

MINUTES

July 3, 2001
7:00 p.m.

Members Present

Clifton McNeill, Vice-Chair
David Averette
Dallas Byrd
Charles Morris
Joe W. Mullinax
Jerry Olsen

Members Absent

John Gillis, Chair
Marion Gillis-Olion

Others Present

Barry Warren,
Planning Director
Donna McFayden
Barbara Swilley
Denise Sykes

I. INVOCATION AND PLEDGE OF ALLEGIANCE

Mr. Byrd delivered the invocation, and Vice-Chair McNeill led those present in the Pledge of Allegiance.

II. INTRODUCTION OF NEW MEMBERS—VICE-CHAIR McNEILL

Vice-Chair McNeill introduced the two new members—David Averette, representing the County, and Charles Morris, representing the Town of Linden. The members welcomed them to the Board.

III. APPROVAL OF AGENDA/ADDITIONAL ITEMS

A motion was made by Mr. Olsen and seconded by Mr. Byrd to approve the Agenda as presented. The motion passed unanimously. Mr. Morris was not present for the vote.

IV. PUBLIC HEARING DEFERRALS

There were no public hearing deferrals.

V. ABSTENTIONS BY BOARD MEMBERS

Mr. Olsen said that he would abstain from discussion and voting on Case No. P01-55.

VI. POLICY STATEMENT REGARDING PUBLIC HEARING TIME LIMITS

Mr. Warren read the Board's policy regarding public hearing time limits.

VII. CONSENT ITEMS

A. APPROVAL OF THE MINUTES OF JUNE 19, 2001

A motion was made by Mr. Mullinax and seconded by Mr. Byrd to approve the Minutes of June 19, 2001 as written. The motion passed unanimously. Mr. Morris was not present for the vote.

B. P01-61. REVISIONS AND AMENDMENTS TO THE TOWN OF STEDMAN ZONING ORDINANCE BY DELETING EXISTING AND CREATING NEW ARTICLE V, SECTION 5.23 “CONTINUANCE OF NONCONFORMING STRUCTURES,” IN ITS ENTIRETY. (STEDMAN)

The Planning staff recommended approval of the amendment to the Stedman Zoning Ordinance based on the following:

1. The amendment was created at the request of the Town of Stedman;
2. The amendment will streamline the process for improvements to nonconforming structures within the Stedman Town Limits; and
3. The amendment is consistent with the regulations in the Cumberland County Zoning Ordinance.

A motion was made by Mr. Mullinax and seconded by Mr. Byrd to follow the staff recommendations and approve the amendment. The motion passed unanimously. Mr. Morris was not present for the vote.

VIII. PUBLIC HEARING ITEMS

A. P01-40. REVISIONS AND AMENDMENTS TO THE CUMBERLAND COUNTY CODE OF ORDINANCES BY CREATING 7.34 “VIEWSHED FRONTAGE,” REQUIRING A 100-FOOT SETBACK FOR LOTS FRONTING BURNETT AND ROSS WEST ROADS WITHIN THE AREA DESIGNATED BY THE NATIONAL REGISTER OF HISTORIC PLACES AS THE AVERASBORO BATTLEFIELD.

Mr. Warren explained the history and purpose of the amendment. He said that the Planning staff recommended approval of the proposed amendment based on the endorsement of the Averagesboro Battlefield Commission and review and recommendation of the Land Use Codes Committee.

Mr. Jim Goodman appeared before the Board on behalf of the Averagesboro Battlefield Commission (ABC) to confirm the Commission’s position in support of the 100-foot viewshed along properties that front Highway 82 (Burnett Road). He said there is a significant difference in 50 and 100 feet, and a 100-foot viewshed is more consistent with preserving the integrity of the battlefield area. He said that the Commission is also concerned about the residents of the area. He said that the original proposal included three additional roads, and the Commission is not opposed to having the viewshed only along Highway 82 in order to lessen the number of affected landowners. Mr. Goodman said that the current amendment also excludes existing structures—allowing them to remain and even be rebuilt in the same place. He said that the amendment is reasonable and balanced and will help preserve the area without adverse consequences to property owners.

Mr. Walt Smith appeared before the Board as a member of the ABC and said that the Commission is in a position to express concern regarding the historic district and residents of the area. He said that he appreciated the Board’s help in working through the amendment because the historic property is a valuable asset deserving of preservation and protection.

