

Town of Nashville

BRENDA BROWN, MAYOR
RANDY LANSING, TOWN MANAGER

TOWN COUNCIL
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KATE C. BURNS
LYNNE HOBBS
LARRY D. TAYLOR



PLANNING BOARD
ANN COLLIER – CHAIR
BILL LUMPP – VICE CHAIR
DWIGHT JORDAN
SHIRLEY HOUSE
BETTY LOWE
JADE MANTELL
AL EDWARDS

MINUTES OF THE NASHVILLE PLANNING BOARD MEETING HELD WEDNESDAY, THE 27th OF JANUARY 2021

Members Present: Ann Collier, Betty Lowe, Bill Lumpp, Dwight Jordan, Shirley House, and Jade Mantell

Members Absent: Al Edwards

Staff Present: Sherry N. Moss, Planning & Development Director and Randy Lansing, Town Manager

Others Present: Amanda Clark (Nashville Graphic), AnQuan Bullock, and others

1. CALL TO ORDER:

The Nashville Planning Board held its monthly meeting on Wednesday, January 27th, 2021 in the Town Council Chamber at 114 W. Church Street. At approximately 8:00PM, Vice Chair Collier recognized a quorum, and called the meeting to order.

2. MINUTES OF THE PRECEDING MEETING(S): NOVEMBER 18, 2020:

Vice Chair Collier called for a motion for approval of the November 18th, 2020 minutes. Shirley House made a motion to approve the November 18th, 2020 minutes. Dwight Jordan seconded the motion. No further discussion was made. All was in favor of approval of the November 18th, 2020 minutes.

3. SWEARING IN OF MEMBERS:

Mayor Brenda Brown swore in new Board Member Jade Mantell to the Planning Board.

4. ELECTION OF OFFICERS:

Board Member Betty Lowe made a motion to nominate Ann Collier as Chair to the Planning Board. The motion was seconded by Dwight Jordan. The motion was unanimously approved.

Board Member Dwight Jordan nominated Board Member Shirley House for Vice Chair. Ms. House declined the nomination. Ms. House nominated Mr. Jordan. Mr. Jordan declined the nomination as well. Shirley House nominated Bill Lumpp as Vice Chair to the Planning Board. The motion was seconded by Dwight Jordan. The motion unanimously approved.

5. NEW BUSINESS:

- A. SU 2021-01:** Request b AnQuan Bullock for a Special Use Permit to allow an in-home day care to be located at 113 Woodfield Drive, R-10 (Medium-Density Residential) Zoning District, Nash County Parcel ID #3810 10 26 6864, in the Town of Nashville, per Division 4; Section 18-113(3), 18(114, and 18-115(12) of the Nashville Zoning Ordinance.

Ms. Collier introduced the item and stated that the presentation was heard during the public hearing. She added they have to follow the quasi-judicial rules and really look at the four things that were stated in those rules;

- A. Use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved.
- B. Use meets all required conditions and specifications.
- C. Use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity.
- D. 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 in general conformity with the plan of development of Nashville.

Ms. Collier asked the Planning Director was there anything else that she would like to add. Planning Director Sherry Moss stated the only thing that she would add is, in addition to the testimony and what's allowed from the zoning code, she recommend that the applicant/owner comply with any and all state requirements.

Ms. Collier and the Planning Board went through the special use packet and briefly discussed the site plan. She added that she did hear the applicant will provide transportation to and from the facility, but still may provide parking for zoning requirements. Board Member Betty Lowe asked if the applicant will be the only one working there. Ms. Moss replied yes. Ms. Collier reiterated one employee and four children is what was planned, in addition to her own, and added that school-aged children are not counted. Ms. Collier informed the board of the State regulations stating, that five or fewer preschool aged children allowed to be considered as a home day care, and can have three additional school-aged children.

Board Member Jade Mantell stated picture #5 in the application packet needed to be revised and labeled to Briarwood Drive. Ms. Mantell expressed concern with the outdoor play area requirements and stated that she didn't see in the packet of a solid wall/fence or green planting of three feet thick and six feet high.

