

Decision on Application 2016-652 Taft Development Apartments at 10252 Monroe Road

DATE: January 4, 2017
FROM: Jay Camp

Background/Issue

Planning Board unanimously recommended approval of the rezoning request at their meeting on January 3rd. The recommendation came with the condition that the detention ponds should be fenced and that the fence around the cemetery should match. The Historic Landmarks Commission must approve the fence and will likely call for a more traditional fence around the cemetery. The Board also recommended that the site be shifted back at least 10' from Monroe Road to account for the proposed light rail extension and potential additional right-of-way that may be needed. The applicant agreed to these two changes. Attached is a crime summary memo from Chief Hunter.

At this time, staff has the following outstanding items that need to be addressed:

1. Completed vegetation survey required
2. PCO Concept Plan Approval
3. Add note regarding fencing around detention ponds
4. Move site plan 10' from Monroe Road
5. Add CATS bus stop pad to frontage
6. Add building materials percentage
7. Add note regarding emergency access at deleted 2nd driveway location
8. Add note regarding public easement to cemetery
9. Connect trail to Monroe Road via sidewalk

Proposed Solution

In light of the positive recommendation from Planning Board, staff recommends that Council approve the request if the above 9 items are addressed accordingly.

Related Town Goal(s) and/or Strategies:

Quality of Life
Economic Development/Land Use Planning

Recommended Motion/Action:

Approve Application 2016-652 subject to resolution of the above 9 items.

**SUGGESTED
STATEMENTS OF CONSISTENCY AND REASONABLENESS
Final Decisions on Zoning-Related Issues**

ZONING APPLICATION # 2016-648

Matthews Board of Commissioners makes the following 2 conclusions:

1) X The requested zoning action, as most currently amended, **IS CONSISTENT** with the policies for development as outlined by the Matthews Land Use Plan.

OR

 The requested zoning action, as most currently amended, **IS NOT CONSISTENT** with the Matthews Land Use Plan and/or other adopted land development policies and plans.

(A requested zoning can be found “consistent” and not approved, or found to be “not consistent”, but approved.)

2) X The requested zoning action **IS REASONABLE** and in the public interest because:
(ex., may be appropriate with specific surrounding land uses; has been shown that it will not create significant new traffic beyond area roads’ capacities; creates/increases desirable use in Town.)

The rezoning provides new housing at a density between 11 and 12 units per acre on a parcel of land specified for a density of up to 16 units per acre in the Monroe Road Small Area Plan. This moderate density project is located within walking distance of shops and services and is located along a current bus route as well as a future planned light rail line.

OR

 The requested zoning action **IS NOT REASONABLE** and in the public interest because:

(Reasons given for a zoning request being “reasonable” or “not reasonable” are not subject to judicial review.)

Decision Date 1/9/17

Memorandum

From: Chief Rob Hunter
To: Hazen Blodgett, Town Manager
Date: January 4, 2017
Subject: Proposed Multi-Family Development 2016-652

During and after the December 12, 2016 public hearing regarding this proposed development, several citizen comments regarding safety and incidences of crime in that area were voiced, including specifically within the Sardis Forest community. As a result, our staff reviewed calls for service and crime data for the immediate area and found the following:

1. Regarding the Sardis Forest community within the Town of Matthews' jurisdiction, encompassing eleven streets, calls for police service have been fairly constant over the past three years, with these results:
 - a. 2014: 22 calls for service, resulting in 3 reported crimes (1 residential burglary and 2 thefts of mail)
 - b. 2015: 22 calls for service, resulting in 3 reported crimes (1 larceny and 2 harassing phone calls)
 - c. 2016: 21 calls for service resulting in 5 reported crimes (2 larcenies, 2 vehicle break-ins and 1 damage to property)

2. The statistical data for CMPD's jurisdiction was limited; the data available covers only the past six months. A review of the Sardis Forest community within Charlotte, encompassing at least 99 streets, found the following over the past six months:
 - a. July – Sept 2016: 39 calls for service resulting in 10 reported crimes (6 vehicle break-ins, 5 larcenies, 3 damage to properties, 2 frauds, 2 assaults, and 1 auto theft)
 - b. Oct – Dec 2016: 22 calls for service resulting in 11 reported crimes (2 vehicle break-ins, 1 larceny, 3 frauds, 2 damage to properties, and 3 assaults)

The employees of the Matthews Police Department strive to promote a safe community by preventing crimes and reducing the fear of crime, while treating all individuals fairly and with respect.

Our members will demonstrate honesty, professionalism and integrity, while building the partnerships necessary to enhance the safety of our community.

3. A review of the Monroe Road / Galleria Blvd. / Sardis Road North area of Charlotte, including both the commercial and multi-family developments in that quadrant, found the following over the past six months:
 - a. July – Sept 2016: 31 calls for service resulting in 9 reported crimes (4 assaults, 2 damage to properties, 1 larceny, 1 vehicle break-in and 1 fraud)
 - b. Oct – Dec 2016: 17 calls for service resulting in 5 reported crimes (3 assaults, 1 robbery and 1 fraud)

I would also note that over the past ten years, we have conducted at least two comparative crime reports regarding multi-family and single-family communities within the Town. Each of those reports found that while calls for service were typically found to be higher in multi-family development – primarily ‘quality of life’ complaints such as loud music, noise complaints, etc. – the rates of reported crimes were essentially the same as single-family developments with comparative populations.

I am available if you should have any questions about this information.

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Our members will demonstrate honesty, professionalism and integrity, while building the partnerships necessary to enhance the safety of our community.

CRANFORD, BUCKLEY, SCHULTZE, TOMCHIN, ALLEN & BUIE, P.A.

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M E M O R A N D U M

TO: Mayor James P. Taylor
Matthews Town Board

FROM: Charles R. Buckley, III, Town Attorney

DATE: January 04, 2017

SUBJECT: Zoning Application 2016-652 – Taft Development, 10252 Monroe Road

During the public hearing there was conversation between various parties including the applicant and Town Board members regarding an issue regarding the townhomes specifically ownership of the townhomes.

I have had an occasion to do a little research since the public hearing and have determined that the North Carolina case law is pretty clear through a series of cases going back to 1981 specifically Graham Court Associates v. Town Council of Chapel Hill (1981), the court held zoning can regulate land use, but not the form of ownership. Then in Gregory v. County of Harnett (1997), which amongst other things held that land use regulations must be based on land use impacts, not the identity of the landowner or applicant.

The most recent case I have found is City of Wilmington v. Hill (2008) that held specifically that the ownership requirement in the town's regulations was unconstitutional as an impermissible regulation of ownership rather than a permissible regulation of land use. The Court went on to state that the owner-occupant requirement was beyond the scope of delegated zoning powers. The Court pointed out that the enabling legislation in Chapter 160A-381(a) grants the city the power to "regulate and restrict the use of buildings, structures and land". Therefore, ownership was beyond the authority granted by the General Assembly and to base a regulation on ownership is an impermissible regulation rather than the use of the defendant's property.

Therefore, to include a condition in the current zoning if it is approved that regulates the ownership of any portion of the zoning district this goes beyond the authority granted to municipalities as the Courts have stated and therefore the zoning ordinance allowing the use containing an impermissible condition dealing with ownership would be subject to being set aside by the Courts.

Obviously, should you have any questions, please do not hesitate to give me a call.

CRB/khh

cc: H. Hazen Blodgett, Matthews Town Manager
Kathi Ingrish, Planning Director