

**PARTIAL MINUTES OF THE
ZONING COMMISSION
August 17, 2020**

Z-20-08-002: An original zoning request from County AG (Agricultural) to CD RM-18 (Conditional District – Residential Multi-family-18) for a portion of the property located at 107 Marshall Smith Road and 120 Marshall Smith Road, generally described as east of Marshall Smith Road and north of West Market Street (39.98 Acres). (Recommended Approval)

Mr. Kirkman reviewed the zoning map and other summary information for the subject properties and surrounding properties and advised of amended conditions added to the request

1. Uses shall be limited to a maximum of 395 for residential dwelling units.
2. A minimum 6' tall opaque fence, consisting of wood or materials that simulate the appearance of wood shall be installed adjacent to the eastern property boundaries of parcels 170420 (also known as 142 Marshall Smith Road, 170470, (also known as 150 Marshall Smith Road) and 170480 (also known as 152 Marshall Smith Road). As well as from the northeastern corner of parcel 170480 east where the 100 along a southern boundary of parcel 17458, as illustrated by the thick line drawn in Exhibit A, attached.
3. Evergreens planted no greater than 10 apart and shall be no less than 12 feet in height at maturity shall be planted behind parcels 17042 (also known as 172 Marshall Smith Road), 170470 (also known as 150 Marshall Smith Road) and 17480 (also known as 153 Marshall Smith Road). The evergreens shall be planted on the eastern side of the fence as described in condition number 2.
4. Buildings shall not exceed 50 feet in height north of the line illustrated on Exhibit B, in which the line is described as where parcel 170483 adjoins Marshall Smith Road, running eastward along the southern boundary of parcel 170483 and from the southeastern most corner of parcel 170483, eastward to the common corners of parcels 227118 and 100197. The maximum height of any multifamily residential building located less than 40 feet of the eastern property boundaries of parcels 170482 (also known as 142 Marshall Smith Road), 170479 (also known as 150 Marshall Smith Road and 170480 (also known as 152 Marshall Smith Road) shall be 40 feet.

Mr. Engle moved to accept the conditions, seconded by Ms. O'Connor. The Commission voted 7-0. (Ayes: Chair Marshall, Holston, Bryson, Alford, O'Connor, Rosa, and Engle. Nays: 0). Chair Marshall stated the conditions were accepted. Chair Marshall then stated there were a lot of people wishing to speak on this matter and advised the applicant would have 15 minutes to speak, opposition will have 15 minutes and there would be 5 minutes of rebuttal for each party. Chair Marshall requested the speakers to be cognizant of the time and that other people also wished to express their opinion on this matter. Chair Marshall requested to hear from Mr. Terrell and to provide his name and address for the record.

Tom Terrell, Fox, Rothschild, 529 West Park Way, stated this was an annexation and an original zoning of 39 acres in a high growth area. Mr. Terrell introduced James Floyd with Marshall-Smith Partners, Jay Clapp with Ramey Kemp, and Eddie MacEldowney with Davis, Martin, and Powell. Mr. Terrell was aware of the voluminous emails received by the Commissioners and staff from members of the community. Mr. Terrell stated the 600 multifamily unit number came from the traffic impact study because at the time it was done, the developer was negotiating with

several companies to build on the site so they went with the maximum number of units to be on the site for that analysis. The neighbors were told from the beginning that number would come down. This request to change the zoning is surrounded by heavy industry to the south and Light-Industrial and PI to the east. Mr. Terrell noted that with a cap of 395 units the effective density was about 10 units per acre. It is classic transitional zoning with all buildings reserved for the area adjacent to heavy industrial. He noted there is not a site plan with specific proposals and it is very likely there will only be townhomes and single family homes adjacent to the existing single family homes in that area. Height restrictions are in place for the area closer to single family and fences. Evergreens and a sound buffer were added in response to what the neighbors requested. One of the new conditions was added to show they are continuing being responsive and in communication with neighbors.

