



**Planning Board**  
**Regular Planning Board Meeting Minutes**  
**March 26, 2019 - 6:30 PM**

**Town Hall**

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**A. Call to Order/Roll Call**

The Chairman determined quorum, and opened the meeting.

Members Present: Jennifer Davis, Chairman, Stephen Swanick, Vice Chairman, Hal Bankirer, Catherine Graffy, Frank Gammon, Scott Hensley, Joe Sailers, Jeff Sny, and Susan Thomas.

The Chairman welcomed Jeff Sny as a new member.

**B. Approval of Minutes**

B.1. Consider approval of the February Minutes

S. Thomas made a Motion to Approve the February 26, 2019 Regular Meeting Minutes, and C. Graffy seconded the Motion. The Motion carried unanimously (9-0).

**C. Public Comments**

There were no individuals signed up for Public Comments.

**D. Action Agenda**

**D.1. R18-10 Oak Grove Hill - Deferral Request**

Meredith Nesbitt, Senior Planner, presented the deferral as requested by the applicant, and entered the Staff Report into the record, a copy of which is attached hereto as Exhibit A, and incorporated herein by reference.

F. Gammon made a Motion to Defer for 90 days (June 25, 2019), as requested, and J. Sailers seconded. The Motion carried unanimously (9-0).

**D.2. Oak Grove Hill Tree Save Mitigation - Deferral Request**

Meredith Nesbitt, Senior Planner, presented the deferral as requested by the applicant, and entered the Staff Report into the record, a copy of which is attached hereto as Exhibit B, and incorporated herein by reference.

J. Sailers made a Motion to Defer for 90 days (June 25, 2019), as requested, and C. Graffy seconded. The Motion carried unanimously (9-0).

**D.3. Multi-building site - Northchar Lot 1 Flex Space, is a proposal for a multi-building site consisting of three (3) buildings on one lot of record, to accommodate 26 condominium units of flex/office space at 380 Seagle Street.**

Bradley Priest, Senior Planner, presented the request, and entered the Staff Report into the record, a copy of which is attached hereto as Exhibit C, and incorporated herein by reference. Staff explained that the applicant has addressed the comments from the last meeting. The sanitary sewer easement is being reviewed

by Charlotte Water, but has yet been approved. Once approved, the Town will give the easement to allow the connection. There are minor comments on the lighting plan. Staff clarified the vesting. Staff recommends approval contingent that the tree save mitigation is approved; that the easement is approved by Charlotte Water, and granted by the Town, and any minor remaining comments be addressed.

Board questions and concerns about the storm sewer easement were made, and Staff noted that Public Works reviews the easement, and there are no issues. The single entrance into site was questioned for emergency services, and staff noted that no comments have been made by the Fire or Police Departments. Traffic impacts on Seagle and Ramah Church Road were expressed. Staff noted there are no improvements planned on the corner of Seagle and Ramah Church Road for mitigation. Trips were questioned, and staff indicated that a traffic impact determination was made, but were less than 100 during peak hours. It was requested to have the Traffic Engineer to look at the intersection again. It was requested to clarify the lighting plan and the surrounding residents. Staff explained the uniformity ratio in the ordinance. The note on the plan for Building 1 to have no entrance into the site from Ramah Church Road was raised, and Donald Mundy, Engineer with Piedmont Designs (125 E. Plaza Drive, Mooresville), responded that the note is for Lot 1. It is part of the original subdivision plan that there was to be no driveway access to Ramah Church Road, but served by Seagle. The area width between the buildings was raised, and Mr. Mundy noted there is a 24' drive width, and tracking was done for large vehicles. The history of the property was requested, and staff noted the subdivision was approved in 1989 under the City of Charlotte's jurisdiction. This site is to come up to the current code to the extent practicable. Construction start time was questioned, and Richard Tucker with the construction company responded it would begin immediately upon approval from the Town, and NCDOT, and be approximately 12 months. Building 1 and 2 would be first along the pad for Building 3, but all within 12 months, weather permitting.

