

# **Planning Board Meeting – December 19, 2016 Minutes**

**Members Present:** Harold Broadwell, Errol Briggerman, Victoria Curtis, Gilda Wall, Ruth Van der Grinten, Lloyd Lancaster, Allen Swaim

**Members Absent:** Ashley Anderson, Kathe Schaecher

**Staff Present:** Planning Director David Bergmark, Planner Patrick Reidy

**Guests Present:** Mr. Marlowe from Marlow Builders

## **1. Meeting Called to Order**

Mr. Broadwell called the meeting to order.

## **2. Welcome and Recognition of Guests**

Mr. Broadwell welcomed the public.

## **3. Chairman and Board Members' Comments**

Mr. Lancaster and Mr. Briggerman both commended Planning Department staff on the role they played in the Wendell Wonderland event.

## **4. Adjustment and Approval of Agenda.**

Errol Briggerman made a motion to accept the agenda. Gilda Wall seconded the motion. The motion passed.

## **5. Public Comments**

No citizens had signed in to make a comment at that time.

## **6. Approval of Minutes**

A motion was made by Gilda Wall to approve the November 21, 2016 minutes. Mr. Briggerman seconded the motion. The motion passed.

## **7. Discussion, Consideration, and Action on the Following Items:**

### **Item 7A – Discussion and Action on a Conditional District request for Olde Wendell Phase 2, to rezone approximately 16 acres from R2-CU to R2-CD.**

Mr. Reidy presented his report to the Planning Board, as shown below in italics.

*The applicant has requested to create a R2 conditional district for approximately 16.19 acres of property within the parcels identified by PIN#s 1794223959 and 1794324805. The proposed conditional district consists of 33 lots for single family development, as shown on the Master Development Plan.*

*The purpose of the Conditional Districts (CD) is to provide an alternative means of land development and an alternative zoning procedure that may be used to establish residential, commercial, and industrial Conditional Districts at appropriate locations and in accordance with the planning and development objectives of the Town.*

*A CD may depart from the strict application of the requirements of the town's general zoning districts.*

*The CD alternative may allow uses which are not specifically allowed in standard zoning districts. A primary purpose of this section is to provide standards by which such flexibility may be achieved while maintaining and protecting the public health, safety and welfare of the citizens. In this case, no alternative uses or lot dimensional standards have been proposed by the applicant.*

*A second purpose of the conditional district is to establish a more complete living and working environment through the application of enlightened and imaginative approaches to community planning and property design. A CD should provide a variety of natural features and scenic areas, efficient and economical land use, improved amenities, orderly and economical development, and the protection of existing and future adjacent development. In this case, the proposed district does not contain any residential uses or their corresponding amenities.*

*The provisions of the CD Master Plan shall replace all conflicting development regulations set forth in this Ordinance which would otherwise apply to the development site. The Planning Board may recommend and the Board of Commissioners may attach reasonable and appropriate conditions including, but not limited to, the location, nature, hours of operation, and extent of the proposed use(s). Conditions and site-specific standards shall be limited to those that address conformance of the development and use of the site to this Ordinance and officially adopted plans and those standards and conditions that address the impacts reasonably expected to be generated by the development and use of the site.*

*The proposed conditional district encompasses what was intended to be a future phase of the Olde Wendell subdivision. This property is located within the extraterritorial jurisdiction (ETJ) of the Town of Wendell and is zoned R2 Conditional Use (R2CU). The intent of this application is to alter certain standards from the UDO to the area identified in Attachment B. A conditional use rezoning was approved in 2006 and a preliminary plan was approved in 2007. Due to the economic downturn, installation of infrastructure never occurred, and the preliminary plan expired in May 2015. The applicant is proposing to develop the remaining land in the Olde Wendell subdivision using very similar plans compared to what was previously approved.*

*The following conditions were approved as part of the rezoning in 2006:*

- 1. All single family dwellings shall have exterior materials consisting of brick, stone, stucco, wood or Hardiplank siding. Under no circumstances shall vinyl siding be permitted.*
- 2. All single family dwellings shall be at least 1800 square feet (finished and heated area).*
- 3. All single family dwellings shall have a two car garage.*
- 4. Each dwelling shall be landscaped with a minimum of four trees in the front yard, and shrubs along the foundation of the house spaced 3 feet apart.*
- 5. All mailboxes shall be uniform and consistent with Phase I of Olde Wendell.*
- 6. Streetlights shall be uniform and consistent with Phase I of Olde Wendell.*
- 7. The parcels shall not be clear cut during the development process.*

*The applicant has included the existing zoning conditions in the conditional district request, so all previous conditions will remain with this conditional district. Condition 2 and 3 is proposed to have a higher standard added to the existing condition.*

*The preliminary plat also had notes that a fee-in-lieu of 2,465 linear feet of sidewalk was approved; fee-in-lieu of open space would be paid by the developer at the time of development; the developer was to*

request a variance from Wendell Boulevard widening; and the developer would request a variance for the length of the cul-de-sac extension due to topography preventing a tie-in with Wendell Boulevard.

