

Town of Tyrone
Planning Commission Meeting Minutes

December 9th 2021

7:00 PM

Present:

Chairman, David Nebergall

Vice-Chairman, Dia Hunter

Commission Member, Jeff Duncan

Commission Member, Carl Schouw

Commission Member, Scott Bousquet

Town Attorney, Patrick Stough

Town Planner, Phillip Trocquet

Call to Order:

Chairman Nebergall called the meeting to order at 7:00 pm. The meeting was also available via YouTube Live.

Approval of Agenda:

Vice-Commissioner Hunter made a motion to approve the agenda. Motion was seconded by Commissioner Schouw. Motion passed 4-0.

Approval of Minutes:

Commissioner Duncan made a motion to approve the October 28, 2021 minutes, with edits. Motion was seconded by Commissioner Schouw. Motion passed 4-0.

Public Hearing:

1. Rezoning petition from applicant Richard Greenan for parcel 0727-090 from Office-Institutional to R-18. **Phillip Trocquet, Town Planner**

Commissioner Bousquet recused himself from the vote due to the proximity of the property to his home and left the room. Mr. Trocquet noted that the applicant was in attendance along with his representative, Mr. Rick Lindsey. Mr. Trocquet first presented the item by stating that the same rezoning petition was presented in November of 2017. The petition was denied 4-0 at that time.

Mr. Trocquet stated that although the desired zoning would be considered a down-zoning and would be matching adjacent R-18 properties, the property was located in the commercial corridor future development character area where R-18 is not explicitly encouraged. He continued that a potential rezoning to residential would require adjacent commercial properties to incur a 75-foot buffer. The surrounding commercial properties are all owned by the same property owner, giving those undeveloped properties flexibility on future construction.

Mr. Trocquet noted that one of the reasons the original rezoning petition was denied was the substantial impact the rezoning would have on the parcel to the west. Since that time, the adjacent property had been bought, and now all adjoining commercial properties belong to a singular owner, giving that owner the flexibility to replat the property and to better accommodate for that 75-foot buffer.

Mr. Trocquet continued that this rezoning petition was not completely consistent with the Town's comprehensive plan and future development strategy, as this property was located within the commercial corridor future development character area. The character area line was delineated along original land lot lines to clearly define commercial from non-commercial areas.

Mr. Trocquet then read the impact assessment:

1. Will Zoning permit suitable uses with surrounding properties?

R-18 zoning is suitable adjoining other R-18 properties and does not significantly affect surrounding commercial properties.

2. Will Zoning adversely affect adjacent properties?

It is staff's determination that R-18 zoning will adversely affect the owner of parcel 0727-089 given that a 75' buffer will be incurred if situated next to a residential zoned property; however, this owner also owns all surrounding lots with the option to combine or re-plat to accommodate the incurred buffer. These lots are also all undeveloped.

3. Does the property have reasonable economic use as currently zoned?

It is staff's opinion that the current commercial zoning provides reasonable economic use.

4. Would the proposed zoning result in a use which will or could be excessively burdensome on existing infrastructure?
5. *It is staff's determination that R-18 zoning would not be excessively burdensome on existing infrastructure.*

Chairman Nebergall opened the hearing to those in favor of the petition.

Mr. Rick Lindsey approached the podium to speak in favor of the petition. He stated that he was representing the landowner, Mr. Richard Greenan. He stated the property owner had spoken to the adjacent property owner to the west and that his client had already signed a statement stating the 75-foot buffer could be on the applicant's property so it would not negatively impact the neighboring property owner, Tyrone 37, LLC.

He continued that when the rezoning petition was originally heard in 2017, he thought there might have been confusion on the guidelines surrounding an R-18 zoning. He pointed out that R-18 calls for the largest square footage of any of the Town's residential zonings, but that minimum square footage was far less than what was built in the Dublin Down's neighborhood. His client has agreed that any house he built on the property would be of same size and quality of the homes in Dublin Downs.

He stated that he had spoken with the Dublin Down's HOA president about potential other uses they would like to see for the property. He noted that the HOA president would like for the Town to acquire the land and turn it into a park and green space.

He continued stating that his client had owned the property for almost 14 years and had tried marketing the property but had received no interest in the property as currently zoned. Even though he had hired or retained four different real estate agents over the years, there had been no traction whatsoever. He noted that he had received residential interest in the property.

Mr. Lindsey restated that if the rezoning petition was approved, the property owner would build a house of the same size and quality of the homes in Dublin Downs. He would also include in the deed records that the 75-foot buffer would be on his property, not the adjoining one. He emphasized that his client was not trying to be a burden to any of the adjoining neighbors.

