

**Planning Board Meeting –  
September 15, 2014  
Minutes**

**Members Present:** Harold Broadwell, Charles Kramer, Ruth Van der Grinten, Laurence Vaughan, Errol Briggerman, Ashley Anderson, Billy Bryant

**Members Absent:** Joseph Sparacia, Judy Silver

**Others Present:** Commissioner Virginia Gray

**Staff Present:** Planning Director David Bergmark, Planner Allison Rice

**1. Meeting Called to Order**

Mr. Broadwell called the meeting to order.

**2. Welcome and Recognition of Guests**

Mr. Broadwell welcomed all guests.

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

There were no comments from the Board.

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

Mr. Kramer made a motion to approve the agenda. Mr. Briggerman seconded the motion. It was passed unanimously.

**5. Public Comments**

There were no public comments.

**6. Approval of Minutes**

Mr. Vaughan made a motion to approve the minutes. Mr. Kramer seconded the motion. It was passed unanimously.

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

**Item 7A - Discussion and action on a zoning map amendment to rezone 610 & 616 Raymond Drive from R3 to CMX.**

Mr. Bergmark introduced Ms. Rice to present the topic.

Ms. Rice said that these properties were located within the corporate limits of the Town of Wendell and were zoned R3. The property at 616 Raymond Drive had a main single family home and an apartment above a detached garage. She said the property's owner had been living elsewhere and the two units were rented out, which was not compliant with the UDO's supplemental use standards for secondary dwellings. In order for a property owner to operate a 'secondary dwelling' on their property, the owner must live in one of the two units on site. Similarly, under the UDO, all multi-family properties (including two-unit properties) required a special use permit and were not permitted in the R3 zoning district. She said the new owner would like to continue renting out the unit above the garage, but would like to bring the use into compliance by rezoning this and the adjacent property to CMX and subsequently applying for a special use permit.

Ms. Rice said the property at 610 Raymond Drive had served as a day care since 1996. Since the use was grandfathered into the current zoning map, it was currently not compliant. Ms. Rice said Child Day Care Centers are permitted outright in the CMX, CC, DMX, CH, M&I, and TND districts, and in the NC district with a special use permit. The proposed rezoning submittal would take the day care center out of its current non-conforming status as well.

Ms. Rice said in the applicant's 'Zoning Justification Statement' (Attachment A of the report), the applicant explained why they were requesting a change in the zoning map. The applicant stated that by "rezoning to CMX with [a] Special Use Permit, it would increase the value of the property by expanding the potential owner pool." Ms. Rice said the Wendell Comprehensive Plan defined this section as S-6 "Infill/Redevelopment Area".

Ms. Rice said the Comprehensive Plan states the S-6 sector typically included "most of the built out areas of Wendell around the historic downtown core. These areas were already urbanized and well served with infrastructure (roads, utilities, etc.), and access to services and amenities." She said the comprehensive plan listed 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, light industrial.

Ms. Rice said the area surrounding the intersection of Wendell Boulevard and Old Wilson Road was also identified as a potential 'Neighborhood Center'. She said, in staff's opinion, the requested zoning map amendment was consistent with the recommended uses and development types outlined in the Wendell Comprehensive Land Use Plan for the S-6 sector.

Ms. Rice said the two businesses within the requested rezoning area were existing nonconforming uses and did not require site improvements unless redeveloped. The approval of the rezoning request would make both sites conforming uses. She said the property owner at 616 Raymond Drive had also submitted a special use request to the Town Board to operate a multifamily residential use (2 units) at this property. She said the Board of Commissioners would

have the option of adding additional site improvement requirements as a condition of their approval of the Special Use request.

Mr. Broadwell asked if it was possible to separate the two properties in terms of actions taken. Ms. Rice said that each application would be considered on their own merit. Mr. Bergmark said that the Special Use application would go directly to the Town Board without being heard by the Planning Board.

Mr. Vaughan asked if there were any responses from the neighbors, and if staff had put out any signs notifying people of the public hearing. Mr. Bergmark said these actions would be taken in advance of the public hearing. Mr. Vaughan said this was the first time he had been involved in a rezoning where the applicant didn't show up.

Ms. Van der Grinten said she had concerns about whether the neighbors would support this and if this would change the neighborhood, since this was on a residential street. Mr. Bergmark said that if the properties were more interior to the neighborhood, staff would have advised against submittal.