The applicant is proposing 13 conditions for the proposed CD, as follows:

1. Fee-in-lieu for sidewalk along Wendell Boulevard due to severe topography.

Staff Comment: The applicant is proposing to pay a fee in lieu of the installation of the sidewalk along Wendell Boulevard. The applicant has justified the fee in lieu due to steep topography. On March 9, 2015, the Wendell Board of Commissioners approved a sidewalk fee-in-lieu for Wendell Boulevard (just north of subject property) for Olde Wendell Phase 3A and 3B. If approved, the fee will be calculated based on the recently adopted sidewalk fee in lieu policy prior to the public hearing. If a sidewalk were to be installed, any future widening of Wendell Boulevard would most likely require the sidewalk to be demolished and reinstalled. A street view photo of the topography of the subject property along Wendell Boulevard is below for reference.

Staff finds that the request is acceptable.

2. Waiver of sidewalks within the subdivision. This is an older subdivision and there are not currently sidewalks within the subdivision.

Staff Comment: Staff recommends that sidewalks be installed along the frontages of Kirkhill Drive and Whitley Way so that future development adjacent to the property could tie in to the provided sidewalk, but that the requested waiver of sidewalks be approved for other internal roads to provide consistency with previously developed lots where sidewalks do not exist. along interior lots adjoining this phase.

3. Phase II is subject to existing recorded covenants of Olde Wendell, Phase I.

Staff Comment: Using the same restrictive covenants as Phase I of Olde Wendell will help ensure that appropriate protections are in place for making sure that the future of the community will be harmonious to the existing homes in Olde Wendell.

Staff finds that the request is acceptable.

4. Fee-in-lieu for Open Space.

Staff Comment: Based on the 33 lots being proposed, a total of 57,750 square feet, or 1.32 acres, of open space is required. The fee-in-lieu would be approximately \$59,000 dollars. The applicant is required to submit appraisals prior to the public hearing so that an exact amount of fee-in-lieu could be determined.

The Town of Wendell was given 1.30 acres of land at 4031 Wendell Boulevard (vacant property at the intersection of Wendell Boulevard, N. Selma Road, and Old Wilson Road). Staff has determined that the proposed fee-in-lieu could be used to help develop a neighborhood park at this location. The location of this park would be more accessible to a greater number of residents than one located at the back of Olde Wendell.

Staff finds that the request is acceptable.

5. All single family dwellings shall have exterior materials consisting of brick, stone, stucco, wood, and hardiplank. Under no circumstances shall vinyl siding be used.

Staff Comment: This condition was previously approved with the prior rezoning.

Staff finds that the request is acceptable.

6. All single family dwellings shall be at least 1,900 square feet (finished and heated areas).  
*Staff Comment: The prior rezoning approved the same condition, but with a minimum of 1,800 square feet. The applicant is proposing to add an additional 100 square feet to the minimum house size.*

*Staff finds that the request is acceptable.*

7. All single family dwelling shall have a two car garage. If the two car is a front load, it shall not extend past the main building wall more than 7 feet. This rule does not apply to a side loaded garage.

*Staff Comment: The prior rezoning approved the same condition, but did not require a maximum garage projection. The maximum project ensures that the front loaded garage will be the dominating façade of the house creating a “snout house”.*

*Staff finds that the request is acceptable.*

8. If stem-walls (or crawl spaces) are used, the builder shall be required to have at least 2 masonry steps going into the residence from existing grade.

*Staff Comment: Staff believes that as a benefit to the Town, the developer should be required to use a stem wall or crawl space on all houses. The language leaves open the option of slab on grade. The maximum height of a residential step is 8.25”. A minimum of 3 steps at a minimum of 6 inches each should be required to provide at least a total of 18 inches above grade.*

*Staff recommends the following change to the condition “Each house shall use a stem-wall or crawl space, with a minimum of 3 steps at least 6 inches in height for a total of at least 18 inches above grade”.*

9. The parcels shall not be clear cut during the development process.

*Staff Comment: This condition was previously approved with the prior rezoning. The intention is that existing trees will remain to add a buffer between every house at the side and rear as provided in Phase 1.*

*Staff finds that the request is acceptable.*

10. Each dwelling shall be landscaped with a minimum of four trees in the front yard, and shrubs along the foundation of the house spaced 3 feet apart.