Mr. Terrell indicated on a photograph the extensiveness of the heavy industrial uses south and east of the property. Several views were shown to illustrate what was in the surrounding area, and the types of use were shown. Mr. Terrell stated there has been numerous interactions with the neighborhood. They have met with them twice in person and have had numerous emails, mail and phone calls. The emails received reach into multi thousands of words illustrating the incredible amount of communication back and forth. Mr. Terrell stated Mr. Wayne Marshall has been a very forceful, passionate representative of the group and in every respect has been a gentleman and he hoped they felt the same about them. Where it was possible and practical, conditions were offered to meet concerns that were raised. Recently after meetings with the neighbors, they were told the neighbors would accept R-5 zoning and nothing else. This request came from another zoning that was approved on Cude Road in July of 2020 but that request was surrounded by rural residential and a large open space area. No light, heavy industrial, or any commercial are anywhere on those surrounding tracts. This tract is very different in terms of what lies adjacent to it and what is being offered is transitional and not a stark contrast. Mr. Terrell provided an illustrative drawing indicating that if there were tall buildings for RM-18, they would be put down against the heavy industrial part. Classic transitional zoning, being respectful of neighbors. Anything north of that line would be limited to 50 feet and he made the comment he did not think it would be fair that a 50 foot apartment would be looking down at those homes. It was limited by saying if over by those properties it would only be allowed to have 40 foot height limit if multi-family. It is important to note that R-5, as demanded, does allow 50 feet in height. The neighborhood asked to have a fence and evergreens that would be both sight and sound buffers which was offered. The Lowes asked about the sound of a sewage pump station that would be in the north part of the tract. Mr. Terrell stated it would sound like an air conditioner and not be very loud. In response the fence line was extended out to act as an additional sound buffer from the sewage pump station.

Mr. Terrell noted a long email from Mr. Burchett was received going into great detail why he disagreed with the Comprehensive Plan regarding rezoning for 600 apartments in area solely surrounded by farms. Mr. Terrell noted the staff report has 4 pages outlining numerous policies, plans, goals, strategies, maps, action plans, and recommendations of both the Western Area Plan and Greensboro 2040. This analysis was done when staff only knew that the limit was 600 units and no other conditions had been offered. Currently there is a wide variety of conditions offered and the limit has dropped by more than 1/3 of the density limit. Mr. Terrell stated the Planning Board recommended this unanimously, staff has also recommended even with 600 units and no conditions at that time. It is classic transitional zoning in Tier 1 with an area of growth pressure. There are now 395 maximum units, essentially R-10. The neighbors only want single family homes and a density of approximately 150 to 175 homes. At the meetings, neighbors were absolutely clear they wanted houses and not apartments because there were assumptions that

apartment dwellers would be undesirable neighbors for many reasons. As a practical manner for the community, it adds housing options near the airport and where new jobs are being located.

Chair Marshall inquired if there were questions for the applicant from the Commissioners. Seeing none, Chair Marshall inquired if there was anyone else in favor of the application. Seeing none, Chair Marshall moved to the opposition and advised of the 15 minute timeframe

Wayne Marshall, 153 Marshall Smith Road, advised he was speaking on behalf of approximately 42 residents, owners, and those who may inherit the land along Marshall Smith road. Mr. Marshall asked if the Commission knew of any communities with 7 generations living there and a quarter of the residents have always lived there, or where half of the residents have lived 20 plus years, or where 3/4 of the residents have been there 10 years or more. Mr. Marshall stated that this is a stable community. Mr. Marshall stated none of the residents are okay with multifamily residential dwelling units. The community respectively requested the Zoning Commission to deny the City RM-18 as presented for Marshall Smith Road and request the applicant to specify R-3 or at most R-5 zoning. Those designations would conform with the community off Leabourne Road that was approved by City Council in the previous month. The community requested to not start a new precedent of high density housing.

Jeff Little, 123 Marshall Smith Road, stated his property is approximately 14 acres, located west of the subject property. As a licensed general contractor he was not against development as long as it would be the correct development for the area. Mr. Little stated the most important item was the amount of water coming off the project directly onto his property. Mr. Little pointed out an error in the Zoning staff report under topography stating that it slopes toward the back. That was incorrect and negatively affects their property. Currently the majority of the subject property drains to a specific area and crosses Marshall Smith Road and then onto his property and downstream to their pond, approximately half acre in size. Mr. Little cannot imagine the amount of water that will come off approximately 20 acres of impervious surface due to sidewalks and parking areas. The site plan as currently drawn is unacceptable. The stream from his pond flows into Reddy Fork Creek and then into Lake Brandt. Reddy Fork Creek is a tributary of the Hall Work River and the watershed. Mr. Little felt that issue should be addressed by the owners as it is a watershed issue and should be taken very seriously. If the property is annexed by the city, then the city should be made to provide some sort of storm water system to take care of the water on the property. The zoning is not compatible with the community and should not be approved.

Chair Marshall inquired if there were questions for Mr. Marshall or Mr. Little from the Commissioners. Seeing none, Chair Marshall requested Mr. Burchett to speak.