Mr. Broadwell said Wendell has a problem with subsidized housing, as well as a problem with single family properties becoming rentals. He said people and neighbors had complained to him about this happening in their neighborhood.

Mr. Bryant said as he understood it, the owner was not currently in compliance. He asked how long had it had been since the owner lived on the property. Mr. Broadwell said judging by the property's deeds and the addresses listed on the deeds, the owner bought that property in the year 2012. He said very soon after purchasing the property, the owner and his wife transferred ownership to an LLC. Mr. Broadwell said it appeared that the owner bought it in order to be a rental property.

Ms. Van der Grinten said on the face of it, this was not a bad application. However, as a homeowner, she said she was experiencing problems with this in her neighborhood.

Mr. Broadwell asked if it was correct that the property at 610 Raymond Drive is an existing nonconforming use, and that it could continue to exist that way. Mr. Bergmark said that was correct, and that the only way the nonconforming use status would impact them was if the property was destroyed and the owner wasn't able to rebuild within 6 months or if the use was discontinued for a long time. Mr. Broadwell asked if it was correct that the owner of 616 Raymond Drive would have to live on that property or get a special use permit. Mr. Bergmark confirmed that was the case.

Mr. Bryant asked if it was correct that rezoning this property wouldn't make it any more consistent in its zoning use. Mr. Bergmark said that it would be consistent, since the newly zone properties were adjacent to the commercial district. Mr. Bryant pointed out that in the

application, the only justification the applicant gave was that he wanted an increase in the property value. Mr. Bryant said that the applicant didn't write anything about how this rezoning would be good for the Town. He said it was also interesting that the applicant had submitted an application to rezone 610 Raymond Drive, even though he was not the owner. Mr. Bergmark said that the applicant originally wanted to rezone only 616 Raymond Drive, his property. Staff recommended that he included 610 Raymond Dr. in his application, so that there would be cohesion in the zoning district and would bring the neighboring property into compliance. Mr. Bryant asked, if these properties were rezoned to Commercial, would it be possible for the owner to change the use to another commercial use that was less compatible with the neighborhood. Mr. Bergmark said any use that was allowed in the Commercial district could potentially go there, however this lot was probably too small for any commercial use that would have higher volumes.

Mr. Briggerman asked if this would set precedent in other areas. Mr. Bergmark said that each case would be decided on its own merit according to its own particular circumstances, but someone could always make the argument that the decision should be made a certain way because that was what was done over there.

Ms. Van der Grinten said there was a for sale sign in front of the property. She said that the applicant may have been trying to get more money from the sale of a commercial property rather than residential. Mr. Bergmark said that might have been the case, but for the sake of this case, the only thing that should be considered was whether this was an appropriate use and an appropriate zoning for the surrounding area.

Mr. Vaughan said that since there were no neighbors present, he had to take that as approval of this change. Mr. Bergmark said the neighbors likely didn't know yet, since notice would only be given ahead of the Public Hearing. Mr. Vaughan said that needed to change.

Mr. Broadwell said he had spoken with the neighbor on the other side of 616 Raymond Dr., who said she was already having problems with the current renters. Mr. Kramer said that Mr. Broadwell's point that rentals with no property owners living on the property was well taken, and agreed that Wendell didn't need that.

Ms. Van der Grinten made a motion that the Planning Board recommend to the Board of Commissioners that this rezoning not be approved. Mr. Broadwell asked for a show of hands. The motion passed unanimously.

Mr. Bergmark asked for a statement of consistency, or a statement of inconsistency. Mr. Broadwell said that the application was not in the interest of the neighborhood or the town.

**Item 7 B – Discussion and action on a zoning text amendment to amend the Wireless Telecommunication Ordinance (Appendix D of the UDO) to require all new cell-tower applications to obtain a special use permit.**

Mr. Bergmark said in October of 2005, in an effort to improve cell coverage for Town residents and businesses, the Town of Wendell entered into an agreement with The Center for Municipal Solutions to review and conduct business with telecommunication companies wishing to locate facilities inside the jurisdiction of Wendell. In 2006 a telecommunication ordinance was adopted and later amended in 2009. He said the Town took upon these efforts in an attempt to improve communications between the Town and wireless carriers while protecting the Town's interest and encouraging the placement of additional towers and carriers in the area. However, the Town continued to receive poor service in the downtown business core.

