
1. **COMMENCEMENT**

Weinbrecht called the meeting to order at 6:30 p.m. and led the ceremonial opening.

**Call to Order and Ceremonial Opening**

**Adoption of agenda**

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2. **QUASI-JUDICIAL PUBLIC HEARINGS**

2.1 **Green Level Baptist Church 18-DP-0131**

Weinbrecht: We’re at our first evidentiary hearing. It’s the Green Level Baptist Church 18-DP-0131. This case is before us tonight because the applicant has requested a modification to town development standards. As a reminder to those in attendance, even though we are in the council chambers, an evidentiary hearing is a lot different from public hearings. It’s like a court case. Council acts as a judge, and we can only accept evidence that is competent, material, and substantial. North Carolina and the United States constitutions give the applicant certain due process rights in an evidentiary hearing. The Constitution ties our hands on what evidence we can accept. And so, I apologize in advance for what might seem burdensome or a complex process. We can only consider competent, material, substantial evidence from anyone who testifies. By law, we can only accept testimony from expert witnesses regarding whether the development will affect property values or increase traffic resulting in this development, pose a danger to safety, and other issues. To those that are with us this evening intending to testify, that are not experts, we can accept testimony from you on factual issues and what you have observed. So, you might say, “I have seen ten cars at this intersection during this time frame. I have observed that.” You cannot say, “I think that’s dangerous, or I think that’s traffic congestion, or I think”—anything at—that involves an opinion. You can only state facts. The hearing and procedures—and remember, this isn’t our rules; these are constitutional rules we’re following—the hearing, procedures, and detailed rules are attached to the printed agenda. All speakers who want to speak during the public hearing must be administered an oath by Mrs. Johnson, who is to my right. And we’ll pause at this time to allow those who would like to speak to approach Mrs. Johnson and receive their oaths, and council will refrain from taking any action during this time.

[Johnson, the clerk to the board, provided oaths to potential witnesses.]

Weinbrecht: Okay. At this time, I’m going to ask council members if they’ve had any site visits, ex parté communication, financial relationships, specialized knowledge, or close relationships to an affected person to disclose.
Hales: Good evening, council, and thank you. We’re starting this evening off with a pair of modification requests associated with Green Level Baptist Church’s plans to add an 18,000-square-foot addition to their existing education building. The town’s Land Development Ordinances requires that a project of this scope widen the adjacent road frontage of Green Level Church Road, and both modifications you’ll be hearing this evening are related to that requirement. The church sanctuary and education building, and its immediate surroundings contribute to the Green Level National Historic District shown in blue. The majority of the district is rural, agriculture, and residential properties. A portion of the Southerlyn subdivision lies within the northern half of the district. Several notable examples of Colonial Revival and Gothic Revival architecture can be found in the area, including the church’s sanctuary building we’ll be discussing this evening. The existing sanctuary for Green Level Baptist is of most direct import this evening. The church was established in the early 1870s, and the existing sanctuary building was constructed around the turn of the 20th century. The sanctuary is a notable example of Gothic Revival architecture, with the pointed arches and steep gables reminiscent of Gothic cathedrals. In this photo from the Green Level Church Road, you can see the brick stoop on the front of the existing church. This stoop is approximately 35 feet from the edge of pavement for Green Level Church Road today. The Land Development Ordinance requires development to widen the adjacent roadways consistent with the Planned Roadway Widths map in the Imagine Cary Community Plan. The map identifies Green Level Church Road in this section as a four-lane, median-divided thoroughfare. And the required cross-section includes an 18-foot planted median and a 100-foot-wide right-of-way based on the center line. This typical section may be considered inconsistent with the character of the historic district. In addition, the right-of-way width conflicts with the location of some of the contributing structures within the historic district, including the church’s sanctuary. However, council recognized these potential conflicts during the adoption of the Imagine Cary Community Plan. The Green Level Special Planning Area within the plan was created in recognition of the unique opportunities provided in this area of southwest Cary. The special planning area includes a note directing that context-sensitive thoroughfare and streetscape designs be used to protect the Green Level Historic District’s context and historic resources. To that end, the town is working with SEPI Engineering to study the corridor between Good Hope School Road and Green Level West Road. This study is expected to generate context-sensitive road sections and streetscapes for the study area. SEPI is currently updating the traffic volumes and modeling anticipated capacity needs and turning movements, and the first of two open houses scheduled to collect public comment on the corridor is scheduled in late September. There is currently no project in the town’s capital improvement budget for making improvements in this corridor at the town’s behest. The town and church have been engaged in dialogue and both seek to find the right solution for the area. However, the church’s construction needs have outpaced the town’s study. Therefore, the church is required to see the modifications before you this evening. So, the council is being asked to make two separate modification decisions. The first is a request to modify the amount of right-of-way to be dedicated along with a portion of the frontage of the church. Keep in mind; developers are generally required to dedicate only their half of the right-of-way. In this case, which would be 50-foot from the center line. The church is requesting to dedicate only 40 feet from the center line of Green Level Church Road for a portion of the frontage, approximately 360 feet north from the southern property line, and this is a 10-foot reduction from the typical LDO requirement. To provide some context to the request, we’ll walk through this one step at a time, since it can get a little complicated. The existing right-of-way for the subject property is shown here in green. It’s approximately 30 feet from the front door and approximately 20 feet from the stoop. There’s an existing sidewalk in front of the church that falls outside of the public right-of-way in its current state. The right-of-way identified in the Planned Roadway Widths Map would be located at the front edge of the stoop and about 10 feet from
the church’s front door. Full dedication would likely require removal and/or significant reconstruction of the stoop that exists today. As a result, the church is proposing to modify the dedication for the southern portion of the site. The proposed right-of-way, 40-foot from the center line, would place the right-of-way line approximately three feet behind the edge of the sidewalk, bringing the sidewalk into the public realm. The modified right-of-way would be about 20 feet from the front door of the church, and about 10 foot from the stoop as it exists today. Once past the existing parsonage north of the sanctuary, the church would dedicate the full 50-foot of right-of-way required by the Imagine Cary Community Plan. To give council an idea of what might be possible within the reduced 80-foot right-of-way, this is the typical cross-section for a four-lane undivided thoroughfare. Note that this is merely one example of what could fit within the right-of-way and is not an anticipated result of the study as it moves forward. The corridor study is still in the information-gathering process, and no potential sections have been discussed to date. The second modification being requested is an acceptance of a payment-in-lieu in the amount of $0 for improvements along the frontage. Typically, the developer would be required to install a curb and gutter and additional pavement width for their half of the road. The church’s engineer prepared an estimate of the construction cost for those improvements, which amounted to approximately $357,000. There is no provision in the Land Development Ordinance to completely waive the improvement requirement. However, the council may accept a payment-in-lieu in an amount less than the total estimate. Therefore, the request is worded the way it is. This concludes the staff’s initial presentation. Following the applicant and any other speakers, we will return to the podium briefly to summarize our observations. Thank you.

Weinbrecht: Thank you, Mr. Hales. At this time, we’ll call on the applicant’s attorney to present arguments and evidence in support of the application by addressing the applicable approval criteria.