*Staff Comment: The applicant has proposed to keep the same condition that was approved with the prior rezoning. This is an increase in landscaping compared to what is required by the UDO.*

*Staff finds that the request is acceptable.*

11. Waiver of UDO stormwater requirements to use old requirements approved for previous preliminary plan.

*Staff Comment: The applicant has proposed to develop the lots using the standards that were in place prior to the UDO. The Wendell Board of Commissioners is scheduled to review a zoning text amendment of the UDO to create a nitrogen load exemption for small residential infill projects.*

*If the zoning text amendment is approved by the Town Board, staff finds that the applicant should develop the subdivision using the proposed amendment that exempts them from nitrogen reduction regulations. The existing ditches in Olde Wendell have a history of erosion issues. The increased flow from the new lots would cause an increase in erosion if stabilization is not added. Staff recommends that the applicant be responsible for correcting any erosion problems with the existing ditches that will be used to tie in to for drainage.*

12. All mailboxes shall be uniform and consistent with Phase 1 of Olde Wendell.

*Staff Comment: This condition was previously approved with the prior rezoning. The United States Postal Service requires that new subdivisions use cluster mailbox units. Based on this requirement, the developer shall provide a cluster mailbox unit that is consistent with style and color of the mailboxes in Phase 1.*

*Staff finds that the request is acceptable as noted for the provision of mailboxes being cluster unites.*

13. Streetlights shall be uniform and consistent with Phase 1 of Olde Wendell.

*Staff Comment: This condition was previously approved with the prior rezoning.*

*Staff finds that the request is acceptable.*

14. **Staff recommended condition 13** – *Staff recommends that curb and gutter is required along Whitley Way and Kirkhill Drive frontages. The R3 zone allows for the developer to choose if they will provide curb and gutter along a road or if they will use a ditch section. There is a large tract of land on the east side of Kirkhill Drive that could be developed. If developed, a high number of vehicles would use Kirkhill Drive and Whitley Way. Based on the recommended sidewalks on Kirkhill Drive and Whitley Way in Condition 2, the curb and gutter would help provide a safety measure for pedestrians using the sidewalks.*

*As previously stated one purpose of the conditional district is to establish a more complete living and working environment through the application of enlightened and imaginative approaches to community planning and property design. A CD should provide a variety of natural features and scenic areas, efficient and economical land use, improved amenities, orderly and economical development, and the protection of existing and future adjacent development.*

*While conditional districts do allow an applicant to ask for exemptions from certain types of standards as part of their application, those exemptions are intended to be offset by other improvements which go above and beyond what is required. This process allows for creative trade-offs that can result in a better overall product.*

*As currently proposed, the Master Development Plan has a mixture of improvements and exemptions being sought. The applicant is proposing to pay a higher fee in lieu of open space (which would be used to develop a more centrally located small park), add an increase of 100 square feet in the minimum house size, include a recessed garage requirements, no vinyl allowed on any houses, raised entrances, additional landscaping, and consistency for mailboxes and streetlights with the existing phase of Olde Wendell. All other proposed changes, such as not requiring internal sidewalks, reduced stormwater requirements, a fee-in-lieu for sidewalk along Wendell Boulevard, constitute reductions in design and site standards.*

**Off-Street Parking:**

*No off street parking is required for single family dwellings.*

**Lighting:**

*Lighting shall meet the requirements as set forth in the UDO at the time of development and use light fixtures consistent with Phase 1 as proposed in Condition 13.*

**Public Utilities:**

*Public water and sewer will be extended at the time of development. Per the adopted Water Allocation Policy, this project is exempt due to its acreage and the fact that it is not located adjacent to other vacant property that could be incorporated into the project.*

**Streets:**

*At the time of construction of all new roads, the standards are to be met as specified by Chapter 12 of the UDO. The applicant has proposed the extension of two local street right-of-ways (60 foot wide).*

*In 2007, a Subdivision Variance (SV07-02) was approved to eliminate the requirement to widen Wendell Boulevard. A variance runs with the land and does not expire, there for this project is exempt from having to widen Wendell Boulevard. The applicant is still required to provide the required 9.5 feet of ROW dedication along Wendell Boulevard.*

