

MINUTES
The Regular Meeting of the
Aberdeen Planning Board

October 17, 2013
Thursday, 5:30 p.m.

Robert N. Page Municipal Building
Aberdeen, North Carolina

The Aberdeen Planning Board met Thursday, October 17, 2013 at 5:30 pm for their regular Board Meeting. Members present were Chairman Johnny Ransdell, Vice Chair Sarah Ahmad, Tim Marcham, Janet Peele, Ken Byrd, Joe Dannelley, Kelvin Watson, and Peter Koch. Others in attendance were Town Attorney TC Morphis, Planning Director Pam Graham, and Planners Jane Tercheria and Jae Kim.

1. Call to Order:

Chairman Ransdell called the meeting to order at 5:35 pm.

2. Planning Board Training with Town Attorney

Town Attorney TC Morphis presented to the Planning Board, which included several new members a general training review about serving on the Board and what their roles, duties, and powers entail. Attorney Morphis stated that most of the information needed by the Planning Board members can be found in the Unified Development Ordinance (UDO) or the Board's Rules of Procedures handout.

Attorney Morphis emphasized the importance that local government and their boards can make four (4) types of decisions:

- 1) Legislative
- 2) Quasi-judicial
- 3) Administrative
- 4) Advisory

Attorney Morphis proceeded to review and discuss the general aspects of the above mentioned decisions for a Planning Board in local government. He stated that the laws and rules were different for each of the four (4) types of decisions. During the presentation, he mentioned to the members that they were here on the Board because of their expertise, that each of them brings something from the community.

During the training session, attorney Morphis went through parts of the Rules and Procedures for the Planning Board. The following Rules and information were discussed in detail:

Rule 5: Conflicts of Interest

Rule 12: Substantive Motions

Information on Recommendations:

Planning Board must make recommendations, but doesn't necessarily have to approve or deny.

Information on Comprehensive Planning Consistency Statements:

A comprehensive planning consistency statement must be provided for each recommendation provided. Attorney Morphis stated that this is a separate vote, which is different from a vote to approve or deny.

Information on Who Can Appear at a hearing:

The applicant if it's the individual can appear to represent himself/herself, but if it is a corporation or another business entity, Attorney Morphis has taken the position that they need to be represented by an attorney. Case law has been set that corporations cannot be represented by officers in regular court; therefore, the same position has been taken here with the Planning Board during quasi-judicial hearings.

An interesting point made by Attorney Morphis was that in NC, it would not be uncommon for non-lawyers would represent applicants. For example, you would have an engineer, architect, landscape architect, real estate developers, or planning firm present their evidence on behalf of applicants. He stated that recently, the NC BAR stated this type of practice constituted "a practice of law." The confusing part is that these types of experts could continue to present evidence and testimony within their expertise, but they could not advocate a case. For example, they would not be able to make statements during their presentation stating that certain things would comply with the UDO. In addition, in smaller communities, it would be difficult for a small business such as a day care to have an attorney present their case before a planning board. In most instances, it would be common for a real estate agent to represent an applicant in that situation, especially for small projects.

Information on Chair Responsibilities:

The Chair runs the quasi-judicial hearings. He or she will be acting like a judge, making decisions about evidence and testimony. The chair will also swear in individuals wishing to give testimony and rule on objections and requests. Among the responsibilities discussed, when it comes to controversial issues an example was given where the Chair can set ground rules for all parties involved on how the process will take place for both sides in advance.

Formality of Hearings:

Attorney Morphis stated that in literature, quasi-judicial hearings are like court hearings to protect due process protections for the applicant. Information on how and what to allow into evidence during the hearing and the concept of hearsay was discussed. Rules of evidence do not apply and some forms of hearsay is allowed.

Testimony:

All witnesses and town staff must be sworn in to give testimony during a hearing. Decisions on what evidence is presented will also be made. It is important if there is any opposition, the other party has the opportunity to look at the evidence.

Case law also states that decisions have to be made on substantial and competent material and information. Attorney Morphis stated that it is only in hotly debated and controversial cases where it is crucial that the Planning Board make decisions based on substantial materials. Also, the burden of proof is on the applicants when it comes to compliance to the UDO. Another item that has come before the Town is that once the hearing has been closed, no new evidence may be introduced. However, during the hearing, members of the Board are encouraged to ask questions, even if there are not any members of the public in opposition to a project or request. However, if a member decides that more questions need to be asked after the closing of a hearing, there has to be a re-notice of the hearing and reopen the hearing. Essentially a new public hearing is created. Only clarifying questions are allowed, something that is not debatable or questionable and not open to interpretations. For example, "what is the setback or what does the applicant say the setback is?"