Ms. Moss replied the applicant has stated in the packet that the fence is 5' high and some trees in between the properties, and added that Planning Board has the opportunity to place conditions on that.

Ms. Collier reiterated the Planning Board can add conditions to comply with the special use requirements and state requirements.

Town Manager Randy Lansing informed the board that the requirements of an in-home day care, per our special use permit are on page 22 (in the PB agenda packet). Mr. Lansing asked Ms. Moss is the applicant in compliance with those requirements, with the exception of the green planting shrubs along the one fence line. Ms. Moss replied yes, and added the Planning Board can place conditions if they like.

Ms. Mantell expressed concern regarding conditions placed in the play area; would the condition force the play area to be smaller. She asked is there a requirement on play area

square footage. Moss replied, previously, the State required 75 square feet per child, and added that the applicant is well over that.

Ms. Collier questioned the parking and loading as shown on the site plan, parking #3, and stated that it looked like some of it was not paved. Ms. Moss replied the applicant stated that it was okay for someone to park there. Ms. Moss also stated that although the applicant is providing transportation, parking requirements are for one employee and one for every six children. Since the applicant is only having four children, two spaces are required.

Ms. Mantell expressed a safety concern to the board. She asked if it was acceptable for the kids to walk across the parking area to the play area. Ms. Moss stated the employee will walk with the children to the play area, and added there would be no other cars coming in and out since the applicant is providing transportation.

Mr. Jordan asked Ms. Bullock if she would be supervising the kids at all times, inside and outside the house. Ms. Bullock replied yes sir.

Mr. Jordan questioned the 5' fencing along Bullock's property. He asked does the fence goes all the way around or does it connect to another fence. Ms. Bullock replied that the fence connects to the house. Standing in front of the house, it's a fence on the left and to the right. In order to get to the back yard, you would have to go around and open the gate because it is locked.

Ms. Mantell stated in the drawing, it looks like two fenced areas, and asked is there a division between the two fenced areas. Ms. Bullock replied there is one fenced area, and added that she has not been approved to do anything yet, and hadn't divided the shed from the play area. She stated once she gets approval, she will block the shed off and add the portion of the fence to separate the play area from the shed. Ms. Bullock also added this is a state requirement.

Board Member Dwight Jordan motioned to approve the proposed special use permit based on the finding of facts "a-d", with conditions that the applicant plant shrubbery on the east property line to grow at least three feet and comply with state requirements. Motion was seconded by Betty Lowe.

Further discussion took place. Board Member Bill Lumpp had a comment and stated as a licensed realtor, rules matter. He stated people moved into Woodfield with rules they were going to follow, and the future people moving in, want those same rules. He felt once you put a business in a residential neighborhood, the value goes down, and don't think it is in harmony.

Ms. Mantell asked was there an option #5 to offer a temporary special use permit until the applicant pursue a location outside of her home. Ms. Moss stated the finding of facts come from General Statutes.

Mr. Jordan commented on Mr. Lumpp's statement. He stated he totally agrees. His first idea was to say no. But Mr. Horne never disputed what Councilman Mr. Larry Taylor said. If you already have something there, and doing it, why are you going to stop one person from doing it, but allowing other people to continue doing it without a license. He stated it's not right. He believes in the rule of law.

Mr. Lansing mentioned to the board that the Town has no jurisdiction to enforce covenants in a subdivision. That's strictly up to the people who live there. Mr. Lumpp stated he goes back to "c" and "d", which are valid statements; the value and not in harmony. Mr. Jordan

stated when you talk about value; you already have a day care there and an auto shop, and it hasn't taken people's value down. They haven't come in saying the value has gone down. You have to have some expert to come in and say that it will take the value down. The board just can't sit there and say that.