Chairman Nebergall opened the public hearing to those in favor of the request. No one spoke.

Chairman Nebergall closed the public hearing to those in favor and opened the hearing to those in opposition.

Mr. Mark Hatton of River Dance Way addressed Planning Commission. He stated that he was a resident of the Dublin Downs neighborhood, an attorney, and that he had lived in the Dublin Downs neighborhood for the last 5 years. He disagreed that there had been any real change in circumstances since the original rezoning request. He thought the original decision was correct.

He was concerned about a standalone piece of property that when sold would not be protected by any covenants or guidelines of an HOA. He argued that promises made by the applicant would not be binding upon a new landowner. He stated that Dublin Downs was a well-established neighborhood that has maintained its character since it's been there. He argued that standalone pieces of property cause a lot of trouble, especially when they go against the nature of an original commercial corridor zoning. He continued that the town had decided that a commercial property there has economic use. He pointed out that no one knew to what extent the owner had marketed the property and that these types of decisions are not based on what is best now but should be based on what would be best for the future.

He restated the promises made by Mr. Lindsey on behalf of the applicant and pointed out that the property would not be bound under HOA covenants and guidelines. If the property fell into a state of disrepair, the HOA would not be able to enforce their guidelines on that property. He continued that that was a big concern of the Dublin Downs neighborhood, along with the property potentially becoming an eyesore and negatively affecting their property values.

He argued that the property had use as is and he did not see a reason to approve the requested change.

Lillie Cunningham, HOA President for Dublin Downs and resident of River Dance Way up to the podium. She wanted it known that she agreed with everything Mr. Hatton had said. She continued that every home in Dublin Downs is from 3,000 to 5,000 square feet and ranged in price from \$500,000 to \$750,000. She did not like the idea of the property being rezoned for R-18 when the home would not be under the bylaws and constraints of the HOA. She explained that the entrance of the neighborhood was a deciding factor for many in the purchasing of a home in the neighborhood. To have a home stuck outside the neighborhood would be like a sore thumb and someone could come in and start dumping tires on the property for all she knew. Since they wouldn't know who owned it and they wouldn't have any control over the property, she didn't want anyone in the neighborhood to be forced to move and sell their home for less money because of this decision. She stepped down from the podium.

Mr. Kim Harper of O'Hara Drive approached the podium. He stated that he and his wife were new residents of Dublin Downs. He explained that one of the reasons they purchased their home was that they understood that piece of property would be for commercial use and not another residential area. He said that anything occurring on the piece of property would impact what they have in their back yard. He said property in question was right behind their house and would change their view in their backyard. He stated that he did not want to look out his backyard and see a stack of tires. He explained that he had seen situations where there were no enforceable boundaries and then the yards and houses turned into a nightmare for those around them. He said that the neighbors were forced to just live with it. Mr. Harper stated that he was not in favor of the rezoning and requested that the zoning was left as-is. He then stepped down from the podium.

Chairman Nebergall closed the public hearing for those in opposition and then offered the Mr. Lindsey the chance to offer a rebuttal.

Mr. Lindsey approached the podium. He explained that if conditions were placed on the rezoning by the Town Council, then those would be legally binding. The applicant's promises were not empty promises. He restated the applicant's offer to move the 75-foot buffer to his own property and that they had the written consent of Tyrone 37, LLC for the rezoning. He restated that the house would be at least 3,000 square feet or whatever was the average size home of the Dublin Downs community and that the applicant's promises could be legally binding. He noted that four years ago his client had offered to join the Dublin Downs HOA, and that if that was a concern of the residents, then that offer still stood. He stated that at that time, the HOA did not want the applicant to become a member, but that if control was an issue, his client was willing to have the property burdened and benefited by the HOA. He stated again that the conditions placed on the property with an approved rezoning would become legally binding. He then stepped down from the podium.

Mr. Trocquet added that while Planning Commission and Council could approve conditions in regards to entry into the HOA or minimum home size, the nature of buffers was that they are imposed on the higher intensity zoning. He stated that it was not within the Town's ordinance to allow that buffer to be incurred on the residential property. He continued that the only way that could be accomplished would be if that portion of the land was deeded over to that property owner. He stated he appreciated Mr. Lindsey and Mr. Greenan's willingness to ameliorate that concern, but it would be against Town ordinances to allow that to happen as suggested.

