

MEMORANDUM

TO: Chapel Hill Board of Adjustment

FROM: Ben Hitchings, Director of Planning and Development Services
Jake Lowman, Senior Planner

SUBJECT: 111 Purefoy Road: Appeal of Planning Commission Decision
(PIN 9788-41-9609, Project #18-117)

DATE: February 21, 2019

RECOMMENDATION

Town Staff recommends that the Board of Adjustment hear this appeal of the Planning Commission's decision to deny a Site Plan Review Application at 111 Purefoy Road.

INTRODUCTION

Ken Gorfkle, represented by LeAnn Nease Brown, Brown & Bunch, PLLC, has appealed the Town of Chapel Hill Planning Commission's October 16, 2018 decision to deny a Site Plan Review Application for 111 Purefoy Road. The application is for the construction of the Purefoy Road Apartments, which would consist of two multi-family structures totaling 10,528 square feet, consisting of seven dwelling units containing 28 bedrooms.

The subject lot is located at 111 Purefoy Road, near the intersection of Mason Farm Road, and adjacent to the Kehillah Synagogue. The property is located in the Residential-4 (R-4) zoning district and the Mason Farm/Whitehead Circle Neighborhood Conservation District (CD-5). The property is identified as Orange County Property Identifier Number 9788-41-9609.

When a decision of the Planning Commission is appealed, the Board of Adjustment hears it as a "new case". Because this is a "new case", the Board of Adjustment (the Board) acts as the Planning Commission (the Commission) and hears the request for site plan approval in the same manner as would the Commission.

The attached application materials include two resolutions for the Board's consideration: Resolution A would overrule the Planning Commission's decision to deny a Site Plan Review Application (Attachment 1), Resolution B would uphold the Planning Commission's decision to deny a Site Plan Review Application (Attachment 2). Additional attachments include the appeal application and exhibits (Attachment 3), the record of the Planning Commission's decision from October 16, 2018, including the staff memo and application materials presented to the Planning Commission, a memo from the Town Attorney to Town Staff dated October 12, 2018, and a

memo from the applicant's attorneys, Kennon Craver, to the Town Attorney dated October 15, 2018 (Attachment 4), and an area map of the subject property (Attachment 5).

SUMMARY OF APPEAL

The appeal pertains to the Planning Commission's decision to deny a Site Plan Review Application at 111 Purefoy Road for the Purefoy Road Apartments.

The appellant's argument is that the Planning Commission made multiple errors pertaining to the Site Plan Review application for 111 Purefoy Road as specified in detail in the appellant's Statement of Justification (Attachment 3).

PROCEDURE

A decision of the Planning Commission in granting or denying a site plan approval may be appealed to the Board of Adjustment as a "new case". (Town of Chapel Hill Land Use Management Ordinance (LUMO) Sec. 4.10.1 (a)).

Because this is a "new case", the Board of Adjustment (the Board) acts as the Planning Commission (the Commission) and hears the request for site plan approval in the same manner as would the Commission. After an introduction by the Planning Staff of the case, the applicant before the Commission presents its information. Then, persons in opposition to the application would then have an opportunity to present their information. (It is possible that preliminary procedural issues would be raised by either party and could be considered by the Board prior to the Board's hearing the merits of the application.)

The Commission may be represented as a witness before the Board (N.C. General Statute Sec. 160A-388(b1)(8)) but is not a party and need not defend its decision.

Unlike the hearing before the Commission, all witnesses who present information before the Board are required to be sworn because the Board is required to follow quasi-judicial procedures. (N.C. G.S. Sec. 160A-388(a1)).

The Board has all of the powers of the Commission and may reverse, affirm, wholly or partly, or may modify the decision appealed from (N.C.G.S. Sec. 160A-388(b1)(8)).

The Board's decision in this case is required to be based on a majority vote (6) of Board members. (N.C.G.S. Sec. 160A-388(e)(1)).

VISITING THE SITE

The property is located at 111 Purefoy Road, near the intersection of Mason Farm Road, in the Mason Farm/Whitehead Circle Neighborhood Conservation District. For additional information please refer to the area map of the subject property (Attachment 5).

We ask that any Board member interested in visiting the site do so separately from other Board members. Or, if you would like to view the site as a group, please arrange the visit through the

Planning Department so that proper procedure can be followed in accordance with the State's open meetings law.

Any member who visits the site prior to the hearing is urged to share information with the other Board members during the hearing.

BACKGROUND

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| July 5, 2016 | Ken Gorfkle acquired the subject property. |
| October 12, 2016 | Coulter Jewell Thames, PA, submitted a Site Plan Review Application for the Purefoy Road Apartments to the Town of Chapel Hill. |
| September 26, 2018 | The Planning Commission discussed the Site Plan Review Application and deferred the case to the October meeting, requesting additional information regarding the neighborhood conservation district. |
| October 16, 2018 | The Planning Commission denied the Site Plan Review Application for the Purefoy Road Apartments at 111 Purefoy Road (Attachment 4). |
| November 8, 2018 | Leann Nease Brown, attorney, on behalf of Ken Gorfkle, filed an appeal of the Planning Commission's decision to deny a Site Plan Review application for the Purefoy Road Apartments at 111 Purefoy Road (Attachment 3). |

ATTACHMENTS

1. Resolution A - Appeal Approved: A Resolution Overruling the Planning Commission's Decision to Deny a Site Plan Review Application.
2. Resolution B - Appeal Denied: A Resolution Upholding the Planning Commission's Decision to Deny a Site Plan Review Application.
3. Application materials including an application form, notification materials, and statement of justification.
4. Record of the Planning Commission's October 16, 2018 decision, including the staff memo and application materials presented to the Planning Commission, a memo from the Town Attorney to Town Staff dated October 12, 2018, and a memo from the applicant's attorneys, Kennon Craver, to the Town Attorney dated October 15, 2018.
5. Area Map of the Subject Property.