Minutes of the Town of Huntersville Planning Board

The Town of Huntersville Planning Board met at 6:30 p.m. on Tuesday, June 25, 2024.

Call to Order/Roll Call
Chairman Sny called the meeting to order at 6:30 pm.
Present: J. Sny, F. Gammon, C. Boyd, J. Wright, J. Henson, S. Hensley & L. Hallman
Absent: G. Baber & T. Loomis

Approval of Minutes
Item 2A. Consider approval of the April 23, 2024, Regular Meeting Minutes
Motion: J. Wright made a Motion to Approve the April 23, 2024, minutes. J. Henson seconded the motion.
Vote: The motion passed unanimously (7-0).

Motion: S. Hensley made a motion to Amend the Agenda and hear Item 4.C. as 4.B. C. Boyd seconded the motion.
Vote: The motion passed unanimously (7-0).

Public Comments:
D. Boone, Huntersville
W. Al-Abed, Cornelius
M. Cooley, Cornelius
L. Borges, Cornelius
T. Mann, Cornelius
J. Mann, Cornelius

Action Items
Item 4A: Consider a recommendation on Petition #TA24-04, a request by the Huntersville Planning Department to amend Article 11, Section 11.4.3(a) of the Huntersville Zoning Ordinance and Article 5.000 of the Huntersville Subdivision Ordinance in response to the Huntersville Ordinance Advisory Board bylaw updates.
P. Patterson, Planner II entered his staff report into the record, a copy of which is attached hereto as Exhibit A and incorporated herein by reference. Staff reviewed the proposed text amendment.

Motion: S. Hensley made a motion to Recommend Approval of TA24-04 based on the amendment being consistent with all of the policies of the Huntersville 2040 Community Plan and compliance with the N.C. State Statutes. It is reasonable and in the public interest to amend the Zoning Ordinance because it would provide further clarification to the language. C. Boyd seconded the motion.

S. Hensley commented that he was not in support of changing the HOAB bylaws but now that the Town Board has approved the change to the bylaws this text amendment is merely a clean up with the current rules.

F. Gammon commented that he was the Planning Board representative on the HOAB for nearly 4.5 years and prior to that he attended as a way to listen and learn to what was coming to the Planning Board. In the past the HOAB was a good sound board for Planning Staff discussion and identifying effective language to address Town issues. As the Town Board has adjusted the rules of procedure for the HOAB it seems they are now limited to considering text amendments brought before them.

L. Hallman commented that he will vote for this as a formality but will also share that there were errors in judgment, first in taking away the HOAB's ability to propose text amendments to remove ambiguity and where the 'spirit of the ordinance' is insufficient leading to undesirable results. Additionally, members of the HOAB is comprised of talented, caring individuals. Some with School of Government experience, others with broad public office experience. The manner in which this action was taken was wrong, there was no notice or discussion with the Chair of the HOAB. Town staff were allowed to insinuate that member(s) had acted inappropriately in some unspecified manner. It is wrong to disparage the HOAB to support the action of adjusting the rules of procedure. This has drawn out the local conspiracy theorists and hopefully there will be an apology when this moves forward to the Town Board.

J. Henson commented that the instructions during his two terms on the HOAB the instructions were to be more proactive and treat the HOAB as a sounding board. It appears to have evolved into something more reactive and has lost its purpose. It is a shame to see the change that has happened.

J. Sny commented as a founding member who spent 3.5 years on the HOAB prior to the Planning Board that he does not agree with the actions that have been taken. He expressed his agreement with S. Hensley's comments that while he does not agree with the actions taken they have already occurred and this amendment is now a cleaning up amendment to what is already in place.

F. Gammon followed up that two current members of the Planning Board were previous members of the HOAB and his replacement was a member of the HOAB. The training ground of the HOAB to better learn the ordinances prior to possibly serving on another Board will be lost.

Vote: The motion passed (6-0-1) with F. Gammon abstaining.

J. Henson notified the Board that he has a conflicting interest in Items 4B & 4C and requested to be recused.

Motion: F. Gammon made a motion to recuse J.Henson from items 4B & 4C. J. Sny seconded the motion.

Vote: The motion passed unanimously (6-0).

Item 4B: Consider a recommendation on Petition SUP24-01, a request by Hotel Ventures of Lake Norman Inc. for a Special Use Permit for +/- 10.328 acres located at 8830 Northpointe Executive Park Drive for a 3-story hotel development.
J. James, Principal Planner entered his staff report into the record, a copy of which is attached hereto as Exhibit B and incorporated herein by reference. Staff reviewed the proposed text amendment.

F. Gammon confirmed with Legal that the Planning Board is not hearing this item as a quasijudicial hearing, only in an advisory board capacity which is why public comments are allowed. Legal confirmed that is accurate.