Barron: Good evening, Mr. Mayor, members of the council. Jason Barron with Morningstar Law Group, here on behalf of my client, Green Level Baptist Church. Here with me tonight is Judy Howell of Green Level Baptist Church, who has been kind of overseeing this construction project on behalf of the church. She’s going to provide some brief comments associated with the church and its historic place in the Green Level Historic Area. Also here with me is Mr. Ken Loring of CLH design. They’ve provided land planning and engineering for the plans that have been submitted with the town and will provide evidence associated with the findings that you all have to make. I will keep my comments brief since Ken ultimately is the expert on this matter. Kevin’s done a great job of summarizing the nature of the request. I will note that the Cary Community Plan notes the context-sensitive solutions and right-of-way widths and right-of-way location should be sought in this area, and we think this modification is entirely consistent with that context-sensitive idea. Green Level Baptist Church is essentially dedicating as much right-of-way as they possibly can without impacting the historic structure. Further, with respect to the payment-in-lieu, as it is noted in the staff report, we believe that the request for payment-in-lieu is reasonable under the circumstances because the sanctuary size isn’t being increased. And so, as a result of that, there won’t be any additional impact to the transportation facilities associated with this particular use. And so with that, I will conclude my remarks and hand it off to Ms. Howell for a few remarks about the church. Thank you.

Howell: I might need something to stand on back here. Good evening. I’m Judy Howell. I am the co-chair of the renovation committee at Green Level Baptist Church. I’ve been a member there for over 40 years. So at this point in time, I would certainly like to recognize the members of the church who have shown up tonight, please. Would you stand?

Multiple people stood in the audience.

Howell: So, we have a good attendance tonight, in spite of the fact that we’ve got vacation Bible school going on at the same time, so we have a lot of members that are busy doing that. But I kind of wanted to give you an overview of the church and the community itself, to kind of let you know where we came from. Basically, Green Level community itself dates back to the early 1800s. There were a level and green area that was a popular place along the Pittsboro Stagecoach Road that ran from Pittsboro to Raleigh near where the Green Level Crossroads is today. The cattlemen drove their cattle from Chatham in western
Wake County to Raleigh along this road. There was also a whiskey tavern where the men could get refreshments, making it a popular stop, that was close to the crossroads. Because of the green level area and this particular location, it was decided that “Green Level” should be the name of that—pretty original, I think. Green Level was founded around 1800 and is one of the oldest surviving crossroad communities in the Raleigh area. In 2001, the Green Level Historic District was added to the U.S. National Registry of Historic Places. This whole community makes up about 75 acres for the historic district as Ken Loring talked about earlier. The church itself—the center of the Green Level Historic District is Green Level Baptist Church. The church originally started in the whiskey tavern that was at the crossroads. It’s kind of interesting you’d have a church start in a whiskey tavern. But anyhow, the first church was organized at Providence Missionary Baptist Church; September 3, 1870, was the original church. The name was changed to Green Level Baptist Church on September 4, 1871. Construction began on the present sanctuary in 1904, and it was completed in 1906. The sanctuary is featured in *The Historic Architecture of Wake County* by Kelly Lally as one of the best-preserved examples of rural church architecture in Wake County. It features the typical Gothic Revival details such as the pointed arched windows and vents and a tower at the central bay as Ken Loring talked about earlier. The church has gone through several renovations over the years. In September 2001, a major renovation was done on the church. We had a lot of termite damage and things such as that because of the age of the church. We needed to add a lot of handicap accessibility, so that was done at the same time. We added new windows and new doors and a new HVAC system. All of this was completed while maintaining the integrity of the existing sanctuary for the architecture of the church. As a result of the renovation, in 2003, Green Level Baptist Church received the Anthemion Award for historic preservation presented by the Capital Area Preservation for Excellence and Historic Preservation. Green Level Baptist Church was placed in the National Registry Historic Places in 2001. The church remains the focal point of the community today. Embossed on the ceiling of the church itself looks like a big compass. Some people think it looks like a cross, but actually, it looks like a compass, and it denotes the directions of north, south, east, and west, pointing in each direction on the ceiling. And it indicates where the church was actually built up on top of the hill, so you can see it from pretty much anywhere when you’re coming up the hill or anywhere around Green Level. You can see the church in—from any direction, which I think was the intent of the forefathers of the church. So, as you know, Green Level is in the heart of a very rapidly growing area. So, due to this growth, our church has also grown. As a result, our children’s areas are bursting at the seams. Therefore, the church has decided to embark on this ambitious renovation plan with our children as our main focal point. We’re asking for the council to support our plans so Green Level Baptist Church can continue to be the focal point of this wonderful community. Thank you.

**Barron:** And I really wish this was a zoning case because I would be done at this point. [LAUGHTER] This is going to be way more boring—no offense to Mr. Loring. At this time, Mr. Mayor, I’ll call Ken Loring with CLH Design to discuss the Land Development Ordinance standards.

**Loring:** Thank you, members of the council. My name is Ken Loring. I live at 203 Forest Run in Cary. I went to UNCG for my four-year degree, and I’m a licensed professional engineer and a licensed professional land surveyor in North Carolina. I’ve been with CLH design for almost 22 years and a principal there for 21 of them. We were hired to prepare a site plan and construction plans for the church, primarily for the educational facility. They are doing the expansion with a drop-off zone, and none of the proposed building is any closer to the existing right-of-way. So, we’re meeting the full extent of the LDO except for in regards to the proposed right-of-way, which we’ve already talked about with the 50-foot widening from the center line. But it is problematic that the setback, the nonconformity, would impact the existing structure that would probably have to come down when the widening for that 50-foot right-of-way would ever occur. So, the church is proposing a 40-foot width for the southern 360 feet, the full extent to which would be dedicated without having to modify the existing building. Either scenario, the additional education facility is fully compliant. The addition itself is not causing the problem, but it’s just that the existing building is. So, it’s important to note that the church is dedicating the full extent of the right-of-way for the remainder of the property to the north and about a lower third to the south is where the narrower right-of-way will be. There is no doubt that the modifications advance the goal of the proposes to the ordinances. The Cary
Community Plan values the historic preservation of structures, and Green Level Baptist Church is one of them. The requested modification would save the structure, and your approval for this request would result in a less visual impact to the corridor by having any physical changes to the church. There'll be less road widening as a part of that, of course. Most importantly, the modification will help preserve a long-standing fixture along the corridor; since the building was built in 1906 and has remained in place since then, it meets the requirements for a historic building. To require full compliance with the LDO, it is a required modification to the historic façade, which would result in significant impacts to the corridor. As a result, payment-in-lieu, the widening of the road is not desirable at this time, since it would be context-sensitive to the historic district. The fact that the town has hired an outside consultant to review the road widening in this area and how it could be context-sensitive, it makes us acknowledge the fact that the current plan would not meet that condition. That the road would be widened in the future is obvious because of the continuing growth. At this time, the $0 payment is reasonable because the proposed expansion is in the response of existing demand and not anticipated to bring in any more patrons to the church. The capacity of the sanctuary is proposed to remain the same. Therefore, payment of any amount for the road widening is unreasonable as it is not in proportion related to the church’s expansion in its educational facility. It is my professional opinion that the requested modifications meet the LDO requirements for approval, the reduced right-of-way is consistent with the spirit of the LDO, and the result of a less visual impact than full compliance would be. The required payment-in-lieu advances the goals and purposes of the LDO because the road widening is undesirable at this time. If there are any questions—if there are no questions, I’ll turn the floor back over to Mr. Barron.

