

**MINUTES
TOWN OF MONTVERDE
PLANNING AND ZONING BOARD**

February 6, 2017

The Planning and Zoning Board of Montverde met on February 6, 2017 at 6:30 p.m. in special session in the Town Hall Mayor's Office.

The recommendations of the Planning and Zoning Board will be submitted to the Town Council at a Council meeting to be held on Tuesday, April 11, 2017 at 7:00 p.m. in the Town Hall Auditorium.

Board Members Present:

Glen Brecheen
Allan Hartle
Sandy Baker
Chris Mitchell
Karin Arellano

Staff Present:

Graham Wells, Town Clerk,
Sean Parks, Town Planner

Glen Brecheen called the meeting to order at 6:30 p.m., and then led the Pledge of Allegiance.

ROLL CALL:

Following the roll call by Graham Wells, Town Clerk; a quorum was announced.

MINUTES:

Minutes for the Planning and Zoning meeting held on January 5, 2017 were unanimously approved.

MINUTE APPROVAL:

MOTION by Sandy Baker **SECONDED** by Chris Mitchell to approve Planning and Zoning Board Minutes for January 5, 2017.

FOR: Brecheen, Hartle, Baker, Mitchell, Arellano

AGAINST: None

MOTION CARRIED: 5-0

REZONING APPLICATION - MONTVERDE ACADEMY

Montverde Academy owns six properties in that Town that are located in residential districts. Their application is for the Town to rezone the properties for Institutional use.

The Board is required to review this application and make a recommendation to Council to approve or not to approve. Council will make the final decision at the April 11, 2017 Council Meeting.

Chairman Glen Brecheen opened giving an outline of the application. Chris Mitchell, who works for the Academy stated that there was a conflict of interest and that he would recuse himself from voting and comment. *Sean Parks* said that the application took two parts; one was an amendment to the Future Land Use (FLU) Map designation and also a zoning change for each of the six properties.

He added that the parcels were all owned by Montverde Academy and as such the FLU designation will become Institutional and the zoning will follow the FLU. The zoning will go from Single Family Residential to Public Facilities Institutional consistent with the Academy's other facilities. The table in the staff report showed six resolutions changing the future land use which will not go through P & Z and also six ordinances for the zoning change.

Glen Brecheen questioned one of the properties which was under the ORC designation as he didn't think that the Town had any in that area. *Mr. Parks* said that he would check for an ordinance to confirm. *Mr. Brecheen* asked what use changes there would be if they are moved from residential to public facilities. *Mr. Parks* read the list of uses from Chapter 10-59 of the Land Development code as follows:

Classrooms, auditoriums, dormitories, gymnasiums, laboratories, cafeterias, athlete fields, administration buildings, libraries and other buildings or structures incidental to or related to the operation and maintenance of a school. Other uses include utility facilities, including electric transformers, gas regulator stations, telephone switching equipment, gas pipelines and poles and accessory buildings and structures customarily used in connection with any permitted use.

Sandy Baker suggested that it could be used as a sewage treatment plant. *Mr. Parks* agreed that it could. *Allen Hartle* asked what "incidental" would cover. *Mr. Parks* responded that it would cover uses such as offices, storage or maintenance shed. *Mr. Hartle* asked what would be required for a residential property to be transferred to dormitory status. *Mr. Parks* said that they would have to submit a site plan and comply with building code.

Ms. Baker said that in the interest of disclosure she lived next to the Morgan house, 17215 9th Street. She said that Graham Wells had checked with the attorney to make sure that she did not have to recuse herself from comment or voting. She wanted to read from her notes, the salient points of which follow.

I am totally opposed to this rezoning application. We bought our house at 17201 9th Street in March of 1978. At that time, the headmaster's house was to our south on 9th Street, next to which was a large vacant field, then our house and then pasture land which the Morgan's owned which went up to the Academy sewer system. Bill and Sybil Morgan became increasingly concerned about actions the Academy took. For example, they built an open maintenance shed for equipment right across 9th Street from the Morgan's front door. It was unsightly to say the least, but nothing could be done except make requests since it was zoned for school use. The smell from the sewer became worse. These types of problems were creating constant stress for them until finally they gave up and sold their property to the Academy.

