



Feb. 16, 2016

## MINUTES

The Holly Springs Town Council met in regular session on Tuesday, Feb. 16, 2016 in the Council Chambers of Holly Springs Town Hall, 128 S. Main Street. Mayor Sears presided, calling the meeting to order at 7 p.m. A quorum was established as the mayor and all five council members were present as the meeting opened.

**Council Members Present:** Mayor Sears, Councilmen James Cobb, Tom O'Brien and Hank Dickson and Councilwomen Linda Hunt-Williams and Cheri Lee.

**Council Members Absent:** None.

**Staff Members Present:** Charles Simmons, town manager; Daniel Weeks, assistant town manager; John Schifano, town attorney; Joni Powell, town clerk, (recording the minutes); Linda Harper, deputy town clerk; Jeff Wilson, information technology director; Mary Hogan, finance director; Len Bradley, parks and recreation director; Gina Clapp, planning and zoning director; Sean Ryan, planner; Matt Beard, planner; John Herring, police chief; Leroy Smith, fire chief; Kendra Parrish, director of engineering; Elizabeth Goodson, development review engineer; Tamara Ward, communications specialist and Mark Andrews, public information officer.

**2 and 3.** The Pledge of Allegiance was recited, and the meeting opened with an invocation by Pastor Marcus Williams, pastor of historic Douglas Chapel AME Church.

**4. Agenda Adjustment:** The Feb. 16, 2016 meeting agenda was adopted with changes, if any, as listed below.

**Motion by:** Cobb

**Second by:** Dickson

**Vote:** Unanimous

**Changes:** None.

**5. Public Comment:** At this time, an opportunity was provided for members of the audience who had registered to speak to address the Council on any variety of topics not listed on the night's agenda. The following comments were recorded:

Howard Slinkard, -- Mr. Slinkard said he has trouble hearing during meetings in the Council Chambers. He asked the Town Council to consider equipping the room with a loop system that would help those with hearing aids to hear better.

**6a. Public Hearing: Special Exception Use petition 15-SEU-02 and Development Plan 15-DP-05 -**

Mr. Ryan said the Town has received a request for a Special Exception Use and Development Plan to enclose the drive-through of the old Fidelity Bank Building, now David Bryan Law, on Main Street. Last year, Town Council approved a change to the Town Village zoning district which would require any new project or subdivision to receive a Special Exception Use. The proposed use – Office – is a permitted use in the TV district; however, because the property owner is seeking to enlarge the building by enclosing the former drive-through, the proposed project is considered a new project requiring the Special Exception Use.

He said in association with the Special Exception Use, a development plan has been submitted for this project.

The current structure is a non-conforming building – meaning that it does not comply with the current development standards of the TV zoning district (i.e. building setbacks, minimum height, and architectural standards.)

Mr. Ryan said as a non-conforming building, expansions and additions which are not in complete conformance with current development standards are limited. The goal of this restriction is to eventually phase out all non-conforming buildings when properties are redeveloped or buildings are destroyed by other means, such as natural disasters. The applicant for this project is seeking to enclose the former drive-through canopy, which in accordance with the UDO constitutes an addition to the non-conforming building. To allow this addition, the applicant has submitted a variance request to expand the non-conforming building. There are several additional architectural waivers that also have been submitted with this project to maintain the current architectural appearance of the building.

Councilman Cobb asked if the drive-through driveway would remain. Mr. Ryan suggested the applicant could address that question during testimony.

With that explanation completed, Mayor Sears continued the opened the public hearing. The following testimony and evidence was submitted by those who had been administered the oath by the town clerk:

Josh Dunbar – Mr. Dunbar, speaking on behalf of the applicant, addressed the Council to testify that current plans did not call for removal of the driveway. He said the building expansion would sit atop the drive-through footprint, and the leftover footprint of asphalt could be used for parking.

There being no further testimony, the public hearing was closed.