Weinbrecht: Thank you.

Barron: With that, Mr. Mayor, we conclude our presentation of evidence. We’ll ask that the town council accept into the record the staff report along with the associated exhibits and take judicial acknowledgment of the contents of the Land Development Ordinance and the town’s other adopted plans. And so, with that, we believe that the evidence supports the request at hand and we respectfully request you all’s approval of the same. Thank you.

Weinbrecht: Thank you, Mr. Barron. At this time, I would invite the speakers who have been sworn in and want to speak in favor of this application to approach the podium. Anyone, to speak in favor that’s been sworn in? Seeing no one, we’ll continue, and I would offer up to either party cross-examination of the witness. I’m getting “nos.” And now, we’ll open it up to those who are opposed to this request. And if you’ve been sworn in and would like to speak in opposition, I would ask that you come to the podium now. Seeing no one, we will continue, and I’ll call on staff to provide professional observations about the requests.

Hales: Thank you, again. In regard to the right-of-way dedication, one of the fundamental purposes of the LDO is to enact and implement the policies of the Imagine Cary Community Plan, and that plan recognizes the importance of the historic context of the Green Level community and the contributions that the historic structures within that district make to that context. That’s why the note’s in the plan. And to that end, the reduction in right-of-way width represents a compromise between the right-of-way the town may need to accommodate future capacity needs in the corridor while retaining some spatial separation between the road and the historic structure that contributes to that historic context. The modification is also being requested only for the existing developed portion of the property, not the entire property, so the southern third would be modified, and the northern two-thirds would be dedicated to the full 50-foot required by the ordinance. The payment-in-lieu modification is related a lot to the uncertainty of the future cross-section. The $356,000 - $357,000 estimate is based on a full four-lane median-divided section, which we think may be very likely to be larger than the section that’s ultimately going to be needed to that corridor in order to maintain the historic context. Additionally, the church is making some contribution to the dedication of the right-of-way. They’re dedicating approximately one acre, a little over one acre, with the assessed tax value that comes to a total of about $87,000 worth of right-of-way they’re dedicating as
part of this project. That concludes staff’s observations. If you have any questions, we will be available while you deliberate. Thank you.

\ Weinbrecht: Thank you. Any cross-examination needed? All right. Does any party believe there’s been new evidence presented that would require a continuance? Okay, keep on going. We now open the deliberative phase of the hearing, and I’ll open it up to council members for comments or questions. It seems pretty straightforward to me. I’m sorry.

Robinson: I have questions.

Weinbrecht: I’m sorry.

Robinson: That’s okay. I have several questions, actually. So, Mr. Hale, my first question is, going back to slide 17, can you point on your arrow where the 40-foot right-of-way comes to in this picture, in front of the building, and then where the 50-foot would come to?

Hales: So, I’m going to be guestimating, because I can scale on oblique, but—the proposed 40-foot right of way would be approximately three feet behind this existing sidewalk. So, the sidewalk today is on private property, it’s not within the right-of-way. The right-of-way would be dedicated to bringing the sidewalk into the public realm, which it normally would be, three feet behind there. The 50 feet falls right within this column. I mean, again, there’s a few inches on a scaled drawing, so it would likely require the stoop to be removed or drastically remodeled. It’s right along that edge.

Robinson: Okay.

Hales: So there are 13 feet or so between the sidewalk and the stoop today.

Robinson: And is there a possibility of any of the design—road designs—coming back that would creep beyond the 40-foot right-of-way?

Hales: My understanding in the discussions we’ve had to date—and we don’t have proposed designs yet, we’re still in a very investigative phase—that any modification that council grants this evening would be based—would be a basis for holding that right-of-way line and designing outside of that.

Robinson: Pushing it to . . .

Hales: It may be an asymmetrical solution, depending on what comes back.

Robinson: Okay, pushing—so we adopt the 40-foot right-of-way and then all designs would adhere to that. There’d be no chance it would be 43 feet and then we’re going back to the church, hoping that they’ll dedicate a few more feet or anything like that?

Hales: The current anticipated direction is that we would hold the 40-foot that you modify tonight.

Robinson: Have you had a conversation with the church, that if it should creep beyond that 40 feet, let’s say an additional foot or two or three, that the church is willing to work with us and dedicate the right-of-way at that time?

Hales: We haven’t had that conversation, to the best of my knowledge, yet. Again, we’re anticipating—our expectation is that the 40-foot would be the line . . .

Frantz: Right.
Hales: —unless something goes—[OVERLAPPING]

Frantz: I think if we agree on 40 feet tonight, we are setting that 40 feet in stone.

Robinson: Are we? That's what—I was unclear about that.

Hales: Or they’d have to come back and request another modification if anything . . .

Robinson: No, we would be the . . .

Hales: —were to change in the future.

Robinson: Well, we would be—I mean . . .

Weinbrecht: Then we would have to . . .

Robinson: —that's what I'm asking, is if we . . .

Weinbrecht: Accommodation.

Robinson: —agree to 40 feet tonight, are we committing to not exceeding beyond that 40 feet with for the cross-section that this designer is come up with . . .

Weinbrecht: And less condemnation. So, if we needed . . .

Hales: Or purchase.

Weinbrecht: —three more feet, we had condemned.

Bush: You don’t have to condemn; you could negotiate.

Robinson: We could negotiate.

Bush: Right.

Weinbrecht: Right.

Robinson: And it would be nice if they didn’t charge us for it.

Overton: Mayor, let me add, too, is—and we’re talking about a road width on a plan. We still don’t have a capital project, so to talk about whether we go to condemnation or the church has another future expansion project, you may cross this bridge at another time, as well.

Weinbrecht: Is this a state road?

Overton: It’s a state road, yes.

Weinbrecht: Being the chair of CAMPO, I can say it’s not on there, either.

Overton: Yeah. Right.

Weinbrecht: So that means 10 years out, at least, so.
Robinson: Okay. You know, I’ve been under the impression that when we collect fees, or we expect people to do their part of their frontage, it’s not because it’s not based on traffic generation. It’s based on being, basically, a player in the community, and that’s their responsibility to do the frontage. And so, we heard a couple times tonight, “Well, we’re not increasing the amount of traffic, so therefore, we should be waived of the contribution.” Is . . .

Hales: That’s the applicant’s position, and that’s true, they’re not.

Robinson: That’s the applicant’s position, but that—okay—so—but I mean, from staff’s perspective, that’s not typically—we don’t typically tie traffic generation to constructing the frontage.