*All drives shall meet the requirements as set forth in the UDO at the time of development.*

*As recommended in Conditions 1 and 2, the sidewalk for Wendell Boulevard would not be required to be installed since fee-in-lieu is proposed. The sidewalk installation along Kikhill Drive and Whitley Way is recommended to be required by staff instead of waiving the requirement. The applicant is requesting to waive the sidewalk requirement along the new sections of Trumpet Vine Court and Beautyberry Lane.*

**Landscaping:**

*All landscaping shall meet the requirements as set forth in the UDO and the proposed conditions at the time of development.*

**Stormwater Management:**

*If the relevant Zoning Text amendment is approved by the Town Board, staff finds that the development of this site would meet the exemption from nitrogen load requirements. This project would be reviewed by Wake County as it relates to post-development runoff analysis.*

**Phasing:**

*No phasing is being proposed.*

**Comprehensive Plan:**

*The Wendell Comprehensive Plan defines the subject properties as being completely within the S-6 "Infill/Redevelopment Sector".*

*The Comprehensive Plan states that S-6 “areas are already urbanized and well served with infrastructure (roads, utilities, etc.), and access to services and amenities. Because these areas are already well provided for in terms of urban services, they are the most efficient and most attractive areas for redevelopment of underutilized sites or infill of vacant parcels.”*

*The Comprehensive Plan lists the following uses as appropriate land uses/development types within this sector: neighborhoods, downtowns, single-family and multifamily residential, commercial uses (retail and office), civic uses, and light industrial uses. The proposed development on the site meets the appropriate uses.*

*Any recommended change to the zoning map should be accompanied by a statement explaining how the change is consistent with the comprehensive plan, and is reasonable in nature. In staff’s opinion, the requested conditional district is consistent with the recommended uses and development types outlined in the Wendell Comprehensive Land Use Plan for the S-6 sector.*

*Staff suggested the following site plan changes be added as a condition of approval of the Master Development Plan:*

- 1. Update the Master Development Plan to incorporate the conditions of the Master Development Plan (sidewalks, open space, landscaping, stormwater, etc.).*
- 2. Update the total open space area required for dedication to the Site Data.*

Mr. Broadwell asked if the applicant wished to address the board. Mr. Marlowe (the applicant) said that staff did a good job of covering everything. He stated that he was in agreement with all of the conditions as stated by staff.

Mr. Briggerman asked if natural gas was available in Olde Wendell. Mr. Marlowe said natural gas was not available. Mr. Briggerman said that he liked the proposed park since there was a need for a pocket park for kids.

Mr. Lancaster asked if the applicant understood and was ok with all the conditions staff just went over, specifically the requirement that sidewalk be installed on Kirk Hill Drive and Whitley Way. Mr. Lancaster said there seemed to him to be 2 or 3 points of disagreement. The applicant said he was prepared to install the sidewalk, but he wasn’t aware that it was a Town requirement and not a state requirement. He said if the Board decided to waive that requirement he would prefer that.

Mr. Reidy said that if the Planning Board and the Town Board agreed to waive the sidewalk requirement, the applicant would still be required to pay a fee-in-lieu per the new policy that was adopted the previous month. Mr. Lancaster asked staff why they were recommending sidewalk on Kirk Hill Drive and Whitley Way. Mr. Reidy said the sidewalk was required per the UDO and that the sidewalk wasn’t an extra requirement. He said conditional districts were intended to be a give and take between the town and the applicant. He said the Town would be giving up sidewalk, curb, and gutter along the interior roads, but staff recommended maintaining these improvements along the exterior roads that could connect to future development along Kirk Hill Drive. Mr. Bergmark said he wanted to make it clear that sidewalks were required by the UDO. He said this was not an extra standard the Town was imposing.

Mr. Swaim said that there were many conditions listed for design standards for the individual houses. He said the legislature has already spoken regarding whether towns could impose design standards. He said he did not understand why the Town was imposing all these extra conditions on the house. Mr. Reidy

said most of the conditions related to the house already existed as a result of the original rezoning. He said staff was recommending that the homes use a stem wall or crawlspace, rather than have the option of slab on grade. Mr. Marlowe said he had talked to staff about the design standards and he didn't have a problem with any of them. He said they made a better neighborhood.

Mr. Marlowe said he had talked with staff about the conditional district, and as he understood it he needed to offer some improvements in some areas in order to offset the reductions in infrastructure he was asking for. He said that was the reason he proposed conditions related to 100 extra square feet of heated space, and the condition related to the garage. Mr. Lancaster asked what the Town was giving the applicant in exchange for these conditions. Mr. Reidy said no internal sidewalks were required, a road connection to Wendell Boulevard was not required, and fee-in-lieu was accepted instead of open space.