C. Boyd asked staff if the statement regarding safety from the Chief of Police is in an official statement. Staff stated that the comment made by the Chief at the Public Hearing. The Board reviewed the minutes of the Town Board meeting when the public hearing was held and reviewed what the Chief shared relative to the existing hotels in Huntersville and the data and stats available based on their calls. Staff confirmed that the Police Chief would qualify as an expert witness to provide that information to the Town Board.

L. Hallman asked staff to confirm what specifically triggered the Special Use Permit. Staff confirmed that it is a hotel adjacent to residential housing that trigged it. The Board asked if the adjacent residents and HOA has standing. The Legal department stated they would have to confirm.

C. Boyd asked staff how they define harmony as it is used in the staff report. Staff responded that as it relates to harmony it is a combination of the proposed buffers, screening, and vegetation. For the building, the proposed architecture is considered in harmony with the existing development and the proposed use and location. Legal staff added that the UNC School of Government finds that the fact that the use is included as an option is a finding that the Town Board has deemed it generally compatible with harmony because it is provided as an option that can be selected. Additionally, height, bulk, scale, and design are the criteria for harmony.

S. Todd, 1065 E Morehead Street, Charlotte is a Land Use Attorney presented on behalf of the applicant.

F. Gammon asked if a 45' hotel is allowed at this location. Staff confirmed that a 45' hotel is permitted and based on the site plans submitted, 36' hotel is what is being evaluated. Staff confirmed the measurement is taken from grade to the roof, not included the parapets, which is allowed to disguise equipment on the rooftop.

The applicant H. Patel, Augusta, GA confirmed that Marriott's requirements include additional ductwork for increased air circulation which may cause their request to exceed 36' in the final iteration.

C. Boyd asked how the Planning Board should review and confirm that the applicant's proposed project will not negatively impact the adjacent property values. Legal staff commented that the same standards are not required of the Planning Board as this evening is not a quasi-judicial hearing. The Board asked for confirmation that they are being asked to vote on a Special Use Permit that includes those criteria. Legal staff confirmed that is correct but the strict standard to achieve that is not required of this Board. Staff offered to the Planning Board that if they do not see evidence supporting a finding of fact that this can be included in the motion.

S. Hensley asked if there is a requirement in place for the owner to replace vegetation if it is removed in the Energy United buffer. Staff confirmed that there is a note on the Special Use Permit and Rezoning plan stating that if vegetation is removed the owner will replace it at their expense. Staff confirmed that a motion including the Energy United letter may be helpful as well.

L. Hallman asked staff if they can ask Energy United if the applicant can be required to plant additional vegetation to increase the density of the buffer. Staff confirmed that can be requested.

The Board asked for clarification on the northern property line as it relates to the existing adjacent residential properties. The applicant confirmed that there are residential fences and uses that fall into the buffer area that technically is their property.

Motion: F. Gammon made a motion to Recommend Approval of SUP24-01, Northpointe Hotel, the Planning Board finds that the request meets all required conditions and specifications and is reasonable. The Planning Board further finds that the impact on the character of the neighborhood as well as the health, safety and general welfare of the community will be minimized. This decision is supported by the Town of Huntersville Zoning Ordinance as stated in part 3 staff findings of the staff report as follows: 1) the request meets the zoning ordinance criteria of article 9.45; 2) the request meets the zoning ordinance criteria of article 11.4.1.e2; 3)the request is consistent with Huntersville 2040 Community Plan policies LU.6, LU 6.1, LU 6.2, and the plans recurring theme to maintain or exceed the current percentage of tax revenue from non-residential uses. The Planning Board agrees with staff findings as stated above and recommends approval of the applicant's special use permit to build a hotel property adjacent to a residential zone, a zone district. This recommendation for approval is contingent upon 1) the applicant providing satisfactory expert testimony at the quasijudicial hearing that shows there is no harm to property values; 2) the rezoning petition R24-01 be approved by the Town Board. L. Hallman seconded the motion.

S. Hensley requested an amendment to the motion to include an approval contingency of the letter from Energy United dated May 2, 2024, be submitted for the record at the quasijudicial hearing. F. Gammon and L. Hallman agreed to the amendment.

Amended Motion: F. Gammon made a motion to Recommend Approval of SUP24-01, Northpointe Hotel, the Planning Board finds that the request meets all required conditions and specifications and is reasonable. The Planning Board further finds that the impact on the character of the neighborhood as well as the health, safety and general welfare of the community will be minimized. This decision is supported by the Town of Huntersville Zoning Ordinance as stated in part 3 staff findings of the staff report as follows: 1) the request meets the zoning ordinance of article 9.45; 2) the request meets the zoning ordinance criteria of article 11.4.1.e2; 3)the request is consistent with Huntersville 2040 Community Plan policies LU.6, LU 6.1, LU 6.2, and the plans recurring theme to maintain or exceed the current tax revenue from non-residential uses. The Planning Board agrees with staff findings as stated above and recommends approval of the applicant's special use permit to build a hotel property adjacent to a residential zone. A zone district recommendation for approval is contingent upon 1) the applicant providing satisfactory expert testimony at the quasijudicial hearing to show there is no harm to property values; 2) the rezoning petition R24-01 be approved by the Town Board. 3) the letter from Energy United dated May 2, 2024, be submitted for the record at the quasijudicial hearing. L. Hallman seconded the motion.

