinances concerning flowerpots, porch swings, treehouses, etc.? After all, isn't the person that doesn't like the look of a treehouse disrupting the natural beauty of a tree as important as the person who doesn't like the look of a doghouse?

Vehicle Ordinance

The town board will also be discussing the possibility of regulating how many cars residents can park in their front yard, whether they can park in the grass, and whether they can have a so-called junk car. We would like to remind the Aldermen that each citizen in North Carolina has the right to "the enjoyment of the fruits of their own labor." If a citizen can afford to purchase 10 cars because he or she has earned the financial means to do so, and he or she owns real estate that was purchased without restrictions concerning the number of vehicles, why do the Aldermen think they have the right to tell that citizen where they can park those vehicles? Or if they can park them on grass the citizen paid for?

The People Behind the Harassment

Denise Brooker founded the Facebook page 4 Love of Animals/Chain Free and has actively pursued legislation in Haywood County making it illegal to chain a dog. There are a lot of animals in Haywood County that are abused and neglected, and Ms. Brooker could have used her influence to help all those animals. Her platform would have been much more effective had she understood due process and taken the advice of Mr. Teague and the local animal adoption groups. Mr. Acosta's dog, Thor, was the "poster child" for her cause. Ms. Brooker's goal may have come to fruition if she had focused on an animal that was actually being abused. Hateful rhetoric, including threats of illegal behavior such as stealing Mr. Acosta's dog, is commonplace on the Facebook page.

For example, Carolyn Mickey posts, "Get a drone to get pics," NCGS 15A-300.1(b) states that no person, entity, or state agency shall use an unmanned aircraft system to conduct surveillance of private real property without the consent of the owner. Therefore, Ms. Mickey's post is a request to the public at large to break the law and invade Mr. Acosta's privacy in order to satisfy their curiosity concerning what is behind his fence. Kim Gillespie responded, "They shouldn't need a drone. There has been animal abuse there before, so AC (animal control) should be able to just stop by and do a check. And if dogs are chained up and abused, they should be taken immediately. This is crazy." Ms. Gillespie is recommending that Haywood County ignore Mr. Acosta's 4th Amendment right against illegal search simply because SHE has decided that he is guilty of the crime of animal abuse, without him ever being charged, tried, or convicted. She is also suggesting that animals should be taken away from him without due process, based on the whim of an animal control employee. The actual law does not seem to have any bearing on what lengths these people are willing to go to.

4 Love of Animals/Chain Free has harassed Mr. Acosta for years. They post pictures of his house online. They incite anger and violence against him by saying he abuses his pets. They attempt to intimidate and bully him online. He fears that their inflammatory rhetoric will spark retaliation from fanatics, putting his family in danger. NCGS 14-196.3 (b) states that it is unlawful for a person to electronically communicate to another repeatedly...for the purpose of abusing, annoying, threatening, terrifying, harassing, or embarrassing any person. They have threatened to enter Mr. Acosta's property without his permission, steal his pets, made false statements about him abusing his pets, and continually attempted to annoy, harass, and embarrass him.

It is important to note that Carolyn Mickey (a resident and homeowner of Maggie Valley), Kim Gillespie (a resident of Maggie Valley), and Denise Brooker (a resident and homeowner of Lake Junaluska), are not residents or taxpayers of Waynesville; therefore they would not be subject to any ordinances that the Board of Aldermen might enact.

In addition to the 4 Love of Animals/Chain Free group, Mr. Acosta has been subjected to vehicle after vehicle slowing down in front of his home, driving slowly and staring at his kids, pets, and property. We feel that their actions easily fit into the category of Stalking as defined in NCGS 14-277.3A. Mr. Acosta has installed motion activated cameras that video record any activity. If the stalking and harassment continue, he will contact an attorney and seek advice concerning legal action.

Summary

Now, after so many failed attempts of depriving Mr. Acosta of his rights and after so many years of harassment, 4 Love of Animals/Chain Free, along with others, have rallied their troops and are out for blood. They are determined to use the Board of Aldermen as a weapon to legislate Mr. Acosta out of his property rights. All for the simple purpose of winning a war that they waged against a single dad who was simply living his life, within the law, without bothering anyone by chaining a dog in his yard like hundreds, if not thousands, of other residents do daily. The dog they are upset about is dead, but their rage lives on, and they demand vengeance.... any way they can get it. We would advise the Board of Aldermen to not join the lynch mob that 4 Love of Animals/Chain Free and the select few people who stand with them have assembled, and whose aim it is to intimidate Mr. Acosta and deprive him of his rights.