Hales: Correct. The LDO requirement is not based on traffic generation; it is based on the Planned Roadway Widths Map as adopted as part of the Imagine Cary Plan. And so, we expect you to widen to what that plan is. However, the plan includes, in this case, a note that says, “Hey, we recognize there are some conflicts here, and something different may be appropriate,” and this is the conversation about something different.

Robinson: Okay. Well, I feel like it’s important to clarify that so that there’s no confusion about why we would waive this, because it’s not just for this particular case, but for future applicants who come to us and say, “Well, they didn’t generate any traffic. Therefore, you waived it. And we’re not generating any new traffic, so now waive ours.” So, let’s make it perfectly clear, if we waive this it’s because it’s a unique situation—it’s historic property, it’s a sensitive property—but it’s not because they don’t generate the traffic.

Hales: Sure.

Robinson: Okay. I just want that to be on writing because I don’t want to be hit with this another, you know, six weeks down the road.

Frantz: Can you remind me how big the expansion is going to be?

Robinson: Eighteen.

Hales: Just over 18,000 square feet.

Frantz: Eighteen thousand, okay. But not any additional traffic expected to be generated because . . .

Hales: Correct, because typically the town considers those are accessory uses to the church.

Frantz: Correct.

Hales: So, it—their big draw is usually on Sunday, right?

Frantz: Right.

Hales: So, they’re not expanding the sanctuary.

Robinson: Yeah, and what I was just saying is it doesn’t matter. It doesn’t matter if they did or not, because that’s not why we widened the frontage. That’s why we improve an intersection nearby, but that’s not why we widen the frontage.

Hales: Correct, and that’s in the staff report. None of the findings are about the traffic. It’s just about . . .
Robinson: Okay.

Hales: —the historic context, really.

Robinson: Okay. Thank you for clarifying that. I appreciate it.

Weinbrecht: Any other questions?

Robinson: Nope.

Weinbrecht: Other questions, comments?

George: Just a question—a quick question. Are there other places in town where we perhaps because of a structure, is it a normally wider road narrows for a short period of time, rather than—I know we route sidewalks all around big trees. Do we—is this a . . .

Hales: I’m hesitant to answer that question in any absolutes. There are definitely some structures, especially downtown, when you think about the Mount Zion Baptist Church, for instance. It’s very close to Chapel Hill Road, and we know that something’s going to happen, at some point, in that road corridor. It would obviously have to be engineered. You can’t be a sudden dip. You’re not going to have like a—like a little loop around a power pole like you would of a sidewalk.

George: Right. Okay.

Hales: Does that answer your question?

George: Yeah. I guess it’s just that five-foot—that five-foot potential offset, certainly, it looked like could be—anyway, I’m fine. No more questions.

Weinbrecht: Other questions?

Bush: So, I just want to understand. Normally, we wouldn’t have this context-sensitive study going on at the same time as somebody would be coming with, you know, a modification, or basically enhancing their own facility, which is what kicks off the requirement to improve the road in front of the building, right? Is that—

Hales: It’s always possible.

Bush: It’s always possible?

Hales: Correct.

Bush: Have we done a payment-in-lieu of $0 when it was, you know, estimated to be $357,000? Let’s say it was going to be built as a four-lane. Have we done something like this before?

Hales: We’ve done some fairly significant—Cary Academy, for instance, when they did their science expansion, did a fairly large payment-in-lieu in the amount of zero.

Bush: Okay. And that was—the reason behind that was similar? I mean, it wasn’t historic, but it was, you know, associated with—

Hales: It was associated with the fact . . .

Bush: —unknown . . .
Hales: Unknown future corridor needs . . .

Bush: —future uses.

Hales: —and then it was also way back in the back of the site where they were adding the addition, and then they were making the case that . . .

Bush: Right.

Hales: —they’re not touching that part right now.


George: Well, that reminded me of the one—part of the Cary Academy was burying . . .

Hales: Their power lines.

George: They have to bury power lines because—but then they—the power company said there were no plans to do that. I see power lines in this picture, I suppose. Is burying power lines part of it?

Hales: Yes, sir. That would be part of the improvements that they’re not going to be making . . .

George: Okay.

Hales: —would be burying the power lines. It’s actually less than a thousand square feet, too. The Duke Energy Progress’ rule of thumb is a thousand square feet, so they’d be able to get a letter saying it was impractical, probably.

George: Okay.

Weinbrecht: Any other questions or comments? Seeing none, we’ll move to the public—we’ll move to close the public comment portion of the hearing, and I would open it up to council members for a motion on the Modifications A and B.

Robinson: Okay. I make a motion to approve a modification request. For the reasons that we discussed, I move that we approve the modification request made by the applicant, as the request meets all of the approval criteria of the applicable sections of the LDO.

Yerha: Second.

Weinbrecht: There are motion and a second. Discussion? All in favor of this motion say “aye.”

All council members present voted aye.

Weinbrecht: Any opposed? The motion carries unanimously. [APPLAUSE] I understand your excitement, but we usually don’t do that. [LAUGHTER] Mr. Silverstein, if everything’s in order, I’ll close this public hearing. All right, we’ll close this public hearing.

ACTION [Contains summary of prior verbatim action]:
Motion: Robinson moved to approve Green Level Baptist Church 18-DP-0131 modification request made by the applicant, as the request meets all of the approval criteria of the applicable sections of the LDO.
RESULT:  APPROVED [UNANIMOUS]
MOVER:  Jennifer Robinson, District A Representative
SECONDER:  Ed Yerha, At-Large Representative
AYES:  George, Weinbrecht, Smith, Robinson, Frantz, Bush, Yerha

2.2 L&L Performance/17-SU-002

Weinbrecht: We’re now at our last evidentiary hearing, L&L Performance 17-SU-002. This case is before us tonight because the applicant has required a special use permit. As a reminder to those in attendance, even though we are in the council chambers, an evidentiary hearing is more like a court case. The council members act as the judge and can only accept evidence that is competent, material, and substantial.

North Carolina and the United States constitutions give the applicant certain due process rights in every evidentiary hearing. The Constitution ties our hands on what evidence we can accept, and I apologize for what might seem burdensome or a complex process. We consider competent, material, and substantial evidence from anyone who testifies. By law, we can only accept testimony from expert witnesses regarding this development will affect property values, whether it will increase traffic resulting from the development, or pose a danger to public safety. To those that are with us this evening intending to testify that are not expert witnesses, I can only say that you can make statements on what is factual and what you have observed. Our contractual attorney, who is sitting to my left, will help determine who is an expert and who is not, and what we can consider. Our hearing procedures and detail rules are attached to the printed agenda. All speakers who want to speak during this public hearing must be administered an oath by Mrs. Johnson, who is to my right. So, at this time we’ll allow those individuals who’d like to speak at the public hearing to approach Mrs. Johnson and receive their oath. And I can see they’re all queued up and ready to go. And the council will refrain from taking any action during this time.

Johnson, the clerk to the board, administered oaths to potential witnesses.

Weinbrecht: Now, I’ll take this moment to ask council members if they’ve had any site visits, ex parté communications, financial relationships, specialized knowledge, or a close relationship to an affected person to disclose.

