

CHEROKEE COUNTY PLANNING COMMISSION

PUBLIC HEARING MINUTES



**May 7, 2019**

**Cherokee Hall 7:00 PM**

The Cherokee County Planning Commission held its regularly scheduled public hearing on Tuesday, May 7, 2019 in Cherokee Hall at the Cherokee County Administration Building. Planning Commission members present were Tom Ware, Ken Smith, Dr. Rick Whiteside, Nicole Carbetta, Marla Doss, Richard Weatherby, Tom Hill and Scott Barnes. Bob Whitaker was not in attendance. In attendance for Cherokee County Planning Staff were Jeff Watkins, Planning and Zoning Director; Michael Chapman, Zoning Manager; Tamala Davis, Planning Technician; and Thomas Trawick, Planner.

The meeting was called to order at 8:06 p.m.

Vice Chairman, Dr. Whiteside stated Case #19-05-011 Quintus Development has requested postponement.

**Case #19-04-008 Gary R. and Christi C. Bagley (BOC Dist. 1)**

Applicant is requesting to rezone 3.921 +/- acres at 11911 Cumming Highway from R-40 to GC for a business office for the sale and display of commercial trucks.

Michael Chapman presented the case. Mr. Chapman discussed current zoning, surrounding uses, land use compliance, economic use as currently zoned, and department comments. He stated the public hearing was conducted in April and this case was postponed along with the next case for a special use permit in order for the applicant to update his site plan to show the right-of-way needed and acquired by Georgia Department of Transportation (GDOT) as well as the parking.

Benson Chambers represented this case. Mr. Chambers stated they have had the public hearing on this case but not on the special use permit, which is for automotive sales. He stated they have been in business for several years in Forsyth County and were notified by their Landlord that the property is being put up for sale. He stated they purchase vehicles that are coming off of their lease that are van type and purchased from Budget. He stated they resale these vehicles to FedEx and contractors and most of these sales are done over the internet. Mr. Chambers stated they do not work on these vehicles and have no deliveries. He stated all vehicles are drove on and off site.

Mr. Chapman stated the rezone application would need to be voted on first and then they can hear the special use permit separately.

Ms. Doss stated she spoke with several people from this community and they are not in support of this application. She discussed the surrounding uses and feels this does not fit within this neighborhood. She stated she could not support this application.

Dr. Whiteside asked if this was a pervious surface to park the vehicles. Mr. Chambers stated, yes.

Dr. Whiteside stated he does not know they would support something like this for a general commercial facility. He stated all the other general commercial facilities have a finished and polished look. He stated they have pavement, curb, gutter, parking spaces striped, etc. Dr. Whiteside stated he visited the Forsyth Truck Sales website today and the vehicles that are for sale today are freightliners with a 26-foot box primarily. He stated he has reservations about approving a general commercial on Highway 20 on this side that is grass and gravel parking lot.

Tom Hill stated in looking at the zoning and uses along Highway 20, he feels GC zoning is appropriate for this area.

Ms. Doss made a motion to recommend denial. Seconded by Dr. Whiteside.

Mr. Barnes stated he agrees with Mr. Hill about the zoning, however he feels the Freehome Community is becoming a used car lot. He stated he doesn't feel this is the vision this community has for this area.

Ken Smith stated he feels they need to move forward with the zoning aspect and then discuss the special use. He stated if they look at both at the same time, he feels it will not get resolved.

Dr. Whiteside asked who is in favor to deny the application. Four (4) in favor, four (4) opposed. Mr. Smith, Mr. Hill, Mr. Barnes and Mr. Weatherby opposed. Dr. Whiteside verified with staff if it is a tie vote, then the recommendation would be a denial. Mr. Chapman stated, yes.

#### **Case #19-04-004S Gary R. and Christi C. Bagley (BOC Dist. 1)**

Applicant is requesting a special use permit to allow internet truck sales at 11911 Cumming Highway.

Dr. Whiteside asked Mr. Chambers to come forward to present his case on the special use permit. Mr. Chambers stated that he thought his previous presentation was for the special use permit and that he does not have anything additional to add.

There was no one present to speak in support of the application.

David Carlucci spoke in opposition. Mr. Carlucci stated his concerns with the size and type of trucks. He provided photos of the big diesel trucks and stated he does not see how these vehicles would be parked once the road is widened. He stated he can see this property from his and feels this will impact his property value and has concerns with noise.

Dr. Whiteside closed public comment.

Dr. Whiteside stated the inventory he saw on the website is big box trucks and does not feel this is a positive use for this property.

Mr. Hill stated he visited the site in Forsyth and he saw the larger trucks that were described.

Mr. Chapman stated in Article 18 it reads if there is a tie vote to recommend approval or denial of the application for rezone or special use permit, then the vote shall result in no action being taken and will need to be tabled until next meeting. Mr. Chapman stated the first application would come back to the Board at the next meeting for a recommendation and if no action is taken at this meeting then it would move on to the Board of Commissioners with no recommendation. Mr. Chapman stated with the zoning application being tabled, it would be prudent to postpone the special use permit until the next Planning Commission meeting.

