

CHARLOTTE-MECKLENBURG PLANNING COMMISSION MINUTES
OXFORD MANOR SUBDIVISION APPEAL
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The Charlotte-Mecklenburg Planning Commission (hereinafter "Board") for the Charlotte Zoning Area held its meeting at the Charlotte-Mecklenburg Government Center, 600 East Fourth Street, August 2, 2018, September 5, 2018 and October 22, 2018. Chairperson called the meeting to order. Reference to "Ordinance" means "Charlotte Zoning Ordinance".

Present: John Fryday (Chairperson), Cozzie Watkins, Phillip Gussman, Keba Samuel, Bolyn McClung, John Ham, Elizabeth McMillan

Also Present: Josh Weaver, Charlotte Planning Subdivision
Terrie Hagler-Gray, Senior Assistant City Attorney
Andrea Leslie-Fite, Assistant City Attorney
April Wallace, Clerk to the Board
Adkins Court Reporting

Case: Appeal of Approved Oxford Manor Preliminary Plans

The Zoning Committee based its decision on the following findings of facts:

1. Per Section 20-2 of the City of Charlotte Subdivision Ordinance, the Ordinance was adopted pursuant to authority conferred by NCGS 160A-371, which states that, "decisions on approval or denial of preliminary or final plats may be made only on the basis of standards explicitly set forth in the subdivision or unified development ordinance."the basis of standards explicitly set forth in the subdivision or unified development ordinance."
2. The Subdivision Ordinance vests staff with authority to administratively approve Preliminary Plan submittals which meet all relevant Ordinance requirements.
3. The Oxford Manor preliminary subdivision plan was submitted for review December 29, 2017, by James Custom Homes. After review and comment by, among others, Planning staff and counsel for the Petitioners, James Custom Homes submitted a revised preliminary plan (the "Plan") on May 2, 2018.
4. The subject property is zoned R-3, Single family development, and includes 4 parcels, owned by Marsha Dean Ford, Sharon Jane Roberts, and MaryAnn Mueller, and Diana Travis (the "Proponents").
5. Planning Staff granted Preliminary subdivision approval for the Plan on May 10, 2018.
6. On May 18, 2018, Kevin Notley, George and Lindsay Munn, and the Oxford Hunt Homeowners Association filed an appeal of the approval,
7. The Appeal alleged that the approved preliminary plan violated:

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- (a) Subdivision Ordinance Section 20-23(g) by allowing a cul-de-sac on proposed Raccoon Lane when a feasible alternative allegedly existed; and .
- (b) Subdivision Ordinance Section 20-25(c) regarding maximum density and minimum lot size requirements, and specifically that the plan contained inaccurate measurements with respect to reported acreage and/or square footage, including square footage of lots. .
8. Pursuant to Charlotte City Ordinance 20-23 (g), "Cul-de-sacs and other permanently dead-end streets are allowed only where no feasible alternative has been documented."
9. Although a proposed extension of Raccoon Lane so as to connect Foxview Court to Deerview Court was submitted by the Petitioners, the documentation of the proposed extension consisted of a sketch prepared by a lay person lacking expertise or training in land planning or street design.
10. The Proponents provided evidence in the form of testimony from Weston Boles, P.E., an expert in land planning, that eliminating the cul-de-sac and connecting Raccoon Lane to Deerview Court would result in an intersection that is not compliant with the City's written policy concerning sight distances.
11. Additionally, Raccoon Lane Cul-de-sac was allowed because no additional internal . blocks are required for Deerview Court per Section 20-23(b) (2) (b) of the Subdivision Ordinance.
12. Oxford Manor is located in a wedge and the density is less than 5 dwelling units per acre.
13. The number of additional new local streets is calculated by using the method set forth in Section 20-23(b)(2)(a): " Measure the length of each property boundary and divide by the appropriate block length spacing from Table 1 "Preferred Street Spacing" to determine the overall number of blocks required along that boundary."
14. Specifically, Section 20-23 (b) (2) (b) of the Subdivision Ordinance requires construction of new local streets where additional streets are required to create block lengths of 600 feet.
15. Section 20-23 (b) (2) (b) also requires the average street spacing, measured from centerline to centerline for an entire site not exceed 800 feet in length.
16. Here, new streets are not required to create block lengths of 600 feet; Deerview Court does not exceed 800 feet in length; and the entire project is only 652 feet.
17. The Plan reported the site acreage for the tax parcels as 14.8 acres, with 0.74 acres being within existing easements or road rights-of-way. The Plan thus reported the net total site area as 14.06 acres pursuant to Charlotte City Ordinance 21-95(b).

