



**TOWN OF HARRISBURG, NORTH CAROLINA
HARRISBURG TOWN HALL
BOARD OF ADJUTMENT MEETING**

**February 18, 2020
6:00 PM**

AGENDA

1. CALL TO ORDER

A. AGENDA ADOPTION

2. CONSENT AGENDA

A. Consider the meeting minutes of December 17, 2019 Board of Adjustment meeting.

3. PUBLIC HEARINGS

4. ADJOURNMENT

Town of Harrisburg's Vision Statement

Harrisburg will be the best small town in North Carolina based on low density housing, excellent economic opportunities, a safe living environment, and efficient and effective municipal services. Amenities such as excellent recreational programs, adequate open space, attractive shopping opportunities, a diversity of restaurants, and a connected system of roadways, sidewalks, greenways, and bicycle lanes will continue to enhance the quality of life of the Town. These services and amenities will be provided while retaining reasonable tax rates and debt levels.



TOWN OF HARRISBURG

Agenda Item Details

Title:

Consider the meeting minutes of December 17, 2019 Board of Adjustment meeting.

Presenting Personnel:

Suggested Motion or Action:

Motion to approve the meeting minutes of December 17, 2019 Board of Adjustment meeting.

Description/Background:

Recommendation:

Fiscal Impact:

Attachments:

1. BOA Minutes DEC 17 2019

**TOWN OF HARRISBURG, NORTH CAROLINA
HARRISBURG TOWN HALL
BOARD OF ADJUSTMENT MEETING
TUESDAY, DECEMBER 17, 2019
6:00 PM**

MINUTES

1.

CALL TO ORDER

Lloyd Quay called the meeting to order.

PRESENT: Lloyd Quay, Thelma Thorne-Chapman, John Overcash, Andy Rathke, Rodney Garner, Jacob Carpenter, Kevin Schaffner

A.

AGENDA ADOPTION

Andy Rathke made a motion to adopt the agenda as presented. Second was made by John Overcash. **The motion passed 5-0.**

2.

CONSENT AGENDA

3.

PUBLIC HEARINGS

A.

H2019-02-(CUP)-Conditional Use Permit request for Kiddie Academy (Child Care Facility)

Michael Ambrosino and Stephen Kramer, on behalf of Kiddie Academy has submitted an application for a Conditional Use Permit (CUP) for a Child Care Facility on property located at 3618, 3624 and 3630 NC HWY 49 S (PIN# 55171-75660-0000/55171-76627-0000/55171-76292-0000). The property is currently zoned RL, Residential Low Density. Table 4.6-1 of the Unified Development Ordinance (UDO) lists this use as an allowed use for RL, subject to conditional use review criteria in Article 3 and supplement use regulations in Article 5 of the Unified Development Ordinance (UDO). Attached you will find a staff report that includes the responses from the applicant, the Conditional Use Permit application, including a site plan and proposed elevations. Staff recommends that the Board of Adjustment hold a Public Hearing on this matter and consider the request for a Conditional Use Permit for a Child Care Facility.

All those speaking concerning this case were sworn in. Sushil Nepal, Planning Director, presented the background information.

Sushil Nepal

The first item on the agenda is to consider a Conditional Use Permit for a childcare facility. The applicant has requested a permit to construct a childcare facility that has three parcels included. The total area is 1.4 acres and again the reason we are in front of you today, the child care facility is only allowed by a Conditional Use Permit and also it has to meet the supplement regulations from our UDO and the Board of Adjustment has to review and approve before we can get into the

