



**Town of Clayton
Clayton Planning Board Minutes
Monday October 22, 2018 @ 6:00 PM
Town Council Chambers**

BOARD MEMBERS PRESENT:

Andria Merritt
Ross Benson
Stephen Powers
James Lipscomb
Marty Bizzell
Bob Ahlert
Frank Price
Sarah Brooks
George "Bucky" Coats

STAFF PRESENT:

Samantha Wullenwaber, Planning Director
Haley Hogg, Planner
Damiere Powell, Planner
Chrissy Dunn, Clerk to the Board
Michael Grannis, Mayor Pro-Tem
Merrick Parrott, Town Attorney

MEMBERS ABSENT:

1 CALL TO ORDER

- a) Bob Ahlert called the meeting to order at 6:00 p.m.

2 ROLL CALL

- a) All Board Members were present.

3 ADJUSTMENT OF THE AGENDA

- a) Request to move the Private Street discussion from Old Business to after New Business to hear Private Streets at the end of the session.

4 APPROVAL OF MINUTES

- a) **ACTION:** Approval of the September 24, 2018 Planning Board Minutes.

Motion: Board Member Price
Second: Board Member Benson
Vote: Unanimous

5 REPORTS AND COMMENTS

6 OLD BUSINESS

7 NEW BUSINESS

- a) 2018-157-VAR Vinson's Pub Variance (Quasi-Judicial)
NC PIN: 166806-29-8767
Tag: 05008071
Location: 800 E. Main Street

Board Member James Lipscomb requested to recuse himself from this project. Town Attorney Merrick Parrott explained the Quasi-Judicial process and her roll during the hearing. Clerk to the Board Chrissy Dunn issued the oath via affirmation to those wishing to offer testimony.

Samantha Wullenwaber presented this project. The applicant is requesting an after-the-fact variance from the referenced code sections noted in the staff report. This is a request for two separate variances. The first one will be mechanical screening with the second variance request is for the setback requirements. The applicant is requesting a variance from rooftop mechanical screening requirements outlined in sections 155.204(D)(12)(C), 155.402 (G)(4)(b) due to the installation of unscreened rooftop mechanical units. The Unified Development Code (UDC) requires that all mechanical equipment, rooftop and ground be screened entirely from view. The UDC also requires that mechanical equipment within the Downtown Overlay District be roof mounted, where practical. The applicant is also requesting a variance from the setback requirements outlined in 155.203 (K)(2) of the UDC. The property is zoned for B-1 and has a minimum building setback of 0'. The original plans submitted and approved by the Town, the applicant showed a fenced mechanical area that encroached into the railroad right of way. This was permitted by the NCRR. When staff performed the final site inspection, it was noticed that the applicant enclosed this area creating a permanent addition to the building. This addition encroaches 12' into the railroad right of way, which created a negative setback and does not meet code. Staff did not review this addition prior to the installation. The applicant responses are found in the staff report. There were no questions for staff.

The applicant James Lipscomb the owner/operator of Vinson's Pub was present. Mr. Lipscomb is also the contractor for this project. He is a licensed contractor with the state of North Carolina. Some of his contracting work and qualifications in town are; Home Town Realty, Brick and Mortar, Revival 1869, which he will discuss later in this presentation. Mr. Lipscomb stated that there are multiple buildings in downtown that do not have screening for the rooftop mechanical units. He went over his license agreement with the NCRR and that everything from the back of the building is temporary. The NCRR can come in at any time and give him 60 days to remove everything. He is trying to make improvements in the railroad right away. Mr. Lipscomb went over the GIS map of his property. When this building was built, at the time it was outside of the city limits. In front of the building, there are a few tenths of inch of the NCDOT right away. Mr. Lipscomb had to use the agreements with the railroad to make Vinson's Pub. Right up to the Pittman's building is the right of way to the railroad. James presented his plans to the railroad and corridor under an existing land license agreement. Mr. Lipscomb stated the change in design does not require him to present to the Town for review and all uses are acceptable. He showed an email from Planning Director Samantha Wullenwaber to Cathy Deely that the minor changes on the site plan showed the landscape island to include sidewalk and the additional fencing was acceptable. Vinson's opened under a temporary CO. James then went over a response from Planner Haley Hogg about an Administrative