Fred Burchett, 168 Marshall Smith Road, advised he submitted documents stating his analysis of the rezoning. Mr. Burchett referred to a document regarding zoning being consistent with the Comprehensive Plan. Mr. Burchett referred to different pages within the Western Area Plan and stated if this zoning was approved, it is likely the future Marshall farm will cease to exist. This area is a growth of high density and interest. Development pressures in the future will be very intense and any vacant farm land will be developed similar to this proposed rezoning. Once the precedent is established for this type of zoning, it will be cited in all future zoning requests in this area. Mr. Burchett stated this area is designated as urban general in the Future Build Map defining what would be the new growth in the area. The site plan for this property indicates a 70s era apartment complex. Not mixed use and is not walkable. The proposed West Market Village

is approximately 3500 feet away at the intersection of Market and Sandy Ridge Road, not adjacent and not walkable. The proposed use of 18 units per acre is vastly different in scale and density than the nearby single family residential and agricultural districts. When Marshall Smith Road was paved, it was upgraded to NCDOT secondary road standards with a 60 MPH speed. Multi-family units are appropriate on urban low speed designed streets, not rural highways. If this area is developed in the future, Marshall Smith Road will have to be rebuilt to accommodate changes in the land use.

The proposed zoning will impact existing land uses and the zoning is not compatible with the existing land uses. This area is not a car optional development, it is a car mandatory development. Approving a development of this density would be ignoring the impact future developments will have on the City's fiscal health. Adjacent owners would request their property to be zoned in a similar manner and more zoning would be approved. Transportation challenges would occur and public improvements would be necessary. There are numerous examples where growth has required improvements and changes that could have been avoided with better planning. Mr. Burchett referred to the land use area on the City of Greensboro Transportation Planning model which estimates by 2045, population in the traffic analysis zone in this area will increase 17/100 of a person per acre, an increase of 210 people or 130 dwelling units in the next 25 years. A development that would add approximately 1000 people in 3 to 5 years is not consistent with the underlying assumptions in the transportation plan. There is a clear disconnect between the Transportation Plan and the Land Use Plan. Mr. Burchett urged the City to perform a Comprehensive Transportation study to understand the true infrastructure costs the city will face in the future. Mr. Burchett asked if the City envisioned Marshall Smith Road developing over the next years like New Garden Road and become a multi-lane highway. If that is the vision, it is the City's legislative right to make land use changes consistent with that vision. That decision should be a conscious decision to be honest and open with everyone regarding the desired outcome, the cost of that decision, and the social cost to the families living on the road in upgrading the road to become a city street.

Wayne Marshall then referred to a photograph depicting an orange area, Marshall Smith Road and the proposed development. All around that particular area is green and residential areas. It is heavy industrial on the other side of West Market and the other side of the railroad tracks, but that does not apply in their neighborhood. Mr. Marshall appreciated Mr. Terrell and staff sharing information and there have been many conversations. They are unable to come up with a win/win situation as of yet.

Chair Marshall inquired of any questions from the Commissioners for the opposition. Mr. Holston asked Mr. Burchett if he was not in favor of this rezoning for any purpose or plan or would be if there were certain conditions. Mr. Burchett responded the conditions as identified were inadequate to address the concerns. If the rezoning was approved, the entire character of the neighborhood would be changed. Mr. Burchett referred to the aerial photograph depicting the open land. If the change is approved, there should be a thorough study because in future years there will need to be improvements to Marshall Smith Road. Mr. Burchett indicated the green line which is the approximate boundary of the urban area in the plan. There are a number of large parks. The green dot represented the Marshall family farm west of Market Street. The industrial was indicated on the south side of Market Street. Figure 2 was shown depicting traffic zone 38 bounded by Marshall Smith Road, Ridge Road, Cude Road, and Bunker Hill Road indicating the 2017 population/land density as .562 person per acre going to .79 persons per acre in 2045. If

these types of zoning changes are made, a comprehensive study should be done to understand what that will do. There is no street system in the area and this is poor planning.

Chair Marshall inquired if there were any further questions from the Commissioners. Seeing none, Chair Marshall advised Mr. Terrell he had 5 minutes to speak in rebuttal.

Mr. Terrell stated it appears correct development, from what was heard over and over, means no apartments because of what is anticipated by that use. Mr. Little's comments regarding the water are not land use issues. Water is a matter that is handled by the engineering staff at site plan approval and the laws on water require that the amount of the discharge cannot be exceeded by any development when adding impervious surfaces to the water volumes. All appropriate storm water detentions, by law, would have to be in place. Mr. Terrell stated the Western Area plan was done many years ago and the City's GSO 2040 plan is new and takes a different look of how to do zoning. Under Greensboro's 2040 plan, residential is residential and does not distinguish between low density and high density. Mr. Terrell stated in his reading of the Greensboro 2040 Plan this property is classic urban general.