site plan. Just to give you a look at the UDO of the permitted uses, you can see where a childcare facility in the RL zoning requires a Conditional Use Permit. Staff will not make any recommendations other than presenting the facts. Here is the site location just to give you reference of where this will be located. The site plan was included in your packet. The main access to Kiddie Academy is right off of 49, it is a full access with a divided landscape median. You can see the parking layout and the building location. There is a fence all throughout the property and the child play area is located in the back of the property and you can see the 15-foot tree save area to protect the existing residential homes. For your reference we have included the elevations for the project, this is a draft not a final. We do not review the site plans until this project is approved by the Board of Adjustment. Again, all the applications and fees were submitted as required, if the board approves today the applicant has 12 months to submit the final site plan for staff review and approval. If there is a TIA requirement then we will go through that process as well while working with NCDOT. Public hearing as required by the UDO was published and the adjacent property owners were notified by mail and notice was posted on the property about today's public hearing. These are not staff responses; they are from the applicant. I will put it on the screen for a few minutes, this was in your packet. The first one talks about does the project fit with the current neighborhood, you can read the responses from the applicant. Traffic impacts, again there is access from 49 and if a TIA is triggered, we will go through that process. It talks about the public health and safety and there should not be any of that. Does it comply with the UDO requirements, when the staff reviews, we make sure any project complies with the UDO. Planning and Zoning staff is recommending the Board of Adjustment hold a public hearing today and consider the Conditional Use Permit. I'll answer any questions and the applicant is here as well if you have any questions.

Lloyd Quay

I noticed the current zoning is RL, will that zoning stay the same or will it be changed?

Sushil Nepal

It will stay the same, RL does allow the childcare facilities as long as the Conditional Use Permit is granted.

Jacob Carpenter

To what extent do we consider the current site plan shown and the impact on our findings.

Sushil Nepal

Keep in mind we still have to go through the full site plan review. This is close to what it will look like but you can make comments if you see any issues today.

Jacob Carpenter

I don't know what extent NCDOT has taken a look at this site plan but generally they will require about 100 feet and if you look at the access to the other parcels they have the long stem with the long median and there is no internal crossing maneuvers or anything after at least 100 feet and from my measurements it looks to be about 40 feet before you got to the end of that median. That was my big concern looking at the site because you're not going to have a turning lane and people will be coming in pretty quick. This type of use has a lot of people at one time, picking up kids and what not.

Sushil Nepal

All NCDOT has reviewed at this point is the access point but we will take that information for the full review.

Jacob Carpenter

And I think there will be some parking lost once they make you rearrange that.

Andy Rathke

Will there be a dedicated turning lane coming into Kiddie Academy?

Sushil Nepal

We haven't gone that far yet

Jacob Carpenter

Just knowing what traffic this generates, its tough to get in there and you don't have someone to have to stop immediately for traffic wise and safety concerns.

Lloyd Quay

I would think a left turn out of there would be rough too

Kevin Schaffner

Does this facility attend to have a bus or van at this location?

Sushil Nepal

That would be a question for the applicant

Lloyd Quay

Is everyone finished with Mr. Nepal at this moment? Sir please come up and state your name and address

Brian Rossy

Hey, I am Brian from Mint Hill. We had thought of a right in, right out access for this location but NCDOT is allowing a full access with a concrete median maybe in front of that entrance.

Jacob Carpenter

Most likely when its constructed and open it will be a full access.

Lloyd Quay

Ok, are there anymore questions? Is anyone speaking on behalf of the applicant? Ok I am going to open a public hearing if anyone in the public would like to speak for or against this permit. Calling one more time.

Lisa Hendrick

I am a resident of the Town of Harrisburg. You made a comment about the speed limits, there is no trouble getting in and out of my driveway, we have lived there for 40 years. There is room to put a turning lane so they can get out of traffic. Thank you.

Lloyd Quay

Is there anyone else for or against? Ok, I am closing the public hearing. Is there any more questions for the staff or applicants? We will need a motion to approve or deny the Conditional Use Permit.

MOTION:

Andy Rathke made a motion to approve H2019-02-(CUP) Conditional Use Permit request with a second from John Overcash.

VOTE:

Passed 5-0

Lloyd Quay

Ok thanks John, is there anymore further discussion? Ok, with there being none all in favor raise your right hand. All apposed please raise your hand. Ok this Conditional Use Permit has been approved.

Findings of Facts as prepared by Attorney Rich Koch are as follows:

FINDINGS OF FACT

1. The use as proposed is not detrimental to the public health, safety or general welfare.
 - a) See Applicant's response to this requirement, which is incorporated by reference as a Finding of Fact.
 - b) The proposed use as a child care facility will not adversely affect the public health, safety and general welfare in that it is being located in a part of Town where such a use is needed.
2. The use as proposed is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, etc.
 - a) See Applicant's response to this requirement, which is incorporated by reference as a Finding of Fact.
 - b) All such facilities, which are specifically required for this additional use, are located nearby.
3. The use as proposed will not violate neighborhood character nor adversely affect surrounding land uses.
 - a) See Applicant's response to this requirement, which is incorporated by reference as a Finding of Fact.

b) The proposed use as a child care facility will not adversely affect the neighborhood character or surrounding land values in that it is being located in a part of Town where such a use is needed.