J. Sny commented that he will not support the motion because there is not sufficient evidence to support that the adjacent residential properties will not be negatively affected.

Vote: The motion failed majority (3-3) with C. Boyd, J. Sny and S. Hensley opposed.

S. Hensley commented that he was going to be in support of the motion but as J. Sny commented regarding the lack of evidence regarding potential the negative impact on property values, he chose not to support it.

The Board had discussion related to the history of the business park and the neighborhood relative to which project was approved first, if the existing homeowner's had knowledge of the business park when they purchased their homes, how the amendments and zoning changes through the years may have affected any expectations, and encouraged any homeowner's who may have standing to get an appraisal on their home value and the value of homes adjacent to hotels and bring their evidence to support their claims to the Town Board meeting.

F. Gammon confirmed that the Town Board will not be allowed to use the minutes, discussion, motion or vote from this meeting in their consideration of the Special Use Permit. Legal confirmed that is correct.

Motion: S. Hensley made a Motion to call a second vote on the amended motion. J. Sny seconded the motion.
Vote: The motion passed unanimously (6-0).

Second Vote: (on amended motion SUP 24-01) The motion failed (2-4) with C. Boyd, J. Sny, S. Hensley, and L. Hallman opposed.

Motion: C. Boyd made a motion to Recommend Denial of SUP24-01, Northpointe Hotel, the Planning Board finds that the request does not meet all required conditions and specifications. They do not have comps, they do not have safety data, and it is not harmonious. In addition, the uses may pose an injurious effect on adjoining properties and the Planning Board further finds that the request is not in in character with the neighborhood and there is no data to substantiate if the health, safety, and welfare of the community will be negatively affected. S. Hensley seconded the motion.

C. Boyd commented that he would like all of the evidence to make a decision. S. Hensley agreed and commented that the applicant is likely going to present credible evidence at the Town Board meeting to address the areas of concern which will allow the Town Board to make a decision based on all of the facts.

F. Gammon commented that the motion states that all of the evidence is not provided and argued that this would be reason for deferral, not denial, so that all evidence may be provided. The Board had discussion relative to the application not being quasi-judicial as presented to the Planning Board and their recommendations not moving forward to the Town Board for consideration in their decision, therefore a deferral is likely not necessary.

Vote: The motion passed (4-2) with F. Gammon and L. Hallman opposed.

Item 4C: Consider a recommendation on Petition #R24-01, a request by Hotel Ventures of Lake

Norman Inc. to rezone +/- 10.328 acres located at 8830 Northpointe Executive Park Drive from Highway Commercial-Conditional District to Highway Commercial-Conditional District for a 3-story hotel development.
J. James, Principal Planner entered his staff report into the record, a copy of which is attached hereto as Exhibit C and incorporated herein by reference. Staff reviewed the proposed text amendment.

F. Gammon asked staff what other uses could be built on this property. Staff confirmed that a 3-story office building would currently be permitted. Any uses in Highway Commercial could be requested through a rezoning.

The Board had discussion related to the proposed parking lot and vegetation in the Energy United buffer, and the required parking. Staff confirmed that is the risk that the applicant is taking, and they have acknowledged that they will take to replace any vegetation that is removed by Energy United.

The Board confirmed that the reason for the rezoning is specific to the use as currently only an office is permitted and there is no limitation or specifications on what type of business, or what hours they are allowed to operate. An office building would be required to install parking lot screening, but the additional 6-foot vinyl fence would not be required. Staff confirmed that is correct. In this case the Special Use Permit must be approved for the Rezoning to be considered or to be approved.

F. Gammon asked staff if the location is within ¼ mile of the current CATS bus rapid transit station and if someone could request a TND rezoning at this location. Staff was not able to confirm the distance and stated that someone could propose many rezonings but they would not necessarily be recommended by staff due to spot zoning and the adjacent uses.