Council members present had no disclosures.

Weinbrecht: Based on the disclosures you’ve heard from council members, I would invite any party to come to the podium at this time if you have an objection to a council member’s participation in this hearing. Seeing no one, we’ll continue. I’ll open up the quasi-judicial public hearing, and Mr. Loveland of our staff will introduce this hearing.

Loveland: Thank you, Mr. Mayor. Good evening, Council. L&L Performance is proposing to locate a motorcycle sales business at an existing building at 1613 Walnut Street. The development ordinance requires that that use at this location be a special use, and as you are aware, that requires town council authorization. The property is located on the north side of Walnut Street. It is northwest of the intersection of Walnut Street and U.S. Highway 164, to help you place this property. Notice that the property has no direct frontage onto Walnut Street. Rather, it is located behind an existing convenience store. It takes access to Walnut Street through an existing access easement. The property is located to the west of a retail center. There’s also, aside from the convenience store, also retail on the south side of Walnut Street, a fast food restaurant to the southwest. The properties to the north and the northwest are multifamily residential. The property is located within a general commercial conditional-use zoning district and within a mixed-use overlay district. As I mentioned, the LDO requires this as a special use. It falls within the motor vehicle sales and rental use type, which is a special use in a general commercial district. There are two existing properties located on the site. The applicant is proposing to locate in the southern
building. The northern building is currently occupied by an auto service center and is not associated with this request. This view gives a good look at the fronts of the two buildings located on the site. To the left, you have the existing service center located off-site. To the right, you have the service center building. And in the center, you have the building that the applicant is proposing to occupy. That building is 2,400 square feet in size, according to Wake County tax records. Here is a recent picture of the front façade of the building. The applicant is not proposing to make any site changes. They are not proposing to alter any of the facades. There are therefore no development plans associated with this request, only the special use request, only the seven findings associated with a special use. I know the council is aware of the approval criteria that go along with the special use, but to remind the applicant and the audience, these are the approval criteria associated with a special use. It is the obligation of the applicant to show these are being met prior to approval of the plan. With that, I’ll hand the podium over to the applicant, who can provide more detailed information on the nature of the business and the use. I will return after the public has provided testimony to present our conclusion.

Weinbrecht: Thank you, Mr. Loveland. At this time, I will invite the applicant’s attorney to present arguments and evidence in support of the applicable criteria.

Brady: Thank you, Mayor Weinbrecht. Mayor Weinbrecht, members of the council, staff, Mr. Silverstein, I’m Bob Brady. I practice law locally in Cary, and I represent L&L tonight in this application for the special use permit. I only have a few words to say about this application, because I think most of the information that the council needs to hear will come from two experts that will testify, and the principal of L&L, who I think will give you an idea of exactly what’s proposed to be operated on this site. The two experts that I have will be Rich Kirkland, with Kirkland Appraisals, and Taylor Honeycutt, with Exult Engineering. Mr. Kirkland, of course, to deal with the property evaluations and the impact of the use of this property on other adjacent properties. And Mr. Honeycutt to address the traffic impact, if any, that this special use will have on the property. The first witness I would like to call, however, is Mr. Gerry Lasalvia, who is the proprietor of L&L, operating now out of Sanford, North Carolina. And I would like for Mr. Lasalvia to tell you exactly what his operations will be here in Cary, North Carolina.

Lasalvia: Hello, how are you guys, ladies, and gentlemen? My name is Gino Lasalvia. If you decide to buy a motorcycle from me, you will call me “Gerry,” it’s just easier to explain, considering I have a country accent as I do. Pretty much what I do is sell street bikes, sell motorcycles, some ATVs. The building that I’m actually working out of now, we’ve had our business license since 1989, and it’s an old wholesale building. It’s located in Sanford, North Carolina. We’ve been—like I said—my father started the business. And when we started, mostly what we would do, we’d put motorcycles on consignment at local dealerships in Fayetteville, Raleigh, a lot of different areas, and they would sell the motorcycles and then pay us afterward. My father passed away in ’97. I took over the business. I started retailing to customers, that’s kind of what I wanted to go with. I didn’t really like the wholesale business too much. The majority of my business is internet-based. Because I’m in a rural area now and it’s a wholesale building, I don’t get a lot of drive-by traffic. So, pretty much, I’ve learned to actually build my business off just the internet. So, the majority of the people that would want to purchase a motorcycle from me would call me. They would see my stuff on a website or on some kind of advertising platform that I have affiliated with CycleTrader or one of those places. They would give me a call. I would explain the process to them, how they could fill out a finance application. Once they fill out the finance application—you know, I tell people not to come until I already know whether I can get them approved or not, that way they don’t waste a trip. But most of the time they’ll fill out the finance application and a lot of times I’ll have to guide them through it. They fill it out. I run their—you know, if I can get them approved, that’s when they would come actually to my shop. Mostly what I do is by appointment only. I do have normal business hours, normally 10:00 to 6:00 through—Monday through Friday, and then 10:00 to 2:00 on Saturday. And I also accommodate my customers that, say, they work seven days a week and they need to come after hours; I’ll be glad to meet someone after hours as long as they give me at least a 24-hour notice. A lot of my customers are from the Triangle area Cary, Raleigh, Durham, Holly Springs, Apex. One of the main reasons—well, actually, I have two main reasons for moving in this direction. One of the main reasons is I have a lot of customers in this
area, and I’m trying to save them a drive. It just seems more appropriate to me to have a location that’s
here in the Triangle area instead of having it, you know, in Sanford, you know, which is a little distance
away. Another one of my reasons is I actually go to Hope Community Church. I’ve been there for 12 years.
It’s right down the street. My daughter started school there today—well, actually today was her
kindergarten, it was her first day. So she goes to Grace, which is next to Hope, which as you probably
know, it’s right down the street. So it kind of works out really well for me. And I believe that’s about it, so.
[LAUGHTER] This is my first time doing this, so I apologize if I see nervous . . .
Weinbrecht: You’re doing a great job.
Lasalvia: —or doing something wrong. I apologize.
Smith: Hang in there.
Brady: Mr. Lasalvia, could I ask you—there’s been a statement made or a comment made about the
potential noise factor that this operation may cause to the area. Could you . . .
Lasalvia: Elaborate?
Brady: —talk a little bit about that, please?
Lasalvia: Yes. Actually, he had said something to me about the noise, and I actually do not start
motorcycles. I mean, I start them outside, but I do not allow test drives. I have not allowed a test drive in
15 years. I had an issue with a customer one time that said he knew how to ride and he didn’t know how
to ride, and there’s a lot of liability involved with that if I allow someone to ride a motorcycle and they don’t
know what they’re doing. So, my offer to them, which most people do not accept, is that I will take them
for a ride and they can ride on the back. But the majority of my customers don’t want to do that, so
[LAUGHTER] they would rather just research what they’re looking at. You know, most people know before
they go to purchase a motorcycle exactly what they’re getting into, you know? So, yeah, I won’t be starting,
I won’t be doing test rides, like I said, unless somebody wants to ride with me, which is unlikely. So, does
that pretty much satisfy?
Brady: Thank you very much, Mr. Lasalvia. At this point, I’d call Mr. Rich Kirkland.
Kirkland: Good evening, hi. Rich Kirkland, with Kirkland Appraisals. I’m a state-certified general appraiser.
I’ve been appraising for over 20 years in the area. I actually grew up in Cary, so I’ve got experience in that
direction, as well. I’m also an MAI through the Appraisal Institute. As I said, I’m real familiar with this. I
grew up in Ivy Meadows, so as a kid I actually babysit—sat some kids in Williamsburg Manor, the adjoining
apartments. We rode our bikes through the neighborhoods, and I would actually visit the Fast Fare that
this was when I was a kid, bought my comics and candy there. So, it’s funny; it comes up. This place holds
a place in my mind and recalling the Ford dealership that used to be next door.
George: Helmold.
Smith: Helmold.
Kirkland: Helmold Ford. Yeah.
Smith: That’s right.
Kirkland: Actually, the building that the transmission shop is in was actually a dirt field. I and my friends
would actually throw frisbees out there and do whatever. And as odd as it sounds—I still can’t even explain
why—we used to collect bottle caps out there, and you could find just piles of them out there. So, I don’t
know what the teenagers were doing, but there were a lot of bottle caps. So, but anyway—coming forward
today, I've looked at this—looking at this, I think the question is whether or not it's going to have an impact on adjoining property values and whether or not it's a harmonious location. To that end, again, I've looked at the adjoining uses. You've got the transmission shop that's on the same parcel; it's just to the north of that second building on the parcel. There's the big box shopping center, Devonshire Place. You've got the Shell Station, you've got the Cook Out, and then Williamsburg Manor. So, when it comes down to it, the only area you're really asking a question about is, really, the apartments, because this is really a commercial use surrounded by commercial uses, next to these older apartments. Again, those apartments are already adjoining those same commercial uses that I just outlined, and also adjoining the transmission shop. The building isn't really changing. The building is where it's at. The use of it, inside, is going to be essentially a retail facility and having no more noise or impact on the adjoining properties than it would have with any other type of retail use going there. To that end, I've looked at—trying to think of other things that would be similar, I've looked at auto parts stores around Cary. I've looked at hardware stores around Cary and just looked to see if they have adjoining multifamily uses. I've identified several that I would point out. Let's see, the Advance Auto Parts on Highway 55. It adjoins, actually, single-family homes and has apartments across the street. Again, very similar use. And the other adjoining use would be a shopping center, a very similar location. Napa Auto Parts on Chatham Street has gotten some commercial uses along that and backed up to—across the train tracks—to the Madison Townhomes. Again, the Advance Auto Parts, later, when I got a little older, when we moved to Cary High, we moved over to Kildaire Farms over in Stoneybrook, so then I was riding my bike over there a bit. And again, we used to go over there to that center to hit Little Caesars and everything else. There's an Advance Auto Parts there, and it backs up to multifamily. It's really common there, that this type of use they're synergizing. And frequently it's because multifamily tends to serve as a buffer between single-family and commercial development. It's my professional opinion that this proposed use at this location is not going to have any impact on adjoining property values. It's also my professional opinion that it's a harmonious location. If you asked me to come up with a use that would fit between a transmission shop and a gas station in that building right in there, I would be hard-pressed to find something that would fit better. So, again, it's my professional opinion that it's a harmonious location, and I'd be happy to answer any questions or go into any greater detail. I could talk about my childhood for as long as you'd like. [LAUGHTER]

