

MINUTES

May 15, 2001
7:00 p.m.

Members Present

Joe W. Mullinax, Chair
Jeffrey Reitzel, Vice-Chair
Dallas Byrd
C.S. "Pete" Connell
John M. Gillis
Clifton McNeill
Jerry Olsen

Others Present

Barry Warren, Director
Thomas J. Lloyd
Barbara Swilley
David Winstead

Grainger Barrett,
County Attorney

I. INVOCATION AND PLEDGE OF ALLEGIANCE

Mr. Connell delivered the invocation, and Chair Mullinax led those present in the Pledge of Allegiance.

II. REPORT FROM NOMINATIONS COMMITTEE

Mr. Byrd reported that the Nominations Committee met prior to the Planning Board and recommended Jeff Reitzel to fill the vacant Vice-Chair position.

No other nominations were made.

The Planning Board voted unanimously to elect Jeff Reitzel as Vice-Chair until the end of June, 2001.

III. APPROVAL OF AGENDA/ADDITIONAL ITEMS

A motion was made by Mr. McNeill and seconded by Mr. Byrd to approve the Agenda as prepared. The motion passed unanimously.

IV. PUBLIC HEARING DEFERRALS

There were no public hearing deferrals.

V. ABSTENTIONS BY BOARD MEMBERS

There were no abstentions by Board members.

VI. POLICY STATEMENT REGARDING PUBLIC HEARING TIME LIMITS

Mr. Lloyd read the Board policy regarding public hearing time limits.

VII. CONSENT ITEMS

A. APPROVAL OF THE MINUTES OF MAY 1, 2001

Chair Mullinax made a correction to page 11 of the Minutes.

A motion was made by Mr. Olsen and seconded by Mr. McNeill to approve the Minutes of May 1, 2001 with the above correction. The motion passed unanimously.

REZONING CASES

A. P00-73: REZONING OF 3.21 ACRES FROM A1 TO R15 AT 1233 AND 1245 BAYWOOD ROAD, OWNED BY JOSEPH T. AND BETTY H. STRICKLAND.

The Planning staff recommended approval of the R15 District based on the following:

1. Urban services are available to the site; and
2. The proposal conforms with the existing development density in the area.

The staff found that the subject property is also suitable for the R30 and R40 Residential Districts and not suitable for the other intervening zoning districts.

Note: The staff recommends amending the 2010 Land Use Plan to reflect low-density residential development for this area.

No one appeared in favor of or in opposition to the request.

A motion was made by Mr. Olsen and seconded by Mr. Connell to follow the staff recommendations and approve the R15 Residential District. The motion passed unanimously.

B. P01-32: REZONING OF 3.53 ACRES FROM M2 AND A1 TO R40A SOUTH OF GOLDSBORO ROAD AND EAST OF I-95 ON POVERTY FLATS ROAD, THE PROPERTY OF ERMA H. BLACKMON.

The Planning staff recommended approval of the R40A Residential District based on the following:

1. The rezoning will bring all property under one ownership into one zoning category; and
2. The district is in keeping with the recommendations of the Eastover Land Use Plan; and
3. The rezoning is consistent with the current development in the area.

The Planning staff found that the subject property is also suitable for the R40 Residential District.

No one appeared in favor of or in opposition to the request.

A motion was made by Mr. Olsen and seconded by Mr. Connell to follow the staff recommendations and approve the R40A Residential District. The motion passed unanimously.

C. P01-33: REZONING OF .99 ACRES FROM A1 TO RR AT 6394 BLAKE ROAD, THE PROPERTY OF ISABELLE K. BLAKE.

The Planning staff recommended approval of the RR Rural Residential District based on the following:

1. The Stedman Land Use Plan calls for suburban density at this location, and the RR District is considered suburban density;
2. The site is now served by the Town sewer system; and
3. The rezoning is consistent with the existing development and density of the area.

The Planning staff found that the subject property is also suitable for the R20 Residential District.

No one appeared in favor of or in opposition to the request.

A motion was made by Mr. Olsen and seconded by Mr. Connell to follow the staff recommendations and approve the RR Rural Residential District. The motion passed unanimously.