When the elected officials of Waynesville decide they have the authority to legislate ordinances designed to limit or infringe on our constitutional rights, especially at the request of a special interest group or a select few, the citizens will not stand for it. The Mayor and the Aldermen must remember that they are ELECTED OFFICIALS, and that the residents of Waynesville elected them. And the residents of Waynesville can remove them. If Waynesville's Mayor and Aldermen decide to cave to the demands of an elite few and create unneeded ordinances to tell us how we can use our private property, we will contact a civil rights attorney to discuss legal action to challenge the ordinances they enact. In the meantime, front yard dog houses and mesh fences may multiply exponentially.

We sincerely hope that the Mayor and the Board of Aldermen will remember that their oaths of office require them to uphold the laws of the United States of America and the laws of the State of North Carolina, and to support, maintain, and defend the United States Constitution and the North Carolina Constitution. It would be wise for them to remember Section 2 of the North Carolina Constitution... "All political power is vested in and derived from the people; all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole." In making decisions concerning our rights and freedoms, please remember that WE ARE "We the People."

- | | | |
|----------------------|-----------------------|------------------------|
| 1. Wayne McCall | 24. Zachery Davis | 47. Anna Hightower |
| 2. Jessica Belt | 25. Amanda L. Owenby | 48. Sherrie Griffith |
| 3. Josh Phillips | 26. Stephanie Willett | 49. Travis Wood |
| 4. Kimberly Phillips | 27. Katie Willis | 50. Matthew Gentr |
| 5. Misty Pooler | 28. Andrea Rathbone | 51. Austin Rogers |
| 6. Nate Pooler | 29. Josh Wright | 52. Lori Anne Surret |
| 7. Ann McCall | 30. Mikeala Parton | 53. Aleisha Evans |
| 8. Tasha Smith | 31. Diné Elizabeth | 54. Brandon Aldredgè |
| 9. Ron Ledford | 32. Brandon Batson | 55. Yvonne McMahon |
| 10. Rebecca Osborn | 33. Jared Gilliland | 56. Lucas Alexander |
| 11. Megan Trull | 34. Dalton Messer | 57. Clarissa DuJat |
| 12. Nathan Osborn | 35. Kim McCall | 58. Kathy Caldwell |
| 13. Jeremy Davis | 36. Kim Dillard | 59. Misty Barton |
| 14. Scarlett Harris | 37. David Acosta | 60. Teresa Kirkpatrick |
| 15. Randy Phillips | 38. Paula Prillaman | 61. Robert McClure |
| 16. Nathalie Smith | 39. Matt Walker | 62. Lisa Allison |
| 17. Ashley Inman | 40. Sherry Barton | 63. Barri Dawn Willis |
| 18. William Swanger | 41. Charlie Alexander | 64. Amanda Parker |
| 19. Loulou Woods | 42. Brittany Johnson | 65. Lisa Caldwell |
| 20. Kayla Smith | 43. Ann Whitner | 66. Linda Trantham |
| 21. Krista Joyce | 44. Robin Rupe | 67. Eric Lemerise |
| 22. Dewayne Pressley | 45. Ashley Wood | 68. Karen Thomas |
| 23. Jacklyne Metcalf | 46. Samuel Rupe | |

(These are the signatures on the letter at the time it was submitted to the Town of Waynesville.)

Town of Waynesville Planning Board Staff Report

Subject: Discussion concerning the status of short-term vacation rentals in the Town of Waynesville
Ordinance Section: 2.5
Applicant: Development Services Department
Meeting Date: October 21, 2019

Background

Currently the Town of Waynesville does not have a regulatory policy concerning short-term vacation rentals. Short term rentals are mentioned in section 2.5 of the Land Development Standards but are referred to in the context of traditional lodging, such as inn, bed and breakfasts, boarding houses, and hotel/motels, rather than the context of today's online short-term vacation rental platforms. (see below).

2.5 - Use Categories and Interpretation of Uses.

modified

2.5.1 Use Categories.

All uses permitted in this Ordinance have been divided into nine general categories and are generally defined as follows:

- A. **Residential:** Premises available for long-term human habitation by means of ownership and rental, but excluding short-term leasing or rental of less than a month's duration.
- B. **Lodging:** Premises available for short-term human habitation, including daily and weekly rental.