Amendment to be submitted to show the new addition, landscaping changes, rear fence, addition and dumpster. The fencing must be painted/stained. In addition, a bike rack must be installed. Mr. Lipscomb stated that this is what he thought needed to be done. Another email from Building Inspector Robert Yarborough listed concerns of the inspector from three requests to multiple requests of things to be done. He went over all the changes that he did do. Mr. Lipscomb showed the original building with the original plans. He showed a rear Inspector Amy Britt approved view of the building where the electrical boxes were located and added new steel beams that. The mechanical on the roof was previously there. He also showed the CO signed by Amy Britt, who no longer works for the Town. Mr. Lipscomb made an objection to make further changes to the mechanical and he should not have to go through the additional expense. His original site plan had a fence that was like a solid wall like fence, 10x15. Once the roof was in place, there was no need for the path and the fence to go around the building. He also wanted to put more landscaping, but it would have taken up more parking spaces. Everything located behind the line on the site plan, he did that voluntary. On July 12, 2018, he submitted a new site plan with the roof mechanical changes, landscape changes, parking lot changes. There is a final site plan that was created for this variance request. The engineering letter talked about the screened mechanical. He talked about other businesses in town that are not screened. James would like the board to consider the work that has been put into the building and what is being requested. He stated if this was brought to his attention before the remodel, he could have done it differently. If the staff states he will have to have a fence-covered area, he would like to use a solid wood that is made of historic material. The NCRR will not allow him to put a brick structure on the property. Mr. Lipscomb stated that this project warrants a variance and that this request from staff would be a hardship to the business. Mr. Lipscomb said he would like to screen in and heat the patio area, but is holding off on that due to this variance request. If this variance request is not approved, James asked how the board would respond when other businesses downtown do not have these requirements. Last month, he requested a postponement to this request because he did not have time after reading the staff report. The code requirement for the mechanical equipment and mechanical screening process during the Technical Review Committee (TRC), was not understood, and he went by the building plan.

Board Member Price had a question; with reference to the rehab of older buildings, did the town did allow some leeway and if so was that still in effect? Board Member Ahlert asked the applicant if he explored screening to the brick walls. Mr. Lipscomb stated it would not handle the brick wall. Board Member Benson asked if he felt like this were the Town's responsibility. Mr. Lipscomb stated that is what the TRC is for, turning the application in for review and receiving comments back. He stated that he did feel it was the town's responsibility to ensure that all codes are presented to the applicant and brought to their attention. Board Member Brooks stated that is always required for construction have screening on the roof, so why did Mr. Lipscomb think this would be different? Mr. Lipscomb stated that two years ago, Revival 1869 project,

there was no requirement and stated it was never brought to his attention that this was needed for this project. He further stated this is part of the review process and stated that this approval is what he based his cost on. Board Member Powers stated to James, he was told at the TRC meeting the screening was needed, but James stated he was never told the roof screening was required. He stated he believed he established reasonably that it was on the site plan and did not have to screen or anything else up there. Board Member Powers stated he was not referring to the site plan but rather to the comment made at the TRC meeting that it had to be done. Mr. Lipscomb stated he took exception to that. Board Member Bizzell questioned the encroachment requirements. Mr. Lipscomb stated he had to get encroachments approved by the NCRR and specify what the encroachments would be and further stated that everything could be torn down in 60 days with the NCRR. Board Member Coats asked about the letter from True Line Surveying. Mr. Lipscomb stated that was part of the site plan process with the original November site plan and the approved site plan was dated December 22 with no mention of the screening of the mechanical on the building.

Board Member Merritt asked about the engineer letter and whether they approved any calculations. Mr. Lipscomb discussed load bearing walls and spanning of the building.

Staff provided rebuttal and Ms. Wullenwaber stated the original email from Cathy Deely stated additional fencing and landscaping was okay, but no mention of an addition. With reference to the Administrative Amendment, staff cannot approve something that does not meet code and that is why there are variance requests. Robert Yarborough, Chief Building Inspector was called in and Ms. Wullenwaber stated she went to the site visit for Vinson. She stated her team works together on commercial visits. The Administrative Amendment showed the difference of what was built and what was shown and approved on the site plan. Once on site, the addition and roof top mechanicals were discovered. Ms. Wullenwaber stated the NC Building Code does not address screening of mechanicals that is purely a zoning code, would never be in any building code, and would not be on a set of construction plans because it is a zoning issue and zoning issues are addressed through site plans. Moving forward, all building plans will need to include a copy of the site plan approved in Planning or they would not be approved and get a building permit. She further stated that the TRC comments indicate the need for screening and the applicant was made aware of this. Staff requested a copy of the construction plans for the record and stated staff would be happy to scan them this evening. Original site plan submitted in 2017 and then applicant submitted an amended site plan, as they wanted changes, another plan was again submitted with more changes showing what was built which was different from what was submitted and finally reviewed and nothing changed, a variance was required. This was the reason for the multiple submittals.

Mr. Price asked if there was previous, allowances made for other buildings. Ms. Wullenwaber stated that if the mechanical were already screened it would be

necessary. However, she stated that she was not involved so previous project and could not address that. Mr. Price stated he thought there were allowances made for older buildings. Ms. Merritt asked about the calculations and curious what went into the calculations. Ms. Wullenwaber stated there is an outside consulting list that the town can use if required for advice. Board Member Bizzell asked if the NCRR had seen the updated site plan. Ms. Wullenwaber stated that Ms. Deely stated the NCRR would go with whatever the Town decided and they are aware of everything.

