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Wednesday - September 23, 1987 - 4:00 P.M.

Regular Meeting

Present: Mayor W. Louis Bissette, Presiding; Vice-Mayor Mary

Lloyd Frank; Councilmen Kenneth M. Michalove, Norma T. Price, Wilhelmina Bratton, George Tisdale, and Walter Boland; Corporation Counsel William F. Slawter; City Manager Douglas O. Bean; and Deputy City Clerk Carol Hensley.

Absent: Associate City Manager/City Clerk William F.

Wolcott, Jr. (vacation)

INVOCATION

The invocation was given by Councilman Bratton.

Scheduling of Public Hearing - Greentree Ridge Nursing Home

Mayor Bissette announced that a public hearing will be held on October 6, 1987 relative to the site plan of Greentree Ridge Nursing Home to be located on Sweeten Creek Road. The plan was prepared by Padgett-Freeman, Architects, for Mission-Thoms Health Services, Inc., Developer.

Public Hearing - Shoppes of Beaver Lake - Merrimon Avenue

Mayor Bissette requested to be excused from participation and vote on the site plan for Shoppes of Beaver Lake since his law firm represents the developer.

Councilman Tisdale moved to excuse Mayor Bissette from participation and vote on the site plan for Shoppes of Beaver Lake. This motion was seconded by Councilman Bratton and carried unanimously.

Vice-Mayor Frank said the Asheville Planning and Zoning Commission at a meeting held September 2, 1987, reviewed a site plan of the proposed Shoppes of Beaver Lake to be located on Merrimon Avenue. The plan was prepared by Danie Johnson, Architect, for Beverly Developments, and submitted in accordance with the Group Development Section of the Asheville Zoning Ordinance. After review and discussion, the Commission voted to recommend approval of the project with the following conditions: 1. That signage description be provided to City Council;

2. Subject to compliance with Erosion Control Ordinance;

3. Subject to execution of an agreement to establish a 20' buffer on the Western Steer property; and

4. That developer give special concern to wildlife habitat during building process and after to avoid silting. The Commission further noted that the public hearing process revealed serious questions with regard to ownership of the right to develop the property in the manner intended. The Commission urges City Council to determine the status of the right to develop the site with regard to boundary survey, the location of the floodway, and any rights the residents of the Lakeview Park Commission might have relative to the use of this parcel.

Vice-Mayor Frank opened the public hearing at 4:07 P.M.

At the request of Vice-Mayor Frank, the Corporation Counsel read the following memorandum.

"MEMORANDUM TO: W. Louis Bissette, Jr., Mayor

and Members of the Asheville City Council

FROM: Bill Slawter, City Attorney

DATE: September 14, 1987

SUBJECT: The Shoppes of Beaver Lake

As you are aware, the Planning and Zoning recommendation in connection with the Shoppes of Beaver Lake group development included a request that City Council look into questions of ownership raised by some of the surrounding neighbors. As I stated to Planning and Zoning just before their motion was adopted, I do not feel that this is an appropriate area of concern for the City Council. The appropriate method of challenging Mr. Beverly's right to develop that property would be by appropriate Court action. For the City to become involved in resolving such questions would require a title examination in connection with each site plan for which approval is requested,

and even that would be subject to challenge in the Courts. The City is not required to look beyond the apparent title of a proposed developer, and would be in fact subjecting itself to potential liability in attempting to do so. In taking action on a site plan approval, the City is not taking a position on ownership of the property. That remains a question for the Courts.

A question has also arisen as to why the City would proceed with consideration of the request for site plan approval when some consideration may be given to rezoning in the area. The group development review process established in our zoning ordinance does not automatically delay the group development review process when there is a potential rezoning in progress. It is therefore not inappropriate to proceed with the group plan review, especially in view of the fact that the request for site plan approval preceded the request for rezoning."

The Corporation Counsel advised that Jack Stevens, Attorney for the developer, has requested that Verl Emrick's and Danie Johnson's statements be made under sworn testimony. He suggested that this request is not inappropriate and if Council so chooses that all witnesses presenting evidence relative to the site plan be sworn as well. He said witnesses just presenting arguments would not necessarily need to be sworn.

Vice-Mayor Frank said Council would take the Corporation Counsel's advice to have those presenting evidence sworn.

The Deputy City Clerk presented the notice to the public setting the time and date for the public hearing and the affidavit of publication.