4. The use as proposed will comply with the general plans for the physical development of the Town as embodied in the Ordinance or in the area development plans that have been adopted.

a) See Applicant's response to this requirement, which is incorporated by reference as a Finding of Fact.

b) The proposed use complies with the general plans for the physical development of the Town and is in the place where the Town wants these types of uses to be located.

Based on the foregoing Findings of Fact, the Board makes the following

CONCLUSIONS OF LAW

1. The Board makes and adopts the Findings of Fact contained in the attached Exhibit 1 labeled Findings of Fact.
2. It is the Board's CONCLUSION that the proposed use does satisfy the first General Standard listed in Section 3.5.3 of the Town of Harrisburg Unified Development Ordinance ("Ordinance"); namely, that the use will promote the public health, safety and general welfare, if located where proposed and developed and operated according to the plan as submitted.
3. It is the Board's CONCLUSION that the proposed use does satisfy the second General Standard listed in the Ordinance; namely, that the use will maintain or enhance the value of contiguous property.
4. It is the Board's CONCLUSION that the proposed use does satisfy the third General Standard listed in the Ordinance; namely, the use does not adversely affect the adequacy of sewage disposal facilities, solid waste and water, police, fire and rescue, equal protection, schools, transportation systems (in and around the site) and other public facilities.
5. It is the Board's CONCLUSION that the proposed use does satisfy the fourth General Standard listed in the Ordinance; namely, the use is in compliance with the general plans for the physical development of the Town as embodied in the Ordinance or in the Comprehensive Plan, or portion thereof, adopted by the Town Council.
6. It is the Board's CONCLUSION that the proposed use does satisfy the specific standards listed in the Ordinance for this use.

B.

H2019-03-(CUP)-Conditional Use Permit request for Wendy's restaurant with a drive through facility. FFC Limited Partnership, on behalf of Wendy's Restaurant has submitted an application for a Conditional Use Permit (CUP) for a restaurant with a drive through facility at 4960 NC Hwy 49 (PIN# 55075631340000/55075632370000). The property is currently zoned C-1, Light Commercial District. Table 4.6-1 of the Unified Development Ordinance (UDO) lists this use as an allowed use for C-1, subject to conditional use review criteria in Article 3 of the Unified Development Ordinance. Attached you will find a staff report that includes the responses from the applicant, the Conditional Use Permit application, including a site plan and multiple exhibits of proposed restaurant elevations. Staff recommends that the Board of Adjustment hold a Public Hearing on this matter and consider the request for a Conditional Use Permit for a restaurant with drive through facility.

All those speaking concerning this case were sworn in. Sushil Nepal, Planning Director, presented the background information.

Sushil Nepal

The information in front of you is a request for a drive-thru facility to build a Wendy's. The project is located next to the Harrisburg Hometown Pharmacy. There are two parcels that go all the way from 49 to Morris. In the C-1 Zoning District the restaurant is allowed but once you add the drive-thru it requires a Conditional Use permit. The site map shows you the location of this project. We have worked with Wendy's to come with this site plan, if approved we will get into a much more detailed site plan. This is a full access point, our preference was a right in right out access point, but NCDOT denied our request. One of the things we added if you look on the screen is a concrete median at the drive-thru access so the traffic in the drive-thru will not back up into highway 49. We will be looking at all the detail reviews such as windows and all once approved. Applicant submitted all applications and all requirements have been met. If it is approved today, they have 12 months from today to submit the final site plan for our review. TIA will likely be required so we will also be going through that phase. Public hearing notices and all have been published. These are the responses from the applicant for all of the criteria. I will ask Board of Adjustment to open the public hearing and consider the Conditional Use Permit.

Rodney Garner

Unable to hear audio

Sushil Nepal

This is the only access they would approve

Jacob Carpenter

NCDOT will not approve a right in and right out with just a porkchop, its got to have a median in the middle.

