

**CITY OF ELIZABETH CITY  
PLANNING COMMISSION  
SPECIAL CALLED MEETING  
Wednesday, December 16, 2015  
4:00 PM**

**MEMBERS PRESENT**

Ernest Sutton, Chairman  
Sonny DiGirolamo  
Carlton O'Neal  
Suzanne Stalling  
Gary White  
Don Witosky

Also present were June Brooks, Planning Director; Kaitlen Alcock, Planner, Dawn Harris, Secretary to the Board; applicant and members of the audience.

Chairman Sutton called the meeting to order and stated that there was a quorum. He asked for a motion to approve the minutes from the August 2015 meeting. Mr. White made a motion to **APPROVE** the minutes as read from the August 4, 2015 Planning Commission meeting. Mr. DiGirolamo seconded the motion. ***ALL IN FAVOR: SUTTON, DIGIROLAMO, O'NEAL, STALLINGS, WHITE AND WITOSKY. NONE OPPOSED. MOTION PASSED.***

Chairman Sutton asked for Ms. Harris to read the Statement of Disclosure as follows.

Elizabeth City Code of Ethics provides that public officials and employees be independent, impartial and responsible to the public; that governmental decisions and policy be made in proper channels of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. In recognition of these goals and in keeping with the ethical standards of conduct for city public officials and its employees, disclosure of interest in legislative action must be stated for the public record, as per City of Elizabeth City Code of Ordinances Section 2-113. Any member of the Planning Commission who has an interest, as defined in Section 2-111 of the City of Elizabeth City Code of Ordinances, in any official act or action before the Commission shall publicly disclose on the record of the Commission the nature and extent of such interest, and shall withdraw from any consideration of the matter if excused by the Commission pursuant to G.S. 160A-75.

Chairman Sutton asked for a motion to approve the agenda as presented for the meeting tonight. Mr. White made a motion to **APPROVE** the agenda for the December 16, 2015 meeting. Mr. DiGirolamo seconded the motion. ***ALL IN FAVOR: SUTTON, DIGIROLAMO, O'NEAL, STALLINGS, WHITE AND WITOSKY. NONE OPPOSED. MOTION PASSED.***

First item of new business on the agenda was CASE NO.: RZ-02-15 filed by Mark Gregory of MaSuKi, Inc. for property located on the southwest side of Halstead Boulevard abutting Millbrook Circle and Body Road. The applicant is requesting a rezoning from Residential (R-15) to Apartment District (AD) for a total of 21.265 acres. (5.243 acres of map and lot number

P90-29-2; a portion to total 14.193 acres of map and lot number P90-29-C; and 1.829 acres of map and lot number P90-29-1). Chairman Sutton asked for Staff's report. Ms. Alcock gave the following report:

### **STAFF REPORT**

The request today is RZ 02-15, made by Mark Gregory on behalf of MaSuKi, Inc. to rezone a 21.265 acre tract from Residential R-15 to Apartment District. The property in question is located southeast of the intersection of Halstead Boulevard and Millbrooke Circle, adjacent to the Millbrooke Subdivision. The Residential R-15 zoning district is designed to accommodate a variety of low density single-family detached dwellings with nonresidential uses permitted including customary accessory, recreational, educational, and institutional lands uses compatible with low density residential development. The Apartment District is primarily intended to accommodate a variety of high density single-family detached dwellings, modular homes, two-family dwellings, and multifamily dwellings. Since only a portion of the property lies within City Limits, the applicant is seeking City Council's approval to annex the remaining property into the City's jurisdiction. The annexation request will be heard by City Council in January along with the rezoning request.

The Joint Pasquotank County and Elizabeth City Land Use Plan classifies the majority of the tract as low density residential with a small section of general commercial at the northern edge of the property. The low density residential classification is described as lands where the predominate land use is low density detached residences. This classification is considered inconsistent with the Apartment District zone; however, the Land Use Plan does state that some areas adjacent to more intense land uses may transition into a medium/high density residential land use and density over time which would be considered generally consistent with the Apartment District Zoning. As such, if the Commission recommends approval of the rezoning, Staff recommends an amendment to the Future Land Use Map to ensure compatibility between current land uses and zoning and the future land uses desired.