Mr. Stough added that Council could put a condition stating that he would provide that 75-foot buffer on his property, but that would not remove the need for the adjacent property owner to get a variance through the Town.

Commissioner Duncan clarified that the buffer was in regard to the property to the west of the property in question.

Chairman Nebergall opened the meeting up for planning comments.

Commissioner Duncan directed a question to Mr. Stough. He asked if a condition could be placed on the rezoning so that before a house is built, all of covenants of the Dublin Downs HOA must be adhered to. He wanted clarification on whether that would be enforceable.

Mr. Stough responded that in his opinion, conditions placed on rezoning should be designed to address a negative of the rezoning. He continued that what would be considered a negative of the rezoning is up to the commissioners to decide. Generally, when a property goes from a lower intensity use to a higher intensity use, that could be a possible negative to the properties around it. He noted that this case would be the opposite of that. He restated concerns from speakers in the public hearing period about this property developing differently than the Dublin Downs community, and stated that it was up to the Commissioners to decide if it was a negative impact or not.

Vice Chairman Hunter asked to see the existing zoning of Dublin Downs. He noted that Dublin Downs was also zoned for R-18, which is what the applicant was requesting, even though the houses were built larger than what R-18 required.

Mr. Stough and Mr. Trocquet clarified that R-18 does not have the largest minimum square footage requirement. R-20 has a 2,000 square footage requirement.

Vice Chairman Hunter asked for the potential land uses of O/I zoning.

Mr. Trocquet stated the potential uses of property zoned O/I zoning, such as doctors offices, museums, specialized non-degree schools, day nurseries, churches, etc. He noted that there were conditions stating that certain businesses had to have more than a 75-foot buffer from residential property.

Vice Chairman Hunter asked if a potential buyer could use the land as-is for any of the permitted or conditional uses as outlined in the ordinance. Mr. Trocquet said that permitted uses would be able to go by right and the conditional uses would have to meet whatever the conditions are in the conditional use section.

Vice Chairman Hunter stated that he thought it was a control issue for the residents from Dublin Downs. He stated that the best way to remedy that would be to try and get that land worked into the HOA so that the owner had to comply with HOA guidelines. He pointed out that as it currently stands, any of the previously mentioned business could be built right outside their subdivision. He stated that further conversation could be had to create a win-win for both the Dublin Downs citizens and the property owner. He also stated that Mr. Greenan wanted to have an economic gain on the property and had come back to the rezoning as his best option. He stated that there were houses right outside of his own neighborhood. They had the freedom to do whatever they wanted, and that had not impacted his property value. He noted that it was in everyone's best interest that an agreement was made. He pointed out that a cemetery could currently go on that property, and that he would not want to drive through a "Thriller" video on his way home every day. He encouraged further conversation between the HOA and the applicant.

The HOA president was asked to return to the podium. She described the current view of driving into the Dublin Downs neighborhood. She explained that no matter what type of building was placed on that property, it would impact the view of homeowners in Dublin Downs. She explained that there was a smoothness to that landscape, and she had hoped that the Town would purchase it for greenspace. She said that Mr. Greenan might be asking too much for the property and he should lower his asking price. She wanted the other office complexes in the area to be further developed, but did not want the property in question developed. She stated that she did not want a house stuck there.

Chairman Nebergall added that it was apparent that she did not want this property added to the Dublin Downs HOA. She responded that if the Council mandated it, then the HOA would allow it, but it was not something that the Dublin Downs community wanted.

Vice Chairman Hunter brought up the possibility of moving the neighborhood entry sign. The HOA president pointed out that it would not look cohesive and pointed out how awkward it would look.

Commissioner Schouw pointed out that if he was a resident of Dublin Downs and he saw the list of current potential uses for the property and noticed that a cemetery could go there, he would not be in favor of that. He stated that even if the community wanted a certain type of building or development to go there, there was no guarantee that it would develop according to their wishes. Chairman Nebergall reiterated that if any proposed development fell within the zoning guidelines, it would be allowed.

Chairman Nebergall asked the HOA president if they would allow this property to join the HOA. It was noted that a decision could not be made without a meeting of the HOA.

Mr. Hatton joined Ms. Cunningham at the podium. He asked a clarifying question on the power of the planning commission.

Mr. Trocquet responded that the planning commission could recommend whatever was applicable. Mr. Hatton was also concerned over whether conditions on the rezoning would be applicable to future property owners. He reiterated that the property being added to the HOA would have to be discussed at an HOA meeting.