Mr. Mac Williams appeared before the Board and commented on a letter that he had written to the Board for an earlier meeting he was unable to attend in support of the viewshed. He said that the Commission is working on declaring Highway 82 a scenic byway, and the 100-foot viewshed will enhance the area.

Mr. Byrd asked about the concerns of the ABC and whether they supported all battlefields within the southern states. Mr. Goodman said that Mr. Byrd was probably referring to the Civil War Trust, who is concerned with major battlefields and offers monetary assistance to some. He said that the Averagesboro Battlefield has received some support from the Civil War Trust. Mr. Byrd asked if the Commission has operating funds in place, and Mr. Goodman said that they do and also have some funding from Averagesboro and the Dunn Museum. He said that the staff serves on a voluntary basis. He added that the ABC has also applied for funds from the federal government, funneled through NCDOT for the scenic byway (requiring a 20 percent match).

Mr. Olsen said that most of the residents of the area favor the amendment, but the project has been sporadic in its efforts over the past 50 years. He said that the Board must remember that they zone property—not organizations. He said if the Board approved the amendment and then the organization fades, and nothing is done, it is not wise planning. He said that the amendment doesn't cover growth, density, traffic or property values. He said that it would be smarter to form a homeowners' association to create restrictive covenants. Mr. Olsen the ABC is trying to maintain the pristine appearance, and then they put in a parking lot that is not consistent with how the property looked at the time of the war. He also pointed out that bona fide farms are exempt from the regulations, and there are some along Highway 82. Mr. Olsen read part of an article from a resident of Averagesboro that indicated that the way he wished to preserve the land was to allow no more homes to be built on the property.

Mr. Olsen read part of a letter to Mr. Warren that was written in April from Robert Brian, president of the ABC. The letter mentioned that a six-foot planning strip along the highway would be beneficial, but a much wider strip would be needed to achieve the desired effect.

Mr. Olsen said that he opposed the amendment because he can't get water, sewer or cable because there aren't enough people living in the area, and yet some of the advocates of the viewshed want zero growth. He said that the ABC should either purchase the 100-foot setback or form a homeowners' association. He said if one person is confused and wants to build a home for a family member, and this project prohibits it, then it is wrong. He said that this measure is a speed bump intended to slow down development in the area.

Vice-Chair McNeill asked about the right-of-way along Highway 82. Mr. Warren said that it is 60 feet. Vice-Chair McNeill said that DOT's records indicate that it is 100 feet. Mr. Olsen said in about 1963, the government made plans to widen Highway 82 and purchased the right-of-way. Mr. Warren said that he was not aware of this and would check on it. Vice-Chair McNeill said if the right-of-way is 100 feet, then it would add 50 feet to the proposed 100-foot setback—making the actual setback 150 feet from the centerline of the road. He asked the ABC members if 100 feet is adequate to accomplish the desired visibility. Mr. Goodman said that there is no simple answer, and 100 feet without structures would be beneficial. He said part of the complexity is the nature of the area is agricultural, and the ABC would like it to remain that way with an

unobstructed view. He said that screening could also be considered with trees separating the structures from the road. Vice-Chair McNeill said when the amendment was drafted, a 60-foot right-of-way was assumed, creating a 130-foot setback. He said if the right-of-way is 100 feet, it leaves a 150-foot setback. He asked if the ABC could live with less and still accomplish the desired effect.

Mr. Goodman suggested that to get around the confusion, the amendment could be written to state “130 feet from the centerline of the highway,” and that would be consistent no matter what the right-of-way is. Vice-Chair McNeill said that would accomplish what the amendment proposes. He asked Mr. Warren if the wording would complicate the proposal. Mr. Warren said that it wouldn’t complicate it, but he would prefer it to read from the right-of-way. He said possibly the amendment could be kept unique to the area, and the other wording could be used.

Mr. Byrd asked what would happen if the road is widened. Mr. Goodman said that he wasn’t aware of any plans. Mr. Byrd said if the road is widened, then DOT will have to purchase the right-of-way, and more nonconforming structures will be created. Mr. Goodman said that it would not be a problem if the setback is measured from the center of the highway. Mr. Warren pointed out that the amendment does not apply to existing structures.

Mr. Averette asked the length of the highway through the battlefield. He was given a map of the area. He asked how many homeowners will be affected and was told that 40 people live on Highway 82, but only a few would be nonconforming. He asked if restrictive covenants would work. Vice-Chair McNeill said that it would be a lengthy process and may not be successful. Mr. Warren explained to the new members that the amendment was created at the request of the Board in order to preserve and protect the battlefield.