When making a determination on a rezoning request, Staff considers the area's zoning pattern, adjacent land uses, the joint Pasquotank County and Elizabeth City Land Use Plan as well as the impact on City infrastructure including roads and utilities. Staff also takes into account the impact the proposed rezoning will have on adjacent property owners. Staff is of the opinion that the requested rezoning is consistent with the current commercial and residential development along this portion of Halstead Boulevard but contradicted by the Land Use Plan. Given this, Staff believes a map amendment would be necessary if the rezoning is approved to ensure compatibility across City plans. Utility service in the area is sufficient to support the rezoning and proposed future development. The applicant has consulted with City Staff from various departments regarding this request and has satisfactorily conducted all necessary due diligence prior to submitting the petition. As such, Staff recommends approval of the rezoning request with the condition that an amendment to the Land Use Map be required.

Chairman Sutton asked if there were questions for Staff from the Commission. There were none. Chairman Sutton asked for the applicant to come forward. Mr. Mark Gregory came forward to give his overview of the project.

Mr. Gregory stated that he is basically here to answer any questions the Commission may have. He stated that they have already done the stormwater report to be sure that they are not affecting Knobbs Creek. It was one of the recommendations from the City. He stated that the reports came back well and they are in good shape. Stormwater was the biggest concern they had with this project.

Mr. White asked Mr. Gregory if the housing was based on age and/or income. Mr. Gregory stated no. The housing is market value complex.

Mr. DiGirolamo asked if the complex was apartments. Mr. Gregory stated yes, that is correct.

Mr. White asked if total apartments. Mr. Gregory stated yes.

Mr. DiGirolamo asked how many units in the complex. Mr. Gregory stated 216 units with clubhouse, pool and all amenities that go with it.

Mr. White asked if the City has anything in existence that could be compared. Mr. Gregory stated that the Tanglewood apartments are the closest comparison.

Mr. DiGirolamo asked the sizes of the units. Mr. Gregory stated that they will be two bedroom/two bath and three bedroom/two bath units. There will be no one bedroom apartments. Mr. DiGirolamo stated that there could be a possibility of families with children coming in. Mr. Gregory stated yes there could be. Mr. DiGirolamo stated the reason he mentioned it was because of the school impact. Mr. Gregory stated that they have discussed that with the school superintendent/board. Based on the number of units proposed is not a lot. Out of the 216 units there might be 40-50 units that are three bedrooms.

Chairman Sutton asked what the anticipated cost per unit will be. Mr. Gregory stated that the two bedroom units will be \$1,000 and three bedroom \$1,300. He stated that they manage the complex themselves. They do credit and background checks on everyone applying.

Mr. DiGirolamo asked if this is their first apartment adventure. Mr. Gregory stated no. Mr. White asked what their other adventure had been. Mr. Gregory stated that they did Camden County; the Riverbridge Apartments by the high school.

Chairman Sutton asked how long they have been working on this project. Mr. Gregory stated approximately six months.

Mr. Witosky asked if the only entrance/exit was going to be off Halstead Boulevard. Mr. Gregory stated that there will be two. One that comes in off of Halstead where Millbrooke is. There will be another entrance off Body Road. He stated that he has already met with NCDOT regarding this matter. This was DOT's recommendation to have two ingress/egress.

Mr. DiGirolamo stated that across from this project is a restaurant, a convenience store on the corner and asked about foot traffic. Mr. Gregory stated that he didn't know that there would be. He was contacted by the property owner of the parcel on the corner on Halstead. They have

some thoughts about developing that parcel. They were asking about Mr. Gregory's project versus their project. He stated that they perhaps were looking at foot traffic for their project.

