



**CITY OF LINCOLNTON
PLANNING BOARD
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BOARD MEMBERS: Änd Lynn, Chair, andmlynn@gmail.com; Worth Roberts, Vice-Chair, worth.roberts@charter.net; Gene Poinsette, poinsetteg@charter.net; Jamel Farley, afarley2351@gmail.com; Becky Burke, beckyburke940@gmail.com; Jerry Hoffman, jlskhoffman@charter.net; Rebecca Abernethy, rabernethy21@bellsouth.net; Greg McBryde, Gregory.Mcbryde@gmail.com

Tuesday, October 15, 2019 Meeting

Present: Änd Lynn, Worth Roberts, Gene Poinsette, Becky Burke, Jerry Hoffman, Jamel Farley, Rebecca Abernethy and Greg McBryde

Absent: n/a

Call to Order

Chairman Änd Lynn called the meeting to order and recognized that all members were present.

Approval of Minutes

Chairman Änd Lynn asked the Board if there were any additions or corrections to the minutes of the September 17, 2019 meeting.

Motion: Worth Roberts made a motion to approve the minutes. Gene Poinsette seconded. Motion carried unanimously.

CUP -2- 2019 Application for Conditional Use Permit Amendment from Boger City Volunteer Fire Department to allow a fire training center in the R-25 district.

Laura Elam addressed the board noting the following:

The Boger City Volunteer Fire Department is requesting amendment of the previously approved conditional use permit at the VFD site at 410 McAlister Road. The site is zoned R-25 (Rural Residential) and a conditional use permit was approved in 2001 to allow the fire station. Surrounding properties are zoned a combination of R-25 and O-I (Office –Institutional).

The subject property is the site of the Boger City VFD. Surrounding properties are devoted to residential and medical uses.

BACKGROUND AND APPROVED SITE PLAN

A conditional use permit was approved in 2001 to allow construction of the fire station. The site plan notes the approximately 17,000 square foot fire station, two driveways to McAlister Road and the parking areas on either side of the station.

One of the conditions of approval of the conditional use permit is a storm water system designed in such a way that storm water will not impact adjacent property owners. A storm water detention pond is provided on the rear portion of the site to address that condition of the conditional use permit.

PROPOSED ADDITIONAL STRUCTURES

The applicant proposes the addition of a fire-training center to the rear of the fire station. The proposed fire-training center would be composed of five shipping containers as follows:

- Lower level: One 8 ft x 40 ft shipping container
- Main level: Three 8 ft x 40 ft shipping containers
- Upper level: One 8 ft x 20 ft shipping container

The site plan indicates all shipping containers to be painted to a color to match the color scheme of the existing building and notes that regular maintenance will be required to keep the containers in good condition.

STORM WATER MANAGEMENT MEASURES

The site plan indicates the following measures for storm water management:

- One or more holes cut into each end of the container at floor level.
- Provide at least one square foot of opening per end / total to allow for sufficient water movement through the shipping container during rain storm events that may require water storage area within the existing detention basin.
- A four inch washed stone base is to be installed under the lower storage container for proper drainage.

STORM WATER DETENTION STRUCTURE IMPACT CALCULATIONS

Staff requested calculations from the applicant to demonstrate that the placement of the shipping containers on the existing storm water detention pond will not negatively impact its capacity. The applicant provided that documentation.

STAFF REVIEW COMMITTEE COMMENTS

The Staff Review Committee made the following comments:

- Building permits must be obtained from Lincoln County Building and Inspections.
- All trees and other vegetation located along the edges of the site to be protected during the shipping container installation process.

COMPLIANCE WITH CONDITIONAL USE PERMIT APPLICATION REQUIREMENTS

Section 153.236 of the UDO requires that a conditional use permit application contain specific terms and meet specific requirements. The application meets the requirements of that section.

OTHER CONDITIONAL USE PERMIT REQUIREMENTS

Section 153.237 of the Unified Development Ordinance requires four findings be determined by City Council prior to issuance of the conditional use permit. They are as follows:

1. The use will not materially endanger the public health or safety if located where proposed and developed according to plan, and
2. The use meets all required conditions and specifications, and
3. The use will not substantially injure the value of adjoining or abutting property unless the use is a public necessity, and
4. The location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and will be in general conformity with the Lincolnnton Land Use Plan and other plans for the physical development of the City as officially adopted by the City Council.