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18. Subsequent to the notice of appeal, the Charlotte-Mecklenburg Planning Department forwarded the complaints of the neighbors challenging the accuracy of the site acreage to James Custom Homes and asked the developer to confirm the acreage.
19. A boundary survey dated June 6, 2018, and performed by Metrolina Engineering & Surveying Associates showed the site acreage of the tax parcels to be 15.565 acres; James Custom Homes submitted revisions to the Plan on June 19, 2018.
20. Thereafter, James Custom Homes submitted a final revised Plan on July 31, 2018 (the "Revised Plan").
21. The Revised Plan differed from the original Plan in the following pertinent ways:
 - (a) Increased site acreage from 14.8 acres to 15.56 acres,
 - (b) Increased tree save to 3.84 acres or 25.3% of the site (15.16 net acres),
 - (c) Added a sidewalk from proposed Raccoon Lane to Deerview Court for additional pedestrian and bike connectivity; and
 - (d) Increased the rear yard on Lot 1 to 45 feet.
22. The Planning Staff approved the Revised Plan for Oxford Manor on August 1, 2018.
23. The Revised Plan qualifies for the tree save credit in that it maintains 3.84 acres of tree save area in common open space, which is 25.33% of the net acreage.
24. On August 10, 2018, an appeal of the August 1st approval was filed by Kevin Notley, George and Lindsay Munn, the Oxford Hunt Homeowners Association, Justin and Hope Gough, Joseph and Emilia Mooney, and Christopher and Rikki Miller.
25. The Appeal alleged that the approved Revised Plan violated:
 - (a) Subdivision Ordinance Section 20-23(g) by allowing a cul-de-sac on proposed Raccoon Lane because a "feasible alternative for connectivity of streets had been documented";
 - (b) Section 21-95(f) (3) of the City of Charlotte Tree Ordinance which allows R-4 Cluster development standards; and
 - (c) Rear yard requirements in that certain lots abutting the Mooney, Miller, and Gough properties contain 30-ft rear yards but are alleged to require 45-ft rear yards.
26. Hereafter, the original Plan and the Revised Plan are referred to collectively as the "Plan."

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27. The approved Plan is allowed to take advantage of the Charlotte Tree Ordinance incentives by preserving more than 25 percent of the site in tree save in common open space.
28. Per the Tree Ordinance incentives, the site could have as many as 57 dwelling units, but proposes 42 units at a density of 2.7 dwelling units per acre.
29. Planning Staff testified that the rear lot line is identified by determining the line farthest from the street frontage. This is a long-standing industry practice.
30. The Proponents provided expert testimony from Weston Boles, P.E. that rear yard refers to the distance from the rear of a principal building or structure to the rear lot line and thus is defined as a linear distance rather than an area.
31. The Tree Ordinance per section 21-95 (f) (1) (b)) allows internal rear yards to be reduced to 30 feet, however rear yards forming the outer boundary of a project must conform to the minimum rear yard of the zoning district in which the development is located or 45 feet.
32. Lots 18, 19, 37, and 42 have rear lot lines and yards that are internal to the development, thus are allowed to have a 30 foot rear yard per the R4 Cluster development standards of Section 2-95(f).
33. There was no competent evidence that any Petitioner would suffer a reduction in the value of his or her property as a result of a) the use of R-4 clusters, b) the Raccoon Lane cul-de-sac, or c) the length of the rear yards on Lots 18, 19, 37 or 42.
34. The Proponents provided expert testimony from appraiser Carol Fortenberry that the Plan would likely have a beneficial impact on the surrounding neighborhood.
35. Ms. Fortenberry also testified that she found no evidence that the Plan would damage property values in the surrounding neighborhood.