Chairman Sutton asked if he had read that part of this project is in the City and part of it is outside the City. Mr. Gregory stated that is correct. The front part is inside the City limits. The other part will be annexed into the City. Chairman Sutton asked how that would work. Ms. Brooks stated that the annexation will go to City Council. Everything that is annexed automatically comes in as R-15 zoning. Following the annexation the rezoning will be heard.

Chairman Sutton asked for Mr. Paul Jones to come forward and be sworn in. Mr. Jones lives at 517 Millbrooke Circle. He stated that his property abuts the proposed rezoning RZ-02-15. He stated that his wife and other members in Millbrooke are opposed to this rezoning for the purpose of apartments. He stated that they had anticipated having homes behind them. They did not anticipate a development of apartments. Looking into previous situations that are similar they found that there is a 5 to 10 percent reduction in values for homeowners. This is one reason they are opposed. The other reason is traffic flow. DOT calculates 1.5 vehicles per home or apartment. Mr. Jones stated that he would argue that it is not an up-to-date figure. He would calculate at least 2 per home. Looking at those numbers they are looking at 325 additional vehicles entering and exiting this development. That doesn't count those already in Millbrooke. If calculated on the 2 vehicles per resident, you are looking at 432 vehicles. Mr. Jones stated that he doesn't feel that he or his neighbors would ever feel comfortable with these apartments behind them.

Chairman Sutton asked Mr. Jones how many residents are in Millbrooke presently. Mr. Jones stated twenty-seven. He was asked if he knew how many individuals. He stated that it varies.

Mr. DiGirolamo ask for confirmation that there are actually six houses in the Millbrooke Subdivision that abut the proposed rezoning. Mr. Jones stated that is correct. Mr. DiGirolamo asked Mr. Gregory if there were plans for buffering the property. Mr. Gregory stated absolutely. They have to put in what the City requires and they also have designed the development to have garages available to rent. The garages will be on the side. Mr. DiGirolamo asked Mr. Jones if it helps that there will be buffering. Mr. Jones stated no. He asked Mr. Gregory if there would be a wall or fence. Mr. Gregory stated that there would be shrubbery. Mr. Jones asked about security lighting. Mr. Gregory stated that there will be lighting.

Ms. Stallings asked Mr. Gregory if he had a site plan that Mr. Jones could see. Mr. Jones stated he had already seen a plan. Ms. Stallings stated that there was not one in her packet. Ms. Brooks stated to the Commission to remember that this hearing is for the rezoning. Lightening, landscaping and buffering is in a whole separate process. Ms. Stallings stated that she didn't know if Mr. Jones had seen a plan. Mr. Jones stated that he is the engineer for northeastern North Carolina for CenturyLink. He stated that as part of his professional career he has to be involved in this project; if it moves forward.

Mr. DiGirolamo asked if Mr. Jones had spoken with the other homeowners. Mr. Jones stated that he has not done a petition. He has spoken to the homeowners across the street from him. He stated that he could try to gather up a petition. Mr. Jones stated that there had been a letter sent

out for the meeting that was to be held on December 1st and he asked if there had been another letter mailed regarding tonight's meeting. Ms. Brooks stated, no. Planning Staff is not required to do notification letters for the second meeting. The meeting was advertised in the Daily Advance as a courtesy.

Mr. White offered a motion to **DELAY ACTION** on case RZ-02-15 to hear the residents of Millbrooke and to see if there are any other overwhelming protest on this matter. Ms. Stalling stated that we are only voting on the rezoning. Mr. White stated that he is only making a motion to delay not to say yea or nay. Chairman Sutton asked for a second. There was none. **MOTION FAILED.**

Mr. Witosky made a motion to **APPROVE RZ-02-15** changing the zoning from R-15 Residential to Apartment District (AD) with the rewrite of the map as required. Ms. Stallings seconded the motion. **ALL IN FAVOR: SUTTON, DIGIROLAMO, O'NEAL, STALLINGS AND WITOSKY. ALL OPPOSED: WHITE. MOTION PASSED.**

Mr. Jones was informed that the City Council meeting of January 25, 2016 will hear this rezoning. Ms. Harris informed Mr. Jones that property letters will be mailed for the Council meeting as a reminder.