There were no further questions for staff.

Applicant was provided an opportunity for rebuttal. Mr. Lipscomb stated he was asking for a variance from a town ordinance and further stated the screening should have been required on the plans.

Ms. Parrott stated that if anything needed to be entered into the record that a motion be made to do so. There were no motions made.

With there being nothing further, the item was turned over to the board for their discussion.

Board Member Merritt asked if the board were required to conclude that all four Findings of Fact were met to approve variance requests.

Town Attorney Merrick Parrott stated there were two separate variance requests. The first one is the setback and right of way for the addition and the second is the screening on the roofing mechanicals. Attorney Parrott provided details regarding the Four Findings of Fact and hardships. She provided some examples and notes.

There was lengthy discussion regarding the setback and encroachment. *(It should be noted that when board members are speaking they are not speaking into the microphones and it is very difficult to hear/determine what is being said)*

Mr. Price stated that his history with NCRR they have granted structure approval in the ROW but further stated they can be required to be taken down at any time.

ACTION: Finding of Fact #1 with regard to screening has been met by applicant

Motion: Board Member Price
Second: Board Member Brooks
Vote: Unanimous

ACTION: Finding of Fact #1 with regard to additional building has been met by applicant

Motion: Board Member Price
Second: Board Member Brooks

Vote: Unanimous

Board Member Merritt asked if there was vote this that staff could have an engineer review prior to final determination and ability of roof to hold screening. Ms. Parrott stated that if that was desire to have additional evidence was required to make determination that hearing should be continued to next month. There was some discussion regarding the a/c units. *(It should be noted that when board members are speaking they are not speaking into the microphones and it is very difficult to hear/determine what is being said)* Mr. Powers stated that council recently mentioned previous granting of waivers coming back and further stated if there are issues with an ordinance than the ordinance needs to be changed. Discussion regarding possibility of applicant getting mixed signals upon receiving a permit. Ms. Brooks stated she supports screening but had concerns about older buildings, safety and possible expense. She further stated that Vinson's is a wonderful addition to the town and she would hate to see them have to go through additional expense.

ACTION: Finding of Facts #2,3 and 4 have been met by applicant

Motion: Board Member Brooks

Second: Board Member Coats

Vote: Unanimous

- b) 2018-165-RZ 517-549 E. Main Street Rezoning
NC PIN: 166917-21-2039 / 166917-21-2093 / 166917-20-3966 / 166917-20-3966 /
166917-20-3991 / 166917-20-4815 / 166917-20-4851 / 166917-20-4725
Tag: 05009002 / 05009003 / 05009004 / 05009005 / 05009006 / 05009048 /
05009007 / 05009008
Location: 517 - 549 E. Main Street

James Lipscomb requested to recuse himself from this project.

Damiere Powell presented this project. The applicant is requesting to rezone 1.196 acres of parcels along Main Street from Office-Institutional (O-I) to Central Business (B-1). There is currently a mix of residential and retail uses on the properties. The properties located at 525 and 531 E. Main Street will continue to be used as residential until they are redeveloped in conjunction with the adjacent properties. 545 E. Main Street will be used as an office, 539 E. Main will be demolished and 549 E. Main will remain as retail. There is sufficient access to public water and sewer service. This project is consistent with the Comprehensive Plan 2040. There were no questions for staff.

Applicant James Lipscomb was present and available for questions. He went over briefly the long term goals for this project. There were no questions for the applicant.

ACTION: Motion to approve the request presented by staff.

Motion: Board Member Benson

Second: Board Member Powers

Vote: Unanimous

- c) 2018-179-SP Gatehouse Self Storage Major Modification, Site Plan
NC PIN: 164900-88-7093
Tag: 05G01199X
Location: 129 US Hwy 70 Bus.

Damiere Powell presented this project. The applicant requested a major modification to the building design approved for the original major site plan from 2016. The approved site plan was accompanied by a conditional use permit to allow the use of a self-storage facility. The applicant is requesting the following changes to the building: removal of the East Side Faux Barn doors, relocation of the east side access door, removal of eyebrow vents from clock tower roofs, removal of rear west clock tower and EFIS and stone color changes. After the original approval, it was noted that there were different features on the building than on the original site plan. The application was submitted for a modification to be approved with the changes. The applicant provided a letter from a professional engineer stating the reasons for the changes. Board Member Brooks asked if the changes were an after the fact request, answered by Samantha Wullenwaber yes, this change is a change in the elevations. A major modification is a request for the Planning Board. There were no further questions for staff.