Chairman Nebergall recommended that a conversation take place between the HOA and the property owner, and that if the HOA was not open to that idea, then planning commission would make a decision based on the current circumstances.

Vice Chairman Hunter noted that the property owner was willing to give up a portion of usable property to accommodate the 75 foot buffer. He pointed out that the person who was losing in this situation was the one who had to accommodate that buffer.

Mr. Hatton said by approving this one rezoning, this problem could become bigger and bigger and that was why it was part of the commercial corridor as determined by the town. He was worried about a continual creep problem.

Commissioner Duncan addressed a question to Mr. Lindsey. He wanted to know how many houses were being planned for the lot. Mr. Lindsey restated that that the 75-foot buffer agreement would be placed in the title of the property and that only one house was planned for the land.

Commissioner Schouw commented that he understood where the residents were coming from but that they had to be careful for what they asked for in situations like these.

Commissioner Duncan reiterated the potential uses for that property as currently zoned.

Chairman Nebergall clarified that his vote was not needed even in Commissioner Bousquet's recusal.

Vice Chairman Hunter pointed out the potential niceties of a complete commercial corridor and why he thought the property hadn't sold as commercial.

Commissioner Duncan made a motion to rezone the property to R-18 with the conditions that it adhered to the Dublin Downs' HOA and the square footage guidelines.

Mr. Stough pointed out that requiring them to be a part of the HOA is out of Planning Commission's control. He suggested requiring them to adhere to the covenants of the HOA, which is different than requiring the property owner to join the HOA.

Vice Chairman Hunter suggested tabling the motion until the applicant conversed with the HOA. Mr. Stough said it was not favorable to do so at that time.

Mr. Trocquet pointed out that even if the applicant and the HOA put everything in writing, the HOA had the right to change their mind at any time. He also suggested putting a time frame on the issue if they pursued that route.

Vice Chairman Hunter noted that in regards to the applicant joining the HOA, it was an issue of good faith. He then stated that if planning commission recommended denial of the petition, a cemetery or amphitheater could go there and there would be nothing anyone could do about it. If it was zoned R-18, someone could build the smallest or largest house allowed. The applicant could join or not join the HOA. Chairman Nebergall then noted that these are not things that the planning commission could control, so they either needed to recommend approval or not recommend it.

Mr. Stough noted in response that they could place minimum square footage conditions on the house built.

Vice Chairman Hunter mentioned the buffer swap. Mr. Trocquet interjected that the property owner next door would still have to apply for a variance through the Town. Chairman Nebergall said that he is generally not in favor of variances.

Vice Chairman Hunter asked a clarifying question about the buffer. Mr. Trocquet noted that part of the reason it was denied last time was that the adjacent property owner to the west only owned that sole piece of land. Since then, it had changed hands. The current property owner now owned several connecting pieces of property, giving them greater flexibility in the land use. He continued that if the true intent was to incur the buffer, the subject property owner should sell a 75 foot strip of his own property to the adjoining neighbor which is not something that planning commission could mandate to be done.

Chairman Nebergall asked if they wanted to approve it as presented or not.

Commissioner Duncan rescinded his original motion to approve the rezoning.

Vice Chairman Hunter asked what the timeframe would be if planning commission recommended denial and asked the applicant and the HOA to converse before coming back before them.

Ms. Cunningham stated that due to the holidays, it would be a couple of months for the HOA to converse with the applicant.

Vice Chairman Hunter posed the same question to the applicant.

Chairman Nebergall said again that their job was to recommend approval or denial to the council.

A motion was made by Vice-Chairman Hunter to deny the rezoning petition. Motion was seconded by Commissioner Schouw. Motion passed 2-1 with Commissioner Duncan in opposition to the motion.

2. Rezoning petition from applicant Kip Oldham on behalf of owner Georgia Board of Realtors to rezone parcel 0727-048 from O-I (Office-Institutional) to C-2 (Highway Commercial). **Phillip Trocquet, Town Planner**

Mr. Trocquet stated that KA Oldham and Design had submitted the application on behalf of the Fayette County Board of Realtors. The purpose of the rezoning was to construct speculative buildings to attract new qualified tenants including an indoor sports and recreational facility and training center. He said that the property was in the Town's quality growth overlay district which did contain heightened landscape and architectural requirements for properties that front Highway 74. He continued that although this property was within the Commercial Corridor Character area, the closest C-2 property was roughly 1,000 feet away to the north as part of a planned Highway Commercial development that had more direct access to SR-74.