The Board of Aldermen asked Planning staff to research short-term vacation rentals in Waynesville and the consensus from the Board was that this was not an issue that rose to the level of a concern in the past. However, the Planning Department has received two specific complaints about single-family structures that are being used as short-term vacation rentals. This coupled with the fact that the inventory of short-term vacation rentals in the Town of Waynesville is increasing, suggests that it is time to think about regulating short-term vacation rentals.

Planning staff is asking for Planning Board guidance as to if and how we should craft language to amend the text of our Land Development Standards in order to fill a gap in our regulatory policy where short-term vacation rentals are concerned.

Town of Waynesville Planning Board Staff Report

Subject: Discussion concerning Townhomes and/or cottage development
 Ordinance Section: 2,4; 2.5.3; 5.3; 17.3
 Applicant: Development Services Department
 Meeting Date: October 21, 2019

Background

The Town of Waynesville defines Townhomes as (LDS 17.3) as:

Dwelling – Townhome. Three or more attached dwelling units in which each unit has its own front and rear access to the outside, no unit is located over another unit, each unit is separated from any other unit by one (1) or more vertical common, fire-resistant fire walls, and the land underneath each unit is titled to the unit.

Recently we had a request from a property owner to do a 3 unit townhome development, who asked if there was a way to do each unit as stand-alone (ie. unattached) structures. This request has come on the heels of other inquiries related to “tiny homes,” or smaller stand-alone structures being located on a single lot within the density and dimensional requirements of the district.

An example of a “cottage” development standard is provided from the Town of Black Mountain.

Planning staff is asking if the Planning Board feels it is appropriate to re-examine the definition of a townhome, or to bring forward a new category of dwelling unit that might accommodate this development approach.

Town of Black Mountain Cottage Development Standards

Definition: *Cottage housing developments:* A cluster of detached structures which are no larger than 1,100 square feet and which share common driveways, yards, and other exterior facilities.

SECTION 7.6 - SPECIAL USE: COTTAGE HOUSING DEVELOPMENT (CHDS)

7.6.1 - Purpose.

The purposes of this type of development and these accompanying guidelines are to:

- Provide a housing type that responds to changing household sizes and ages (e.g., retirees, small families, single person households);
- Provide opportunities for ownership of small, detached dwelling units within all districts; encourage creation of more usable open space for residents of the development through flexibility in density and lot standards;

- Preserve a housing type of small, free-standing cabins and cottages, a housing style that has historically existed in Black Mountain since its development as a retreat and vacation destination and to provide guidelines to ensure compatibility with surrounding land uses; and
- To accommodate and encourage new types of housing options such as "Katrina Cottages," and free-standing structures of small footprint that are generally more affordable, energy efficient and sensitive to the land.

7.6.2 - Applicability.

A cottage is a small, detached dwelling unit, not greater than 1,100 square feet in total floor area that may be developed at a density greater than the underlying zone. More than two cottages may occupy a single lot and may be owned separately as long as there are existing agreements for the maintenance and use of common areas. A cottage development may be developed in any zoning district except for HI-0.

7.6.3 - Density.

Cottage housing developments shall contain a minimum of two free-standing structures located in a cluster to encourage a sense of community among the residents. A development site may contain more than one cottage housing development, but in no case shall a single cottage housing development exceed eight units per acre unless meeting specifications for the inclusionary housing bonus, in which up to ten units per acre are allowed.

7.6.4 - General design requirements.

In addition to the general requirements of this chapter, the following guidelines shall be met:

- A. Setbacks for all structures from the adjacent property lines along the perimeter of the site shall comply with all setback requirements of the district in which the development is located.
- B. The minimum distance between structures, including accessory buildings, shall be ten feet, and must have off-set windows and all fire safety codes related to building proximity and fire rated walls shall be met.
- C. The maximum built-upon area, including parking, driveways and buildings, shall be equal to or less than 66 percent of the total land area for the lot.
- D. Maximum height for cottages shall be 35 feet and the maximum height for accessory structures shall be 18 feet. All parts of the cottage roof above 18 feet shall be pitched.
- E. Cottages must have a stoop or front porch that shall have a roofed porch at least 80 square feet in size with a minimum dimension of eight feet on any side.
- F. A pitched roof design is required for all parking structures.