Mr. Bergmark said in an effort to further promote improvements to the Town's wireless coverage, a draft ordinance was reviewed by the planning board on Monday, July 15, 2013 and adopted at a public hearing on August 12, 2013.

Mr. Bergmark said in 2013, House Bill 664 was passed with the intent of streamlining the processes used by state agencies and local governments to approve the placement of wireless facilities in their jurisdictions. Major legislative changes resulting from HB 664, included:

- Limiting the time frame for review of an application
- Establishing a limit on fees charged for collocation
- Establishing the definition of substantial modification

Mr. Bergmark said part of the changes incorporated into Wendell's current Telecommunication Ordinance included not requiring a special use permit for:

- Any tower 60 feet or less, except for a residential district
- Any concealed tower less than 60 feet in a residential district
- Any tower less than 200 feet in an industrial district
- Concealed towers less than 150 feet except in residential.

Mr. Bergmark said in 2014 SCI Towers approached the Town about locating a tower in downtown Wendell. SCI Towers submitted an application for property located at the corner of Fourth and Hollybrook. The tower was located in a Manufacturing and Industrial district and was less than 200 feet in height. The Town's ordinance, as currently written, called for this type of tower to be approved at the administrative level.

Mr. Bergmark said although the Tower received zoning approval from the Town, Section 106 of the National Historic Preservation Act Federal Code requires the impact to historic areas and structures be evaluated. In the case of North Carolina, this responsibility typically falls to the State Historic Preservation Office (SHPO). He said in June, SHPO made a determination that there was an Adverse Effect on the surrounding historic areas if a tower was located at the corner of Hollybrook and Fourth Streets. Renee Gledhill-Earley with SHPO stated that a Statement of Adverse Effect does not automatically eliminate the currently proposed location.

Mr. Bergmark said at the August 25<sup>th</sup> Town Board meeting, concerns were expressed about the physical location and appearance of future towers within the town's planning jurisdiction. He said the Town Board directed staff to have the Planning Board review a proposed amendment to change the Wireless Telecommunication Ordinance to require all new towers to obtain a special use permit. He said the attached ordinance shows those sections which would change in order to make this amendment.

Mr. Bergmark said staff has no objections to the proposed change to require special use permit approval for all new towers. He said staff recommends that all references to fees be amended to simply refer to the Town's fee schedule. He said this will allow the Town to amend fees as needed without require a text amendment each time.

Mr. Bergmark said any recommended change, if deemed necessary, should be accompanied by a statement explaining how the change is consistent with the comprehensive plan, and is reasonable in nature. He suggested Principle Number 5: "Promote Wendell's attractiveness to business and people of all walks of life."

Mr. Briggerman asked if this made the process simpler. Mr. Broadwell said that it wouldn't make the process simpler, it would actually complicate the process. Mr. Broadwell said the reason why he liked it was because it would allow public input.

Ms. Anderson said that she agreed that public input was a good thing, however it would make it much less attractive to cell phone companies, and it might keep cell phone companies from building towers.

Mr. Vaughan said it seemed like the central issue was whether a special use process was prohibitive to cell phone companies who might otherwise do business. Mr. Broadwell said there would be some cost, but it would depend on how they would go about it.

Commissioner Gray said this latest proposed change was due to the current ordinance leaving the town a little exposed. She said the current ordinance was passed to encourage cell phone towers to be built in Wendell, particularly at the Wendell Park. She said that she would rather put the burden and responsibility on the Board instead of the staff to make the decisions over where cell phone towers could be placed. She said it would also give the public an opportunity to give input.

Mr. Bergmark pointed out that a balloon test would also have to be included as part of the special use process, which wouldn't be required under a normal administrative review.

Ms. Van der Grinten said people would be happier if they had a say. She said the current ordinance might have been a lot easier, but on the back end there was a lot of work correcting the situation.

Mr. Bryant said this would allow more input, but it would also allow it to be approved on a case by case basis, which staff isn't able to do with the current ordinance.

Mr. Bryant made a motion that the Planning Board recommend to the Town Board that they adopt these changes. The motion passed, with Ms. Anderson abstaining.

Mr. Bergmark asked for a statement of consistency. The Board agreed to give the statement of consistency recommended.

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

Mr. Vaughan made a motion to adjourn the meeting. Mr. Briggerman seconded it. The motion passed unanimously.