

Town of Lexington  
**Board of Zoning Appeals  
Minutes**

November 5, 2020

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The Board of Zoning Appeals held their regular scheduled meeting on November 5, 2020 at 5:30 p.m. in the Council Chambers located in Town Hall, 111 Maiden Lane, Lexington, S.C. Those present for the meeting were Chair Mary Watts, Vice-Chair Troy Fite, Board Members Reve´ Richardson, Justin Brown, and Ronald Fisher.

Council and Staff members present were: Councilmember Ron Williams, Director of Planning, Building and Technology John Hanson, Assistant Zoning Administrator Jessica Lybrand, Municipal Attorney Brad Cunningham, Parks and Sanitation Director Dan Walker, Digital Media Coordinator Darrell Pritchard and Municipal Clerk Becky Hildebrand.

Seven (7) citizens were present and no one from the news media was present.

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Chair Watts called the meeting to order at 5:30 p.m. and read an opening statement to explain the rules of procedure for a Board of Zoning Appeals meeting as follows:

*All four points must be met and should be read as part of the official record. The Board of Zoning Appeals is a legal board operating under the Comprehensive Planning Act of the State of South Carolina; they make decisions within the parameters of State law and may hear and decide appeals for a variance from the requirements of the ordinance when strict application of the provision of the ordinance would result in unnecessary hardship and a variance may be granted in an individual case of unnecessary hardship if the Board makes and explains in writing all their findings: (1) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography. (2) These conditions do not generally apply to other property in the vicinity. (3) Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property. (4) The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance. State law further prohibits the board from granting a variance simply because the property could be used more profitably if the variance were granted. The board is not concerned with the use of the property because that is determined by others. If the applicant believes the board made an incorrect decision, they may appeal the decision through Circuit Court within certain time limits provided by State law. Those testifying at the meeting are asked to sign-in.*

**ACTION ITEMS**

1. **Variance 2020-6(V): Variance from the Buffer, Setback and Density Requirements at 201 Old Chapin Road:** Director of Planning, Building and Technology Hanson presented the request and stated that Mr. Casey Brock with CB 2 Consulting requested a variance from the buffer, setback and density requirements for a new apartment project at 201 Old Chapin Road. This request is similar to one that was granted in 2011. Apartment projects are required to provide a 100 foot buffer and 150 foot building setback on all sides except those that border a public right of way. These sides are required to have a 100 foot buffer and setback. Mr. Brock requested to reduce the buffer and setback on the front of the property (Old Chapin Road) to 20 feet. On the North side (adjacent to an assisted living facility) he would like to reduce the buffer to 10 feet and the setback to 20 feet. On the South side (adjacent to the old Jaycee's Hut and SCDOT property) he would like to reduce the buffer and setback to 20 feet. There is no reduction of the buffer and setback proposed for the rear of the property (adjacent to a residential area). Finally, Mr. Brock requested a variance to allow the density of the project to be increased from 105 units per acre to 126 units per acre.

Chair Watts stated that the Board was provided a copy of the Board of Zoning minutes from 2011, but the variance granted in 2011 is null and void and has nothing to do with the new variance requests for the new project.

Chair Watts called on the applicant for comments.

**Mr. Casey Brock**, CB 2 Consulting, Inc. Charlotte, NC, provided the Board Members with a Preliminary Site Plan and rendering attachments for Lakeland Townhomes. (Copy attached.) Mr. Brock stated that the plan is to tear down the old apartments and come back with a townhome development for rent. He added that the units will be approximately 1,400 square feet with three (3) floors, garage on the ground floor, living area and kitchen with granite and stainless steel appliances on the second floor, and two bedroom and two full baths on the third floor. Mr. Brock stated that they hope to have a few units with three bedrooms. He added that they would also have a playground, a dog park using the easement, and patios on the backs with small fenced in yards for renters that have animals. Mr. Brock stated that they were here for the two hardship variance issues. The first being that the power lines run through the property with two large power poles which locks in the topography of the property and grading becomes more difficult. He stated that they wanted to spread the units out to provide more green space. He added that they had asked for setbacks in order to develop the property but maintaining setbacks that are adjacent to the residential area and they were working to elongate the pond. He directed the Board Members to a rendering with a large yellow section which showed the odd shape of the property, some of which are not developable. He added that the shape of the property is not conducive to utilizing all of the property. Mr. Brock stated that the easement is 1.81 acres and the power lines make it undevelopable. He added that the second issue is it creates fixed grading points which causes additional hardship on getting the layout to a proper manner. Mr. Brock demonstrated a rendering of the surrounding properties and he

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did not feel like they were impeding the value of the other property because they are like commercial or high density residential. He added where their property touches residential in the back of the property they have maintained the buffer and set back and they are working hard to leave that buffer and not disturb it any more than is necessary. Mr. Brock stated that it is for these reasons that they need to get the variances granted for them to have a viable class-A development.

Chair Watts asked the Board Members if they had any questions for the applicant.