Sidewalks are being offered and other things which no one else in the area has. Staff is a neutral party and their reports state after professional review this zoning is compatible and consistent with all of the transportation plans. Mr. Terrell stated population is driven by growth of both job industry, trends, and projections when many industries came into the area. Comprehensive plans have to change to meet the times. This is not a rezoning jumping into the countryside. Ramey Kemp is one the most respected traffic and transportation engineering firms in the state who has shown live data that the capacity on this road is extremely low compared to the maximum capacity of the road. Even if the property is built out to 395 units, they would still be way under maximum capacity. This development could be full and still under the rated capacity of the road according to NCDOT.

Chair Marshall inquired if there were any questions for Mr. Terrell from the Commissioners. Seeing none, Chair Marshall advised the opposition had 5 minutes to speak.

Wayne Marshall stated he had talked to Steve Galanti who advised the Western Area Plan was included in the GSO 2040. Photographs have been shown depicting both current and past density of the area. Sidewalks would be included which is required. Mr. Marshall thanked the Zoning Commission for their service. The neighborhood has tried to be very diligent in working with the applicant since the beginning of July. They have not reached a win/win plan. Everyone in the neighborhood feels very strongly about this request and have offered acceptable, viable, alternatives as in R-3 or R-5 zoning that was approved on Cude Road. The neighborhood is concerned that one developer will seriously disrupt the community only for profit. The community respectively request the Zoning Commission to follow the Cude/Leabourne Road precedent made in July. The community does not want to establish a new precedent of dense housing in any rural areas such as Marshall Smith Road.

Chair Marshall advised there was a minute and a half left. Chair Marshall inquired if there were any questions for Mr. Marshall. Seeing none, Chair Marshall advised Mr. Burchett of the minute a half time remaining.

Fred Burchett stated he realized plans change. He obtained the data from the GDOT Planning Model within the previous week. It is in the model for the 2045 Transportation Plan and there is a large disconnect between that land use plan and the transportation model that will have significant impacts on infrastructure. It is a big concern. Plans do change but the plan needs to be updated. An analysis depicting the impact of land use change on the model of the infrastructure for the entire area over the next 20 or 30 years is needed. Mr. Burchett felt they were getting ahead of themselves by approving rezonings without understanding what the true impacts of those plans are.

Chair Marshall inquired if there were questions for Mr. Burchett. Seeing none, Chair Marshall closed the public portion of the hearing and requested to hear from staff.

Mr. Kirkman stated the GSO 2040 Comprehensive Plan designates this site as Urban General on the Future Built Form Map. The Western Area Plan designates this site as Residential. He noted that the request is consistent with the Comprehensive Plan because the uses requested increase the range of housing and supports nearby industrial and commercial uses in the surrounding area. The proposed CD-RM-18 request, as conditioned, limits uses to only residential uses and includes protections for existing uses, while fitting the broader context of the surround area and is consistent with the GSO 2040 Comprehensive Plan. Staff recommended approval of the request.

Chair Marshall inquired if there were questions for staff from the Commissioners. Seeing none Chair Marshall inquired if there was someone to make a motion. Mr. Engle stated this was one of the most well-presented cases from both sides as he had seen in his tenure. Not many questions were asked because most of the issues brought up were presented intelligently and eloquently. Mr. Engle stated this was a proposal for RM-18 that is conditioned down to such that it appears to be more like RM-12. Given the location, Mr. Engle felt it was a good transitional use and he was in support of the request. Everyone is still talking and no matter what Zoning decides, it is an annexation and original zoning which will go on to City Council. The conversations should continue. Mr. Engle stated he would make a motion, if no one else would.

Mr. Engle moved that in regard to agenda item Z-20-08-002, the Greensboro Zoning Commission believes that its action to recommend approval of the original zoning request for the property described as a portion of 107 Marshall Smith Road and 120 Marshall Smith Road from County AG (Agricultural) to CD-RM-18 (Conditional District – Residential Multi-family – 18) to be consistent with the adopted GSO 2040 Comprehensive Plan and considers the action taken to be reasonable and in the public interest for the following reasons. The request is consistent with the Western Area Plan. The uses requested are of a similar scale, intensity, or off-site impact as existing nearby uses. The proposed CD-RM-18 request, as conditioned, fits the context of the surrounding area. The request is reasonable due to the size, physical conditions, and other attributes of the area. It will benefit the property owner and surrounding community, and approval is in the public interest. Seconded by Mr. Holston. The Commission voted 7-0. (Ayes: Chair Marshall, Holston, Alford, Rosa, Bryson, O'Connor, and Engle. Nays: 0). Chair Marshall advised the approval constituted a favorable recommendation and is subject to a public hearing at the September 15, 2020 City Council meeting.