COMPLIANCE WITH SECTION 153.237

1. It does not appear that the use will endanger the public health or safety.
2. The use meets all required conditions and specifications.
3. The applicant will need to provide evidence that the use will not substantially injure the value of adjoining or abutting properties.
4. The applicant will need to provide evidence that the use, if approved, will be in harmony with the area.

STAFF RECOMMENDATION

Staff recommends approval of the conditional use permit subject to the applicant satisfactorily proving the findings of fact and subject to the Staff Review Committee comments.

Motion: Worth Roberts made a motion to recommend approval. Gene Poinsette seconded. Motion carried unanimously.

CUP -3- 2019 - Application for Conditional Use Permit from Shu Zheng Zhao to allow an arcade game room in the General - Business (G-B) district.

Laura Elam addressed the board.

Lisa Leonhardt and Damon Stowe both spoke against the approval of the Conditional Use Permit.

After some discussion, Chairman And Lynn stated he felt the board needed additional information and asked to table the item until the November meeting.

Motion: Worth Roberts made a motion to table the Conditional Use Permit until the November meeting. Gene Poinsette seconded. Motion carried unanimously.

CU-ZMA-1-2019- Application from Rebecca Chambers requesting conditional use rezoning from R-10 to NB-CU to allow a beauty salon

Laura Elam addressed the board noting the following:

SITE AND AREA DESCRIPTION

The subject property is the rear portion of the parcel located on the northwest corner of the intersection of North Flint Street and East Alexander Street. The subject property and all surrounding properties are zoned R-10.

BACKGROUND

The zoning regulations allow “home occupations” in any residence subject to several standards including the following:

- The home occupation is incidental and subordinate to the residential use of the dwelling and does not change the residential character of the dwelling.
- No accessory buildings or outside storage are to be used in connection with the home occupation.
- Use of the dwelling for the home occupation is limited to 25% of the area of the principal building.
- Residents of the dwelling plus a maximum of one non-resident may be engaged in a home occupation.
- No display of products may be visible from any adjoining lot or street and only articles made or reconditioned on the premises may be sold; except that nondurable articles incidental to a service conducted at the home occupation may be sold on the premises.
- No external alterations inconsistent with the residential character of the building shall be permitted.
- Only vehicles used primarily as passenger vehicles (e.g., automobiles, vans and pick-up trucks) shall be permitted in connection with the conduct of the customary home occupation.
- No traffic is to be generated by the home occupation in greater volumes than would normally be expected in a residential neighborhood. Any need for parking generated by the conduct of the home occupation is to be provided off the road right-of-way.
- Home occupations may only be conducted between the hours of 7:00 a.m. and 9:00 p.m.
- One non-illuminated professional name plate, occupational sign or business identification sign mounted flush to the dwelling unit and not more than two square feet in area is allowed per customary home occupation.
- In lieu of a flush mounted sign, a freestanding sign of up to two square feet and not higher than five feet may be erected in the front yard.

NOTE: Under the existing zoning, a beauty salon could be operated as a home occupation subject to the above standards. In this specific instance, those standards would allow use of 626 square feet of the home as a beauty salon. Residents could be employed at the home-based salon plus one non-resident.

PROPOSED USE AND SITE PLAN

The applicant requests conditional use rezoning in order to allow use of the former shop building for a beauty salon.

The site plan indicates the beauty salon would provide space for up to four beauticians. To the west of the proposed beauty salon is a proposed 24-foot commercial driveway connection to East Alexander Street along with a proposed parking lot containing 10 parking spaces. A new fence would be provided along the edges of the proposed rezoning site abutting residential zoning.

DESCRIPTION OF CONDITIONAL USE DISTRICT REZONING PROCESS

Conditional use rezoning is a process whereby a conditional use permit and a rezoning are acted upon simultaneously. The use that is proposed in the conditional use permit portion of the process must be the use constructed on the property after it is rezoned. Unlike a standard zoning in which all the uses permitted in the district are potentially allowed on the rezoned site, a conditional use rezoning limits the potential use of the property. In this case, the applicant proposes to limit the use of the property to a beauty salon with up to four beauticians.

COMPLIANCE WITH CONDITIONAL USE PERMIT APPLICATION REQUIREMENTS

The UDO requires that a conditional use permit application contain specific terms and meet specific requirements. The following items are not in compliance:

- Twenty foot screening buffer required along property lines abutting residential zoning
- Twelve parking spaces required
- Twenty foot building setback required along the side and rear yards abutting residential zoning

The applicant indicates she plans to pursue variances for the above matters.