Mr. Hill made a motion to table until next meeting. Seconded by Mr. Weatherby. Motion passed 8-0.

**Case #19-04-010 Abdel Mihyar (BOC Dist. 4)**

Applicant is requesting to rezone 0.44 +/- acre at 5983 Highway 92 from R-20 to GC for a used car dealership and sales office.

Michael Chapman presented the case. Mr. Chapman discussed current zoning, surrounding uses, land use compliance, economic use as currently zoned, and department comments.

Abdel Mihyar represented this case. Mr. Mihyar stated he purchased this lot in 2015 and is currently selling vehicles from another location he is leasing. He stated he would like to move his vehicle sales to the property he purchased and that is why he has applied to rezone the property to commercial. He stated he would sell the vehicles over the internet. He stated there would not be a mechanic on the property, only sales.

Dr. Whiteside stated this case was on our previous agenda and the applicant did not attend. Dr. Whiteside asked for clarification from staff.

Mr. Chapman stated the applicant provided a written response stating that he was not aware that he needed to attend the public hearing. Dr. Whiteside stated we received some additional correspondence that we may be able to hear this case and asked staff to explain further. Mr. Chapman stated there was some discussion among Planning Commission as to whether or not to even consider hearing the case given the code provision in Article 18 states the case is to be dismissed if failure of the applicant to appear at the public hearing unless it was a medical emergency.

Dr. Whiteside stated he would like to have the Planning Commission discuss this before moving forward.

Mr. Ware asked staff what are the charges or fees the applicant has paid to get before the Board. Mr. Chapman stated the \$750.00 application fee for a rezoning, \$750.00 application fee for a special use and then additional fees for re-advertising for the cost of the signs, notification to adjoining property owners and legal advertisement. Mr. Ware asked if the case is dismissed would he pay these fees again. Mr. Chapman stated, yes.

Mr. Ware stated he feels this would be a financial hardship on this applicant and his recommendation would be to move forward with the application.

Mr. Hill made a motion since staff has re-advertised, property was re-posted and notices sent to adjoining property owners that meets specific statutory deadlines for state rezone procedures, he moves the Board waive section 18.3-5a.10h and proceed with this case tonight and withhold re-advertising any future cases with the similar circumstances, until such time an administrative policy has been approved for handling cases when applicant's fails to appear. Seconded by Mr. Smith. Motion passes 8-0.

There was no one present to speak in support of or in opposition to this application.

Dr. Whiteside closed public comment.

Mr. Barnes asked the applicant the amount of cars he would have on site to sell. Mr. Mihyar stated maximum of ten (10). Mr. Barnes stated without the handicapped spaces, it leaves eight (8) spaces. He asked the applicant would there be parking out on the front piece also. Mr. Mihyar stated there are areas on each side for additional parking. He stated most would be by appointment.

Mr. Hill stated there is residential and neighborhood commercial next to this location. He stated he would be more comfortable if this request was for neighborhood commercial instead of general commercial.

Mr. Hill stated vehicle sales is not a permitted use in neighborhood commercial.

Mr. Weatherby stated he could support general commercial and made a motion to recommend approval.

Ms. Carbetta stated she cannot support general commercial and feels this would impact neighboring properties.

Motion fails for lack of second. Ms. Carbetta made a motion to recommend denial. Seconded by Mr. Ware. Motion passed 7-1. Mr. Weatherby opposed.

**Case #19-04-005S Abdel Mihyar (BOC Dist. 4)**

Applicant is requesting a special use permit for a used car dealership at 5983 Highway 92.

Michael Chapman presented the case. Mr. Chapman discussed current zoning, surrounding uses, land use compliance, economic use as currently zoned, and department comments.

Abdel Mihyar represented this case. Mr. Mihyar stated they plan to have a car lot and this is the only land they have. He discussed the surrounding zoning and uses. He stated there was no opposition at the community input meeting. He stated it is not a good location for residential uses.

There was no one present to speak in support or in opposition to this application.

Dr. Whiteside closed public comment.

Mr. Chapman stated to the Board that since there was a denial of the rezoning, they might want to table this case until a decision is made on the rezone application from the Board of Commissioners.

Dr. Whiteside made a motion to table this case. Seconded by Mr. Hill. Motion passed 8-0.

**Case #18-09-023 Lance Hale (BOC Dist. 4)**

Applicant is requesting to rezone 46.75 acres at Bascomb Carmel Road and Delay Street from R-40 to RD-3 for a single family residential development. The applicant is also requesting a concurrent variance to allow 24% of the lots (23) lots to be served by alley access in lieu of the required 30%.

Michael Chapman presented the case. Mr. Chapman discussed current zoning, surrounding uses, land use compliance, economic use as currently zoned, and department comments.