The applicant, Robert Stevenson was present and available for questions. There were no questions for the applicant.

ACTION: Motion to approve the request with the conditions presented by staff.

Motion: Board Member Price
Second: Board Member Brooks
Vote: Unanimous

- d) 2018-74-OA Private Streets Discussion

Samantha Wullenwaber presented this discussion workshop. A motion was made in a previous Planning Board meeting to discuss further with a sub-committee with Board Members Price and Lipscomb. This is a workshop to discuss the ordinance and then can go back to staff to make the changes and then come back for a hearing. Currently if there is 1- 5 lots you may have gravel, 6-10 lots, asphalt and anything above that would be required to be built to public road standards. This amendment currently allows two types of private streets within the R-E zoning district. Class A will serve a maximum of 6-10 single family residential lots; these streets will be paved in accordance. Class B private streets will serve a maximum of 5 single family residential lots. These streets may be constructed of alternative materials approved by the Town Engineer. Both types of private streets will be required to maintain a 20' travel way width in order to have access for emergency vehicles. Board Member Ahlert mentioned that these standards do not meet the town requirements at The Walk at East Village. Samantha Wullenwaber stated that this amendment is more for the rural farm land. Also the Walk at East Village will be coming before the Board with a major modification. Board Member Lipscomb stated family farms that have been here a long time will like to give family lots to other family members down the road. His family farm has gravel road and they have not had any issues traveling down the road. He stated that this should be addressed and what if

someone buys later on down the road would like to keep the rural atmosphere. He stated that this should be discussed on a density basis and who is this for. Board Member Brooks asked if this is inside city limits. Samantha Wullenwaber stated that the majority of addresses are in the ETJ. Board Member Price stated that the NCDOT standards would be needed in order to be maintained. Board Member Merritt asked if it was an issue with EMS. Samantha Wullenwaber stated there are some paths that are not passable. This ordinance need to be changed for new builds to be put on family lots. The ordinance needs to be updated to where it works for everybody. Board Member Merritt asked if the Town is trying to come to a compromise. Board Member Lipscomb stated the ordinance needs to be amended but to come up with standards for everyone. Board Member Price says this gets more critical with the builders coming in and making private subdivisions, a gated community, and the roads can't be maintained by municipality or state. Lipscomb stated if you are maintaining your own street, they should have the option to live on that private street. Board Member Merritt the roads that are not up to standard, what about EMS? Board Member Lipscomb stated Liberty Lane is one of the oldest roads in Clayton to the fact it was there before Clayton or the NCRR came. This is a road that is extremely old has no recorded maintenance agreement. To say no because it is not 20' wide or not asphalt is not right. Samantha Wullenwaber stated James Lipscomb wants density based, is there any other feedback? This is the law of Clayton and need to get this worked out. There is no municipality around that allows private streets. This model was taken from Wake County. Board Member Lipscomb stated if there is an existing lane that services my family, can we have an existing standard right away? Any existing private street 12' wide, can we say existing development pattern? Samantha Wullenwaber stated there could be a grandfather law in there. Board Member Lipscomb said existing property owners could sign a long term road maintenance plan? He also stated he likes the density and could say it can't exceed X amount of density. This is more of a subdivision concern. Board Member Bizzell mentioned people who move into the subdivisions think roads are NCDOT maintained and they are not. This could fall back on the Town with a lot of angry property owners. Board Member Lipscomb gave an example of Portofino in Johnston County. It has State maintained roads with asphalt but would not be up to the Town's road standards. So why limit the width size? Samantha Wullenwaber stated this would not apply to a planned development. Board Member Lipscomb says this brings it back to existing drives that are already in use. Is this something that we can craft into an ordinance? This will be brought back before the Planning Board next month. Please email Samantha Wullenwaber with any comments. There was a comment from resident Dick Bumgarner. He asked would we consider this if this was in Johnston County. Is there an ordinance in the county that manages private streets? Yes there is an ordinance. Resident Alsey Gilbert stated when you get to 4 lots in the county, you can do private roads, but it has to be made to NCDOT standards. Certain conditions, ten 5 acre lots, there are standards. You have to go before the Johnston County Planning Board. Board Member Lipscomb said the Town will be working more towards with the residents. Alsey Gilbert said he lives in Walden Subdivision and they maintain their own roads, if it's done well it can work. Wake County ordinance is only 1 lot and have to put down an alternative surface. There were no further comments.

8 INFORMAL DISCUSSION AND PUBLIC COMMENT

9 ADJOURN

- a) With there being nothing further the meeting was adjourned at 8:33 p.m.

ACTION: Motion to Adjourn

Motion: Board Member Benson

Second: Board Member Powers

Vote: Unanimous



Robert J. Ahlert, Chair

ATTEST:



Chrissy Dunn, Clerk to the Board