Based upon the above findings of fact, the Zoning Committee makes the following conclusions of law:

1. Residential development is permitted by right on land that is zoned R-3.
2. The Plan provides for fewer homes than would be permitted by right in an R-3 zoning district.
3. The Subdivision Ordinance must be construed in favor of an owner's desired use of the property, particularly where, as here, the use proposed is allowed of right per the zoning ordinance. Guilford Financial Services, LLC v. City of Brevard, 356 N.C. 655, 576 S. E.2d 325 (2003).
4. The Subdivision Ordinance at Section 20-23(g) provides, "Cul-de-sacs and other permanently dead-end streets are allowed only where no feasible alternative has been documented. . . Where a vehicular connection is impractical and limited additional connections

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exist, or when environmental conditions make a vehicular connection impractical, a pedestrian and bicycle connection through the cul-de-sac may be required,,

5. Merriam Webster defines feasible as:

1: capable of being done or carried out a feasible plan

2: capable of being used or dealt with
successfully: suitable

3: reasonable, likely -- gave an explanation that
seemed feasible enough

6. The Petitioners did not provide competent, material and substantive evidence of a feasible alternative to the Raccoon Lane cul-de-sac.

7. Proponents provided competent, material and substantive evidence that elimination of the cul-de-sac is not feasible given the requirements of the CDOT Sight Distance Policy.

8. In addition, the developer added a pedestrian and bicycle path connecting the Raccoon Lane cul-de-sac to Deerview Court, as recommended by the Subdivision Ordinance.

9. For the foregoing reasons, the Plan and, specifically, the Raccoon Lane cul-de-sac, is compliant with Subdivision Ordinance 20-23(g).

10. Additionally, the proposed Raccoon Lane cul-de-sac does not violate the Charlotte Subdivision Ordinance, in that the proposed Oxford Manor Subdivision has one point of access, and no additional internal blocks are required.

11. Section 21-95(f)(3) of the Tree Ordinance permits the use of reduced lot sizes in this case R-4 Cluster Lots where the planned development provides a tree save area in the common open space equal to or greater than 25% of the net acreage of the development site,

12. The proposed Preliminary Subdivision meets the requirements of the Charlotte Tree Ordinance incentives by preserving a tree save area in common open space of equal to or greater than 25 percent of the net acreage of the development site.

13. Section 2.201 of the Zoning Ordinance defines a rear yard as "the minimum distance required by the ordinance between the rear of a principal building or structure ,, and the lot line farthest from the street fronting the lot . . .

14. Thus, rear yard refers to a distance rather than to an area.

15. The required rear yard for an R-4 Cluster Lot is 30 feet.

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16. However, the Tree Ordinance, at Section 21-95(f) (1) (b), provides that "Rear yards forming the outer boundary of a project must „ conform to the minimum rear yard [required in an R-3 district].

17. The required rear yard for typical development within an R-3 zoning district is 45 feet.

18. To determine whether a rear yard forms the outer boundary of project, the location of the rear yard line is the determinative fact, This interpretation is consistent with the text of the ordinance, the interpretation of the broader planning community and the City' s interpretation on numerous subdivisions over the last decade.

19. The rear yards of Lots 18, 19, 37 and 42 do not form the outer boundary of the Plan.

20. In other words, Lots 18, 19, 37 and 42 properly contain 30-ft. rear yards rather than 45-ft. rear yards.

21. The rear yards shown are consistent with section 21-95 (f).

22. The Petitioners do not have special damages distinct from the rest of the community arising from the Plan's a) use of R-4 clusters; b) Raccoon Lane cul-de-sac and c) length of the rear yards on Lots 18, 19, 37 and 42. Thus, the

Petitioners are not persons aggrieved under Section 2047 of the Subdivision Ordinance.

Therefore, the Planning Staff's decisions of May 10, and August 1, 2018 to grant Preliminary Subdivision Approval to James Custom Homes is AFFIRMED.

Members who heard this case were John Fryday (Chairperson), Cozzie Watkins, Keba Samuel, Phillip Gussman, Bolyn McClung and Elizabeth McMillan. The decision of the Board was expressed in a motion by Board Member Watkins and seconded by Board Member Samuel to **uphold** the Planning's staff's decision. A yes vote is to grant. The vote was unanimous to grant.

Board Member Samuel made a motion to adopt staff's findings of fact and conclusions of law as amended. Board Member McClung seconded.

The aforementioned minutes were approved by the Charlotte-Mecklenburg Planning Commission.

This _____ day of _____, 2019.

John Fryday, Chairperson

April Wallace, Clerk to the Board