Mr. Mullinax said that the Board and Committee spent a lot of time on this effort, and he didn’t understand why they were just hearing about the 100-foot right-of-way. He said that the Committee studied the amendment, made their recommendation to the Board, and it was time to act. He asked if the staff was working on an historic preservation ordinance. Mr. Warren said that they are and also establishing a commission. Mr. Mullinax said that it is the responsibility of the Board to protect its citizens and historic areas.

Mr. Mullinax made a motion to follow the staff recommendations and approve the 100-foot viewshed on Highway 82 (Burnett Road) only. The motion died for lack of a second.

Mr. Byrd said that it may be to the Board’s advantage to have DOT put the plans for the highway in writing. Mr. Mullinax asked if there are any projects for the road at the present time. Mr. Warren said that he didn’t know of any.

Mr. Warren informed the Board that when the staff recommendations are made, members of each section are in attendance—including the Transportation Section. He said that no one from the section mentioned any plans for the road. Vice-Chair McNeill said that he didn’t find any plans either when he checked with DOT. Mr. Olsen said that the plans for widening the road were junked about 28 years ago.

A motion was made by Mr. Mullinax and seconded by Mr. Byrd to refer the matter back to Land Use Codes Committee for further study because of changes and recommendations from the ABC.

Mr. Olsen requested a five-minute recess to talk with members of the ABC.

After recess, a substitute motion was offered by Mr. Olsen and seconded by Vice-Chair McNeill to approve a 70-foot viewshed measured from the right-of-way on Highway 82 (Burnett Road) in the Averagesboro Battlefield area.

Mr. Olsen said that a compromise is in order to move forward.

Mr. Mullinax asked Mr. Goodman why the ABC agreed to 70-foot. Mr. Goodman said that they agreed to 70 feet in the spirit of compromise and saw it as a balance to the concerns of the ABC and residents. He said that if the right-of-way is 60 feet, it will create a 100-foot setback, and if it is 100 feet, it will create a 120-foot setback, and either is acceptable to the Commission.

Mr. Warren said that DOT notifies staff on widening projects, so they would be aware of any nonconforming structures.

Upon a vote on the substitute motion, it passed unanimously.

Mr. Goodman thanked the Board for their patience and consideration of the matter.

B. P01-55. REVISIONS AND AMENDMENTS TO THE CUMBERLAND COUNTY CODE OF ORDINANCES, SECTION 7.3, "DISTRICT DIMENSIONAL PROVISIONS," TO REQUIRE A 50-FOOT FRONT YARD SETBACK WHERE 30 FEET IS CURRENTLY REQUIRED.

Mr. Olsen left the room.

Mr. Warren explained the purpose of the amendment and said that the staff recommended approval of the Ordinance amendment based on the following:

1. The amendment brings the A1A District dimensional requirements (setbacks) more in line with the A1 District setbacks.

Mr. Warren further explained that when creating setbacks, 30 to 35 feet is commonly used in cities throughout North Carolina, and 50 feet is more appropriate in rural areas.

Mr. Morris asked how long the 50-foot setback had applied to the area prior to being zoned A1A. Mr. Warren said that the area was zoned A1 for years with the 50-foot setback. Mr. Morris asked how long the 30-foot setback had been in place, and Mr. Warren said that the Board and Commissioners approved the A1A District with 30-foot setbacks in June. Mr. Morris said that there would be no affected structures.

A motion was made by Mr. Mullinax and seconded by Mr. Morris to follow the staff recommendations and approve the amendment. The motion passed unanimously with Mr. Olsen abstaining.

IX. DISCUSSION

A. WORK PROGRAM

There was a brief discussion regarding the Work Program. Mr. Warren said that the Towns were asked to submit any projects/studies that they wanted to be included on the Work Program. The Board agreed to place the item on the Agenda for July 17 after input is received from the Towns.

X. FOR YOUR INFORMATION

A. DIRECTOR'S UPDATE

Mr. Warren asked if the Board wanted to have a joint meeting with the City because July contains a fifth Tuesday. Mr. Olsen said that there were no pressing matters.

A motion was made by Mr. Olsen and seconded by Mr. Mullinax to delay the joint meeting until the fifth Tuesday in October. The motion passed unanimously.

XI. ADJOURNMENT

There being no further business, the meeting adjourned at 8:45 p.m.