

Cabarrus County Government

Cabarrus County Planning and Zoning Commission Tuesday, February 8, 2022 @ 6:30 p.m. Board of Commissioners Meeting Room Cabarrus County Governmental Center

Agenda

- 1. Roll Call
- 2. Approval of January 11, 2022, PZ Meeting Minutes
- 3. Approval of Granting Order with Finding of Facts for SUSE2021-00045 –Amendment to approved Master Plan for Rocky River Regional Wastewater Treatment Plant. Applicant is Thomas Hahn. Owner is Water & Sewer Authority of Cabarrus County. 6400 Breezy Lane (PIN's: 5547-06-4548, 5537-98-7403, 5537-99-6094, 5547-17-5193 and 5547-17-5388).
- 4. New Business Board of Adjustment Function:
 - A Petition VARN2022-00001 Request for relief from the following: Chapter 5, impervious area maximum for non-residential districts, Chapter 7, setbacks for swim clubs, Chapter 9, landscape buffers and parking lot buffers. Evolution Recreation & Aquatics is the applicant. Ethan & Austin Properties is the owner. Address is 11202 Harris Road (PIN: 4670-45-1661). Request to Table
- 5. Legal Update
- 6. Director's Report
- 7. Adjourn

Planning and Zoning Commission Minutes

January 11, 2022

Mr. Adam Dagenhart, Chair, called the meeting to order at 6:30 p.m. Members present, in addition to the Chair, were Mr. Jeff Corley, Ms. Holly Grimsley, Mr. David Hudspeth, Ms. Ingrid Nurse, Mr. Charles Paxton, Mr. Chris Pinto, Mr. Brent Rockett, and Mr. Stephen Wise. Attending from the Planning and Zoning Division were, Ms. Susie Morris, Planning and Zoning Manager, Mr. Phillip Collins, Sr. Planner, Ms. Sandy Howell, Planner, Ms. Arlena Roberts, Clerk to the Board, Mr. Richard Koch, County Attorney and Mr. David Goldberg, Deputy County Attorney.

Roll Call

Approval of December 14, 2021, Planning and Zoning Commission Meeting Minutes

There being no corrections or additions to the minutes, Mr. Brent Rockett **MOTIONED**, **SECONDED** by Mr. Jeff Corley to **APPROVE** the December 14, 2021, meeting minutes. The vote was unanimous.

Approval of Granting Order with Findings of Facts for CUSE2021-00007 – Special Use Permit for Public Service Facility (Well House) Mr. Brian LaFranchi/Dewberry, Owner is Aqua Inc.

There being no corrections or additions to the Granting Order or Findings of Fact, Mr. Brent Rockett **MOTIONED**, **SECONDED** by Ms. Ingrid Nurse to **APPROVE** the Granting Order with Findings of Fact for CUSE2021-00007. The vote was unanimous.

The Chair moved to Item #5, RZON2021-00005, Request to apply Mobile Home Overlay (MH) to LDR zoned property. Owner/Applicant is Larry Hamrick, 5952 Yale Avenue. Request to Table.

The Chair asked Ms. Howell if she had a memo.

Ms. Sandy Howell, Planner, addressed the Board stating that the Applicant has requested to table the rezoning until the March meeting due to travel restraints. He lives out of State and needs time for scheduling travel.

The Chair asked for a motion to table this request until the March 8, 2022, Planning and Zoning Commission meeting.

Mr. Jeff Corley **MOTIONED, SECONDED**, by Mr. Brent Rocket to **TABLE**, RZON2021-00005, Request to apply Mobile Home Overlay (MH) to LDR zoned property until the March 8, 2022, Planning and Zoning Commission meeting. The vote was unanimous.

The Chair said anyone wishing to speak tonight for an agenda item, needs to complete a blue card and give it the Clerk.

The Chair said we need to adopt the rules of procedures and asked if anyone needed them read. There being no one needing them to be read, the Chair asked for a motion to approve the rules and procedures (see attached).

Mr. Charles Paxton **MOTIONED**, **SECONDED**, by Mr. Brent Rockett to **Adopt** the Rules and Procedures for the meeting. The vote was unanimous.

The Chair said anyone wishing to speak for the Board of Adjustment case or to testify during the public hearing must be sworn in. If you wish to speak, we need to have a completed blue card as mentioned before and provide it to the Clerk.