David Sperling, Court Reporter, administered the sworn statement to Verl Emrick, Planning Director.

Verl Emrick, Director of Planning, summarized the sequence of events leading up to the approval of the site plan for the Shoppes of Beaver Lake. He said project plans were submitted by Danie Johnson, Architect, on July 21, 1987. He said on August 4, 1987 a rezoning petition was submitted to Council with a copy being sent to the Planning and Zoning Commission. He said on August 12, 1987, the Planning and Zoning Commission reviewed the project and requested additional information to resolve several technical problems. He said the project was also reviewed by the Zoning Board of Adjustments on August 31, 1987 seeking a variance on buffering and construction in the flood

plain area. He said on September 2, 1987, the Planning and Zoning Commission, again reviewed the project and recommended approval subject to the conditions outlined by Vice-Mayor Frank. He said the Commission also received concerns relative to the widening of Merrimon Avenue. The Commission requested that Council contact the North Carolina Department of Transportation and request that the widening of this particular section of Merrimon Avenue be removed from the Thoroughfare Plan.

Mr. Emrick said the project is proposed to be constructed on Merrimon Avenue on a four acre tract. He said the site is relatively flat and is the site of the old Beaver Lake Club House. He said the property is zoned Commercial Highway.

He said the developer plans retail shops and a restaurant which are appropriate and allowable in this zone. He said 151 parking spaces are proposed which would meet all parking requirements. He said the Fire Department reviewed and approved the plans. He said the North Carolina Department of Transportation requested that the plans be modified at the entrance point to align with the road directly across Merrimon Avenue. He said the plans have been amended to reflect this request. He said the project will contain approximately 30,000 square feet. He said all construction and parking requirements have been met and the project will be in compliance.

Mr. Emrick said on August 31, 1987, the Board of Adjustment granted a variance on the buffering requirements of 12' rather than the required 20' of two rows of white pine tree plantings, with the plantings being removed from the northern property line which abuts Merrimon Avenue for site visibility.

He said that the Zoning Board of Adjustments also approved the site plan as it related to construction in the flood plain area of Beaverdam Creek. This approval required no variance in the provisions of the Floodplain ordinance since, 1) parking lots are permitted uses in Floodway zones and 2) the elevation of the area where the buildings are to be constructed are currently 1-1/2 foot above the 100 year flood level.

He said an agreement has been reached between Mr. Beverly, the developer and the adjacent property, Western Steer, a division of Mom and Pops, Inc. He said Mr. Beverly has a letter from Marshall E. Dye with Mom and Pops, Inc. allowing Mr. Beverly the use of their property for buffering.

He said the signage package has been submitted and the Erosion Control Plan has been reviewed and ready for approval by the Engineering Department pending payment of the proper fees. He said the developer is aware of the condition imposed by the

Planning and Zoning Commission relative to wildlife habitat.

Mr. Emrick said the Planning and Zoning Commission recommended Council's approval of the project subject to conditions outlined by the Planning and Zoning Commission.

Upon inquiry of Councilman Tisdale, Mr. Emrick said the Planning Staff would also recommend approval and in his opinion the project meets all legal requirements.

Mr. John Stevens, Attorney for Beverly Development Company, spoke in support of the project referring to a letter dated September 18, 1987 to Mayor Bisette. (Letter on file in the City Clerk's Office)

Danie Johnson, Architect, was sworn by the court reporter.

Danie Johnson, Architect, said the project would consist of 30,200 square feet of specialty retail shops in two "L" shaped buildings. He said 27,000 square feet would be used for retail and 3,200 would be used for a restaurant. He said there would be no large anchor stores. He said it was determined that the market for such a development is in North Asheville. He said an agreement had been reached with Western Steer to use 20' of their property for buffering. He presented two sketch concept drawings of the proposed project. He also showed a video of the land and area with a super imposed rendering of the proposed buildings. He said the character of the buildings would be similar to the old Beaver Lake Club House that was on the property. He said the lighting plan has not been finalized but low-level lights would be utilized. He said the signage would be in compliance with the ordinance using a smaller area than actually allowed. He said individualized illuminated signs would be used. He said it has been suggested that sycamore trees be used along the property line and across the street on Merrimon Avenue along the golf course if allowed.

Mr. Johnson said a traffic study was made in the area and it was determined that the traffic volume created by the development would not substantially increase traffic on Merrimon Avenue. He said it was the developers intention to control erosion from this particular site and to protect the wildlife as much as possible.