F. Gammon made a Motion to Approve with conditions; 1) the Planning Board approves the tree mitigation, 2) the sanitary sewer easement is approved by Charlotte Water and the Town, 3) the lighting plan is updated in conformance with Article 8.25 of the Ordinance, and 4) any remaining minor comments from staff. Further the Planning Board has the following concerns; 1) a lack of current connectivity, a lack of site design flexibility to provide options for future connectivity, and 2) potential impact of traffic and a lack of a mitigation at the intersection of Seagle Street and Ramah Church Road. J. Davis requested that the Motion maker accept an amendment that no longer than one (1) year pass before building - start to completion. F. Gammon added to his Motion a #5) that construction would be completed within one year of start. Staff questioned the Ordinance requirement for this condition on construction completion, and J. Davis noted her concern of the old subdivision and the buildings not being completed in a timely manner. Staff advised there may not be any ability to require this action. The issue of phasing was discussed by the members, to which J. Davis requested that no phasing be part of the Motion, which was accepted by the Motion maker, and seconded by J. Sailors. F. Gammon added to the original

Motion to strike the last addition (#5), and include that there is no phasing of construction.

Discussion after the amended Motion included concerns of connectivity (single access, emergency vehicles); and traffic is appropriate on Seagle for ingress and egress, and not Ramah Church Road.

A correction to replace Article 8.26 in condition 3 above was made. The Amended Motion carried unanimously (9-0).

#### **D.4. Northchar Lot 1 Multi-building Site - Tree Mitigation**

Bradley Priest, Senior Planner, presented the request, and entered the Staff Report into the record, a copy of which is attached hereto as Exhibit D, and incorporated herein by reference. Staff explained the Ordinance, and reviewed the calculations for tree save. Five (5) specimen trees are required to be saved, and the applicant proposes four (4) to be saved. One (1) specimen tree would be mitigated, which is a large small maturing cherry tree over 12” in caliper, and applicant is proposing to contribute \$700.00 to the tree fund. Staff recommends approval, and has noted that further mitigation may be required based on possible disturbance of the trees near the driveway and sidewalk, and to the north. If tree is not able to survive within a 2 year timeframe that further mitigation is required.

Questions and concerns from the members included who would police the trees, to which staff noted himself. Bradley Priest (staff) added that another option for the plan can include an arborist to inspect the trees within the 2 year time period. The option to now mitigate trees that “may” be disturbed during construction and become unhealthy is not preferred by staff. If the trees do not survive they can be addressed at a later time. The timing was questioned, and staff commented that the note could be changed to “at the start of construction” for the 2 year period. The trees were discussed for a definition of “healthy”. Staff noted the terminology could be changed to “dead or dying”. A concern of the obligation of the trees within the 2 years, ownership, and the condo association’s covenants was raised. Mr. Tucker responded it was planned to have 60% of the units sold within a 12 month time frame, and then turned over to the condominium association. The exact language from the note can be put in the covenants so the association is responsible. It is not probable that the developer will be in charge of the property at the end of the 2 year time frame, but can incorporate within the covenants without a problem. It was asked if the owner of the property would be agreeable to have an arborist, to which Mr. Tucker agreed. It was suggested that an arborist inspect the trees during and after construction (twice) to make sure of the health of the trees. Staff noted there is not a lot of room on the site to plant trees.

S. Swanick made a Motion to Approve the mitigation contingent on the plan language, “Should specimen trees not survive or be in ill-health after construction is completed additional tree mitigation may be required, and such health of specimen trees be determined by an arborist at the expense of the developers and/or condo association, and contingent on the responsibility of mitigation passing to condo association if developers no longer involved in the project”. F. Gammon seconded. H. Bankirer noted the Motion did not address timing that

was talked about, and a review by an arborist be conducted two times; once 12 months after the completion of Buildings 1 and 2, and again at the completion of the entire site. J. Davis seconded. Staff requested clarification if a change was being made from beginning of construction, or after construction for the time frame. S. Swanick noted one (1) year after start of construction, and then a subsequent year, and F. Gammon seconded. The issue of the language in the note on the plan was raised, and J. Snyder amended the Motion to include that language be put into the condominium covenants for the tree mitigation plan. S. Swanick accepted the amendment. J. Davis added that an arborist be added to the covenants, and H. Bankirer seconded. The Amended Motion carried unanimously (9-0).