Next item on the agenda was **CASE NO.: TEXT AMENDMENT 02-15** presented by the City of Elizabeth City to amend the Unified Development Ordinance, specifically Article X Subdivisions – Procedures and Standards; and Article VIII Amendments by adding and updating language governing bonding for unimproved requirements and protest petitions as reflected by enacted legislation by the 2015 General Assembly.

### **STAFF REPORT**

Ms. Brooks stated that both the text amendments before the Commission are a result of the 2015 General Assembly legislation. The first one is a result of House Bill-721. The Assembly limits the amount of performance guarantees that can be required to complete required improvements for developments. Currently, the City requires the developer to post a bond or letter of credit as a performance guarantee in the amount of 150 % for the amount of unimproved requirements. The new legislation has reduced it to 125% for the unimproved requirement.

Ms. Brooks stated that the second piece of legislation is regarding protest petitions. This is a tool that Elizabeth City has rarely used. A protest petition is a tool if you have a really controversial rezoning. The protest petition has required that the City Council have a super majority vote. To invoke this super majority vote the petition would have to be signed by the owners of either twenty percent (20%) or more of the area included in the proposed change or five percent (5%) of a 100 foot wide buffer extending along the entire boundary of each discrete or separate area proposed to be rezoned. The rezoning does not become effective unless it receives a favorable vote of three fourths of all the members of the City Council. The new legislation states that any resident or property owner in the city may submit a written statement to the clerk of the board at least two business days prior to the proposed vote on the change, and the clerk shall deliver the written statement to the City Council. A vote to approve the change requires a majority vote of

the City Council. These changes became effective October 1, 2015 and apply to actions taken on or after that date by the local governing bodies.

Chairman Sutton asked if a Letter of Credit satisfy the requirements. Ms. Brooks stated yes. The City accepts Letter of Credits, Bonds and have in some cases accepted checks.

Chairman Sutton asked how the City usually receives notifications on legislative changes. Ms. Brooks stated through the School of Government. Chairman Sutton asked if there had ever been an occasion when something was missed that the City should have received. Ms. Brooks state no. During the legislative period Staff follows all of the processes closely. City Manager Olson also follows the processes.

Mr. DiGirolamo stated that these are changes that have already been made. Ms. Brooks stated yes.

Mr. DiGirolamo made a motion to **APPROVE TA-02-15** as presented. Mr. White seconded the motion. **ALL IN FAVOR: SUTTON, DIGIROLAMO, O'NEAL, STALLINGS, WHITE AND WITOSKY. NONE OPPOSED. MOTION PASSED.**

There was no Staff Report.

There was no Chairman Report.

Member concerns: Mr. Witosky stated he had noticed renovations going on at the First Citizen's building at Holly Square and asked what was going there. Ms. Brooks stated that she believes a dentist [Ms. Gilliam].

Mr. DiGirolamo asked how large the complex that is going near the Farm Fresh is. Ms. Brooks stated 120 apartments and they are tax credit apartments. The apartments behind Farm Fresh are also tax credit apartments. Mr. DiGirolamo stated that he knew there was some issues raised with Oxford Heights when the complex first surfaced. Ms. Brooks stated that the issues were all stormwater related and is being taken care of. [Inaudible dialogue]

Chairman Sutton thank everyone for their service through the year and wished everyone a happy holiday and new year. He also thanked Staff for their time and effort. He mentioned Ms. Lena Council who had to resign due to family medical reasons. He thank her for her time served.

With no further business, Mr. White made a motion to adjourn. Mr. DiGirolamo seconded. All were in favor. **Motion passed and meeting was adjourned.**

Respectfully submitted by,

*Dawn Harris*  
Secretary to the Board

***\*Minutes approved at the March 8, 2016 Planning Commission Special Called Meeting\****