The Chair asked those persons who will speak or testify for the Board of Adjustment case, to stand, and he administered the oath.

New Business – Board of Adjustment Function:

The Chair introduced Petition SUSE2021-00045 – Amendment to approved Master Plan for Rocky River Regional Wastewater Treatment Plant (RRRWTP). Applicant is Mr. Thomas Hahn. Owner is Water and Sewer Authority of Cabarrus County (WSACC), 6400 Breezy Lane. PIN'S: 5547-06-4548, 5537-98-7403, 5537-99-6094, 5547-17-5193, and 5547-17-5388.

The Chair said is there anyone that has any type of conflict or any information that needs to be shared at this time related to the case?

Mr. Jeff Corley stated that he serves on the Water and Sewer Authority Board of Directors and asked to be recused from the case.

The Chair asked for a motion to recuse Mr. Corley for this matter.

Mr. Brent Rockett **MOTIONED**, **SECONDED** by Ms. Holly Grimsley to recuse Mr. Corley. The vote was unanimous.

The Chair asked for a motion to seat Mr. Stephen Wise on the Board.

Mr. Brent Rockett **MOTIONED**, **SECONDED** by Ms. Holly Grimsley to have Mr. Stephen Wise seated on the Board. The vote was unanimous.

The Chair called on Mr. Phillip Collins to present the staff report for SUSE2021-00045, Amendment to approved Master Plan for Rocky River Regional Wastewater Treatment Plant (RRRWTP). Applicant is Mr. Thomas Hahn. Owner is Water and Sewer Authority of Cabarrus County. (WSACC),

Mr. Phillip Collins, Sr. Planner, addressed the Board presenting the staff report. The subject property is approximately 261 acres in size. The purpose of this request is to amend the Master Plan that was approved in January of 2019 (CUSE2018-00006).

The subject property is currently the location of the Rocky River Regional Wastewater Treatment Plant (RRWWTP). The property is bounded to the south by the Rocky River and to the east by Irish Buffalo Creek. The subject property is surrounded to the north, east and south by residential and agriculture uses, and to the west, residential and vacant properties. Zoning on the subject property is LDR and any uses permitted in the LDR district would be permitted on the subject property. The subject property is surrounded by Agriculture Open Space (AO) and Low Density Residential (LDR).

The applicant has provided correspondence from NCDOT stating that there would not be any need for studies for this request.

Because there are no physical upgrades to building projects currently proposed, no stormwater or soil and erosion control plans were provided. The Applicant will be required to seek review and approval from NCDEQ as new development is proposed on the site. NCDEQ plan review and permitting will be required as part of commercial zoning site plan review and approval.

The applicant submitted the "Findings of Fact" sheet along with an amended Master Plan showing the proposed additions to, and deletions from, the approved Original Master Plan. If approved, the plan currently under consideration will serve as the Master Plan for the overall site moving forward.

The facility meets the current standards of the zoning ordinance for a Public Service Facility.

The applicant submitted a Stormwater Pollution Prevention Plan that covers the entire site and an Emergency Action Plan.

The total combined footprint for the existing impervious area is approximately 573,000 square feet.

The total combined footprint for the proposed impervious area is 105,500 square feet. With these proposed additions, approximately 0.7% of the site will be covered with new structure surfaces and approximately 6% of the site will be covered in impermeable surfaces. The LDR zoning districts permits sites to be covered with up to 20% impermeable surface.

The purpose of the amended Master Plan is to expand the current treatment capacity at the facility to accommodate continuing growth in Cabarrus County. The original master plan was reviewed and approved by the Board of Adjustment at its regular meeting in January 2019.

If the revised Master Plan is approved, in the future, when new buildings or equipment installations are proposed, the Applicant would be required to submit plans for commercial zoning site plan review and approval only. So long as the proposed site plan matches the amended Master Plan, there would be no need to submit a new Special Use Permit to the Board of Adjustment.

Mr. Collins called to the Board's attention Exhibit F, the Comparison Maps. He said on this map, basically all the blue is what is being proposed with this proposal. All that is in red is the old, and none of the red is being renewed, it is just going to be the blue.