S. Todd, 1065 E Morehead Street, Charlotte presented on behalf of the applicant.

The Board had discussion with the applicant regarding the buffer adjacent to the residential homes, and if the existing vegetation could be supplemented with additional evergreens to create a more dense buffer versus appearing to simply have a 6-foot vinyl fence now across the existing neighbors backyards. H. Patel, Augusta, GA confirmed that their initial plan was to simply use the 30' buffer but due to the Energy United easement there were a number of unknown factors related to how the space could be considered and utilized with vegetation during the initial planning, so the plan is to leave the additional buffer as shown on the current request. The applicant confirmed that they could consult their landscaping team to consider additional plantings. Staff confirmed that if the motion required additional landscaping that they would work with the applicant to review the approved planting list and identify additional opportunities to plant within the buffer.

The Board asked what amount of traffic and congestion the hotel typically sees on their properties on a busy night. The applicant responded that many travelers typically share transportation but have their own rooms on a full night you will see the parking lot still have about 1/3 available capacity.

The Board asked the applicant about occupancy rates of tenants in the business park and any crime issues related to this hotel brand. The applicant commented that they are not aware of occupancy rates and the other hotel property opened in Huntersville has experienced one car break in since the hotel opened and it was in conjunction with a number of other car break-ins reported at the same time within the business park.

The Board asked about the lighting plan and potential noise pollution from the project will be addressed. Staff responded that the applicant will be required to meet all ordinances and any deviation or inability to meet these requirements would require the applicant to come before the Town Board for a new rezoning to adjust their plans as it relates to lighting.

The Board asked the applicant what the purpose of the retaining wall is in the Northeast corner of the proposed parking lot. T. Fallova, Huntersville responded that there are underground power lines, and the applicant has identified a solution to ensure with grading that they are safely avoiding those lines.

Motion: F. Gammon made a motion to Recommend Approval of R24-01 Northpointe Hotel with condition, the Planning Board has considered Huntersville Zoning Ordinance Articles 11.4.7d and 11.4.7e and finds that the rezoning is consistent with the surrounding developments character. Further, given the distance of separation and proposed buffer to adjacent single-family properties, the Planning Board believes this plan is consistent with the spirit of the Zoning ordinance. In addition, the Planning Board finds the petition is consistent with the Huntersville 2040 Community Plan policies LU 6, LU 6.1, LU 6.2, and the plans recurring theme to maintain or exceed the current percentage of tax revenue for non-residential uses.

The Planning Board also recommends approval of 1) the applicants requested modification to replace the required 30' buffer along the residential property line with an alternative buffer built within the parking lot; 2) approval of the applicant's modification to allow a portion of the proposed parking lot to be outside of the proposed alternative buffer; 3) the applicant work with staff to supplement the vegetation in the 30' buffer along the residential property lines.

This recommendation for approval is contingent upon 1) the applicant making the required improvements along Northpointe Executive Drive prior to gaining certificate of occupancy to gain acceptance of the street as a public right-of-way; 2) the developers of the business park as addressed and approved R98-10 and R07-17 dedicate and construct a 35' right-of-way connector to the Tally Road, Birkdale Village vehicular bridge once the location of that bridge is determined; 3) the applicant submits to staff the Energy United letter dated May 2, 2024, approving the proposed development with stipulations; 4) Approval of the SUP24-01 by the Town Board. 5) Address other staff comments that are remaining.

It is reasonable to approve the rezoning plan because the rezoning is consistent with the envisioned use and development pattern set forth in the 2040 Community Plan. C. Boyd seconded the motion.

C. Boyd commented that if done correctly and not negatively affecting property values then in his opinion this use adjacent to a residential area is likely a reasonable use and can be done in a way that it is not overly intrusive.

S. Hensley commented that this is difficult for him. There is limited properties remaining in Huntersville and the proximity to the other adjacent uses makes sense in all instances except the residential. He is comfortable with the office building that could be built here but not sure yet about the hotel.

L. Hallman commented that he agrees it is difficult. There is a clear site line but he thinks that the buffer could address this and assist with breaking that up. The business park does not appear to be at full capacity and keeping this land limited to office use only may be devaluing the land if the existing office space cannot be leased.

F. Gammon commented that the land has been vacant for 25 years and with the existing vacancies in the business park it does not appear anyone will be seeking to build more offices any time soon. This use could provide some tax revenue to the Town.

S. Hensley followed up that he is also a believer in the rights of the property owner and developer and there are instances where a parcel should be rezoned.

Vote: The motion passed unanimously (6-0).

Motion: F. Gammon made a motion to reseat J.Henson. C. Boyd seconded the motion.

Vote: The motion passed unanimously (6-0).

Other Business
Item 5A: Planning Board Member Acknowledgement

Board members congratulated S. Hensley and J. Henson on a second term and welcomed new member M. Pollard. Board members thanked F. Gammon for his service and completion of terms.

Adjourn
Motion: F. Gammon made a Motion to Adjourn. S. Hensley seconded the motion.
Vote: The motion passed unanimously (7-0).

Approved this 27 day of AUGUST 2024.

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Chairman or Vice Chairman

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Board Secretary