#### **D.5. R18-02: Birkdale Golf Club Mixed-Use Conditional District Rezoning**

David Peete, Principal Planner, presented the request, and entered all Staff Report into the record, a copy of which are attached hereto as Exhibit E, respectively, and incorporated herein by reference. Staff reviewed the modifications to the plan including the parking, drive isle, parking near the clubhouse, block length, and joint parking lots. During presentation it was questioned about the parking at the clubhouse and tournaments, and staff noted the applicant could respond, and noted the three story parking garage. Trent Gustafson with Gustafson Partners (5960 Fairview Road, Charlotte) appearing on behalf and with the applicant, identified the surface parking and parking garage that are for the golf course and other uses. Staff continued presenting, and noted the landscape buffer. Staff supports the modifications. The TIA (Traffic Impact Analysis) has been accepted by the Town, and calls for a left turn lane off of Beatties Ford Road onto Gilead Road. This is the first intersection that is effected by the development that is not a part of the NC73 project. The project will provide the full movement at Lindholm and NC73, and will comply with the NCDOT project and requirements. Staff was asked about a timeframe, and responded that the project is one phase. Staff reviewed the proposed NC73 plans at the Lindholm location, and once NCDOT's plans are finalized there may be minor adjustments, but this will not cause concerns. The prohibited use list has been updated by the applicant. The greenway easement area was described with the culvert, and the applicant is willing to create a floating easement area. There are minor adjustments for the greenway easement. There are no issues with the APF (Adequate Public Facilities). The architectural elevations and Note 15B were addressed (copy attached). The applicants indicate they are generally comfortable with the Note, and will continue to work with staff. Staff noted that evergreens will be planted along the parking garage, which is provide screening of the garage and for the surrounding homes.

Questions and concerns from the members included the bag-drop area to which staff gave its location; and if the trees along the parking garage would be extend to the east side, and staff confirmed.

Staff continued presenting and noted the TIA improvements and block breaks. Staff conditionally recommends the approval, subject to the accepted TIA, minor plan updates, that the building elevations notes continue to be adjusted, the modifications be approved as shown, the greenway easement will be tweaked by staff, and any outstanding transportation or redline comments to be addressed.

The Chairman called for questions, and it was questioned if the hotel height needed to be addressed, and staff responded that the rezoning project can go forward without the height and tree mitigation. The applicant can build the hotel to Highway Commercial (“HC”) height if the following SUP is not approved.

The Chairman called the applicant. Susan Irvin, Attorney, Trent Gustafson, Brian Jenest, with Cole, Jenest & Stone, and Peter Oelbaum, with Romspen from Toronto, and the hotel developer was also present. Trent Gustafson noted the design team and golf course owner are all working together. The golf course owner acquired the property through foreclosure in 2014, and Peter Oelbaum has been trying to improve golf course operations. Birkdale is unique in its proximity to Birkdale Village with its property fronting NC73, and the mixed use project that would serve as a catalyst to generate capital for the golf course operations. The condition of the clubhouse was noted along with its renovations. The project incorporates the clubhouse, multi-family units, and a round-about. Improvements to the Birkdale golf club is to increase the rounds being played, and the mixed use project is a catalyst with its hospitality, residential, recreational, restaurants and retail. There are challenges with the property in creating a public street, a creek, and existing commercial property, clubhouse and existing golf course. In addition to the 135 dedicated parking spaces there will be parking on the public street, which will provide parking for tournaments. The hotel will also enable the golf course operations to hold tournaments and stay-n-play packages. The hotel will also offer meeting and banquet spaces, and is a big part of the mixed use project with its design and position with a natural separation in proximity to the residents of Birkdale (subdivision). The nets on the driving range are about 125’ (tall), and the hotel is about 2/3 of that height. A question of how long the golf course would be closed was asked and Mr. Gustafson replied the development is one phase with the garage and surface parking at the clubhouse first, and it is premature for timing. It is expected to start, if approved, in the first quarter of 2020, and 2023 with the completion of the hotel. It is a lengthy project, and there will be synchronizing to minimize disruption of the golf course. It is also planned to convert the greens within a two month window and that may be in 2020 or 2021. Susan Irvin noted that discussions have been with staff since 2016 with pre-development meetings, and showed a timeline for meetings.