D. P01-35: REZONING OF 6.31 ACRES FROM R40 TO R40A AT 28348 SANDHILLS ROAD, OWNED BY REGINALD AND ALICE SWANN.

The Planning staff recommended approval of the R40A Residential District based on the following:

1. The Land Use Plan calls for low-density residential development at this location; and
2. The uses allowed in the R40A District are compatible with the existing development along Sandhill Road

There are no intervening districts to consider for suitability.

No one appeared in favor of or in opposition to the request.

A motion was made by Mr. Olsen and seconded by Mr. Connell to follow the staff recommendations and approve the R40A Residential District. The motion passed unanimously.

- E. P01-37: CONDITIONAL USE OVERLAY DISTRICT AND PERMIT TO ALLOW A RETAIL CARPET STORE IN A C1 DISTRICT AT 4582 CUMBERLAND ROAD, SUITES 100 & 104, CONTAINING 1.19 ACRES, OWNED BY SMITH/WARREN PROPERTIES, LLC.

The Planning staff recommends approval of the Conditional Use Overlay District based on the finding that the request is reasonable, neither arbitrary nor unduly discriminatory, and in the public interest.

The Planning staff recommends approval of the Conditional Use Overlay Permit after finding that the proposal meets the following conditions:

1. It will not materially endanger the public health and safety;
2. It will not substantially injure the value of adjoining or abutting property;
3. It will be in harmony with the area in which it is to be located; and
4. It will be in conformity with the 2010 Land Use, Thoroughfare and other plans officially adopted by the Board of Commissioners.

Materials relevant to this case were received into the record.

No one appeared in favor of or in opposition to the request.

A motion was made by Mr. Olsen and seconded by Mr. Connell to follow the staff recommendation and approve the Conditional Use Overlay District based on the finding that the request is reasonable, neither arbitrary nor unduly discriminatory, and in the public interest. The motion passed unanimously.

A motion was made by Mr. Olsen and seconded by Mr. McNeill to follow the staff recommendation and approve the Conditional Use Overlay Permit after finding that the proposal meets the following conditions:

- 1. It will not materially endanger the public health and safety;**
- 2. It will not substantially injure the value of adjoining or abutting property;**
- 3. It will be in harmony with the area in which it is to be located; and**
- 4. It will be in conformity with the 2010 Land Use, Thoroughfare and other plans officially adopted by the Board of Commissioners.**

The motion passed unanimously.

VIII. PUBLIC HEARING ITEMS

A. P01-17: REZONING OF 34.64 ACRES FROM R10 TO C(P) ON SYCAMORE DRIVE, EAST OF THE SEABOARD COAST LINE RAILROAD, OWNED BY LAND ASSOCIATES, INC.

Maps were displayed outlining the zoning and land use in the area. A video of the site was shown. Mr. Lloyd explained that this case was deferred at Board request in order for the staff to work with the applicant. He reported that NCDOT prepared a plan in which they plugged in a typical shopping center and traffic generation prospectus. He said DOT asked that the developer submit a detailed plan so that a more accurate interchange could be developed.

Mr. Lloyd reported that prior to the meeting with DOT staff recommended denial of the C(P) Planned Commercial District based on the following:

1. There is currently inadequate transportation infrastructure serving this tract to support heavy commercial development; and
2. The staff believes that it is too early in the Hope Mills Bypass development stages to act on a conceptual project.

Mr. Lloyd continued that after the meeting with DOT, the staff recommended that the developer request a deferral of this case until a mixed-use district is in place that will afford flexibility and encourage staff participation in the planning and development process.

Mr. Lloyd said that he has spoken with the applicant, and the access that he wants from DOT is a possibility when he presents a detailed plan to them.

Mr. Dave Averitte appeared before the Board and commended the staff on their work on this project. He said that he had not seen DOT's layout prior to the meeting, and it appeared to be oversized for a subdivision, but was probably adequate for a shopping center. He explained the how the roadway is currently designed.

Mr. Averitte said that he could prepare plans for a subdivision and shopping center, but he wanted a zoning determination before he prepares detailed plans. He said that the Board could always zone it back if the bypass doesn't become a reality and the shopping center is not feasible.

Mr. McNeill said that rezoning the property commercial at this time puts the Board in the position of approving commercial zoning that currently has no access. He said that he would like to see a plan assuming that the road goes through.