Substantial and competent material evidence:

Substantial evidence is good evidence that supports your result. Competent evidence is referred to evidence that is admissible. An example of competent evidence given was when you have experts giving testimony during a hearing. They have certain knowledge in the field in which they are about to discuss and subject to cross examination by the opposition.

GS 168-393 now requires expert testimony in the following three (3) cases:

- 1) Property valuation
- 2) Vehicle traffic
- 3) Matters about which expert testimony that would generally be admissible under the rules of evidence

Attorney Morphis stated that he went over a lot of information, but if any of the members of the Planning Board wanted to follow up, to contact him or Planning Director Pam Graham.

3. Approval of Agenda

Chairman Ransdell asked if there were any questions in regarding the agenda. Vice Chair Ahmad made a motion to approve the agenda. Mr. Byrd seconded.

Vote: Unanimous

4. Approval of Minutes

- a. Regular Meeting of September 19, 2013.

Mr. Dannelley and Mr. Byrd made requests to correct some errors found in the minutes. Chairman Ransdell asked if there were any other requests or questions.

Vice Chair Ahmad made a motion to approve the minutes. Seconded by Ms. Peele.

Vote: Unanimous

5. New Business

Chairman Ransdell asked that all parties that would give testimony for SU #13-06 and SU #13-07 be sworn in at the same time. The following individuals were sworn in:

- Planning Director Pam Graham
- Planner Jane Tercheria
- Applicants: Ron Jackson and Shannon Turner

a. Special Use Permit SU #13-06 for Automobile Sales at 335 Fields Drive

Planner Tercheria presented SU#13-06 for applicant Quality Auto of Aberdeen, LLC. Under the table of uses within the UDO, under the C-I (Commercial/Light Industrial) district, a special use permit is required for "Motor Vehicle Sales or Rental."

Surrounding land uses of the properties adjacent to 335 Fields Drive include a building supply, roofing company, propane tank storage, and a signage manufacturer.

Planning Director Graham stated that the applicant, Ron Jackson was in attendance to answer any questions in regards to the special use permit application.

Chairman Ransdell asked if the Planning Board members have any questions. Mr. Dannelley asked if there were any specific issues that the Board needed to look at or know about. Director Graham stated the proposal meets the UDO and that the Planning Board has the findings of facts and conditions before them for discussion. Mr. Dannelley wanted to make sure what the numbers of lots were for auto sales and customer parking for the location indicated on the maps provided. Mr. Jackson stated that parking was required when proceeding to get approval for submission of the application. Again, Mr. Dannelley clarified that he wanted to know what the distinction was between the two in this application. Director Graham stated that there are no parking requirements for this use and it is not specified in the UDO. Mr. Dannelley asked Director Graham if she is recommending any spots for customer parking. She stated that she was not recommending, but instead stated that the attached maps showing special designations for customer parking separate from the sales lot were all stated in the recommended conditions of the application.

Mr. Byrd began a series of questions regarding the fourteen (14) spaces for the sales lot and customer/employee parking. However, his primary intent was to understand if cars were going to be worked on in any part of the facility. Mr. Jackson replied that no cars will be worked on for this business.

Chairman Ransdell asked if there were any other questions. Mr. Jackson stated that he did not get a copy of the conditions that were recommended for the special use permit application. Chairman Ransdell read the six (6) conditions before the applicant and Planning Board.

Mr. Jackson had questions regarding the screening and signage requirements of the conditions listed. He stated that there was screening and landscape already on the property, but was told that staff would discuss and inspect the site. Also, Mr. Jackson stated that the DOT or DMV has certain requirements for his business and wanted to know if it was in line with the Town. He stated that he had to have a sign in black letter and three (3) inches or taller above his door. Director Graham stated that his business is on a corner lot and that he would be allowed two (2) wall signs. They could be on any façade. She stated that there would be no conflict with the signs.

Chairman Ransdell entertained individual motions for all six (6) motions recommended by staff in the staff report.

Motion #1: Mr. Byrd made a motion that SU #13-06 is complete as submitted. Mr. Marcham seconded.

Vote: Unanimous

Motion #2: Mr. Byrd made a motion that SU #13-06 satisfies Finding #1: will not endanger public health or safety. Mr. Marcham seconded.

Vote: Unanimous

Motion #3: Ms. Peele made a motion that SU #13-06 satisfies Finding #2: will not injure the value of adjoining or abutting property. Mr. Koch seconded.

Vote: Unanimous

Motion #4: Mr. Marcham made a motion that SU #13-06 satisfies Finding #3: will be in harmony with the area in which it is located. Mr. Byrd seconded.