Weinbrecht: Maybe later.

Kirkland: Yeah, sure. Thank you very much.

Brady: Thank you, Mr. Kirkland. At this point, I'd like to call Mr. Taylor Honeycutt with Exult Engineering.

Honeycutt: Hey. Good evening. As Mr. Brady mentioned, I am Taylor Honeycutt with Exult Engineering. I am currently licensed as a professional engineer in the State of North Carolina. I have been in engineering for roughly eight years, and Mr. Brady and Gerry asked me to kind of analyze the use of this from a traffic perspective. And, you know, based on our analysis, we use the 10th edition of the Trip Generation Manual published by the Institute of Transportation Engineers that are currently adopted by NCDOT. And I ran through Mr. Lasalvia's new use case with the square footage and came up with a daily increase of traffic of 68 cars, 68 trips. And so that's a daily total. You know, in the a.m., roughly five trips, and then 26 trips in the p.m. And so, when you take a closer look at the total traffic along Walnut Street—as everybody knows, it's a very busy street—and, you know, the latest available data of annual average—or average annual daily traffic—is 31,000 vehicles per day. And so, when you do a simple calculation of the percentage increase of 68, that's roughly 0.2% increase, which in my professional opinion is a negligible impact to the congestion and traffic in the area. Are there any questions? If there are no questions.

Weinbrecht: Thank you.

Brady: At this point, I'd like to tender Mr. Kirkland and Mr. Honeycutt as experts. It is the applicant's position that the testimony of the experts and the testimony of applicant have sufficed to satisfy the criteria for the approval of the special use permit that he's applied for. The noise factor that we were
somewhat concerned about I think has been addressed sufficiently by Mr. Lasalvia. No repairs will be occasioned on this property and no test drives. I think he explained that somewhat humorously, quite well, though. The use that this property needs to be put to is a use that would make it occupied and productive, not only for the individual that occupies it and the other of the property but also for the town. You heard Mr. Lasalvia tell you that a lot of his customers come from the Triangle area. To put a motorcycle shop—I don’t believe there’s another one in Cary—but to put a motorcycle shop in Cary, I think, benefits the town, number one, because it will increase traffic through the town; benefits the proprietor, number two, because of the income and the business that he will generate. And it benefits the owner of the property because he now has a property that is vacant, which is not an attractive site and will not become any more attractive unless it is occupied and put to useful use. In our opinion, all the criteria for approval of this special use permit have been satisfied, and we would ask the council to unanimously approve it.

Weinbrecht: Thank you. At this time, I’ll invite those who’ve been sworn in to speak who would like to speak in favor of this application to approach the podium. Anyone, to speak in favor? Seeing no one, we’ll ask each party if they have any reason to cross-examine what we’ve seen so far? All right. So now I’ll open it up to those who’ve been sworn in and would like to speak in opposition to the request. Anyone in opposition? All right. Very good. Does either party believe there’s any evidence presented tonight to continue this hearing? I see none. And I’ll turn it over to staff, who will provide their professional observations about this request.

Loveland: Thank you. Just to run back through, again, there are no proposed changes to the existing site. There is no development plan, so the findings are just the seven findings for the special use approval. On the motion sheet, we have suggested some conditions regarding limiting the use to the southern building, which the applicant has stated is his intent, but also to limit the use to no outdoor storage. There’s a development standard for this use that would require a 30-foot-wide buffer around any outdoor storage area, which would make any proposed outdoor storage impractical at best, or perhaps impossible, given the tight confines of the site. I believe the applicant had previously indicated they were agreeable to that. Council has the authority to grant—to impose these conditions whether the applicant is agreeable or not. I don’t know if the applicant wants to weigh in on whether they have objections to these conditions, but it’s suggestion of staff that these would be beneficial.