Mr. Averitte said that he prepared a rough drawing for staff to present to DOT with possible uses and two entrances to the north. He said that the plan wouldn't be

viable if the bypass doesn't go through, and he'd have to rezone back to residential use because Sycamore Drive isn't adequate to serve the area.

Vice-Chair Reitzel asked if Mr. Averitte wished to defer the case. Mr. Averitte said that he did not.

Mr. McNeill asked if DOT told Mr. Averitte that they would not grant a street stub if the area were not rezoned. Mr. Averitte said that the only way that they would give it to him is if he had a plan approved by a governmental body. Mr. Lloyd said that DOT told Mr. Heicksen that they need a detailed plan, and their recommendation would not depend on rezoning. He said that they are waiting to meet with Mr. Averitte.

Mr. Averitte said if he has to go to the trouble to design a shopping center, it will be costly, and it may not come about. He added that it could be a long time before a mixed-use ordinance is approved, and the Board may decide that the area is not appropriate for mixed-use development.

Mr. Warren said that he appreciated Mr. Averitte meeting with the staff. He said that the proposed mixed-use ordinance will meet the needs of this type development. Mr. Warren said that the purpose of good planning is when property is considered for rezoning, the Board must look at the merits of the area and what is appropriate. He said if a property is suitable for commercial, then the Board should approve the request—not just rezone a tract, and then rezone it back if the developer changes his mind.

Mr. Byrd questioned access to the proposed Hope Mills Bypass. Mr. Averitte pointed out the current access and where he planned to design a road to serve the area. He said that he has been working on a plan for the area since 1986. He said that it is suitable for commercial development.

No one appeared in opposition to the request.

The public hearing was closed.

Mr. Byrd said that he has heard different discussions regarding the bypass. He asked if it was going to happen. Mr. Warren said that the bypass is proposed to border the subject property.

Mr. Gillis said that this was a chicken and egg situation, and someone has to take some risk—either the developer or the government, and the government isn't in the risk business. He said if the property owner is sure of his proposal, and DOT is willing to meet and design an interchange to meet his needs, then when the bypass is under construction, he could support the area for viable commercial use. He said because the bypass is still in the preliminary design stages, and to approve the request without knowing that the road will go in would not be good

planning. He said the area is not currently suitable for commercial because it doesn't have access. He said that the request is premature, and he could support it in the future once the road construction has begun. He said that the area has good potential for residential development as currently zoned.

Vice-Chair Reitzel commended staff for working with DOT and achieving what the Board has asked. He said that there appears to be more than adequate access on DOT's proposal. He said that the Board also requested Mr. Averitte to provide a plan for access to the landlocked properties to the north, and he has not seen such a plan. He said that Mr. Gillis' observations are correct, and staff did what they could to work with the developer.

He said that it would be best to defer the case, but the applicant did not agree to this.

A motion was made by Vice-Chair Reitzel and seconded by Mr. McNeill to deny the request. The motion passed unanimously.

B. P01-31: REZONING OF .96 ACRES FROM A1 TO RR AT 6951 JOHNSON ROAD, THE PROPERTY OF GREGORY MCNAIR.

Maps were displayed outlining the zoning and land use in the area. A video of the site was shown. Mr. Lloyd said that the Planning staff recommended denial of the RR Rural Residential District and approval of the R40 Residential District based on the following:

1. The Planning Board's policy recommends R40 Residential District in smaller tracts within farmland areas;
2. The R40 Residential District is consistent with the character and density of the area; and
3. All of the uses allowed in the RR Rural Residential District are not appropriate at this location.

No one appeared in favor of or in opposition to the request.

Mr. Gillis asked if staff had spoken with the applicant about the staff recommendation. Mr. Lloyd said that he had not.

A motion was made by Mr. Olsen and seconded by Mr. McNeill to follow the staff recommendations and deny the RR and approve R40.

Vice-Chair Reitzel asked if the owner was the same as when the land was deeded in 1998. Mr. Lloyd said that the file didn't reflect the owner at that time.

Upon a vote on the motion, it passed unanimously.

Dr. Henley arrived.