**Action #1:** The Council approved a motion to make and accept the findings of fact as submitted by the Petitioner to be recorded in the minutes for Special Exception Use Petition #15-SEU-02- for David Bryan Law, as specified in Unified Development Ordinance Section 3.03 TV Town Village to allow for a new project in the Town Village zoning district at the property located at 100 North Main Street, Wake County PIN 0649925110.

Special Exception Use Findings of Fact:

*A special exception use may only be granted upon the presentation of sufficient evidence to enable a written determination that:*

- a. The proposed use will not be injurious to the public health, safety, comfort, community moral standards, convenience or general welfare;*
- b. The proposed use will not injure or adversely affect the adjacent area;*
- c. The proposed use will be consistent with the character of the district, land uses authorized therein, and the Town of Holly Springs Comprehensive Plan;*
- d. The proposed use shall conform to all development standards of the applicable district (unless a waiver of such development standards is requested as part of the special exception use petition and approved as set forth above, in which case the proposed use shall conform to the terms and conditions of such waiver).*
- e. Access drives or driveways are or will be sufficient in size and properly located to: ensure automotive and pedestrian safety and convenience, traffic flow as set forth in Section 7.09 – Pedestrian Circulation and Vehicular Area Design; and, control and access in case of fire or other emergency;*
- f. Off-street parking areas, off-street loading areas, trash enclosures, trash pick-up and removal, and other service areas are located so as to be safe, convenient, allow for access in case of emergency, and to minimize economic, glare, odor, and other impacts on adjoining properties and properties in the general neighborhood;*
- g. The lot, building or structure proposed for the use has adequate restroom facilities, cooking facilities, safety equipment (smoke alarms, floatation devices, etc.), or any other service or equipment necessary to provide for the needs of those persons whom may work at, visit or own property nearby to the proposed use;*
- h. Utilities, schools, fire, police and other necessary public and private facilities and services will be adequate to handle the needs of the proposed use;*
- i. The location and arrangement of the use on the site, screening, buffering, landscaping, and pedestrian ways harmonize with adjoining properties and the general area and minimize adverse impacts; and,*
- j. The type, size, and intensity of the proposed use (including but not limited to such considerations as the hours of operation and numbers of people who are likely to utilize or be attracted to the use) will not have significant adverse impacts on adjoining properties or the neighborhood.*

**Motion by:** Williams

**Second by:** Cobb

**Vote:** Unanimous.

*A copy of Special Exception Use Application 15-SEU-02 addressing these findings is attached to these minutes.*

**Action #2:** The Council approved a motion to make and accept the findings of fact as submitted by the Petitioner to be recorded in the minutes for a variance of regulations of UDO Section 1.21 E, Legally Established Nonconforming Buildings or Structures, to allow for the expansion of a legally established nonconforming building, for Development Petition #15-DP-05 for David Bryan Law as submitted by The EI Group.

*A variance may be granted by the Board if competent and substantial evidence is presented by the applicant which persuades the Board to either reach each of the following conclusions independently or be reasonably able to meet these conclusions upon implementation of conditions by the Board:*

1. *Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.*
2. *The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.*
3. *The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.*
4. *The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.*

**Motion by:** Cobb

**Second by:** Dickson

**Vote:** Unanimous.

*A copy of the variance application addressing these findings is attached to these minutes.*

**Action #3:** Having made the necessary findings of fact, the Council approved a motion to grant a variance of regulations of UDO Section 1.21 E, Legally Established Nonconforming Buildings or Structures, to allow for the expansion of a legally established nonconforming building, for Development Petition #15-DP-05 for David Bryan Law as submitted by The EI Group with the following condition:

1. This variance shall apply only to development plan project number 15-DP-05 David Brian Law Office. Any future addition to the building or redevelopment of the property shall be in conformance with the development standards at the time such project is proposed.