Mr. Collins wants to point out that Mr. Hahn was good enough to catch it after the packet was sent out, that there is a smaller building right here (showed on the map), that was not in the Board packet and an extension of a building right here (showed on the map) and a concrete pad that is here, and a vehicle equipment storage building. These were not included; he did not catch them and Mr. Hahn brought it to his attention. Mr. Collins wanted to include that information and submit it for the record.

Should the Board of Adjustment grant approval of the Special Use Permit, Staff requests the following conditions become part of the approval and case record:

- 1. Site plan review and approval is required subsequent to Board of Adjustment approval in order to ensure compliance with all applicable development requirements and conditions.
- 2. A granting order, stating restrictions and applicable conditions of approval, shall be recorded with the deed to the property.
- 3. The applicant shall procure any and all applicable federal, state, and local permits prior to commencement of the project.
- 4. Any modification of the proposed Master Plan, or deviation therefrom, that does not qualify as minor modifications, shall be reviewed by the Board of Adjustment in the form of an amendment to the Special Use Permit.
- 5. Applicant must submit copies of permits and documentation as required from NCDEQ for Phase 2 Post-Construction Stormwater and Soil and Erosion Control permitting with site plans submittals to zoning for review and approval. Approved permits from NCDEQ are required prior to zoning permitting.
- 6. Applicant must submit and obtain Floodplain Development Permits from Cabarrus County for all development, as defined by FEMA, located in the regulated floodplain.

Mr. Collins said conditions number 7 and 8 were from the Fire Marshal conditions carried over from the original Conditional Use Permit approval. He said in Number 7, strike the middle sentence because it refers to the old plan and the old plan is not there anymore. He would suggest that Number 7, should read:

- 7. Master Plan shows several new buildings and building expansions. Any additional buildings will require building plans to be submitted for construction.
- 8. Master Plan proposed access roads are adequate as shown. If buildings/structures are moved, access roads will need to be addressed further.

Mr. Collins would be happy to answer any questions the Board may have.

The Chair asked if there were any questions for the staff.

The Chair said it is his understanding that the applicant does not want to make a presentation, is that still the case?

Mr. Chad VonCannon, Engineering Director, Water and Sewer Authority of Cabarrus County (WSACC), 232 Davidson Highway, Concord, NC., addressed the Board stating that we do not have a formal presentation to make, but would like to thank the Board for consideration of this.

He understands, this is a very crucial project for Cabarrus County, to continue to support growth in our area. WSACC and our Design Engineer, at the direction of our Board of Directors, has pushed us to try to keep this a very compact project; to limit the impacts to our buffers that it would have to our neighbors with this project. He thinks their Engineers have done a really good job with that, and thus the changes that you see from the 2019 layout, of really preserving our buffer and preserving those areas for potential future needs.

Mr. VonCannon is here tonight to answer any questions. He said Mr. Thomas Hahn is our Assistant Engineering Director and is our Technical Lead from WSACC on this project, and Mr. George Anipsitakis, is our Lead Engineer, with Brown and Caldwell for the design of this project.

The Chair asked if there were any questions for the applicant. There being no questions, the Chair opened the Public Hearing. There being no one speaking for or against the case, the Chair closed the Public Hearing.

The Chair said at this time the Board will need to discuss the proposed Special Use Permit for the Public Service Facility Master Plan. The Board will need to discuss thoroughly and have findings to support or deny the request for the Amended Master Plan.

The Chair asked the Board if the amended Master Plan proposal meets the standards defined in the

ordinance for a Special Use Permit and have potential impacts of the proposed use been mitigated where possible.

Mr. Charles Paxton said it is a worthwhile project. Obviously, it is in the public interest because of the growth, and we need to accommodate the growth.

Mr. Brent Rockett agrees with Mr. Paxton. Obviously, water and the availability of water within our County has been a major point of conversation recently, and this seems to be with the intent of moving toward solving some of those issues.

The Chair notes that the landscaping for the site provides adequate screening with what is existing. If you looked over the neighborhood meeting minutes, a couple of the concerns that property owners had, they are addressing.

They are changing the aeriation basin. The noise from the valves were an issue, their new processes should eliminate that and reduce odors from the plant. They are also changing the lighting, to have less impact on neighbors by transitioning from the taller light poles to the shorter poles. It appears they worked with the neighbors to mitigate the impacts with what they are proposing here.