- G. Cottages must not exceed 1,100 square feet of enclosed, habitable space. Cottage areas that do not count toward the total floor area calculation are:
1. Unheated storage space located under the main floor of the cottage.
 2. Architectural projections such as bay windows, fireplaces or utility closets not greater than 18 inches in depth or six feet in width.
 3. Attached roofed porches.
 4. Detached garages or carports.
 5. Spaces with a ceiling height of six feet or less measured to the exterior walls, such as in a second floor area under the slope of the roof.
- H. Accessory buildings and detached or attached garages or carports shall not exceed 200 square feet in size, shall match the architecture of the cottages in style and material, and shall not be used for residential purposes.
- I. Parking spaces may be spread out through the development connected to each cottage, clustered in a shared parking lot or some combination thereof at a minimum ratio of two spaces per unit; clustered parking for more than six vehicles must be screened from public streets and adjacent residential uses by landscaping or architectural screening.
- J. Driveways and parking areas and any common open space, parks or stormwater management facilities, shall be considered common areas and must be maintained by an established neighborhood association.
- K. The total square foot area of a cottage dwelling unit may not be increased. A note shall be placed on the title to the property for the purpose of notifying future property owners that any increase in the total square footage of a cottage is prohibited for the life of the cottage or duration of cottage regulations.
- L. Common area shall be outside of wet stormwater ponds, wetlands, streams, lakes, and sensitive areas and maintained. Private open space shall provide a private area around the individual dwellings to enable diversity in landscape design. Requirements:
1. Common open space shall be a minimum of 400 square feet per cottage, abut at least 50 percent of the cottages in a cottage housing development, and have cottages abutting on at least two sides.
 2. Private open space shall be a minimum of 300 square feet or private, contiguous, usable space adjacent to each dwelling unit, for the exclusive use of the cottage resident. It shall be oriented toward the common open space as much as possible or in the rear or side yard areas with no dimension less than ten feet.
- M. An existing detached or attached single-family dwelling that is incorporated into a cottage housing development as a residence and is nonconforming with respect to the standards of this section shall be permitted to remain on a site used for a cottage housing development. However, the extent of the non-compliance may not be increased unless the proposed change is determined by the zoning administrator to be consistent in character, scale and design with the cottage housing development. If the existing dwelling meets the requirements of this section with regard to size and is able to conform to other site

standards, it may be counted as a cottage in the density calculation for the site. If the existing dwelling does not meet the size limitation for a cottage, then it shall count as one standard size dwelling.



TOWN OF WAYNESVILLE

Development Services Department

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RECOMMENDATIONS

A discussion of the 2035 Comprehensive Land Use Plan, chapter 5 pages 78-93.

RECOMMENDATIONS

5

This chapter includes the Future Land Use Map, area descriptions, and policies and strategies that are organized by topic area and meant to guide decisions.

1. Does chapter 5 accomplish what it sets out to accomplish?
2. Would the Board like to see any changes or additions?
3. Does the Board have any overall observations or comments?

Chapter 5 is where our new Comprehensive Plan begins to start painting a future for the Town of Waynesville's land use policies and economic development. Pages 78-93 cover our Draft Future Land Use Map, land use designations, land use development recommendations, and infill and redevelopment concepts.

- The Draft Future Land Use Map is not a zoning map. This map serves to help guide zoning policies down the road.
- Land use designations act as definitions for the different types of land uses found on the Draft Future Land Use Map.
- Land uses development recommendations outline tools which we can use to make specific changes to our Land Development Standards in the future.
- Infill and redevelopment concepts are ideas of what different types of infill and mixed uses could look like in different areas throughout Town. These are not plans, but are ideas which help better explain infill development and mixed uses.

Some things to consider when reviewing chapter 5:

- Do the land use designations on our Draft Future Land Use Map reflect our goals of growth and development?
- Do the recommendations set forth in chapter 5 adequately depict where Waynesville wants to be in 15 years?
- Are there any contradictory ideas or recommendations found in this section of chapter 5?
- Does this section of chapter 5 adequately serve both purposes of informing the public as well as functioning as a tool for required items such as consistency statements?
- A theme throughout our review has been the utility of this document and the economy of words. Does this section of chapter 5 need to be cut down, or is all the material necessary?

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