Questions and concerns by the members included the project being in one phase over multiple years. Mr. Gustafson noted that the infrastructure would go in first and then the buildings (within 6 months of one another) while minimizing disruptions to the golf course, and gave the example of Charlotte golf course that was shut down. This is something that has not been done, and everyone will need the access and infrastructure first. The NCDOT plan for NC73, the project street, and construction traffic was raised. Staff noted that would be further analyzed during the construction phase, and staff does not expect the applicant to identify construction traffic now. NCDOT has control on NC73, and the Town will have a say on Birkdale Commons. Mr. Gustafson noted for the Lindholm extension and prior to the superstreet the model TIA noted access (right in – right out and left in). The left in movement has been approved. Staff noted that the TIA received yesterday has a left in, a through, right in and right out. The only movement not permitted by NCDOT is a left out. The safety issue was raised and

traffic interference. Mr. Gustafson noted that is part of the construction documents and there will be detailed plans at that time. Safety is at the top of the list and #1, and will provide safety measures during construction for the operation of the golf course as well. Jack Simoneau, Planning Director, commented if approved there will be preliminary plat review that is detailed, and NCDOT will prescribe to them what materials can be used and what can be done. There will be bond money put up, controls on construction entrances, and safety measures in place like with all projects. Parking control issues were raised, and Mr. Gustafson commented that residents will have a pass/key card to use, and golfers would not be able to get through the gate for resident parking, the clubhouse will have exclusive parking, and hotel guest will have dedicated parking as well as the commercial and retail. There is cross access/shared access public parking spaces on the street, but specific uses will have to have dedicated parking and will be enforceable through the owner's association. The golf course operation was explained and would not encroach upon other operations, but it is expected to have cross use. Concerns about tournament parking was discussed and explained. Brian Jenest indicated this is no different than Birkdale Village and parking at the movie theater. Parking will be utilized and will be well taken care of. It was asked if a buffer would be between the greenway and the storm water area, and Brian Jenest noted and described the area. Peter Oelbaum described the redesigned 9<sup>th</sup> hole and ball trajectory, which will be carefully designed along with the tee boxes. The greenway will also run along Street A to Birkdale Commons Parkway. Staff noted that the greenway will be worked out at construction level, and the maintenance is not part of this action. Historically, the County maintains the greenways. Susan Irvin noted that the design of the culvert needs to be determined first. Staff noted the greenway is the typical cross section for the County (10' wide), and either asphalt or concrete. Brian Jenest noted those details have not been worked out. The issue of the NC73 culvert underpass was questioned, and staff indicated that NCDOT is looking into it, and the County is willing to participate, but there are no final costs. The notes on the plan about a 10' path were raised, and staff clarified. Brian Jenest added that the path is 10' in both locations, but it is questioned as whether it is the official greenway, or not. The existing tree canopy of 33% was thought to be in error, and will be discussed at that item. It was asked when the multifamily units would be built, and Susan Irvin gave a timeline for building (commercial, multifamily to hotel). Mr. Gustafson added to the response that building, based upon approvals, could be completed by 2022 – 2024. The design of the BMP was questioned, and Mr. Jenest noted they would be dry basins with plantings, and would be more visible from the golf course. Peter Oelbaum noted the golf course will be shut down for a few months, but hoped to be open during the balance of the project.

S. Swanick made a Motion to approve. The rezoning is consistent with the 2030 Plan. It is reasonable and in the public interest to amend the zoning ordinance because of the benefits that the updated Birkdale mix use will provide the Town. This is being made contingent upon finalization of a building elevation note with work of staff and the applicant to make sure it provides the intent and concludes further design elements. That the greenway easement area has been finalized as best as possible throughout the process; that all transportation comments be addressed, and all outstanding redline comments be addressed. C. Graffy seconded.

