

Denton Planning Commission

Minutes

Town of Denton

May 29, 2018

Planning Commission Members:

Doris Walls, Chairperson*

William Quick*

Sue Cruickshank*

Marina Dowdall*

Dean Danielson **

Nicholas T. Iliff, Jr.*

* Those Present

** Excused

*** Absent

Visitors:

Patrick Thomas

Kevin Shearon

Linda Baynard

Billy Seay

Don Mulrine, Jr.

Kevin Sills

Carlton Holmes

Chris Drummond

Mark Keeley

James Darling

Joe Thompson

Allen Rausch

Lee Bridgman

Recording:

Derrick Kennedy

PROCEEDINGS

Call to Order:

The Planning Commission Meeting was called to order by Chairperson Walls at 6:00 p.m., on May 29, 2018, at the Denton Town Office and followed by the Pledge of Allegiance.

Approval of Minutes:

The April 24, 2018, Planning Commission Meeting minutes were reviewed and approved unanimously as submitted.

Old Business #1 – Denton Project LLC/Reclassification of Zoning: – Patrick Thomas, Attorney for Denton Project LLC (Applicant), provided an overview of the proposed project. Mr. Thomas referred to the Concept Plan to provide the location of the property on Market Street. The property is surrounded by three properties zoned Mixed Residential (MR), one property zoned Recreation and Parks (RP), two properties zoned Industrial (I), and fourteen properties zoned Town Scale Residential (TR). Other surrounding properties across from Route 404 are the Mallard Landing Subdivision zoned Suburban Residential (SR).

The Applicant is seeking a change in the zoning classification based on mistake in the existing RP classification. This request for zoning is to allow the multi-family housing project which includes fourteen (14) twelve (12) unit three (3) story apartment buildings and referred to the Concept Plan.

In order to proceed with this project, it will require a reclassification of zoning from Recreation and Parks (RP) to Mixed Residential (MR) to accommodate the proposed development. Under the Zoning Ordinance and State Law Land Use Article, the Town can rezone the property based on a change or mistake in the existing zoning classification. The Town is required to make a Findings of Fact to include population change, availability of public facilities, present and future transportation patterns, compatibility with the Comprehensive Plan, and the Planning Commission's recommendation.

The Applicant believes a mistake exists due to events that occurred during the 2010 Comprehensive Plan, and Maryland Courts state are the basis for rezoning based on a mistake in the classification. Four cases were cited in the Applicant's memorandum provided to the Planning Commission.

Prior to the 2010 Comprehensive Plan rezoning, the property was zoned MR. The property was changed to RP and planned for a Caroline County Public School. The Caroline County Commissioners decided not to purchase the property for a public school, and there are no plans to develop a park on this property.

The Applicant addressed the population change for the MR District zoning which allows a residential density of 8 dwelling units per acre based on 21.34 acres for a permitted total maximum density of 170 units. Per the Comprehensive Plan, the average population per household is 2.17 persons per dwelling unit resulting in an estimated population increase of 369 people.

Per the Town, there are adequate public facilities, infrastructure, police, fire, and rescue personnel to support the proposed development.

This property was zoned MR prior to the 2010 Comprehensive Plan Rezoning, and the Applicant is requesting the property to be changed back to the MR zoning. The MR zoning is compatible to the surrounding residential zoning districts. There are no planned residential developments in the vicinity of this property.

The rezoning of this property to MR is consistent with the 2010 Comprehensive Plan because it creates an opportunity to develop a range of housing densities, types, and sizes to provide residential options for citizens of all ages and incomes; affordable, quality housing; it encourages compatible infill by developing a vacant and underutilized property that is compatible with the surrounding residential properties; it is consistent with the State's Smart Growth principles; and any development will require compliance with the Town's requirements.

Mark Keeley, Project Manager for Traffic Concepts, Inc., provided a summary of the Applicant's Traffic Impact Study (TIS). The study was completed according to State Highway Administration Guidelines. The Town Engineer reviewed and approved the TIS. Traffic was compiled on peak hours during the weekday mornings and evenings.

Chris Drummond, Town Attorney, redirected the Planning Commission to review the rezoning application. The TIS will be reviewed during the site plan approval process when the use will have to be evaluated and prove there are no adverse effects on health, safety, and welfare.