Upon inquiry of Councilman Price, Mr. Johnson said the North Carolina Department of Transportation requested that the

entrance to the project be parallel with Dover Street is due to the future possibility of traffic signalization. He said there would only be two garbage dumpsters on the project and there would be no individual garbage containers.

Mr. Stevens requested that the following documents be made a part of the proceedings: 1) Letter from Danie Johnson to Mayor; 2) Two renderings of the project; 3) video; 4) photographs.

Mr. George Beverly, Developer, was sworn by the court reporter.

Mr. Beverly said when he purchased the property he was cognizant and sensitive to the Lakeview Park area. He said there would only be two garage dumpsters on the project.

Mr. Stevens said he felt the proposed project is a quality project that complies with the spirit and the letter of the law. He said in his opinion the project would be an addition to the community, particularly with Mr. Beverly's superior performance.

Mr. Tom Bell, attorney representing the residents of Lakeview Park Commission and a resident of the area, was sworn by the court reporter.

Mr. Bell said if the project is developed, the scenic asset of Beaver Lake to Asheville would be gone. He said he felt the entire process of the project had been pushed through. He said no formal application for the project had been made and the \$100 fee required had not been paid. He said in his opinion the Zoning Board of Adjustment had not issued a valid variance on the buffering requirement. He said an appeal of the Zoning Board of Adjustment's decision is now being prepared due to the process used by the Board of Adjustment being improper. He said the residents had also presented members of Council with a petition, signed by 300 property owners, requesting a rezoning study of the area. He said while Council is not legally required to cease this development because of this rezoning request he felt it would be the wisest course of action to determine the ultimate zoning of the area.

Mr. Bell said he also felt the right to ownership question should be concluded prior to any approval of the project. He said, as recorded on a map in the Register of Deeds Office, a portion of this property is shown to be lake property which was dedicated to the Lakeview Park property owners use.

Mr. Bell said the residents are also concerned about the increased traffic in the area. He disagreed with the statistics given by the North Carolina Department of Transportation stating that Merrimon Avenue is only at 58% capacity. He said in his opinion Merrimon Avenue is overloaded.

Mr. Bell disputed several portions of the Environmental Impact Statement submitted by the developer. He said the pending 2010 Asheville Comprehensive Plan shows this property to be used for a park.

After being sworn, John Folbes, 28 Beaverbrook Road, reiterated comments made by Mr. Bell. He said he also felt the project was rushed through and 90% of all the residents in the area are opposed to the project.

After being sworn, Inez Redmon of Lakeshore Drive, spoke in opposition to the project.

Carol Kronus, 131 Red Oak Road, speaking on behalf of the Leaf and Petal Garden Club, read a resolution in opposition to the project.

Cecil Myrick, 27 Shorewood Drive, spoke in opposition to the project.

Lelia Cort, 1 Beaverdam Court, spoke in opposition to the project stating that the project would add pollution to the lake and endanger the wildlife presently on the lake.

Jan Tescione, 20 Inglewood Road, spoke in opposition to the project.

Sandra Byrd, 89 Edgelawn Road, spoke in opposition to the project. She presented two alternatives to Council for the use of this property. She suggested that the property be purchased by the City with pending federal funds that would be

used for a park or that the City condemn the land and use it as a park/picnic area as indicated by the 2010 Asheville Comprehensive City Plan.

Jim Parker, 8 Beaver Point Park, spoke in opposition to

the project stating that the project would increase the traffic on Merrimon Avenue. He said North Asheville does not need more specialty shops. He said the project would also contribute to accumulation of trash in the area.

Joseph Tvedt, 117 Westwood Road, spoke in opposition to the project. He said the developer should obtain an easement, rather than just an agreement, from the adjacent property owner, Western Steer, to use their property for buffering as stated in the Zoning Board of Adjustment minutes.

Turner Rogers, 7 Glen View Road, Chairman of the Lakeview Park Commission, read a letter dated September 11, 1987, in opposition to the project. He said Council should not consider the project until such time as ownership is resolved. (Letter on file in the City Clerk's office)

Dorothy Hart, 43 Martindale Road, spoke in opposition to the project.

A resident of 14 Marlborough Road, spoke in opposition to the project stating that the project would cause an increase in traffic on Merrimon Avenue which is not needed.

Upon inquiry of Councilman Tisdale, referring to Mr. Tvedt's suggestion that an easement be obtained from Western Steer, Mr. Stevens said if an easement is required one would be obtained.