Mr. Swaim said he did not understand why slab on grade was being prohibited. He said slab on grade was the most effective building technique from a heating and cooling standpoint. Mr. Lancaster asked if Mr. Marlowe would want to build slab on grade if he could. Mr. Marlowe said that while slab on grade was a fine product, since he was a custom home builder he typically did not use slab on grade. Ms. Wall asked what foundation type the existing homes in Olde Wendell used. Mr. Reidy said there were a few slab on grade, but the vast majority of homes were on crawlspaces.

Mr. Lancaster said he was opposed to requiring sidewalk along Kirk Hill Drive and Whitley Way. He said there was a clear misunderstanding and that the builder clearly didn't understand that process. Mr. Marlowe said he agreed with the sidewalk requirement but he would be happy if the Board removed it. Mr. Broadwell said if he understood Mr. Lancaster's position, Mr. Lancaster wanted to make a motion to accept the conditions as recommended by staff, with the exception to condition 2, which would require sidewalk to be installed on Kirk Hill Drive and Whitley Way. Mr. Lancaster said he was willing to make that motion. Mr. Briggerman seconded the motion.

Mr. Broadwell asked if there was any discussion on the motion. Mr. Swaim asked what the effect was of requiring 1900 square foot homes with limitations on the garage would be on the existing neighborhood. Mr. Reidy said, if anything, it would help their property values. Mr. Swaim asked if there was any conflict of interest with anyone living in the existing subdivision, who worked for the Town or was on a board. Mr. Reidy said the Town Manager lived in Olde Wendell, but that he was the case manager for the conditional district, not the Town Manager. Mr. Reidy said Stacy Griffin was the case administrator for the original rezoning of Olde Wendell in 2005. Mr. Swaim asked if any other Town representatives lived in the existing neighborhood. Mr. Reidy said a former commissioner lives in that neighborhood, but that he was not aware of anyone else.

Mr. Marlowe said that Wendell was the most difficult town to build in his 30 years of building. He said staff had been very willing to work with him to come up with a way to make the subdivision cost effective. He said without any reduction in conditions to the stormwater requirements or the infrastructure requirements, he did not think this area would be developable. He said he had tried to work with the Town on a steady, ongoing basis to remove as many requirements as possible because he wouldn't be able to build and sell houses that meet the price of the existing houses in that subdivision with a lot of conditions attached. He said they have been very fair because it was their job to make the Town of Wendell a better place. He said he told staff that they couldn't give up 2 lots to meet the open space requirement, and staff agreed to a fee-in-lieu. He said he and staff had to get together to form a give and take to work this out. He said he did not know that the sidewalk requirement was a Town of Wendell requirement and not a state requirement. He said that he had agreed to build that sidewalk but if he could get a relief from that requirement that would be fantastic.

Mr. Lancaster said the Planning Board and the Town needed to truly hear what the applicant just stated. He said he thought the Town needed to take a step back from all of its regulations so as to not create a situation where developers can't afford to develop or to do as the market dictated. Mr. Lancaster said that the government should not dictate to the builder, the consumer should dictate to the builder.

Mr. Marlowe said that if this had been a new subdivision, with the new rules, he wouldn't have touched it. He said in fairness to them, when he pointed out problems with the stormwater rules, they brought it back to the board and changed it. Mr. Lancaster said the Planning Board had voted on that the previous month, and that he was the one board member who wanted to remove the nitrogen requirements in their entirety from residential developments.

The motion passed 6-1 in favor. Allen Swaim voted against the motion. Kathe Schaecher and Ashley Anderson were absent.

Mr. Marlowe said he had stood before a lot of boards, but he had never seen one that cared as much about the issues as this one.

**Item 7B– Receive the 2017 Planning Board meeting schedule.**

Mr. Bergmark said he wanted to share the 2017 Planning Board meeting calendar with the Planning Board. He said he wanted to point out that the January meeting would be on a Tuesday due to holiday. He said all the other meetings fell on their regularly scheduled day. Mr. Broadwell asked if staff required a motion to accept the schedule. Mr. Bergmark said a motion was not necessary.

**8. Adjourn to Next Regularly Scheduled Meeting**

Ms. Wall made a motion to adjourn the meeting. Ms. Van der Grinten seconded the motion. The motion passed unanimously. The meeting was adjourned at 7:50.