

**01-27-2021 Town Council Meeting**  
**Responses to Council Questions**

**ITEM #8: Public Hearing Continued: Conditional Zoning for 1200 & 1204 Martin Luther King Jr. Blvd. from Residential-4 (R-4) and Neighborhood Commercial (NC) to Office/Institutional-2-Conditional Zoning District (OI-2-CZD) and Neighborhood Commercial Conditional Zoning District (NC-CZD)**

**Council Question:**

What is the purpose of the cameras, which were recently set up on the property?

**Council Question:**

Why were the cameras recently set-up on the property?

***Applicant Response:***

*No cameras have been installed on the property. Some residents may be mistaking the recently installed motions sensor for the new lights as cameras.*

**Council Question:**

What is the status of the situation with trees that were creating an unsafe condition for the residents?

***Applicant Response:***

*The trees that the Arborist marked as urgent and were approved by the Town have been removed. Any additional trees will need to be submitted to the Town for approval.*

**Council Question:**

On Dec. 9th, Dan Jewell indicated that solar lights would be added to the rear of the property by the end of December in order to increase safety for residents. Have those lights been added?

***Applicant Response:***

*Yes, the lights have been installed. We have added motion sensor solar lights throughout the park. This is what the tenants are calling cameras.*

**Council Question:**

On Dec. 9th, another commitment was made to address the narrowness of the roads by way of a one-way circular pattern as well as posted speed limits and stop signs. Can this be written as a stipulation?

***Applicant Response:***

*We have repaired the roads in areas that were too narrow causing tenants to drive in the grass. We have started adding the signs and will complete it as soon as we receive the signs. However,*

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*if the plan is approved the signs will have to be re-evaluated. We would prefer to not have this as a stip, as we need the flexibility to experiment with one-way roads and driveways over time to see which works best.*

**Staff Response:**

*If agreed upon, Town staff will work with the applicant to craft the appropriate language and bring forward a revised Ordinance.*

**Council Question:**

Can the playground that was shown in the plans on Dec. 9th and committed to on p. 99 of the packet (p. 1 of the Developer's program) be written as a stipulation?

**Council Question:**

As discussed at the last public hearing, is the applicant willing to commit to putting in a play structure that meets the needs of the current mobile home residents (i.e. a play structure for older children than a tot pad)?

**Applicant Response:**

Yes.

**Staff Response:**

*Staff will bring a revised Ordinance with stipulation revised to the following effect: "A playground shall be provided in accordance with the size and location as shown on the approved plan set."*

**Council Question:**

When would the 30-day window to opt into an annual lease begin for current residents?

**Applicant Response:**

*The 30-day window will begin when the 3 remaining homes to be relocated have been moved. The residents will know upon approval of the CZ when that time will begin, so realistically they will have several months advance notice of when that 30-day window is to start.*

**Council Question:**

Would the proposed hours for the self-storage building be 8 AM to 10 PM on both weekdays and the weekend?

**Applicant Response:**

Yes.

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**Council Question:**

Stipulation 5: Should the language be modified to state that "...the current 73 mobile homes **or their replacements...**? Also, since the applicant is requesting an additional 10 homes, if we should approve the addition of these homes, shouldn't they be covered as well?

**Staff Response:**

*Staff will bring a revised Ordinance with stipulation revised to the following effect: "The existing seventy-three (73) mobile homes or their replacements, as of the date of this approval, shall be allowed to remain on-site until January 1, 2035, so long as each lot lease remains in good standing. Each home must remain compliant with the park rules, and all health, safety, and environmental regulation. Any additional units authorized by this approval shall also be permitted to remain."*

**Council Question:**

Stipulation 23: Has the applicant been queried about doing the assessment at two-year intervals and, if so, what was the response? Have we done any checks to ascertain that the Raleigh and Charlotte markets currently have rents comparable to Chapel Hill's? Might there be markets more comparable to ours? When surveys of rents are done, can we also ascertain that the rules and regulations being promulgated by the applicant are comparable to those being used in those markets?

**Council Question:**

What was the applicant's response to considering different comparable markets other than Raleigh and Charlotte for the rent comparisons?

**Applicant Response:**

*We will perform the assessments at 4-year intervals. The assessments will cover the greater Charlotte and Raleigh Metro Areas, of which Chapel Hill is a component.*

**Council Question:**

Can our Stormwater Management staff please comment on the impact and advisability of allowing seven new mobile homes into the RCD? What criteria have they used to make their determination?