There being no further discussion, Ms. Holly Grimsley MOTIONED, SECONDED by Mr. Brent Rockett to APPROVE SUSE2021-00045, Amendment to Approved Master Plan for Rocky River Regional Wastewater Treatment Plant with conditions recommended by Staff, and with the changes on Item #7 and Item #8 presented by Mr. Phillip Collins. The vote was unanimous.

Legal Update

Mr. David Goldberg, Deputy County Attorney, addressed the Board giving an update on the McClain RV case on Joyner Road. Since we last talked, via a Writ of Execution process, we will collect the debts owed.

He thinks we have a tentative deal that the Sheriff was able to facilitate. We will not tow off his cars and take money out of his bank accounts. In exchange, he is going to make a substantial upfront payment of a portion of his penalties, and a \$200 per month payment towards those penalties for 12 months.

If he does that, it will stop the accrual of the interest as it is accruing right now, and we will not tow all his cars. He must clear out the lot and come into compliance there too.

Mr. Goldberg thinks we are on the right path. It is not done until it is done. He thinks the deputies going over there and eyeballing his stuff has provided the proper motivation, and we are getting to a descent result. He said the next time we talk it could be a completely different situation.

Mr. Goldberg said if the Board has any questions, he knows we had a little email traffic on

conflicts of interest. He was talking with Ms. Morris, and in the not so distance future we will have a little more opportunity to talk through some of those statutes and a couple of other things. He said to just keep it in the back of your mind, so there are no surprises, and always be on the lookout.

The Board is the best identification of conflicts, and the changes to 160D put them really front and center. When you look at the statutes, they seem so simple, right up until you start thinking about them. We will have more discussions on that and more support, but if you have any questions before that, please feel free to reach out.

Directors Report

Ms. Susie Morris said the text amendments will be going to the Board of Commissioners on Tuesday (January 18, 2022) evening. Those were the text amendments related to the Flood Ordinance. Hopefully, that will be approved and then we can work on resolving our final outstanding issues for our five-year audit with FEMA and see what that result is going to be.

She said Ms. Nurse has attended a training and will take about five minutes to give an update on what that was about. There was a power point that went along with that, and Ms. Morris will send it out to the Board.

Now that it is the first of the year, we will be renewing our information and our subscription with the School of Government. She does not know if there will be any new modules in the new subscription. Once we have access to it, she will let the Board know if there are any additional online trainings that you may need to take.

In February, Ms. Morris will be submitting to the Board of Commissioners for a Midland representative to be appointed to the Board. At that point, we would have one open seat and that currently would be the Northwest Area representative. We may look at making some modifications to the mapping that is used, to broaden those areas, and broaden that reach for potential applicants for the Board.

The Chair called on Ms. Ingrid Nurse to give a briefing on the workshop she attended.

Ms. Ingrid Nurse addressed the Board stating that she attended a Quasi-Judicial workshop in August 2021. They defined what a quasi-judicial process is and how it is different from other decisions. The appropriate procedures for hearing a quasi-judicial case and considering the evidence and deciding the case and finalizing the decision.

There were some power point slides that she will send Ms. Morris to share with the Board that included resources to review.

There being no further discussion, Ms. Holly Grimsley **MOTIONED**, **SECONDED** by Mr. Stephen Wise, to adjourn the meeting at 6:55 p.m. The vote was unanimous.

APPROVED BY:

Mr. Adam Dagenhart

SUBMITTED BY:

Arlena B. Roberts

ATTEST BY:

Susie Morris, Planning and Zoning Manager

SUGGESTED RULES OF PROCEDURE FOR CABARRUS COUNTY PLANNING AND ZONING COMMISSION MEETING JANUARY 11, 2022

- The Cabarrus County planning staff person(s) shall first present the staff report and answer questions from the Commission. There will be no time limit on this presentation.
- 2. The Applicant may make a presentation to the Board (optional) and will then answer questions from the Commission. There will be a 15 minute time limit on the presentation if the Applicant choses to make a formal presentation. There will be no time limit on questions from the Board following the presentation.
- 3. When the Board is ready to proceed, the proponents (those speaking generally in favor of the case) will have a total of 15 minutes to speak and/or present documents in support of their position. The 15 minute time limit does not include questions directed to the proponents by the Commission.
- 4. After the proponents finish, the opponents (those speaking generally against the case) will have a total of 15 minutes to speak and/or present documents in support of their position. The 15 minute time limit does not include questions directed to the opponents by the Commission.
- 5. Each side will then have 3 minutes for rebuttal, with the proponents going first. Again, questions directed to the speaker will not count against the time limit. This will conclude the public hearing portion of the meeting and the Commission will proceed to deliberation.
- 6. Each side is strongly encouraged to use a spokesperson to present the positions commonly held by each. Each side is also strongly encouraged to organize their speakers and presentations to ensure that all persons wanting to speak will have time to do so.
- If a speaker has questions of a person on the other side, such questions shall be addressed to the Commission members to be redirected to the person to be asked. There will be no direct questioning of one speaker by another except through the Commission.
- 8. Public demonstrations of support for a speaker's comments should be limited to clapping. Any other type of audible support shall be out of order and subject the offender to being removed from the building. Anyone speaking out of order shall likewise be subject to removal.
- 9. These rules are designed to have a full and fair hearing that is orderly and expeditious and avoid unnecessarily repetitious presentations.

Prepared by: Richard M. Koch Cabarrus County Attorney

Application Number SUSE 2021-00045

PIN: 5547-06-4548; 5547-17-5388 5537-98-7403; 5547-17-5193

5537-99-6094

COUNTY OF CABARRUS STATE OF NORTH CAROLINA

ORDER GRANTING A SPECIAL USE PERMIT

The Board of Adjustment for the County of Cabarrus, having held a public hearing on January 11, 2022, to consider application number SUSE 2021-00045, submitted by the Water and Sewer Authority of Cabarrus County and having heard all of the evidence and arguments presented at the hearing, makes the following FINDINGS OF FACT and draws the following CONCLUSIONS:

- 1. The Board makes and adopts the Findings of Fact contained in the attached Exhibit 1 labeled Findings of Fact.
- 2. It is the Board's CONCLUSION that the proposed use does satisfy the first General Standard listed in Section 8.3 of the Cabarrus County Zoning Ordinance ("Ordinance"); namely, that the use will promote the public health, safety and general welfare, if located where proposed and developed and operated according to the plan as submitted.
- 3. It is the Board's CONCLUSION that the proposed use does satisfy the second General Standard listed in the Ordinance; namely, the use does not adversely affect the adequacy or is appropriately located with respect to sewage disposal facilities, solid waste and water, police, fire and rescue, equal protection, schools, transportation systems (in and around the site) and other public facilities.

- 4. **It is the Board's CONCLUSION that the proposed use** does satisfy the third General Standard listed in the Ordinance; namely, that the use will not violate neighborhood character nor adversely affect surrounding land uses.
- 5. **It is the Board's CONCLUSION that the proposed use** does satisfy the fourth General Standard listed in the Ordinance; namely, the use is in compliance with the general plans for the physical developments of the County as embodied in the Ordinance or in the Comprehensive Plan, or portion thereof, adopted by the Board of County Commissioners.
- 6. **It is the Board's** CONCLUSION that the proposed use does satisfy the specific standards listed in the Ordinance for this use.

Therefore, because the Board concludes that all of the general and specific conditions precedent to the issuance of a SPECIAL USE PERMIT have been satisfied, it is ORDERED that the application for the issuance of a SPECIAL USE PERMIT be GRANTED, subject to the conditions contained in the staff report, if any, and the Findings of Fact and Conclusions. The applicant shall fully comply with all the applicable, specific requirements in the Ordinance. The Master Plan shall be considered the approved site plan at this time, although it is understood and agreed that the Master Plan can be modified in accordance with the conditions contained below. If any of the conditions shall be held invalid, this permit shall become void and of no effect.

Ordered this day of February, 2022	, <i>nunc pro tunc</i> to January 11, 2022.
	CHAIR of the CABARRUS COUNTY PLANNING AND ZONING COMMISSION Sitting as the BOARD OF ADJUSTMENT
	County, NC certify that Adam Dagenhart, Chair nmission appeared before me on this day and
Arlena B. Roberts, Notary Public My Commission expires :	

NOTE: If you are dissatisfied with the decision of this Board, an appeal may be taken to the Superior Court of Cabarrus County within thirty (30) days after the date of this order. See Section 12-25 of the Ordinance.