Kevin Moore represented this case. Mr. Moore stated this would be an age targeted community for 55 and older, consisting of 97 homes. He discussed the surrounding zoning and uses. He stated 19.7 acres will be used for open space and buffers. Mr. Moore stated this project is consistent with the future development map. He stated within the open space, they would have walking trails and natural park to be enjoyed by the residents. He discussed the request for variances and noted that 23 homes would have alley access and feel the other six (6) locations they could do however feels it would take away from the design. He stated they have revised the plan to eliminate one of the cul-de-sacs and will have emergency access only to Delay Street.

Mr. Ware asked is this development age-restricted or age-targeted. Mr. Moore stated age-restricted.

There was no one present to speak in support of this application.

Alvin Winters spoke in opposition. Mr. Winters stated his concerns with traffic, property values and safety. He stated they are not opposed to development but would prefer to keep an R-40 zoning. He stated there are five (5) churches, five (5) subdivisions, daycare facilities, a public school and several businesses. He stated during the day there is a raw sewage smell and thinks there may be a failing system.

Dr. Whiteside closed public comment.

Mr. Barnes asked has the site plan been revised within the last couple of days. Mr. Chapman stated they did contact him stating they have a revised site plan but informed them to hold onto it since they are not allowed to do this in between work session and public hearing.

Mr. Ware stated he feels this project does not fit within the neighborhood and cannot support as presented.

Mr. Weatherby stated he cannot support and does not feel it fits within the surrounding area.

Mr. Weatherby made a motion to recommend denial of the application. Seconded by Mr. Barnes. Motion passed 8-0.

#### **Case #19-05-011 Quintus Development, L.P. (BOC Dist. 3)**

Applicant is requesting to rezone 41.18 acres from GC and R-20 to RM-16 for a mixed use community consisting of 283 apartment units and 71 townhome units.

Mr. Chapman stated the applicant has requested to postpone this application.

Mr. Barnes made a motion to accept the applicant's proposal to postpone this application. Seconded by Mr. Ware. Motion passed 8-0.

#### **Case #19-05-012 Kodiak Investments, Inc. (BOC Dist. 1)**

Applicant is requesting to rezone 1.70 acres at 7620 Cumming Highway from R-80 to GC for commercial retail/office/restaurant space.

Michael Chapman presented the case. Mr. Chapman discussed current zoning, surrounding uses, land use compliance, economic use as currently zoned, and department comments.

Jeff Rusbridge represented this case. Mr. Rusbridge stated this proposal is in compliance with the future development map. He stated the applicant has not yet secured any tenants for this building. He stated they have talked to a potential restaurant and feels they are a need for this type use in the area. He stated the applicant would comply to all architectural standards. He stated if the application is approved, they have provided a list of uses that will not be permitted on this site.

There was no one present to speak in support of or in opposition to this application.

Dr. Whiteside closed public comment.

Dr. Whiteside stated adjacent to the property is neighborhood commercial and asked the applicant if they have considered a NC zoning. Mr. Rusbridge stated because GC zoning allows a greater scope of uses and this zoning is appropriate for the corridor.

Mr. Ware stated he would prefer NC zoning instead of GC zoning.

Mr. Hill stated he could support the application with the conditions made by the applicant.

Mr. Hill made a motion to recommend approval with the proffered conditions by the applicant.

Ms. Doss asked Mr. Hill could she add a condition to the motion. Ms. Doss stated she would like to add no overnight vehicle parking. Mr. Hill accepted the additional condition. Seconded by Mr. Barnes. Motion passed 8-0.

**Case #19-05-013 Woodall Communities, LLC (BOC Dist. 1)**

Applicant is requesting to rezone 71.11 acres on Cable Road from AG to R-40 for a single family residential neighborhood.

Michael Chapman presented the case. Mr. Chapman discussed current zoning, surrounding uses, land use compliance, economic use as currently zoned, and department comments.

Parks Huff represented this case. Mr. Huff stated this project is in compliance with the land use plan and provided a video of Mr. Woodall's Wilshire Community and stated this proposed development will look the same.

There was no one present to speak in support of this application.

Lynda Moulton spoke in opposition. Ms. Moulton stated she does not really object but has concerns with traffic, the springs and wetlands on the property and would like to know they are protected. She stated she would also like to know that no run-off comes into their subdivision from this development.

Mr. Huff spoke in rebuttal. He stated stormwater and engineering will have to be approved by the County and must adhere to their guidelines. He stated the soils studies have been provided to Environmental Health and is under review.

Dr. Whiteside closed public comment.

Mr. Ware stated he attended the community meeting and he did not hear any objections to this project. He feels this will be a very nice addition to the area.

Mr. Ware made a motion to recommend approval. Seconded by Mr. Weatherby. Motion passed 8-0.

Tom Hill made a motion to approve the April 2, 2019 Public Hearing minutes and the April 15, 2019 Work Session minutes. Seconded by Mr. Barnes. Motion passed 8-0.

Dr. Whiteside made a motion to adjourn. Seconded by Mr. Barnes. Motion passed 8-0.

The meeting adjourned at 10:22 p.m.