Brady: Completely receptive to that.

Loveland: Okay. And with that, I’d just conclude and say we’re available for questions.

Weinbrecht: Okay, stay right there. I’ll start.

Loveland: Okay.

Weinbrecht: I only have a couple. I want to confirm that special uses are tied to the property and not to the applicant, not to the owner.

Loveland: Yes, sir. Correct.

Weinbrecht: So this applicant could get approval and trade it to somebody or sell it to somebody tomorrow, and we’d have a different applicant who’d maybe feel totally different. Based on that—I’m thinking the worst-case scenarios—business hours that were mentioned, test drives that were mentioned—are they enforceable through this special use permit, or is that a condition offer?

Loveland: If they’re not a condition then they’re generally not enforceable unless—speak if you feel otherwise, but . . .
Glover: They could be added as conditions. I would leave it to staff to advise you on how easy or hard it might be to enforce those in the future.

Weinbrecht: Please advise.

Frantz: It would be being hard.

Loveland: Hours of operation are generally difficult for us to enforce.

Weinbrecht: I’m not as concerned about that as much as the noise factor, which we talked about, and the test drives. That’s very key to me, so—

Loveland: Test drives are really somewhat incidental to motor vehicle use. I think that’s just inextricably tied to that use. I don’t know how you could potentially permit this use and not allow test drives.

Frantz: I will tell you most motorcycle dealerships, period, do not allow test drives.

Weinbrecht: Okay

Frantz: I mean, it’s . . .

Weinbrecht: That’s good information to know.

Frantz: One little oops, you lay that thing down, you just trashed a bike. It’s not happening.

[LAUGHTER]

Weinbrecht: Okay. I trust you, an automotive dealer, repair [ph]. So, any other comments, questions?

George: I had a—yeah, I was at first thinking about this, hours, and cranking motorcycles after hours, but motorcycles need gas, and it’s next to a gas station. So, what’s to stop people from coming by there and getting gas at a gas station, whether they buy a motorcycle there or not, so I don’t think there’s—I mean, to me, it’s like I don’t see any—have any noise issues. That was my first thought, but I thought people cut them bikes off, they fill them up, they crank them up again. You’re not going to stop it at the gas station if they’ve been doing that all these years next to the apartments. Then I don’t see any difference in having motorcycles being sold.

Weinbrecht: Okay.

Frantz: I would agree. You’ve also got a lot of noise being generated from the transmission shop, whether that’s air guns, air compressors, and the like, that just goes on with general automotive service. This use is not going to add any meaningful, significant noise to the area whatsoever, in my opinion.

George: And during business hours . . .

Frantz: Correct.

George: —that would be the shop. Of course, at nighttime, you—if the gas station is open, they’ll be cranking cars and motorcycles—I don’t have any problems.

Weinbrecht: Any other questions?
Frantz: I have a question of staff. We have a list of four, possibly five conditions. You know, the five is kind of left up for whatever else we want to add. Do we have to approve all four, or can—if we didn’t want to approve one of them, could we?

Loveland: That’s completely at your discretion.

Frantz: Okay, because I actually have a little concern with number three, “There shall be no outdoor vehicle sales or display area.” I don’t see any reason why the proprietor shouldn’t be allowed to park 6, 8, 10—whatever—motorcycles out in front of the shop, you know, because the reality is, at night he’s going to bring them inside anyway, if not—because if not, they might not be there in the morning. So, I just don’t know why that’s a concern. I really don’t. And if anything, putting some beautiful motorcycles out in front of this building makes this building look better.

Robinson: I agree.

Weinbrecht: So, could you speak to that? Why?

Loveland: It would be somewhat difficult to do because of the requirement to buffer the display area. If you see on your screen, I just drew up a random display area. I believe that’s approximately 500 square feet in size. That’s showing how they would have to buffer. So they would have to rip up the pavement to install a buffer to meet ordinance requirements. So, if you don’t impose that condition, they can potentially do it, but actually implementing it would be difficult.

Frantz: They could potentially store or display vehicles in this entire area?

Loveland: I just drew an area, just at random to show.

Frantz: Got it. Yeah. Well, they can’t do it there because they’re, like, blocking the whole drive aisle and then they can’t do it there. . .

Loveland: Well, what would end up happening . . .

Frantz: —because it would end up blocking parking.

Loveland: —is they’d end up having to move it.

Frantz: Right.

Loveland: The orange is—I’m showing is what would be a buffer, correct.

Frantz: Okay.

Loveland: So, if this were what they came in and said, “We want to use that, a display area,” and there’s a 30-foot buffer off that display area, so what I drew was an orange, what would be a 30-foot buffer. So they’d be ripping up all this parking lot. The driveway could go through it, and that would displace a buffer over here. So they’d be losing parking spaces to put in a buffer. Well, now, do they meet the parking requirements after they lose all those spaces? It gets very difficult to do. They could shrink this display area, and the buffer shrinks a little bit, but—

Frantz: So, they have to have a—if they want to park five motorcycles out front, they now have to have 30-foot buffers and stuff on both sides and across . . .

Bush: By ordinance?
Loveland: Yes, sir. Correct. That’s an ordinance requirement.

Frantz: Okay. Or we can just do it as is . . .

Loveland: Associated with that use.

Frantz: —and just park motorcycles out front anyway, because we’re not going to be able to enforce it anyway, so.

Loveland: And that’s based on, you know, base—keep in mind, the use type is vehicle sales, so motor vehicles could potentially come into this establishment too; it runs with the land, not with the use, so . . .

Frantz: No, I get it.

Loveland: —business. So, if you have a vehicle sales lot, the idea is you can have it, but it needs to be screened from other businesses. This is GC; you can have an ice cream shop right next door, probably not at this location, but that the ordinance considers all locations.

Frantz: Does that apply to any business, then? Say, for example, the shop to the north wanted—had three vehicles they wanted to sell, and they parked them out in front of their business, put for-sale signs, and that—are they now in violation of the ordinance and would have to provide buffering?

Loveland: Well, they’re not approved for that use. They’re an auto repair, not an auto sale—

Frantz: Well, yeah, but every shop sells cars and stuff. I mean, we just—it’s what we do.

Loveland: —auto sales and general commercial there’s actually a use permit.

Frantz: Okay.

Overton: In practical terms, it’s a “yes.”

Frantz: Okay.

Bush: They’re going to stop fighting him on that.

Frantz: I think he knows what to do. All right.

Weinbrecht: Anyone else with questions or comments? All right. We will move to—we’ll end the public comment portion of the hearing, and I would ask council for a motion on the special use permit.

Frantz: For the reasons discussed, I move that we approve the request for special use made by the applicant as the request meets all of the approval criteria of Section 3.8.3 of the LDO. This approval is conditioned upon the following: the resolution and permanent approved for this special use request be recorded with the Wake County Register of Deeds upon the expiration of the appeal period, per section 3.8.4(E) of the LDO. The motor vehicle sales/rental use may—shall be limited to the smaller of the two buildings located on the property. I’m doing this one with—yeah—there shall be no outdoor motor vehicle sales or display area. If the motor vehicle sales/rental use is not established on or before October 1st, 2019, this approval shall expire. The planning director may grant a single one-year extension of this time limit for a good cause shown as defined in the LDO, upon receiving a written request from the applicant prior to October 1st, 2019.
Bush: Second.