EXHIBIT 1

FINDINGS OF FACT
SPECIAL USE PERMIT APPLICATION
APPLICANT: WSACC
ROCKY RIVER REGIONAL
WASTEWATER TREATMENT PLANT
SUSE 2021-00045

FINDINGS OF FACT

- 1. The use as proposed is not detrimental to the public health, safety or general welfare.
- a) See Applicant's response to this requirement, which is incorporated by reference as a Finding of Fact.
- b) The proposed use adds no new additional burden to the property that would affect the public adversely.
- 2. The use as proposed is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, etc.
- a) See Applicant's response to this requirement, which is incorporated by reference as a Finding of Fact.
- b) All such facilities, which are not specifically required for this additional use, are located nearby.
- 3. The use as proposed will not violate neighborhood character nor adversely affect surrounding land uses.
- a) See Applicant's response to this requirement, which is incorporated by reference as a Finding of Fact.
- b) The proposed use adds no new additional burden to the property that would affect the public adversely.
- 4. The use as proposed will comply with the general plans for the physical development of the County as embodied in the Zoning Ordinance or in the area development plans that have been adopted.
- a) See Applicant's response to this requirement, which is incorporated by reference as a Finding of Fact.

b) The proposed use adds no new additional burden to the property that would affect the public adversely.

EXHIBIT 2 CONDITIONS APPLICATION SUSE 2021-00045

- 1. Site plan review and approval is required subsequent to Board of Adjustment approval to ensure compliance with all applicable development requirements and conditions.
- 2. The granting order, stating the restrictions and applicable conditions of the approval, shall be recorded with the deed of the property.
- 3. Applicant shall procure any and all applicable federal, state, and local permits prior to commencement of project.
- 4. Any modification of the proposed Master Plan, or deviation therefrom, that does not qualify as a minor modification, shall be reviewed by the Board of Adjustment in the form of an amendment to the Special Use Permit.
- 5. Applicant must submit copies of permits and documentation as required from NCDEQ for Phase 2 Post-Construction Stormwater and Soil and Erosion Control permitting with site plan submittals to zoning for review and approval. Approved permits from NCDEQ are required prior to zoning permitting.
- 6. Applicant must submit and obtain Floodplain Development Permits from Cabarrus County for all development, as defined by FEMA, located in the regulated floodplain.
- 7. The Master Plan shows several new buildings and building expansions. Any new buildings or building expansions will require that building plans be submitted to Cabarrus County for review prior to construction.
- 8. The Master Plan proposed access roads are adequate as shown. If buildings/structures are moved, access roads will need to be addressed further.

Planning and Development

Memo

To: Cabarrus County Planning and Zoning Commission

From: Phillip Collins, Senior Planner, AICP

CC: File

Date: **February 8, 2022**Re: **VARN2022-00001**

Evolution Recreation & Aquatics submitted an application for variances from Section 7-3.59.c and Table 9-4 and Part II of Chapter 9 of the Development Ordinance to allow relief from the setback requirements for swimming clubs and the landscaping and buffering requirements for commercial facilities in the OI zoning district.

The applicant is requesting that the case be tabled until the March Board of Adjustment meeting to in order to address site plan and design issues for the proposed changes to the facility.

The case has been advertised, the sign has been posted and adjacent property owners notified.

The Board of Adjustment will need to vote to table the meeting until the March meeting, or the next available agenda due to COVID-19 regulations and guidelines.

Susie Morris Planning and Zoning Manager Cabarrus County 65 Church St S, Concord, NC 28025

January 28, 2022

RE: Evolution Recreation and Aquatics Variance Application

Dear Susie:

Following our discussions yesterday and the changes needed to be made on the site plan especially with recent NCDOT request we will not be able to provide these changes to your department in time for the February 7 Board meeting.

On behalf of Evolution Recreation and Aquatics we are requesting that this item be tabled for the March 8th Board meeting giving us ample time to work with NCDOT and your department for the necessary changes.

If you have questions, please contact me at (404)-822-8398 or email at berkowitz.jessica@gmail.com

Respectfully,

Evolution Recreation & Aquatics

Yessica Berkowitz

President