Commissioner Iliff noted the Applicant is requesting the property to be rezoned based on a mistake that this property was never intended to be a park. This property was rezoned as part of the 2010 Comprehensive Plan, and there may be other properties that were improperly rezoned.

State Highway Administration sold their excess property to the Applicant.

The Town Attorney provided a summary for the basis of the rezoning mistake during the 2010 Comprehensive rezoning for the property. This property was rezoned from MR to RP which was a new zoning classification. Once land is comprehensively zoned, it may not be rezoned until the next Comprehensive Plan update. The next Comprehensive Plan update will occur around 2022, and the Town will begin the review around 2020. The only way land can be rezoned is if the applicant can prove a mistake in the Comprehensive rezoning or substantial change in the neighborhood. The Town Attorney concluded this mistake was justified, and the Planning Commission reviewed the Findings of Fact prepared to forward to the Denton Town Council. These Findings of Fact included that the property was zoned RP during the 2010 Comprehensive Plan rezoning process from the prior residential zoning of MR for more than 20 years to accommodate the Caroline County Board of Education for a new school. The Board of Education had listed this property as one of the preferred locations for a new school in the late 2000's. However, the Board of Education decided not to proceed with the purchase of the land for the new school. Since this property is zoned Recreation and Parks (RP) with a Redevelopment Eligible

(RDE) Floating Zone which would have permitted the school, there is very limited development options for this property. Therefore, the assumption for which the property was comprehensively rezoned was an error. The case law that applies to this mistake in zoning reads, “when subsequent events demonstrate that any significant assumption made by the Town Council at the time of comprehensive rezoning was invalid, presumption of validity recorded to the Comprehensive rezoning is overcome and mistake may be established by showing that the assumption upon which a particular use was predicated proves with the passage of time to have been erroneous.” This case law would apply to this rezoning request because it proves the assumption was incorrect.

Commissioner Quick informed the public that the Planning Commission makes a recommendation based on the Findings of Fact to the Town Council. The Town Council makes the decision for the request of the rezoning of the property.

Commissioner Iliff motioned to accept the proposed Findings of Fact and Recommended Conclusions of Law prepared by the Town Attorney and recommend the change in zoning classification from Recreation and Parks (RP) to Mixed Residential (MR) based on a mistake for the current zoning classification for this parcel.

Commissioner Dowdall seconded the motion. The motion passed unanimously (5:0).

Old Business #2 – Other: – None.

New Business #1 – Denton Plaza Major Site Plan Revision – Kevin Sills, owner of Mid-Atlantic Real Estate Investments Inc. (Applicant), made the presentation for the revision to the Denton Plaza major site plan approved in 2014. Mr. Sills is requesting approval to replace the proposed 6,895 square foot building located on the existing pad site next to the Rite Aid Pharmacy with a 14,913 square foot retail building. The Applicant has donated the former bank space to a group for the backpack for kids’ program. The Applicant purchased the Denton Plaza in September and is negotiating with national tenants to occupy the space.

The Planning Commission discussed the proposed parking plan and confirmed there was an adequate number of parking spaces to accommodate the Denton Plaza.

Lee Bridgman, Applicant's Engineer, referred to the proposed parking plan and confirmed the plan met the Denton Town Code requirements for size of parking spaces and aisles.

Mr. Sills has an agreement with the State Highway Administration to change the traffic flow from the Denton Plaza. The island at the second entrance next to the Walmart Parking lot will be removed to allow left turns.

Commissioner Iliff motioned to approve the Denton Plaza preliminary major site plan revision as submitted subject to satisfying all applicable requirements.

Commissioner Dowdall seconded the motion. The motion passed unanimously (5:0).

New Business #2 – Other: - Mr. Mulrine provided an update on the road to nowhere that has been officially approved by the State Highway Administration. The road will be constructed from the Walmart light to Gay Street with a right turn out and a right turn in on MD 404/Shore Highway.

The YMCA plans to move to the Double Hills Farm owned by Caroline County.

The old milk plant property located at Gay Street and Sixth Street owned by Dr. Pulimood is planned for a café.

Staff Item #1 – Other: None.

Adjournment: The meeting adjourned at 7:12 p.m.