Upon inquiry of Councilman Price, Mr. Bell said the Zoning Board of Adjustment did not grant a valid variance because they did not conduct a proper hearing and this would be subject to a review by the courts.

Upon inquiry of Vice-Mayor Frank, Mr. Beverly said the \$100 filing fee had been paid. Mr. Emrick said the ownership question would be a question for the courts.

Vice-Mayor Frank, responding to questions by Sandra Byrd, said the Council appreciates the input of the residents in the 2010 plan. She said there are no federal funds to be used for a park.

Upon inquiry of Councilman Price, Mr. Johnson said if Merrimon Avenue is widened the North Carolina Department of

Transportation could take part of their property for a fifth lane on Merrimon Avenue.

Councilman Michalove asked several legal questions relating to the project of the Corporation Counsel. The Corporation Counsel responded stating that the property is properly zoned for this type of development; that if Council changes the zoning of the property in the middle of a group development process some risk would be involved; property rights of a owner can not be disregarded in a decision for approval of the project without risk; that property can only be condemned for public use. He said several of the questions asked by Councilman Michalove were matters for executive session.

Councilman Tisdale said his residence adjoins the proposed project and he felt Mr. Beverly's superior performance would be an asset to the area. He requested that the following letter be made a part of the minutes relative to his not having a conflict of interest.

"MEMORANDUM TO: George Tisdale, City Council Member

FROM: Bill Slawter, City Attorney

DATE: August 11, 1987

SUBJECT: George Beverly Project, Merrimon Avenue

You requested an opinion concerning a potential conflict of interest in connection with the George Beverly Project on Merrimon Avenue. In connection with your vote when the matter is considered by City Council, it is my opinion that you do not have a conflict of interest since your own financial gain or personal conduct is not at issue. I likewise feel that you do not have a legal conflict of interest with regard to making a presentation before the Planning and Zoning Commission. As we discussed, since City Council appoints the members of the Planning and Zoning Commission, some persons might perceive this as a conflict. Since you have nothing personally to gain in making such a presentation, there is in my opinion no legal conflict. Please let me know if you have any further questions."

A discussion was held relative to the disputes presented in regard to the Environmental Impact Statement submitted by the developer. Mr. Johnson answered questions of Council relative to the revised Environmental Impact Statement.

Karen Fields suggested that Council take time to digest all the comments made during the public hearing and to make the right decision relative to the project.

Vice-Mayor Frank closed the public hearing at 6:55 P.M.

Councilman Michalove moved that Council go into executive session to discuss legal matters relative to the proposed project. This motion was seconded by Councilman Tisdale and carried unanimously.

Councilman Michalove, after hearing legal opinions from the Corporation Counsel, moved for the approval of the site plan for the Shoppes of Beaver Lake subject to the conditions outlined by the Planning and Zoning Commission as well as any other additional contingencies other members of Council would like to impose. This motion was seconded by Councilman Tisdale.

Councilman Price requested that the following

contingencies also be imposed on the approval of the project:

1) That the lighting for the project be kept low-level and that

the lighting plan be submitted to City Planning staff for approval to make sure the lights are low-level and non-reflective and only used for security purposes.

2) That sycamore or London Plane trees, a minimum of 8' in

height be planted along the developer's property line on Merrimon Avenue as well as the other side of Merrimon Avenue if agreed to by the Country Club of Asheville.

3) That if the Lakeview Park Commission desires to have willow

trees planted on the rear portion of the property that the developer, as previously agreed, continue to make them available for at least two (2) years.

4) That there be only two (2) garbage/waste dumpsters on the

property at locations proposed and that there be no others allowed.

5) That the developer obtain an easement from Mom and Pops, Inc,

Western Steer division, for the use of their property for buffering, easement to be approved by City Attorney.

6) That the site plan approval be conditioned upon the validity

of the variance from the buffering requirements granted by the Board of Adjustments on August 31, 1987. In the event that the variance is invalidated by a final adjudication of a court of competent jurisdiction then this site plan approval

shall become invalid at that time, unless an alternate variance is granted by the Zoning Board of Adjustment.

Councilman Michalove and Councilman Tisdale accepted these contingencies and the motion carried unanimously.

ADJOURNMENT

Upon motion of Councilman Michalove, seconded by Councilman Bratton, the meeting adjourned at 8:00 P.M.

MAYOR CITY CLERK