**Staff Response:**

*Stormwater Management Division Staff do not find relocating mobile homes in the RCD to meet the purpose and intent of the ordinance (LUMO 3.6.3). The project also proposes relocation of homes in Zone 2 of the Jordan Buffer, which requires a Minor Variance (LUMO 5.18). To grant a Jordan Buffer Minor Variance, Council shall find that there are practical difficulties or unnecessary hardships that prevent compliance with the requirements; stormwater staff do not find that this project meets the specific criteria needed to overcome that threshold (See item 2.c. under "Procedures for Modifications" below). Additionally, some of the mobile homes are*

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*proposed to be relocated in low-lying areas adjacent to the stream and over steep slopes, which may pose a hazard to the residents. Information regarding required modifications, development scenarios with staff recommendations, and procedures for modifications can be found below.*

#### ***Modifications Requested***

*The project at 1200 MLK Jr Blvd proposes to relocate seven (7) mobile homes in the Resource Conservation District (RCD). Three (3) of these units also encroach in the outer 20 feet (Zone 2) of the Jordan Buffer. In order for this plan to be approved, Town Council must grant modifications to*

- 1) LUMO 3.6.3 Resource Conservation District*
- 2) LUMO 5.18 Jordan Watershed Riparian Buffer Protection*

#### ***Development Scenarios with Staff Recommendations***

*The Stormwater Management Division staff provide the following buffer encroachment scenarios for this project with associated required modifications and recommended conditions for approval. These scenarios are listed in order from most preferable to least preferable from a stormwater management and water quality perspective and considering the purpose and intent of stream buffer protection ordinances.*

- 1. The applicant proposes no mobile home units to be relocated in the RCD or Jordan Buffer.*
  - a. Modifications required: none*
  - b. Recommended conditions: none*
- 2. The applicant only proposes mobile home units to be relocated in the RCD Managed Use Zone (50-100 feet) and Upland Zone (100-150 feet), with no units relocated in the RCD Streamside Zone (0-50 feet) or Jordan Buffer (0-50 feet).*
  - a. Modifications required: RCD (LUMO 3.6.3)*
  - b. Recommended conditions*
    - i. Enhance RCD per Jordan Buffer mitigation rules LUMO 5.18.8(e)*
    - ii. Remove all trash and debris from buffer*
- 3. The applicant maintains the current site plan with mobile homes relocated in all zones of the RCD and Zone 2 of the Jordan Buffer.*
  - a. Modifications required: RCD (LUMO 3.6.3) and Jordan Buffer (LUMO 5.18)*
  - b. Recommended conditions*
    - i. Enhance RCD per Jordan Buffer mitigation rules LUMO 5.18.8(e)*
    - ii. Remove all trash and debris from buffer*
    - iii. Provide water quality treatment for all new impervious area*
    - iv. Provide engineering calculation of the impact to 100-year flood elevation*

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### *Procedures for Modifications*

1. *LUMO 3.6.3 Resource Conservation District*
  - a. *Section 3.6.3(i)(1) states that development and land-disturbing activities within the RCD are prohibited after January 27, 2003 unless exempted by 3.6.3(i), or permitted by 3.6.3(e), or granted a variance by the Board of Adjustments. Town staff did not find that the mobile home relocations are exempted by 3.6.3(i) or permitted by 3.6.3(e), and therefore a variance is needed. Since this project is going before Town Council for approval, Council would take the place of Board of Adjustments in granting a modification. Council may attach conditions to the approval that support the purpose and intent of the buffer protection program, such as stream buffer enhancement.*
2. *LUMO 5.18 Jordan Watershed Riparian Buffer Protection*
  - a. *Section 5.18.7(b) states that uses and activities not categorized as exempt, allowable, or allowable with mitigation are prohibited unless a variance is granted per 5.18.8(d).*
  - b. *The requested variance is a Minor Variance because the proposed activity is limited to the outer 20 feet, Zone 2, of the Jordan Buffer. Section 5.18.8(d)(2) states that Minor Variance will be reviewed and approved by the Town Board of Adjustment based on criteria in Section 5.18.8(d)(1). The Board may attach conditions to the variance approval that support the purpose and intent of the buffer protection program, such as stream buffer enhancement. Town Council will take the place of the Board of Adjustments in this instance.*
  - c. *Section 5.18.8(d)(1) states that the deciding body shall make a finding of fact as to whether there are practical difficulties or unnecessary hardships that prevent compliance with the requirements. For Council to make a finding of practical difficulties or unnecessary hardships, the following conditions shall apply:*
    - i. *If the applicant complies with the provisions of this section, he or she can secure no reasonable return from, nor make reasonable use of, his or her property. Merely proving that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. Moreover, the town board of adjustment shall consider whether the variance is the minimum possible deviation from the terms of this section that shall make reasonable use of the property possible;*
    - ii. *The hardship results from application of this section to the property rather than from other factors such as deed restrictions or other hardship;*
    - iii. *The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, such that*