Ms. Collier addressed clarification that there is no obligation from the Town to the neighborhood in the covenants. It is between the residents and the neighborhood. Mr. Lansing agreed. Mr. Jordan added if the residents want to fight this, it's up to them.

The Planning Board voted 2-3 to approve the special use permit request, with Dwight Jordan and Betty Lowe in favor of the request, and Shirley House, Bill Lumpp, and Jade Mantell in opposition of the request. There was no favorable recommendation, and the motion did not pass.

The statement for non-approval was referred to "d" of the finding of facts, "The location and character of the use if developed according to the plan as submitted and approved, will not be in harmony with the area in which it is to be located, and in the general conformity with the plan of development of the Town of Nashville."

Ms. Moss stated the recommendation will go before the Town Council on Tuesday, February 2, 2021 at 7pm for final decision.

B. OA 2021-2: An ordinance amending Chapter 18 "Land Use Regulations" in the Code of Ordinances for the Town of Nashville".

Ms. Collier introduced the item to the Planning Board and asked for questions and thoughts. The board briefly discussed the setback chart. Ms. Moss implied that we (staff) had it, but it was never added to the book or online. Mr. Lumpp asked was this future properties or existing properties. Ms. Moss and Mr. Lansing both replied this is existing. Mr. Lansing added it was never listed in the text. Mr. Lumpp asked was this in line with other towns. Ms. Moss replied that every town has its own setbacks. Ms. Mantell asked is this in compliance with what the county says for their minimum requirements and is it the same. Ms. Moss replied that the County has its own setbacks and added some are different. Ms. Moss also stated that this is what has been used for years, but was never added in the book or online, and added none of the numbers will be changed.

Ms. Collier proceeded with the next sections regarding special use. She asked for questions and comments. Ms. Mantell asked where is the second part of the statement about the Town Council cannot consider the recommendation of the Planning Board. Mr. Lansing replied that is not in there; it's in Chapter 160D. He stated that he can get that for Ms. Mantell.

Ms. Mantell stated she had expected to find it in the quasi rules. Mr. Lansing stated it's in the state statutes and added the quasi rules were drafted and written when it was still Chapter 160A and now it's being converted to 160D.

Ms. Moss shared with the board that a lot towns does this different ways; special use permits are heard by Planning Boards, Board of Commissioners, and Board of Adjustments. The board and staff discussed clarification of the existing and new process of who and how the special use permits will be heard.

For clarification, Ms. Mantell stated, currently the Planning Board is making the recommendation to the quasi-judicial board, so they (the Planning Board) can get completely out of the process or become part of the quasi-judicial board. Mr. Lansing stated

that it can be left the way it is. He referred to the School of Government's blog, stating that the quasi-judicial board can't take the Planning Board's recommendation into consideration, and added there are many towns and many counties that still ask their Board of Adjustment or their Planning Board to review special use requests.

Mr. Lansing stated that any amendments to the text have to be reviewed by the Planning Board and give a recommendation to the Council before they can be adopted. He added this is the reason why the Planning Board is talking about this tonight. Ms. Collier stated the board can make conditions on the approval. Mr. Lansing stated the wording can be changed. Mr. Lumpp implied that he respects the Council's decision, but he likes the Town having another group having an opinion about something. He understands that the Council has a final say. Mr. Lumpp implied that he will vote either way.

Ms. Mantell asked is the quasi-judicial board spelled out by the State, or is that something that the Town gets to define. Mr. Lansing replied that it's spelled out by Statute and added the Town Council is the deciding board that makes a decision on a special use permit. He stated the Planning Board is an advisory board that gives a recommendation and mentioned, because it is a special use permit, the board has to abide by the quasi-judicial rules. He also stated that anyone that wasn't presenting evidence, a fact, technically can't speak, and added, having said that, we've invited people to a public hearing, for their input.

Ms. Collier proceeded with the amendments and asked for comments, questions, or a motion. Mr. Lansing added that even if the Council decides to keep the Planning Board as an advisory board for special use permits, there will be two public hearings from here on out. He stated it will be too confusing for the applicant to come to a meeting like this and know who they are supposed to be directing their statements to. The two hearings will give the public two opportunities to come to a public hearing. Ms. Collier stated she liked the idea of having two public hearings.