Weinbrecht: There's a motion and a second. Discussion? All in favor, please say “aye.”

All members present voted aye.

Weinbrecht: Any opposed? The motion carries unanimously. Mr. Silverstein, how do we look?

Silverstein: I don’t think you actually closed this hearing.

Weinbrecht: Not yet.

Silverstein: Okay.

Weinbrecht: I’m asking you if everything’s in order.

Silverstein: Yes.

Weinbrecht: All right. Very good. We’ll close the public hearing, and since this is our last quasi-judicial hearing, we’re going to take a break and reset the table and come back and have one discussion item. Thanks, everyone.

[Vertibam transcription stops here]

Council took a break, and the Mayor reconvened the meeting at 7:36 p.m.

ACTION [Contains summary of prior verbatim action]:

Motion: Frantz moved to approve the request for the special use made by the applicant (L&L Performance / 17-SU-002) as the request meets all of the approval criteria of Section 3.8.3 of the LDO. This approval is conditioned upon the following: the resolution and permanent approved for this special use request be recorded with the Wake County Register of Deeds upon the expiration of the appeal period, per section 3.8.4(E) of the LDO. The motor vehicle sales/rental use shall be limited to the smaller of the two buildings located on the property. There shall be no outdoor motor vehicle sales or display area. If the motor vehicle sales/rental use is not established on or before October 1st, 2019, this approval shall expire. The planning director may grant a single one-year extension of this time limit for a good cause shown as defined in the LDO, upon receiving a written request from the applicant prior to October 1st, 2019

RESULT: APPROVED [UNANIMOUS]

MOVER: Don Frantz, District B Representative

SECONDER: Ken George, District D Representative

AYES: George, Weinbrecht, Smith, Robinson, Frantz, Bush, Yerha

3. DISCUSSION

3.1 ACT 5 - Planning & Zoning Board Membership and Duties

Weinbrecht reconvened our council meeting and introduced the Act 5, Planning and Zoning (herein known as P&Z) membership and duties. This item was presented at the last council meeting on July 26 for feedback. The staff has modified the report based on the feedback and has brought it back to the council tonight for action.

Glover summarized the changes to the report since the discussion by council. Summarized proposal:
1) Planning & Zoning Board would determine plan consistency, and they may discuss any matter that any member deems appropriate as they’re making that determination.

2) The unanimous vote by the board would place an item on the council’s consent agenda.

3) The board would no longer conduct public hearings. The council would have the option to call for a second public hearing (after the Planning and Zoning Board meeting) if conditions have changed. Citizens always have the option to contact the council by phone, email, or participate in the next Public Speaks Out at any regular council meeting. The time frames for submission or new or changed zoning conditions have been standardized.

4) no changes to the role of the ETJ member or to the overall membership of the Planning and Zoning Board

Weinbrecht shared he wants to know from the board what they feel about projects, not just the plan consistency. The requirement by the state is not as important to him. Weinbrecht gave an example: if the board member said ‘This case is consistent with the plan, but it is a bad idea.’ He shared those are two different determinations, and it may need to be two different votes. He shared that even though the vote is seven to one; if the P&Z chair expressed that six of the members had serious concerns; that information would be helpful to him.

Frantz shared that the wordage captures Weinbrecht’s request.

Robinson shared that this is achieved by having the member articulate their concerns and those concerns are written in the staff report. She shared the tricky part of this practice is when a case goes on consent, and we do not know that ‘x’ amount of members had concerns, but voted yes as the case is consistent with the plan.

Glover shared that there is a summary of the P&Z meeting in each staff report. Staff can highlight the conversation more, perhaps even moving the location of the summary.

George confirmed that the P&Z chair attended every council meeting.

Frantz highly recommended council members to contact staff and the P&Z chair with any questions they may have about the vote or any detail of the staff report. He also recommended council members to watch the meeting video, available online, or read the minutes to understand the concerns of the board.

Robinson provided an example where council members get last minute information, from citizens, regarding cases and would like council to talk about a certain issue.

Bush confirmed with staff that the appropriate notification modes would be followed to allow citizens to know about potential second public hearings. She confirmed with staff that the notification process is in the LDO, for any public hearing, not in the staff report summary for this item.

Yerha objected to the second point of the summary, calling for a second public hearing, as he is against delaying any case longer than needed. Glover confirmed that it would probably delay the case until the next meeting based on our current schedule. He would like the process to call for a second public hearing on the same criteria that would have resulted in a public hearing at the P&Z meeting.

Frantz shared that changes to the project usually make the case a better product.

Weinbrecht shared that he will modify his wordage after the first public hearing to remind anyone in the audience how they can continue to express their concerns to the council about the case.

Stegall shared the public hearing may provide false comfort to citizens about the public input opportunities. There are multiple opportunities for citizens to learn about the case and give feedback,
including Public Speaks Out, the opportunity for the council to call a community meeting, and meeting with staff. He shared that a second public hearing may not ‘magically’ make the case better for the community or for the council’s consideration.

Bush shared council can monitor these changes and see how it goes to make adjustments as needed. She does not share the concern about delaying the process as the rezoning process is very long. The impact on our community warrants a two-week delay. She agreed with the comments that we give our citizens lots of ways to contact us with their thoughts and concerns.

Smith shared that it is helpful for the council to articulate our concerns about a project after the public hearing and the applicant will either address those concerns or not. Those improvements are summarized in the staff’s presentation at the council meeting.

Robinson shared the scenario in which the developer makes changes, but they do not satisfy the concerns of the citizens. Citizens have the opportunity to contact the council or express that opinion at Public Speaks Out. Council can then determine to pull it from consent or call for another public hearing.

George expressed how asking the applicant to hold another neighborhood meeting is another tool that the council can utilize. No matter if the project gets better or worse with added conditions, the council has the opportunity to table it to allow the citizens to understand the project and/or contact council with their concerns.

Stegall shared that developers are familiar with our process and expect there to be changes along the way. There is evidence that developers in our community have an understanding about working with the neighbors to find the best solution.

Smith shared there is a lot of merits to change the ETJ role in the overall membership, but he is okay keeping the membership the same for now.

Motion: To approve the consistency statement and Act 5 Planning and Zoning Membership and Duties.

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<tr>
<td>MOVER:</td>
<td>Jennifer Robinson, District A Representative</td>
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<tr>
<td>SECONDER:</td>
<td>Ken George, District D Representative</td>
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<tr>
<td>AYES:</td>
<td>George, Weinbrecht, Smith, Robinson, Frantz, Bush</td>
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<tr>
<td>NAYS:</td>
<td>Yerha</td>
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4. **CLOSED SESSION**

No closed session was held.

5. **ADJOURNMENT**

The meeting was adjourned at 9 p.m.

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<tr>
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