LAND USE PLAN

The Lincolnnton Land Use Plan includes the site in the Traditional Single Family Planning Area. The Plan notes that these areas consist of single-family uses on smaller to medium sized lots in older established portions of the community that should be protected from encroachment of incompatible business and industrial development. One of the identified objectives of the Land Use Plan is protection of the integrity and viability of the City's established residential neighborhoods.

This request proposes rezoning from single family residential to conditional Neighborhood Business. Therefore, the requested rezoning is not consistent with the Land Use Plan.

STAFF REVIEW COMMITTEE

The Staff Review Committee had the following comments:

- (1) Twenty foot screening buffer required along property lines abutting residential.
- (2) Twelve parking spaces required.
- (3) Twenty foot building setback required along side and rear yards abutting residential zoning.
- (4) Any outdoor lighting on the site should be directed downward and not cast glare onto neighboring properties.
- (5) Hours of operation to be limited to between 8 am and 9 pm.
- (6) If the rezoning is approved, the ordinance would allow a freestanding pole or ground mounted sign of up to 20 feet in height and 32 square feet in area. This type of signage would not be appropriate in this location. Any freestanding signage should be limited to signage permitted with a home occupation.
- (7) If the rezoning is approved, the ordinance would allow wall signage with a maximum area of 10 % of the wall area of any wall on the building. This type of signage would not be appropriate in this location. Any freestanding signage should be limited to signage permitted with a home occupation.
- (8) The property deed references an easement for an alley. The site plan needs to identify the location of the alley and clarify whether the proposed fence and/or proposed parking will be located within the alley. If so, documentation must be provided indicating those uses are allowed by the easement.
- (9) All activities, equipment and materials to be contained within the building. No outdoor storage permitted.
- (10) The parking lot should be designed in such a way that storm water will not impact adjacent property owners.
- (11) A building permit must be obtained from Lincoln County.

FINDINGS OF FACT

Section 153.237 of the UDO requires that four findings be determined by City Council as follows:

- (1) The use will not materially endanger the public health or safety if located where proposed and developed according to plan, and
- (2) The use meets all required conditions and specifications, and

- (3) The use will not substantially injure the value of adjoining or abutting property unless the use is a public necessity, and
- (4) The location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and will be in general conformity with the Lincolnnton Land Use Plan and other plans for the physical development of the City as officially adopted by the City Council.

COMPLIANCE WITH FINDINGS OF FACT

- (1) It does not appear that the use will endanger the public health or safety.
- (2) The use does not meet required conditions and specifications of the ordinance. The applicant indicates she plans on pursuing variances for required buffers/screening, required off-street parking and building setbacks.
- (3) The applicant will need to provide sufficient evidence that the use will not substantially injure the value of adjoining or abutting properties.
- (4) The request is not consistent with the Land Use Plan. The applicant will need to provide sufficient evidence that the use, if approved, will be in harmony with the area.

STAFF RECOMMENDATION

Staff recommends operation of the beauty salon as a home occupation in lieu of through the proposed rezoning.

Jeff Hurt, Karen Hurt and Jill Tipton spoke in favor of approving the conditional use rezoning.

Cindy Freideberg, Cyndi Moore, Mark Angel, Kathy Hendricks, Laura Morris, Gary Cornwell and Nancy Rhyne all spoke against the rezoning.

After some discussion, Chairman And Lynn asked if there were motions on the finding of facts. The motions are as follows:

1. The use will not materially endanger the public health or safety if located where proposed and developed according to plan.

Motion: Worth Roberts made a motion that the use would materially endanger the public health or safety if located where proposed and developed according to plan. Gene Poinsette seconded. Greg McBryde opposed the motion, all others voted for the motion.

2. The use meets all required conditions and specifications.

Motion: Worth Roberts made a motion that the use did not meet all required conditions and specifications. Gene Poinsette seconded. Motion carried unanimously.

3. The use will not substantially injure the value of adjoining or abutting property or the use is a public necessity.

Motion: Worth Roberts made a motion that the use will substantially injure the value of adjoining or abutting property or the use is a public necessity. Greg McBryde seconded. Motion carried unanimously.

4. The location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and will be in general conformity with the Lincolnton Land Use Plan and other plans for the physical development of the City as officially adopted by the City Council.

Motion: Worth Roberts made a motion that the use will not be in harmony with the area and will not be in general conformity with the Lincolnton Land Use Plan and other plans for the physical development of the City as officially adopted by the City Council. Jamel Farley seconded. Motion carried unanimously.