Vice-Chair Fite stating that he did not want to pick Mr. Brock's words apart, but with the first rendering, Mr. Brock stated that "they were hoping to have". Mr. Brock stated that they have not done a full topo rendering and as the units are now drawn, they would be on a flat surface, but they may have to adjust the plan. He added that they should be able to include the dog park, playground, pavilion with a cookout area and green spaces. They also hope to add a pool but that may not work. Mr. Brock stated that it all depends on the full topo because they would also like to have back patios with a three to four foot fence so renters could let their dogs out.

Vice-Chair Fite asked about a note on the rendering indicated on the west side of the property stating "no variance requested" and there is a statement "will provide 8 foot screening to achieve 90% opaqueness with the full property". Vice-Chair Fite stated that this may be a question for the engineer.

**Mr. Tom Britt**, HB Engineering, stated that the statement on the rendering is there to demonstrate that they are going to meet the requirements of the Town Ordinance.

Chair Watts confirmed that the project still have to go before the Town's Planning Commission so some of it may change. Mr. Hanson stated that it could change slightly but it could not change outside of any variance that this Board grants or does not grant. He added that it primarily goes to the Planning Commission for a discussion about traffic improvements. Mr. Hanson stated that parking or landscaping is not currently on the table, but the applicant is proposing that they will meet all the requirements. He added that the Board's discussion for tonight is only about buffers and setbacks.

Chair Watts asked if anyone was present who opposed the variance.

**Mr. Charles Trevino**, 2016 Rama Lane, adjacent property owner, stated that one point of contention with Mr. Brock was his application for the variance was all handwritten and not done very well. He added that he was concerned because when he bought his home about eight years ago the area was very quiet neighborhood. He stated that slowly with the growth of Lexington traffic has become a lot. Mr. Trevino stated that now he sees a forest from his backyard without being in the country. He added that he is also close to everything he needs. Mr. Trevino stated that what the company is asking for is a little too much. He added that he is 72 years old and when he bought his home it was with the intention of it being his last home. He wanted a quiet place and he has a quiet place and he know if all the construction begins it will be noisy with a lot more traffic. Mr. Trevino stated that

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he received the information about the proposed apartments about two weeks ago from a neighbor and he thought there should be more people here from the neighborhood. He added that one thing about his property is it used to be a landfill. Mr. Trevino stated that he really doesn't have much of a backyard but he took advantage of the forest behind his house and invested a lot of money to make it look natural with a creek bed and a boardwalk. He stated that with the proposed townhomes the quietness and the wildlife will be affected by adding dogs and cats. He stated that these little guys (deer, rabbits, fox, etc.) do not have a voice. Mr. Trevino stated that the small scale of their renderings were hard to read and they did not have access to any of the information. Chair Watts offered for Mr. Trevino to come up front and look at the larger drawings, but he did not. Mr. Trevino empathized with Mr. Brock in that there is some topography issues because he has had to deal with it, but there was no one to complain to because he bought it and that was it and you make the best you can out of it. He added that as a result of his work on his property it is beautiful now and anyone was welcomed to come visit. Mr. Trevino stated that he does not want to stop progress or change but he would like for things to be fair. He added that he knows the Board has to vote one way or the other, but personally and for the record, this project is unacceptable to him.

Vice-Chair Fite thanked Mr. Trevino for his service to our country.

**Mr. Tom Howard**, 200 Rama Lane, adjacent property owner, asked how the developer was going to try and save the vegetation which includes a lot of tall trees. He added that he did not know what "try" meant. He stated it may be because of the retention pond but he did not know what they meant. Mr. Howard asked where the eight foot screening would be located.

**Mr. Tom Britt**, HB Engineering, responded that the vegetation clearing is directly related to the pond and they will do their best to minimize the width that must be taken between the development and the existing property line. He felt confident that they can maintain at least a 30 foot undisturbed buffer if not more. Mr. Britt added that he was not in a position to commit to that tonight but it would certainly be their goal. Mr. Britt stated that the eight foot screening would be located where the Town felt it would best be placed. He added that sometimes it is not good to put it right next to residential property because you actually have to clear vegetation to put the fencing in. He defined screening as 100% opaque and be a wooden or some combination of wood and masonry.

Chair Watts asked Mr. Howard if that answered his questions. Mr. Howard responded no because it was not a specific answer when it might be put here or it might be put there. Mr. Hanson responded that the Town requires an eight foot screening between residential and commercial that is 90% opaque. He added that the screening can be achieved with landscaping or a fence. Mr. Hanson stated that if they can maintain enough of the vegetation in the back that might meet the requirement, but most of the time it requires a fence. Mr. Walker stated that they have had some properties with a steep slope so a fence at the bottom of the slope does not provide any screening. In those instances, they allow the developer to place the screening at the top of the slope for maximum screening. Mr. Walker

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stated that they would work with the developer and they may have to do less clearing. He added that along with the 30 to 100 foot buffer of wood screening would probably give it ample screening. Vice-Chair Fite confirmed that Mr. Walker would not only work with the developer but also take into consideration what would be best for the neighboring residents. Vice-Chair Fite thought he understood Mr. Howard to say if the screening was on the property line near his property it could make it worse. Mr. Howard responded that there is approximately 100 feet of woods between the property lines and it would not make to take that out and replace it with a fence and it would depend on where the fence is located. Chair Watts responded that the developer would probably rather use the vegetation and not have to pay for and install a fence.