The development pattern along Handley Road assumed a more "community commercial" and office feel with zoning not exceeding C-1 in intensity. In addition to this prevailing zoning and development pattern, a historic residential property from 1900 existed directly to the south as with the Town's primary recreational park, Handley Park, to the east. In keeping with the surrounding character and development pattern, he said that staff would encourage this property to assume C-1 zoning as it would present a lower-intensity impact on the area.

He noted that C-2 is allowed within the commercial corridor character area; however, this particular neighborhood reflected more of an office and C-1 zoning.

1. Will Zoning permit suitable uses with surrounding properties?
Highway Commercial zoning may permit unsuitable uses adjoining the AR property to the south and other lighter commercial/office uses along Handley Road as Highway uses are higher in intensity to the zoning of surrounding properties.
2. Will Zoning adversely affect adjacent properties?
It is staff's determination that Highway Commercial zoning could adversely affect the residential property to the south as well as the light commercial/office character of the commercial neighborhood along Handley Rd.
3. Does the property have reasonable economic use as currently zoned?
It is staff's opinion that the current commercial zoning provides reasonable economic use as does C-1 zoning.
4. Would the proposed zoning result in a use which will or could be excessively burdensome on existing infrastructure?

It is staff's determination that C-2 zoning would be unlikely to cause an excessively burdensome use for this particular property. If C-2 development patterns were to appear along Handley Road more, the associated uses could impact road intersections to a higher degree than office and light commercial.

Chairman Nebergall opened the public hearing to those in favor of the request.

Mr. Kip Oldham approached the podium. He stated that he was the applicant for the property owner. He noted that their application did say C-2 but after more discussions with Phillip and others, they were willing to reduce their request to C1. He emphasized that they want to respect all applicable buffers and would not be requesting any variances.

Chairman Nebergall closed the public hearing to those in favor and opened the hearing to those in opposition. No one spoke.

Commissioner Duncan asked for clarification between C1 and C2. Mr. Trocquet said that C-2 allowed higher intensity uses such as automotive uses and also permitted more of big box commercial, which was appropriate along SR-74. Commissioner Duncan clarified that the property was advertised as being rezoned to C-2, not C-1. Mr. Trocquet stated that due to the zoning relationship of the two types of zonings, it could be appropriate to recommend a C-1 zoning in this instance. Mr. Stough clarified that C-1 is less intense than C-2.

Chairman Nebergall stated that he was not in favor of a C-2 zoning due to improvements needed along Handley Road to support new development.

Commissioner Schouw asked for clarification on the intended use of the property. Mr. Oldham said that an indoor training facility was going to be the primary use for one of the buildings. Nothing automotive related was proposed for the site. He said they wanted two buildings under 20,000 square feet. He stated that they went with a C-2 zoning originally due to the word "training" appearing in the ordinance under that section. The site plan was then pulled up on the screen. He noted that the buildings would most likely be built in phases and they would adhere to all required buffers.

Vice Chairman Hunter asked about architectural guidelines for the property. Mr. Trocquet stated that there are only architectural guidelines for the frontage along highway 74.

Chairman Nebergall asked Mr. Trocquet about the entrance of the property in relation to the entrance of Handley Park. Mr. Trocquet stated that the entrance would be much further south.

A motion was made by Commissioner Schouw to approve the rezoning petition to C-1. Commissioner Duncan seconded the motion. Motion passed 4-0.

No new business was presented.

Staff Comments

Mr. Trocquet stated that hard copies of the LCI would be delivered soon. He reiterated that it was a guide for the Town and that it had been before Town Council last week. He explained that it would give the Town access to more grant money and would help stretch the taxpayer dollar. Commissioner Duncan brought up the area around Shamrock Park and how he'd like to turn it in to a preserve or park of sort. Mr. Trocquet brought up that utilizing existing structures and land is a big part of the LCI. Mr. Trocquet then brought up a design for the area on the screen.

Chairman Nebergall asked about the relocated recreation center. Mr. Trocquet said that it would be an upgraded facility, not necessarily a brand new one. He noted that more recreation activities were wanted by the people in Town.

He also noted that after an outreach event, it was shown that a farmers' market was also desired for the park area. He clarified that the space could also be a multi-use space.

Commissioner Bousquet asked about the property of the east of the park. Mr. Trocquet said he didn't have a lot of information on it, just that it was still for sale.

Adjournment

Commissioner Duncan made a motion to adjourn. Meeting ended at 8:26pm.

Chairman David Nebergall

Phillip Trocquet, Town Planner