Discussion after the Motion included F. Gammon's requested that the note for the 10' path/greenway be clarified or taken out; that a buffer be provided between the greenway and storm water management, and S. Swanick accepted the addition and C. Graffy seconded. It was noted that this project is unique with the golf course within the development, and the owner and developers are working together. The partnership between the developer and golf course was explained by Mr. Oelbaum as an important relationship. A concern of the elevation details (Note 15B) not being mentioned in the Motion was raised, and H. Bankirer requested the Motion be amended in that Note 15B be finalized in final form before it goes to the Town Board for clear understanding and final approval. Staff noted the project is a conditional rezoning, and the applicant must agree. S. Thomas seconded. Susan Irvin added that the language for the Motion is contingent upon finalization of the building elevation note between the applicant and staff, and when questioned if this can be done prior to the next Town Board meeting, Mrs. Irvin confirmed. The Amended Motion, with conditions carried unanimously (9-0).

**D.6. SUP19-02: Birkdale Golf Mixed-Use Hotel Height**

David Peete, Principal Planner, presented the request, and explained the previous text amendment for permitted heights for hotels in the Highway Commercial ("HC") zone. The request is for six (6) stories with conditions as identified (see Staff Report). All conditions must be met, including Note 15B. Staff finds all requirements of the Special Use Permit ("SUP") to be satisfied, and recommends approval.

Questions of the members include the distance from the residential zone, and staff clarified the distance is from the zone, and the distance is 700' to a house. The prior height allowed for a shop front building is 48'. Staff noted the hotel height proposed is 92'. Jack Simoneau, Planning Director, added the TOD zoning district in Bryton is up to 160'.

J. Sailors made a Motion to Approve. The request is for a six (6) story building up to 92' in height; the building will be a maximum of 92' and will be a minimum of 276' from residential zoning; the rezoning plan notes be compliant with staff's notes concerning architectural elevations and the necessary applicable codes prior to the Town Board meeting; the hotel is over 700' from a residential lot line with vegetation and golf course area in between; the proposed use is not in conflict with adopted Plans as there are no Small Area Plans for this area only a Corridor Plan; the use will be accessed on a new street in a mixed use project directly accessing from a major thoroughfare. S. Swanick seconded. The Motion carried 8-1, with H. Bankirer opposing.

**D.7. Tree Save Mitigation - R18-02 - Birkdale Golf Mixed-Use**

David Peete, Principal Planner, gave the calculations for tree save to which the applicant is proposing to save 33%. The applicant will mitigate 10 trees at \$3,180.00, which is the mid-range of estimates. Staff approves the mitigation as proposed and contribute the funds into the tree mitigation fund.

Questions and concerns included clarification of the number of trees, specimen trees, tree #186 (to be saved), location of trees #298 – 303 listed for removal,

saving #298, and 33% of the tree canopy save. Brian Jenest indicated that as many trees will be maintained as possible, especially the bigger trees. Staff reminded the members that the applicant is not required to save any trees, and confirmed there are 28 on site to which 33% is of that number being saved. Brian Jenest noted they are planting 162 trees on site. The environmental sound buffers provided by the existing trees was mentioned. The developer should get credit for the trees planted. The applicant was asked if they would be in agreement to plant the additional 10 trees for a total of 172 trees, to which they confirmed, yes. The size of the replacement trees was noted. The location of trees #293 and 294 was asked, to which staff located both trees on the plan.

J. Sailers made a Motion to Approve; that the 10 mitigated trees be planted on site or funds deposited into the tree mitigation fund if not able to be incorporated within the project plan. C. Graffy suggested a dollar amount (\$318.00) per tree be included in the Motion. H. Bankirer requested that an arborist confirm the availability to plant the trees, or appropriate funds be deposited into the tree fund. It was further expressed that replacing 24" trees with 2" trees will take decades to mature to a 24" tree, and would like to see the developer increase any amount for the fund. Mr. Jenest felt comfortable with planting all trees on site, even if along the golf course. J. Sailers restated the Motion upon request: all mitigated trees will be planted on site. S. Thomas seconded. The amended Motion carried unanimously (9-0).

#### **D.8. R18-12: NC-73 Driving Range**

Bradley Priest, Senior Planner, reminded the Board that this matter was previously deferred to this meeting. Staff entered the Staff Report into the record, a copy of which is attached hereto as Exhibit F, and incorporated herein by reference. The text amendment and Special Use Permit have been approved; therefore, this rezoning is no longer needed. The applicant submitted a request to withdraw. Staff recommends denial.