Chair Watts called for the Board's discussion. She stated that she liked the 150 feet on the back and they will do well to position themselves against the property owners there. Chair Watts stated that density for the property is a question and could they do with less than 126 units. Vice-Chair Fite stated that if this is put in as a single variance, can they be split. Mr. Hanson responded yes it could be split any way the Board decides.

**Mr. Brock** responded that for them to have a viable product, if they had to have less density, they probably would not have a project at all with all the items that have to be addressed from the power line easement. He would like for that to be a factor because they have talked to Randy Edwards, Transportation Director at the Town and with Tyler Clark at SCDOT and even though the traffic study is not yet complete, their opinions, and they have agreed to, they will have to do some road improvements on Old Chapin Road. He restated that for them to have a viable product they really needed 126 units.

**Mr. Trevino** responded that everything in this world is negotiable. He stated that Mr. Brock did not have to take his project and go somewhere else but maybe what he should do is go back to the drawing board and make something a little more presentable for your investors and for our community and that's how they need to think. Mr. Trevino stated that we all have hardships and if Mr. Brock does everything he wants to do it creates a hardship for him and his neighbors. He added that this is where he lives and he does not know where Mr. Brock lives, but he had to stand up for where he is living. He stated that he has attended a lot of meetings of different kinds and most of them he did not want to be in. Mr. Trevino told Mr. Brock if he could not figure out a way, then come see him and he will not even charge him.

Chair Watts called for any further questions from the Board. Board Member Richardson stated that the Board had not yet discussed the buffers. Chair Watts and Vice-Chair Fite both stated that they did not have a problem with the buffers but they did have a problem with the number of units. Board Member Richardson agreed and stated that she also has a problem with the setback. Board Member Fisher stated that he has an issue with the setback on the Old Chapin Road side. He added that they wanted to put a four (4) foot fence behind the townhomes. Board

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Member Brown stated that he did not have a problem with the setbacks but the number of units is troubling.

Vice-Chair Fite asked Mr. Walker about the setback requirements on Old Chapin Road. Mr. Walker responded that they will have to have on average a large canopy tree every 34 feet along the road and the entrance would have to be landscaped and the parking lot would require screening. He added that the Town has no control over fencing along public right of way and that it is up to the developer if they install a four foot fence or an eight foot fence.

**Mr. Brock** stated that fencing is more of an amenity and they were not going to have any fencing on Old Chapin Road, but they planned for a three foot fence behind the units so if residents had a small dog. He added that if the Board thought it would look better, they could install an eight foot fence behind the units on Old Chapin Road or they could commit to no small fences on Old Chapin Road.

Mr. Hanson advised the Board that they deal a hardship on the property and the Appearance Board would deal with fencing and landscaping if needed.

Chair Watts called for a motion if there were no further questions. A motion was made by Vice-Chair Fite and seconded by Board Member Richardson to approve the setbacks and buffers requested in Variance Request 2020-6(V) with conditions and to deny granting the number of units requested of 126 and restrict the number of units to 105. Vice-Chair Fite stated his findings as follows: *(1) There are extraordinary and exceptional conditions pertaining to the particular piece of property due to the power line that runs through the property and the unique shape of the property should be considered. (2) These conditions do not generally apply to other property in the vicinity due to the power line that runs diagonally through the property. (3) Because of these conditions, the application of the ordinance to this particular piece of property would effectively prohibit or unreasonably restrict utilization of the property because a combination of the buffers and setbacks, the property would be unusable for apartments which is how the property is zoned. (4) The authorization of a variance will not be of substantial detriment to adjacent property and because of the age of the existing apartments and them being removed, the addition of new apartments would not be a detriment.* Chair Watts called for a roll call vote. Roll call vote results: Board Member Brown, yes to the motion as stated. Vice-Chair Fite, yes to the motion as stated; Chair Watts, yes to the motion as stated. Board Member Richardson, yes to the motion as stated. Board Member Fisher, yes to the motion as stated. The motion to approve Variance 2020-6(V) with conditions as stated was unanimously carried.

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**APPROVAL OF MINUTES**

A motion was made by Board Member Brown and seconded by Board Member Fisher to approve the Board of Zoning minutes from the October 1, 2020 meeting as submitted. The motion was unanimously carried.

**OTHER BUSINESS**

Mr. Hanson advised the Board that they would have a meeting on December 3, 2020.

**ADJOURNMENT:** There being no further business Chair Watts called for a motion to adjourn. A motion was made by Board Member Brown and seconded by Vice-Chair Fite to adjourn the meeting at 6:07 p.m. The motion was unanimously carried.

Respectfully submitted by:

Becky P. Hildebrand, CMC  
Municipal Clerk

**APPROVED:**

Mary Watts  
Chair

*FOIA COMPLIANCE – Public notification of this meeting was published, posted and mailed in compliance with the Freedom of Information Act and the Town of Lexington requirements.*