Their house has been used for faculty families ever since until this school year. Along the same lines, Louise Cox, born and raised in Montverde, came before the Town Council when another apartment building was planned next to her house (17404 9th Street). She did not want a 2 story institutional building looming over her. Other neighbors were also upset. But again, nothing could be done because it was zoned for school use. The point being that nothing could be done to protect citizens' property values or quality of life because the properties were zoned for school use.

This past summer, we heard rumors that the Academy was intending to move many students into the houses on either side of us. This of course alarmed us, but we thought it was so outrageous that we dismissed it as only a rumor. That is, until I was standing at my kitchen window and saw a furniture truck unload 20 to 30 single mattresses into the house to our north. I was alarmed, to say the least.

I spoke with someone from the Academy and was assured that they were just storing them there to be used in the dormitories. Several days later, I received an email from Dr. Kesselring stating that a faculty family with children would be moving into that house since the faculty member who had lived there for many years was now single with her children grown. This did not come to pass. Indeed, a couple of weeks later, a split-system was installed to heat and cool the garage.

In a few days somewhere between 6 and 8 students along with a couple to serve as house parents moved in! We now have eight to ten people living in an R1 single family house on a residential septic tank on Lake Florence (17215 Ninth Street). I scheduled an appointment with Dr. Kesselring. He was very kind and explained that they had had a problem with the housing for 30-some students and just did what they did to solve that problem. They did not ask for permission, or get any permits.

I pointed out that this was not a permitted use in R1. He assured me that they were planning to build a new dorm as soon as a sight could be agreed upon. This might take two years but in the meantime, he would work on alternative arrangements for student housing and keep me posted. I thought we had an understanding. I received a nice email thanking me for coming directly to him with my concerns. The next thing I knew about this issue was the notice of a rezoning application.

This was certainly not what I had in mind! I am sorry I did not take the advice of some who said this was going on all over Town and that I needed to go before the Town Council and get these concerns on record. At my age, I shouldn't have been so naive. These properties are all on residential septic systems close to Lake Florence, which has enough problems already. It is not appropriate to have eight to ten people on these systems. Changing the zoning will not fix this. Indeed, just today the septic truck was back pumping out 17215 9th St and 17351 8th St. How often do you need your tank pumped?

As I have demonstrated, once the zoning is changed, anything permitted can be done... a maintenance shed, bus parking lots, dormitories, sewage treatment facilities... whatever. I realize that today the intent may be to keep the appearance of single family homes in order to not change the character of the neighborhood, but as we know, administrations change, boards change, and needs and situations change.

If the zoning is changed, the Town loses its power to protect the citizens who own surrounding properties from the loss of property values and the constant stress of wondering what will come next. It is not as though the Academy has no options. They own many acres already zoned for school use within their current campus boundaries. They have a one-story dorm they could change to two story.

They make choices as to how to use their property. An Equestrian center is lovely. Horses make great neighbors, but again... choices. They have acres of athletic fields... again choices. I am reminded of a sign posted in a school secretary's office which read "Lack of planning on your part does not constitute an emergency on mine". Surely they knew how many legal beds they had when they accepted students. Their decisions do not compel the Town to make zoning changes to the detriment of surrounding properties to accommodate their choices.

What we have here plain and simple is "Academy Creep". Notice that they are picking off homes especially between Porter and CR455. If the Town changes the zoning this area, the heart of town will eventually cease to exist. I know they have purchased many other houses throughout Town. I really have no problem with that. They have purchased and improved many properties and as long as they use them for single families as zoned, then it is a win, win. Many complain that they don't pay taxes and that is true, but they have been very generous with improvements and money to the Town which makes up for lost taxes. As long as they are doing that, it is again, a win, win. When the Town looks good, the Academy looks good and visa-versa.