**Motion by:** Dickson

**Second by:** Cobb

**Vote:** Unanimous.

**Action #4:** The Council approved a motion to make and accept the findings of fact as submitted by the Petitioner to be recorded in the minutes for a variance of regulations of Section 7.01 D: Required Landscaping of Required Front Yard, to not require the street trees along N Main Street and Center Street to be planted for Development Petition #15-DP-05 for David Bryan Law as submitted by The EI Group.

*A variance may be granted by the Board if competent and substantial evidence is presented by the applicant which persuades the Board to either reach each of the following conclusions independently or be reasonably able to meet these conclusions upon implementation of conditions by the Board:*

1. *Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.*
2. *The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.*

3. *The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.*
4. *The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.*

**Motion by:** Lee

**Second by:** Williams

**Vote:** Unanimous.

*A copy of the variance application addressing these findings is attached to these minutes.*

**Action #5:** Having made the necessary findings of fact, the Council approved a motion to grant a variance of regulations of Section 7.01 D: Required Landscaping of Required Front Yard to not require the street trees along N Main Street and Center Street to be planted for Development Petition #15-DP-05 for David Bryan Law as submitted by The EI Group with the following condition:

1. This variance shall apply only to development plan project number 15-DP-05 David Brian Law Office. Any future addition to the building or redevelopment of the property shall be in conformance with the development standards at the time such project is proposed.

**Motion by:** O'Brien

**Second by:** Cobb

**Vote:** Unanimous.

**Action #6:** The Council approved a motion to adopt Resolution #16-03 to make and accept the findings of facts as submitted by the Petitioner as specified in Exhibit X (with the following additional findings, if any) and to approve Waivers of Architectural & Site Design Requirements, UDO Section 3.08, waiver numbers 15-WAV-03, 15-WAV-04, & 15-WAV-05, in association with Development Plan Petition #15-DP-05 for David Bryan Law as submitted by The EI Group, with the following condition:

1. These waivers shall apply only to development plan project number 15-DP-05 David Brian Law Office. Any future addition to the building or redevelopment of the property shall be in conformance with the development standards at the time such project is proposed.

*A petition for a waiver of regulations of UDO Section 3.08 may only be granted upon the presentation of sufficient evidence to enable a written determination that:*

1. *The proposed development represents the use of (building materials, colors, textures, building architecture, building orientation, signs, landscaping, lighting or pedestrian circulation and vehicular area design) which will result in a development pattern which is equivalent to or superior to that achievable under the applicable regulations;*
2. *The proposed development will be compatible with and will enhance the use or value of area properties;*
3. *The proposed development is consistent with the intent of the Comprehensive Plan; and,*
4. *The proposed development is consistent with the intent and purpose of this UDO.*

**Motion by:** Williams

**Second by:** Cobb

**Vote:** Unanimous.

*A copy of Resolution 16-03 and waiver applications addressing these findings are attached to these minutes.*

**Action #7:** The Council approved a motion to make and accept the findings of fact as submitted by the Petitioner to be recorded in the minutes for a waiver of regulations of UDO Section 7.07 C Sidewalks, for a waiver of the requirement to install sidewalks and street furniture, for Development Petition #15-DP-05 for David Bryan Law as submitted by The EI Group.

A petition for a waiver of regulations of UDO Section 7.07 C Sidewalks may only be granted upon the presentation of sufficient evidence to enable a written determination that:

1. The granting of the waiver will not be detrimental to public safety, health or welfare or injurious to other property;
2. Conditions upon the request for a waiver are unique to the property for which a waiver is sought and are not applicable generally to other property

3. Because of the particular physical surroundings, shape or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of these regulations is not carried out
4. The waiver will not contravene the provisions of this UDO or the Comprehensive Plan
5. Where the waiver impacts on the design, construction or maintenance obligations of public facilities, that the appropriate public agency has reviewed and approved the proposed development in writing and the subdivider has submitted a copy of such approval.