ZTA-3-2019 Application from Lincolnton Planning Department to create an Abandoned and Junked Vehicle Ordinance and amendment of the Unified Development Ordinance to remove references to junked motor vehicles.

Laura Elam addressed the board noting the following:

Background

The Unified Development Ordinance defines and regulates wrecked or junked motor vehicles on private property. Various sections of the City Code address objects including vehicles that are obstructing the public rights-of-way.

Typically, the Planning Department handles violations of the UDO regarding junked vehicles and the Police Department handles abandoned vehicles that are obstructing travel on public streets.

Neither the UDO nor the City Code outline the required process for vehicle removal or notice to the owner. The state general statutes include several relevant provisions and steps a local government is to take in order to remove abandoned or junked vehicles and many cities have an “Abandoned and Junked Vehicle Ordinance” that outlines their policies and procedures.

Proposed Amendment

The proposed amendment would create an “Abandoned and Junked Vehicles Ordinance” and consolidate the regulations regarding abandoned vehicles on public streets and the regulations regarding abandoned, junked or nuisance vehicles on private property. The ordinance would also outline the City’s policies and procedures regarding removal of such vehicles.

The proposed ordinance mirrors ordinances from other cities in North Carolina and the relevant state statutes. Key provisions in the proposed ordinance are outlined below:

Definitions

The ordinance includes the following terms and definitions:

An **abandoned vehicle** is a motor vehicle that is left:

- on a public street in a no parking zone,
- on a public street for more than seven days,
- on city owned property for greater than 24 hours or
- on private property without the consent of the owner, occupant or lessee for longer than two hours.

A **junked vehicle** is a vehicle that does not display a current license plate *and*

- is partially dismantled or wrecked,
- cannot be self-propelled or moved in the manner it originally was intended to move *or*
- is more than five years old and appears to be worth less than \$100

A **nuisance vehicle** is a vehicle that is determined and declared to be a health or safety hazard, a public nuisance and unlawful, including a vehicle found to be:

- a breeding ground for insects or pests;
- a point of heavy growth of weeds or other noxious vegetation over eight inches in height;
- a collection point of pools of water;
- a point of concentration of quantities of gasoline, oil or other flammable or explosive materials as evidenced by odor;
- one which has areas of confinement which cannot be operated from the inside, such as trunks or hoods;
- situated that there is a danger of it falling or turning over;
- a point of collection of garbage, food waste, animal waste or any other rotten or putrescible matter; and/or
- one which has sharp parts or contains sharp edges of metal or glass.

Exemptions

The proposed ordinance exempts any vehicle which is:

- located in a bona fide automobile graveyard or junk yard as defined by state statute;
- on the premises of an automobile repair business operating legally and the vehicle is being kept pursuant to the operation of that business;
- in an enclosed building;
- parked on the property so that the vehicle cannot be seen from a public street or abutting property;
- in an appropriate storage place or depository maintained in a lawful place and manner by the city; or

- used on a regular basis for business or personal use.

Special Interest Vehicle

Individuals actively restoring not more than one special interest vehicle outside of a garage or other enclosed structure would have a temporary exemption from the ordinance provided that the vehicle is kept in a rear yard.

The vehicle must be made to be in running condition within one year after being brought onto the premises.

Investigation and Determination

The Police Department and the Code Enforcement Officer would be responsible for administration and enforcement of the ordinance.

The Police Department would deal with vehicles that are determined to be abandoned on a public street.

The Code Enforcement Officer would deal with other vehicles that are determined to be abandoned and with vehicles determined to be junked or nuisance vehicles.

Abandoned and Nuisance Vehicles Prohibited

- The proposed ordinance would make it unlawful for the owner of a vehicle to cause or allow the vehicle to be abandoned and allows the city to investigate and determine that a vehicle is an abandoned vehicle and order its removal.
- The proposed ordinance would make it unlawful for the owner of a vehicle or for the owner of the property where the vehicle is located to leave or allow the vehicle to remain on the property after it has been declared a nuisance vehicle. The City could investigate and determine that a vehicle is a nuisance vehicle and order the vehicle removed.

Junked Vehicles Regulated

- The proposed ordinance would make it unlawful for the owner of a junked vehicle or for the owner of the property where a junked vehicle is located to leave or allow the vehicle to remain on the property after the vehicle has been ordered removed.
- The City could order the removal of a junked motor vehicle after a written finding that the aesthetic benefits of removing the vehicle outweigh the burdens imposed on the private property owner. The finding is to be based on a balancing of the monetary loss of the owner against the corresponding gain to the public by promoting community, neighborhood or area appearance.