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- compliance with provisions of this section would not allow reasonable use of the property;*
- iv. The applicant did not cause the hardship by knowingly or unknowingly violating this section;*
  - v. The applicant did not purchase the property after the effective date of this section, and then request a variance; and*
  - vi. The hardship is rare or unique to the applicant's property.*
  - vii. The variance is in harmony with the general purpose and intent of the state's riparian buffer protection requirements and this section and preserves its spirit; and*
  - viii. In granting the variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.*

#### **Intent of Stream Buffer Regulations**

*Per LUMO 3.6.3, the RCD is “intended to be applied to the areas within and along watercourses within the town's planning jurisdiction in order to preserve the water quality of the town's actual or potential water supply sources, to minimize danger to lives and properties from flooding in and near the watercourses to preserve the water-carrying capacity of the watercourses, and to protect them from erosion and sedimentation, to retain open spaces and greenways and to protect their environmentally-sensitive character, to preserve urban wildlife and plant life habitats from the intrusions of urbanization, to provide air and noise buffers to ameliorate the effects of development, and to preserve and maintain the aesthetic qualities and appearance of the town.”*

*Per LUMO 5.18, the general purpose and intent of Jordan Watershed Riparian Buffer Protection is “to protect and preserve existing riparian buffers throughout the Jordan Watershed as generally described in 15A North Carolina Administrative Code 2B.0262 in order to maintain their nutrient removal and stream protection functions. Additionally, this section will help protect the water supply uses of Jordan Reservoir. Buffers adjacent to streams provide multiple environmental protection and resource management benefits. Forested buffers enhance and protect the natural ecology of stream systems, as well as water quality through bank stabilization, shading, and nutrient removal. They also help to minimize flood damage in flood prone areas. Well-vegetated streamside riparian areas help to remove nitrogen and prevent sediment and sediment-bound pollutants such as phosphorous from reaching the streams.”*

#### **Council Question:**

The applicant is requesting an upzoning to OI-2 on parcel 3, the mobile home park. Is that

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rezoning necessary to bring him into compliance, or would adding the PD-H overlay to the current zoning, or another less dense zone, be sufficient? Is the issue that the self-storage has to share a zone with the MHP in order to qualify as an accessory use? Could the self-storage parcel be rezoned to OI-2 with the self-storage as a primary use?

#### **Staff Response:**

*Yes, the Office/Institutional-2 (OI-2) rezoning for the mobile home portion of the site is necessary to allow the self-storage use and to meet the required floor-area ratio. Self-storage cannot be allowed as a primary use in any zoning district, and is only allowed as an accessory use in OI-2. In this case, it would be considered "accessory" to the mobile home park.*

*If the self-storage parcel alone were rezoned as Office/Institutional-2 (OI-2), self-storage would be the only use on the parcel which is not permitted, and the floor area would exceed the FAR allowed in OI-2.*

#### **Council Question:**

I appreciate the applicant's interest in demonstrating to Council that they are truly committed to the agreements for the mobile home residents that been under discussion. Given this, can they be asked to consider the following:

- Rent increases: Use other parks in Chapel Hill for analysis of market rate and agree to assess market rates prior to any planned rent increase
- Park repairs: Inclusion in the agreement to completing the repairs and upgrades referenced at earlier meetings (and based on resident input) such as tree removal, playground, fixing potholes, installing stop signs, and other road safety issues, etc. by a date certain
- Storage facility hours: 10pm seems too late due to issues of noise and light for the residents. Can the applicant again consider a 9pm closing, at least on weekdays
- Start of 15-year period: Begin at issuance of COA

#### **Applicant Response:**

- *Rent increases: We will be using comps in both the Charlotte and Raleigh Metro areas, of which the Chapel Hill communities will be a subset.*
- *Park repairs: The dangerous trees identified in the Arborist report have been removed and potholes filled, lights installed, and stop signs are on order. The latter items will be completed when delivered and installation crews scheduled. The playground cannot be installed until issuance of the ZCP.*
- *Storage facility hours: We would like to keep the hours as currently committed.*
- *Start of 15-year period: 15 years will begin upon Council approval of Conditional Zoning*

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**Council Question:**

Does the current plan include any electric charging stations at the Sheetz?