We strongly object, however, to these proposed zoning changes. We do not want to live beside student housing, a bus lot, a maintenance shed, a sewage treatment facility or whatever else comes along. Let's not set a precedent and advise the Academy that we will not allow "Academy Creep" to the detriment of Town residents. The Town has a responsibility to protect the residents' quality of life and property values whenever it can. Please send a strong message of reassurance to town residents that the Town will do this.

Mr. Jimmy Crawford introduced himself as an attorney working for the Montverde Academy and others for twenty three years. He added that Dr. Kasey Kesslering, had asked him to represent the Academy at the meeting and was here because the Town asked them to be. He questioned that if the Town is going to allow ten family members to stay in a house, two parents and eight kids; then the Fair Housing Act prevents the Town from discriminating against another type of use in a similar way. You cannot discriminate on the type of occupancy. Our position would be that we are not breaking any rules.

Allen Hartle asked if the Fair Housing Act applied to this as it was being used as a dorm. *Sandy Baker* felt that it applies to families as opposed to this situation. *Mr. Crawford* said that he thinks that it does but he would want to defer to the Town's attorney. He knew that it applied to rental situations the same as ownership. If you cannot show "disparate impact" (a legal doctrine under the Fair Housing Act which states that a policy may be considered discriminatory if it has a disproportionate "adverse impact" against any group based on race, national origin, color, religion, sex, familial status, or disability when there is no legitimate, non-discriminatory business need for the policy), then I think it would apply he said.

This is not what we are here to argue. If the Town wants us to come in and do these into a use that is more formally used then 'Institutional Public Facilities' is a zoning that allows you to condition it. *Sean Parks* said that he had advised the Academy that there were two ways to go, one was rezoning or through a Conditional Use Permit. He added that a conditional use goes with the applicant whereas rezoning is permanent. *Mr. Crawford* said that you could condition the use and say that you cannot have a sewer plant or build a three story dorm.

Ms. Baker stated that over the years Council's change. It is a small town and residents would have to constantly monitor the conditional use that was made ten years ago to make sure it was being followed. *Mr. Crawford* said that the Town should monitor it. *Mr. Hartle* said that once it changes, that's it. We must be a visionary ten years from now so that we don't reflect "didn't see that coming".

Mr. Crawford said that size limitations do not apply as they do in residential and that the Town should see what uses they would want to see and what uses they would not want to see and run it by the school. Then have an agreement for what uses are allowed or prohibited in terms of size. You have a blank sheet that you can tailor to suit everybody.

Ms. Baker asked where the school was planning to build a dorm to house these students. *Mr. Crawford* responded that he did not know the answer. *Mr. Parks* said that you could ask for a zoning agreement which could be noted on the G.I.S. *Ms. Baker* said that it sets a bad precedent as there are concerned residents all over town as the Academy has properties all over the town. She added that the school has options. They have property that is already zoned for school use. *Mr. Crawford* said that these properties about the school and they are asking for them to be used for residential use. *Ms. Baker* responded "no, they are not; they are asking for them to be rezoned for school use which can be anything.

Mr. Crawford said that they would limit these to residential use and add the list of deplorables to it. *Ms. Baker* questioned residential use. *Mr. Crawford* said yes, you cannot discriminate whether there is a family living there or a student. *Karin Arellano* brought up the issue of septic tank size based on the number of bedrooms, bathrooms and occupants. *Mr. Hartle* asked that if the number of occupants increased would that affect the size of the tank or drain field. *Glen Brecheen* asked if a sprinkler system was required as they are using it as a dorm. *Sean Parks* said that he would check the code.