J. Sailers made a Motion to Deny based on the applicant has requested removal of the application. The motion did not receive a second. S. Swanick made a Motion to Deny. It is not consistent with the 2030 Community Plan, and other applicable long range Plans. It is not reasonable nor in the public interest to rezone this property because there is no longer an applicant requesting such a zoning. J. Sailers seconded. The Motion carried unanimously (9-0).

#### **D.9. Farrington Tree Save Mitigation**

Meredith Nesbitt, Senior Planner, entered the Staff Report into the record, a copy of which is attached hereto as Exhibit G, and incorporated herein by reference. The Sketch Plan for Farrington was approved as the McIlwaine Road Subdivision in June 2016, the Preliminary Plan was approved July 2017. The Sketch Plan met the tree save requirements and the Preliminary Plan met the requirement using a mitigation option. The use should have come back to Planning Board for approval. The developer requested to clear underbrush in a tree save area, which is not allowed. Going back to the Plans it was noticed that the mitigation was not approved. The proposal is to plant on site 162 large maturing trees, and 102 small maturing trees. Staff reviewed the calculations, credits, and footnotes on

the plan. The applicant exceeds the tree save requirement. Staff recommends approval.

Questions and concerns from the members included the number of trees already cut, and staff noted they are clearing north of the creek, and south of the creek has not been cleared. They are clearing the site based on the Preliminary Plan. Staff does not have a specific number of trees. They have not cleared anything outside the limits of the approved plan. Staff explained the area is surrounded by lots, and the applicant wants to clean up some of the underbrush and smaller trees that do not count as small maturing trees. Staff clarified that the applicant is not requesting change to the tree save areas, but only to get the mitigation approved. Staff noted that 89 specimen trees are being saved. Staff explained the rationale in the ordinance if denial of the mitigation if made. The Town Attorney's opinion is that if denied without rationale it can be appealed to the court.

Marty Davis with MI Homes ("applicant") informed the subdivision was designed and permitted by the previous developer. The U-shaped area in Phase 1 contains a number of dead trees and undergrowth, and it is to be a pocket park for the homes, and create a grass useable urban open space ("UOS"). The nice trees will remain. Mr. Davis was questioned about one or two tall trees in that vicinity, and Mr. Davis responded there are more. The grading changes and the inability to clear the underbrush to make it a park like setting were noted. Scott Wilson with Landworks Design Group commented about the area being an UOS with tree save. The request is in order to do more of the park like setting and clear the underbrush. Staff confirmed the UOS with tree save, and the applicant was able to improve the outside edges of the area, and the applicant wants to improve within the tree save. Staff reiterated the Preliminary Plan is not compliant with the tree save ordinance without counting the large and small maturing trees (the mitigation plan). The plantings are already approved, and the mitigation plan needs to be approved by the Board.

F. Gammon made a Motion to Approve, and C. Graffy seconded. Discussion after the Motion raised concerns about the tree save area being shifted, and the previous process and plans. The tree save subcommittee can discuss the ordinance for requirement modifications. The tree canopy was again discussed, including the Chinese Privet being invasive. A concern of the canopy and environment was mentioned. H. Bankirer requested to include in the Motion, "However, the Town Board should understand that the Planning Board does so reluctantly in that the continuation of such request(s) will have detrimental impact on the Town and its character." F. Gammon agreed, as did the seconder, C. Graffy.

The Amended Motion carried 5-4, with J. Davis, J. Sny, S. Swanick, and S. Thomas opposing.

## **E. Other Business**

### **E.1. Discussion on Comprehensive Plan update**

Dave Hill, Senior Planner - Transportation, reviewed the process needed to update the 2030 Community Plan. A Memo dated March 15, 2019 was shared

with the members that includes a timeline, a copy of which is attached hereto as Exhibit H, and incorporated herein by reference. Staff intends to provide regular updates on the plan.

**F. Adjourn**

Approved this 23<sup>rd</sup> day of April 2019.

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Chairman or Vice Chairman

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Board Secretary