Removal of Vehicles and Towing Notice Requirements

Abandoned, nuisance or junked vehicles would be removed by the City only after prior notice to the owner.

The exception to the prior notice requirement would be a circumstance in which the authorizing official determines there is a special need for prompt action to eliminate traffic obstructions or to otherwise maintain and protect the public safety and welfare such as an abandoned vehicle on a public street that is obstructing traffic or parked illegally.

Other abandoned, nuisance or junked vehicles would be removed only after prior notice to the owner.

Appeal of City's Determination to Board of Adjustment

With respect to abandoned vehicles on private property and nuisance or junked vehicles for which prior notice is required, the owner may appeal the City's determination that the vehicle is an abandoned or nuisance vehicle.

In the case of a junked vehicle, the owner may appeal the City's determination that the aesthetic benefits of removing the vehicle outweigh the burden on the owner. The appeal would be made to the Board of Adjustment.

Right to Probable Cause Hearing

After the removal of an abandoned vehicle, nuisance vehicle or junked vehicle, the owner may request a hearing to determine if probable cause existed for removing the vehicle. A request for a probable cause hearing would be filed with the county magistrate.

Claimed Vehicles

At any stage in the process, the owner of the vehicle may get possession of a removed vehicle by paying the fee to the towing operator that has the vehicle.

Unclaimed Vehicles

Vehicles that are not claimed by the owner could be disposed of in accordance with the relevant state statute.

UDO Amendments

Section 153.073 of the Unified Development Ordinance outlines regulations related to wrecked or junked vehicles. That section and the related terms and definitions in the UDO would be deleted since the new ordinance would deal with those vehicles.

Staff Recommendation

Staff recommends approval of the amendment.

After some discussion, Chairman And Lynn asked if there were any motions.

Motion: Worth Roberts made a motion to approve recommendation of the text amendment. Jamel Farley seconded. Motion carried unanimously.

ZTA-4-2019 Application from Lincolnton Planning Department requesting amendment to Section 153.057, (Accessory Structures), of the Unified Development Ordinance to modify accessory structure size requirements.

Laura Elam addressed the board noting the following:

Background

The UDO allows accessory structures such as storage sheds and detached garages on any lot containing a principal residential use subject to a maximum size of one-half the heated ground floor area of the principal building.

This means that a lot that is developed with an 1,100 square foot, one-story home may have up to 550 square feet of accessory structures whether the lot is 50 acres, 5 acres or one acre.

The following are several hypothetical situations and how the standard would apply:

- A 50 acre lot with an 1,100 square foot, one –story home may have up to 550 square feet of accessory storage structures.
- A 5,000 square foot lot with an 1,100 square foot, one –story home may have up to 550 square feet of accessory storage structures.
- A 5,000 square foot lot with a 3,000 square foot, one –story home may have up to 1,500 square feet of accessory storage structures.

On a fairly routine basis, property owners are encountering issues with this regulation.

- In situations similar to Example1 in areas with relatively large lots, a homeowner with a relatively small home is limited to a small amount of accessory building(s) in comparison to neighboring properties. There have been numerous requests for variances for similar situations.
- In situations similar to Example 2 in neighborhoods with relatively small lots, an abutting homeowner would likely have concerns about an accessory building of this scale in relationship to the lot.

Staff researched the ordinances of several other cities and found that many are basing the maximum area allowed for accessory structures on residential lots on the required rear yard rather than on the size of the home.

Many cities allow accessory structures to cover up to 30 percent of the required rear yard on the lot. Some of the cities using that standard or a similar standard include Conover, Lenoir, Newton, Salisbury, Spencer and Statesville. Staff in those cities indicate that they have not encountered problems or concerns.

Proposed Amendment

The proposed amendment seeks to amend the maximum allowable aggregate area for accessory structures on a lot containing a principal residential use to no more than 30 percent of the required rear yard.

Staff Recommendation

Staff recommends approval of the amendment.

Motion: Jamel Farley made a motion to approve recommendation of the text amendment. Worth Roberts seconded. Motion carried unanimously.

Chairman And Lynn asked the Board if there was any other business to be addressed, to which there was none.

Adjournment

Motion: Jamel Farley made a motion to adjourn. Gene Poinsette seconded. Motion carried unanimously.

Jean Derby