Vote: Unanimous

Motion #5: Mr. Dannelley made a motion that SU #13-06 satisfies Finding #4: will be in conformity with the land-use plan, thoroughfare plan, or other plan (Hazard Mitigation, Pedestrian and Bicycle Plans) officially adopted by the Town Board. Ms. Peele seconded.

Vice Chair Ahmad asked if the Bike Plan included this area. Director Graham stated there were no recommendations made for this property in the plan.

Vote: Unanimous

Motion #6: Mr. Byrd made a motion that based on the findings of fact and the evidence presented, the Planning Board approves SU #13-06 with conditions. Mr. Dannelley seconded.

Vote: Unanimous

b. Special Use Permit SU #13-07 for Automobile Sales at 2833 E. Indiana Avenue

Planner Tercheria presented SU #13-07 for applicant Shannon Turner. A special use permit is required in our UDO for "Motor Vehicle Sales or Rental" within the H-C (Highway Commercial) district, in which the applicant's property is located. The applicant had been using the existing building on the property to sell furniture since 2004. He is requesting a change in use to now sell automobiles. There will be no changes to the existing building or property.

Chairman Ransdell asked if there are any questions from the Planning Board. Mr. Dannelley asked if there is anything specific that needs to be brought up from the findings of facts. Director Graham stated that there is nothing she is aware of that was not already included in the Finding of Facts.

Chairman Ransdell asked if the site had been previously used for automobiles. According to Director Graham, two parcels over was the site heard last year from an applicant wanting to broker for and sell vehicles.

Chairman Ransdell entertained individual motions for all six (6) motions recommended by staff in the staff report.

Motion #1: Ms. Peele made a motion that SU #13-07 is complete as submitted. Mr. Byrd seconded.

Vote: Unanimous

Motion #2: Mr. Koch made a motion that SU #13-07 satisfies Finding #1: will not endanger public health or safety. Mr. Marcham seconded.

Vote: Unanimous

Motion #3: Mr. Marcham made a motion that SU #13-07 satisfies Finding #2: will not injure the value of adjoining or abutting property. Mr. Byrd seconded.

Vote: Unanimous

Motion #4: Mr. Dannelley made a motion that SU #13-07 satisfies Finding #3: will be in harmony with the area in which it is located. Ms. Peele seconded.

Vote: Unanimous

Motion #5: Mr. Marcham made a motion that SU #13-07 satisfies Finding #4: will be in conformity with the land-use plan, thoroughfare plan, or other plan (Hazard Mitigation, Pedestrian and Bicycle Plans) officially adopted by the Town Board. Mr. Koch seconded.

Vice Chair Ahmad asked if the Bike Plan included this area. Director Graham stated that this was the same situation as the previous special use permit application heard earlier in the evening and that it is not included. She did state that he could be asked to put a bicycle rack up, but it is not a recommendation of the bicycle plan.

Vote: Unanimous

Motion #6: Mr. Byrd made a motion that based on the findings of fact and the evidence presented, the Planning Board approves SU #13-07 with conditions. Mr. Koch seconded.

Vote: Unanimous

6. Old Business

a. General Updates

Director Graham stated that the text amendments heard last time were presented at a public hearing during the last Board of Commissioner's meeting. It is possible that it will be heard again during the work session on the 29th. She stated that the next regular Board of Commissioner's meeting is on November 12, 2013.

Chairman Ransdell asked if there were any updates on the retreat and asked if it would be moved until after the first of the year. Director Graham agreed as there were scheduling and calendar issues. She stated that this was a good idea and supported this. The next step would be to get a date and location that would work for all the members of the Planning Board.

Director Graham updated the Planning Board about the survey for the Town's Comprehensive Plan. She stated that the public input part of this process is always challenging as it is hard to get people involved and in the room when working these long range plans. Former Planning Director Kathy Liles has been contracted to work on this plan. One of her ideas was to create this survey and post it online from the Town's website. The response rate has not been ideal and there have been other opportunities discussed to increase the numbers including the 4th of July to reach more people. Planner Tercheria also attended the Sardine Festival to complete more surveys by residents.

b. General Discussion

Community Development Planner Kim discussed the upcoming event of the 4th Annual Holiday Open House and 2nd Annual Bread Bowl Walking Tour.

Director Graham discussed the upcoming event of the Reindeer Fun Run that will be hosted by the Town of Aberdeen to benefit the Boys and Girls Club.

7. Adjourn

Mr. Koch made a motion to adjourn. Vice Chair Ahmad seconded.

Vote: Unanimous

Johnny Ransdell, Chairman

Jae Kim, Community Development Planner