For clarification, Ms. Mantell asked that (the two public hearings) will only happen if they (the Council) decide to keep them (the Planning Board). Mr. Lansing replied, if they decide to keep the Planning Board, then the Planning Board will still go that route. Ms. Mantell asked if they (the Council) decide to get rid of them (the Planning Board), will it be just the one meeting with the Town Council. Ms. Moss replied that the Planning Board will still do rezonings and amendments. Ms. Collier stated we (the Planning Board) will still have the monthly meetings when those items come up. Mr. Lansing added that rezonings are legislative decisions. He stated it is appropriate for the applicant to approach the Planning Board members and speak to them outside of the meeting. Mr. Lansing also added that we are supposed to be operating under similar rules as a court of law, as far as evidence and submission of evidence. He stated that none of that ex-parte communication is supposed to be happening between the applicant, Planning Board, or the Council members.

Ms. Collier and Mr. Lansing had further discussion regarding presenting and representation at public hearings.

Ms. Collier asked what's the feeling of the board for the text amendment of the land use regulations. Mr. Lansing informed the board that they can take them one at a time; the chart with the setbacks; the middle part which is removing the Planning Board from the special use permit hearings, and then you can take the latter part, which is putting the duties of the Planning Board in the ordinance or in the text. Ms. Collier agreed to do it that way, so there is no confusion.

Ms. Collier asked for a motion for the first part of adding the setbacks. Mr. Lumpp made a motion to approve the amendment as it is written. The motion was seconded by Ms. Mantell. There was no further discussion. The motion carried unanimously.

Ms. Collier asked for a motion for the special use, section 3; removing the Planning Board from special use hearings process. Ms. House made a motion to approve Section 3 as written, to take out the Planning Board. The motion was seconded by Mr. Jordan. There was no further discussion. The Planning Board voted 2-3 to approve Section 3 as written, with Shirley House and Dwight Jordan in favor of the request as written, and Bill Lumpp, Jade Mantell, and Betty Lowe in opposition of the request and wants to leave it like they currently stand. There was no favorable recommendation, and the motion did not pass.

Ms. Collier reported to the board that Section 4 is changing the number on sending notices to owners that are within 200' feet of a parcel in consideration, Section 5 is renumbered divisions. The Planning Board further discussed the perimeter / number in feet to have as the distance.

Ms. Collier asked for a motion. Ms. Mantell made a motion to amend the proposal to say, "to the owners of all parcels land within a reasonably impacted neighborhood or 500 feet of the parcel at the discretion of the Planning Director." The motion was seconded by Mr. Lumpp. There was no further discussion. The motion carried unanimously.

Ms. Collier proceeded with Section 5, regarding renumbering divisions, and Section 6; the new division about the Planning Board. Ms. Collier called for a motion to accept the amendment as written and add back in special use review if approved by the Town Council. Ms. House made the motion. The motion was seconded by Mr. Lumpp. There was no further discussion. The motion carried unanimously.

C. Acceptance of the 2021 Planning Board Meeting Calendar.

The Planning Board reviewed the calendar. The time was announced to be 7pm. Mr. Jordan made a motion to accept the 2021 Planning Board Meeting Calendar. Ms. House seconded the motion. There was no further discussion. The motion carried unanimously.

6. ANNOUNCEMENT OF NEXT MEETING:

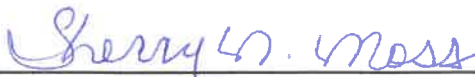
Ms. Collier informed the board that the next meeting will be Wednesday, February 24, 2021 (if any items are submitted).

7. ADJOURNMENT:

Ms. Collier adjourned the meeting at approximately 9:15 p.m.



Ann Collier, Chair



Sherry N. Moss,
Planning & Development Director