**Motion by:** Cobb

**Second by:** O'Brien

**Vote:** Unanimous.

*A copy of the waiver application addressing these findings is attached to these minutes.*

**Action #8:** Having made the necessary findings of fact, the Council approved motion to grant a waiver of regulations of UDO Section 7.07 C Sidewalks Development Petition #15-DP-05 David Bryan Law, for a waiver of the requirement to install sidewalks and street furniture with the following (2) condition(s):

1. This waiver shall apply only to development plan project number 15-DP-05 David Brian Law Office. Any future addition to the building or redevelopment of the property shall require the installation of the sidewalk and street furniture prior to opening.
2. A sidewalk easement will be required for the future sidewalk to include the area from the sewer easement to the Right-of-way for the future sidewalk.

**Motion by:** Dickson

**Second by:** Cobb

**Vote:** Unanimous.

**Action #9:** Having made the necessary findings of fact, the Council approved a motion to approve Special Exception Use #15-SEU-02 for David Bryan Law and Development Plan #15-DP-05 for David Bryan Law as submitted by The EI Group, dated Revised 13 DEC 2015 with the following conditions:

**Special Exception Use**

1. All operations must adhere to the evidence submitted by the applicant as stated in the findings of fact submitted and those findings of fact specified by the Town Council in conjunction with 15-SEU-02.

**Development Plan**

1. If the approval of project number 15-DP-05 David Brian Law Office expires prior to completion of the canopy being enclosed, the siding placed in the location of the former bank teller window must be replaced with brick which matches the current structure.

A sidewalk easement will be required for the future sidewalk to include the area from the sewer easement to the Right-of-way for the future sidewalk.

**Motion by:** Lee

**Second by:** Dickson

**Vote:** Unanimous.

**7. Consent Agenda:** The Council approved a motion to approve all items on the Consent Agenda. The motion carried following a motion by Councilman Cobb, a second by Councilman Dickson and a unanimous vote. The following actions were affected:

7a. Minutes – The Council approved minutes of the Town Council's meeting held Feb. 2, 2016.

7b. Resolution 16-04 – The Council adopted Resolution 16-04 declaring certain personal property surplus to the needs of the town. *A copy of Resolution 16-04 is attached to these minutes.*

7c. Enforcement Response Plan - The Council approved additions to the Town of Holly Springs Enforcement Response Plan regarding fats, oils and grease rule enforcement and violations.

7d. Former Police Building - The Council approved to hire a firm to perform building up-fit on the former Holly Springs Police Department building.

7e. Town's Hydraulic Model Project – The Council approved to retain Hazen and Sawyer, P.C. for \$12,000 and approved \$13,000 in funding, including contingency, for additional work in the Town's Hydraulic Model project.

7f. Monthly Budget Report – The Council received the monthly report of budget amendments approved by the town manager. *A copy of the budget amendment report is attached to these minutes.*

7g. Town Council Annual Retreat – The Council set a special meeting for Friday, Feb. 19 and Saturday, Feb. 20, 2016 at Pine Needles Lodge in Southern Pines for the purpose of holding the Council's annual planning retreat.

**8a. Avent Ferry Road Intersection Improvement Project** – Ms. Parrish said the Town received bids for the Avent Ferry Road Intersection Improvement project and were opened Dec. 14. She said the bids were 8% over the estimated project cost.

Ms. Parrish said the Town convened with NCDOT and requested additional funds from the Safety Funds to cover the increase in the amount. NCDOT was able to lobby the safety funds and grant the Town an additional \$300,000.

**Action:** The Council approved a motion to approve enter into a municipal agreement with the North Carolina Department of Transportation for \$300,000 in additional funding for the Avent Ferry Road Intersection Improvement project.

**Motion by:** O'Brien

**Second by:** Williams

**Vote:** Unanimous.

**9. Other Business:** None that resulted in Council action.

**10. Manager's Report:** None that resulted in Council action.

**11. Closed Session:** None.

**12. Adjournment:** There being no further business for the evening, the Feb. 2, 2016 meeting of the Holly Springs Town Council was adjourned.

Respectfully Submitted on Tuesday, March 1, 2016.

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se minutes follow and are a part of the official record.