**Staff Response:**

*No electric charging stations have been indicated.*

**Council Question:**

What authority does the Town have to inspect and require park owners to address issues impacting public health and safety within MHPs?

**Staff Response:**

*Staff believes the Town's authority to inspect and require park owners to address issues impacting public health and safety within MHPs would be no different than other areas of Town.*

**Council Question:**

Has staff researched whether Raleigh and Charlotte are reasonable MHP markets to use for setting Chapel Hill MHP rents?

**Staff Response:**

*The Housing and Community staff are researching comparable MHP markets to determine comparable market rents and will provide additional information.*

**Council Question:**

Ordinance wording (sect II, 5)

"Mobile Homes: The existing seventy-three (73) mobile homes while occupied by the current home owners as of the date of this approval shall be allowed to remain on-site until January 1, 2035, so long as each lot lease remains in good standing. Each home must remain compliant with the park rules, and all health, safety, and environmental regulation."

This does not seem to capture our interest and agreement accurately. Can staff propose alternate language to reflect that the land currently identified as a mobile home park will continue to function such that it cannot be used for any other purpose for the duration of 15 years? The wording seems to imply if current residents leave, the pads do not need to be re-leased.

**Applicant Response:**

*Clarification – there are currently 65 residents in the park and 5 vacant homes.*

**Staff Response:**

*The stipulation will be revised to the following effect: "The existing seventy-three (73) mobile homes or their replacements, as of the date of this approval, shall be allowed to remain on-site*



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*until January 1, 2035, so long as each lot lease remains in good standing. Each home must remain compliant with the park rules, and all health, safety, and environmental regulation. Any additional units authorized by this approval shall also be permitted to remain.”*

### **Council Question:**

What is the status of the improvements to the mobile home park that the applicant spoke about at the last public hearing (i.e. cutting down the trees, better lighting, etc)?

### **Staff Response:**

*The applicant has indicated that hazardous trees have been removed, additional lighting has been installed, and street signage has been added.*

### **Council Question:**

Is there any new information on the applicant's willingness to improve the streets within the mobile home park and install speed reduction measures (i.e. a speed table)?

### **Applicant Response:**

*We have repaired the roads in areas that were too narrow causing tenants to drive in the grass. We have started adding the signs and will complete it as soon as we receive the signs. However, if the plan is approved the signs will have to be re-evaluated. We would prefer to not have this is a stip, as we need the flexibility to experiment with one-way roads and driveways over time to see which works best.*

### **Council Question:**

On pages 72 and 90 of the packet, it says that the development will have 40,257 SF of land disturbance within the RCD. Is this the existing/grandfathered disturbance, or new? If the latter, what is the % of new RCD disturbance proposed in each zone, and is it within LUMO disturbance limits?

### **Staff Response:**

*Disturbance in the RCD would be new, and has the following amounts per zone:*

- *Streamside Zone: 4,960 sq. ft. (approx. 6%)*
- *Managed Use Zone: 11,036 sq. ft. (approx. 17%)*
- *Upland Zone: 24,261 sq. ft. (approx. 43%)*

*The Upland Zone appears to exceed the LUMO permitted amount by 3%, but the Managed Use and Streamside Zones are both well below the thresholds.*

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**Council Question:**

The TIA shows that we're using an ambient growth rate for traffic of 0.5% -- I've seen rates as high as 1.5% on other town projects. Is 0.5% the number we're using for all MLK projects now?

**Staff Response:**

*The growth factor of 0.5% was developed based on the historic traffic data. We are using 0.5% for many projects in Martin Luther King Jr Blvd corridor.*

**Council Question:**

The applicant is requesting disturbance in the Jordan Buffer for a stormwater facility. Is there a practical alternative that would not require that disturbance?

**Staff Response:**

*The stormwater facility proposed is a rip rap apron for runoff. Due to the extent of the RCD in relation to the proposed development, there does not appear to be a practical alternative.*

**Council Question:**

Starting on packet page 80, there is language about establishing a homeowner's association and its operation. Should this be struck from the document?

**Staff Response:**

*This is part of our standard stipulations that are attached to each project. Not all the stipulations are applicable.*

**Council Question:**

On page 73 of the packet, stipulation 6, it says that the town will be notified if there's a vacant lot so we can notify residents of other parks in town who might want to relocate. The language refers to these residents as "qualified buyers" – does that mean they'd have to buy their pad, or would they be leaseholders of the pad like current residents?

**Staff Response:**

*The stipulation will be revised to state: "qualified buyers or lessees".*