Mr. Hartle asked if all properties were notified about the rezoning application as his belief was that First Baptist Church was not. *Mr. Parks* said that all were sent certified letters. *Sandy Baker*, *Glen Brecheen* and *Karin Arellano* confirmed that they did receive a notification. *Ms. Arellano* asked why they have to rezone them. *Mr. Parks* said that he had given them the option of rezoning or conditional use as there was language in the Land Development Code to allow for conditional use. The school wanted to rezone.

Sandy Baker said that speaking to Kasey, it was their intention to build a three story dorm. If this is the case then we could make a conditional use until they get it built. *Mr. Parks* said he would have to check with the attorney to see if a conditional use with a time certain was possible. *Ms. Baker* said that she preferred the rezoning to be denied but was willing to give them time to find a solution. *Mr. Hartle* asked *Mr. Parks* if the number of occupants could be capped and included in a conditional use permit. *Mr. Parks* responded that you can, either in rezoning or in a conditional use permit. He added that this could be a good solution.

The floor was opened up to the public for any questions or comments that they may have.

Mr. Roger Perkins – 17620 Doris Street, pointed out that one property on Doris Street had six or seven cars parked on the drive and the road. He said that if you allow them one thing, next year they will want something more.

Mr. David Baker – 17201 Ninth Street, said that he was completely opposed to rezoning but was open to a temporary solution.

Mr. Hartle asked *Mr. Crawford* what the maximum student capacity overload was being housed in these properties. *Mr. Crawford* did not know. *Chris Mitchell* speaking as an individual and not as a P & Z Board member said that there is a number that is reasonable but he did not know what it was. He went on to clarify that the Board of Trustees of the Academy had already capped enrollment and that it was not building for growth. The properties for housing were congruent to the property of the Academy and have been improved. He added that the Academy has been there for one hundred years and people who have bought would have been aware.

Karin Arellano asked *Mr. Crawford* if he was confident that the only reason for the rezoning was to house the Kids. He affirmed that after speaking to Dr. Kesslering that it was. The Town asked them to come with a proposal to rezone or for a conditional use permit. *Mr. Crawford* added that he did not know of any time frame for the Academy to build a new dorm.

A suggestion was made to renew the conditional use permit every two years. They would have to come back to the Board for approval every two years. *Mr. Crawford* said that he was not certain that would be acceptable to the academy. If student housing is protected by the Brown Housing Act then they (Academy) may be contractually surrendering a right that they have. Any new proposal would have to go back to Dr. Kesslering.

For the record the recording does clearly say Brown Housing Act; however Mr. Crawford when asked for the benefit of these minutes meant to say Fair Housing Act. He was not aware of the Brown Housing Act.

Allen Hartle asked the chairman if the Board should table this. *Glen Brecheen* said that it was one way to handle it if no one wanted to make a particular motion. It would allow both sides to talk more about how they want to proceed. *Mr. Hartle* proceeded to make a motion with the input from Sean Parks and *Mr. Crawford*. Before receiving a second, *Ms. Baker* suggested an alternative motion which after final wording changes is shown below.

MOTION by Sandy Baker, SECONDED by Karin Arellano, to recommend to Council that the zoning not be changed, the zoning remain as it is but that a Conditional use be considered to accommodate the Academy's need for housing with a time certain until they can get dorm built.

Glen Brecheen asked for a roll call vote.

FOR: Brecheen, Baker, Hartle, Arellano

AGAINST: None

RECUSED: Mitchell

MOTION CARRIED: 4-0

There was discussion on the ordinance for complete streets and the design standards that *Mr. Parks* is working on. *Glen Brecheen* asked if the design standards will apply to new subdivisions only. *Mr. Parks* responded that they did or for a parcel that has been platted or subdivided.

Being no further business a motion to adjourn was requested at 7:45 pm.

ADJOURN:

MOTION by Chris Mitchell, SECONDED by Sandy Baker to adjourn.

FOR: Brecheen, Baker, Hartle, Mitchell, Arellano

AGAINST: None

MOTION CARRIED: 5-0

Respectfully submitted,



Graham Wells, Town Clerk



Glen Brecheen, Chairman