Sushil Nepal

Our ultimate goal of 49 is to have a landscaped median but we are not there yet we have to go through NCDOT. It just does not rank high enough at this time. We are going through the transportation process where we will most likely look at opportunities to break down 49 into

different sections but where we stand today based on what we have talked with NODOT about going back and forth, this is where we stand.

Lloyd Quay

The secondary access point there on Morris is that the Towns requirement or did the applicant volunteer that?

Sushil Nepal

The applicant did volunteer that but that would be a requirement from the Town as well.

Jacob Carpenter

Sushil, will this project trigger the Underground Utilities?

Sushil Nepal

Yes it will and the applicant is fully aware.

John Overcash

Sushil will who is going to pay for the clean up of the building that already exists on this property?

Sushil Nepal

It will be the applicant

Lloyd Quay

Anymore questions for Sushil or the applicant? Ok I am opening the public hearing for anyone speaking for or against this permit. I am closing the public hearing. We now need a motion to either grant or deny this Condition Use Permit.

MOTION:

Thelma Thorne-Chapman made a motion to approve H2019-03-(CUP) Conditional Use Permit request with a second from John Overcash.

VOTE:

Passed 4-1 with Rodney Garner voting against

Lloyd Quay

Is there any other business for the Board of Adjustment? No.

4.

ADJOURNMENT

There being no further business, Lloyd Quay made a motion to adjourn with a second from Andy Rathke. **The motion passed 5-0.**

Findings of Facts as prepared by Attorney Rich Koch are as follows:

FINDINGS OF FACT

1. The use as proposed is not detrimental to the public health, safety or general welfare.

a) See Applicant's response to this requirement, which is incorporated by reference as a Finding of Fact.

b) The proposed use as a restaurant with a drive-thru facility will not adversely affect the public health, safety and general welfare in that it is being located in a part of Town with many like uses.

2. The use as proposed is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, etc.

a) See Applicant's response to this requirement, which is incorporated by reference as a Finding of Fact.

b) All such facilities, which are specifically required for this additional use, are located nearby.

3. The use as proposed will not violate neighborhood character nor adversely affect surrounding land uses.

a) See Applicant's response to this requirement, which is incorporated by reference as a Finding of Fact.

b) The proposed use as a restaurant with a drive-thru facility will not adversely affect the neighborhood character or surrounding land values in that it is being located in a part of Town with many like uses.

4. The use as proposed will comply with the general plans for the physical development of the Town as embodied in the Ordinance or in the area development plans that have been adopted.

a) See Applicant's response to this requirement, which is incorporated by reference as a Finding of Fact.

b) The proposed use complies with the general plans for the physical development of the Town and is in the place where the Town wants these types of uses to be located.

Based on the foregoing Findings of Fact, the Board makes the following

CONCLUSIONS OF LAW

1. The Board makes and adopts the Findings of Fact contained in the attached Exhibit 1 labeled Findings of Fact.

2. It is the Board's CONCLUSION that the proposed use does satisfy the first General Standard listed in Section 3.5.3 of the Town of Harrisburg Unified Development Ordinance ("Ordinance"); namely, that the use will promote the public health, safety and general welfare, if located where proposed and developed and operated according to the plan as submitted.
3. It is the Board's CONCLUSION that the proposed use does satisfy the second General Standard listed in the Ordinance; namely, that the use will maintain or enhance the value of contiguous property.
4. It is the Board's CONCLUSION that the proposed use does satisfy the third General Standard listed in the Ordinance; namely, the use does not adversely affect the adequacy of sewage disposal facilities, solid waste and water, police, fire and rescue, equal protection, schools, transportation systems (in and around the site) and other public facilities.
5. It is the Board's CONCLUSION that the proposed use does satisfy the fourth General Standard listed in the Ordinance; namely, the use is in compliance with the general plans for the physical development of the Town as embodied in the Ordinance or in the Comprehensive Plan, or portion thereof, adopted by the Town Council.
6. It is the Board's CONCLUSION that the proposed use does satisfy the specific standards listed in the Ordinance for this use.

Lloyd Quay, Chairman

Carly Bedgood, Secretary