C. P01-34: REZONING OF 1.49 ACRES FROM A1 TO RR AT 2118 DUNN ROAD, THE PROPERTY OF JERRY W. AND CHONG KIM MATHERLY.

Maps were displayed outlining the zoning and land use in the area. A video of the site was shown. Mr. Lloyd said that the Planning staff recommended denial of the RR Rural Residential District and approval of the R30A Residential District based on the following:

1. The initial zoning of C1 on the subject property rendered the back portion of the property useless because there is not enough acreage to qualify for a residential unit on the site at either the A1 or R40 district requirements;
2. The rezoning will allow the property owner the same rights as other owners in the area; and
3. The rezoning is consistent with current development in the area.

The Planning staff found that the subject property is also suitable for the R30 Residential District.

Ms. Chong Matherley appeared before the Board and said that she owns the grocery store in the front of the property and would like to place a doublewide mobile home in the rear where she could live.

No one appeared in opposition to the request.

The public hearing was closed.

Chair Mullinax asked if Ms. Matherley would agree to the R30A zoning. She asked if she could have a doublewide trailer with R30A. She was told that she could, and she agreed to the R30A.

A motion was made by Mr. Gillis and seconded by Mr. Connell to follow the staff recommendations and deny the RR and approve R30A. The motion passed unanimously.

D. P01-36: REZONING OF 16.10 ACRES FROM A1 TO R30 AT 4091 MURPHY ROAD, THE PROPERTY OF WILLIAM E. DRAUGHON JR.

Maps were displayed outlining the zoning and land use in the area. A video of the site was shown. Mr. Lloyd said that the Planning staff recommended denial of the R30 Residential District based on the following:

1. The Eastover Land Use Plan recommends farmland at this location.

The Planning staff found that the subject property is also not suitable for the R40 or R40A Residential Districts.

No one appeared in favor of or in opposition to the request.

The public hearing was closed.

Mr. Byrd asked why the staff felt that R40 and R40A are not appropriate for the property. Mr. Lloyd said that the R40 is usually recommended for smaller tracts in farmland areas, and the staff didn't think that the entire property should be cut into one-acre lots. Mr. Byrd said that A1 with zero lot line development would allow eight houses on two-acre lots. Mr. Lloyd agreed and said that the staff would prefer this rather than allowing the density.

Mr. Warren said that the staff wants the area to remain farmland because that is what is called for in the 2010 Land Use Plan. He said that there may be areas in the County that are designated farmland that should be studied, but the staff agreed with the recommendation for this case.

Mr. McNeill asked for clarification on the map. Mr. Lloyd explained where the property is located.

Mr. Olsen said that the land is beautiful farmland.

A motion was made by Mr. Olsen and seconded by Vice-Chair Reitzel to follow the staff recommendation and deny the request.

Mr. Gillis said he agreed that the land is pretty farmland, but there are times when development is appropriate in farmland areas. He noted that the owner was not committed enough to the request to be present.

Vice-Chair Reitzel said that approving the request would promote urban sprawl and encourage more rezoning. He said that the infrastructure in the area cannot support additional development.

Mr. Barrett said that the preferable legal approach would be to address the Plan, and not lot by lot zoning.

Mr. McNeill said that he agreed with what was said and added that dense development in the middle of agricultural land is not appropriate at the location. He said that he supported staff and the motion.

Upon a vote on the motion, it passed 6 to 1 with Mr. Byrd voting in opposition.

E. P01-38: CONDITIONAL USE OVERLAY DISTRICT AND PERMIT TO ALLOW A PAINTING BUSINESS IN AN R10 DISTRICT AT 1054 STRICKLAND

BRIDGE ROAD, SOUTH OF KILMORY DRIVE, CONTAINING .80 ACRES,
OWNED BY ANGELA B. NICHOLS.

Maps were displayed outlining the zoning and land use in the area. A video of the site was shown. Mr. Lloyd said that the Planning staff recommended approval of the Conditional Use Overlay District based on the finding that the request is reasonable, neither arbitrary nor unduly discriminatory, and in the public interest.

The Planning staff recommends denial of the Conditional Use Overlay Permit after finding that the proposal does not meet the following conditions:

1. It will not substantially injure the value of adjoining or abutting property;
2. It will be in harmony with the area in which it is to be located; and
3. It will be in conformity with the 2010 Land Use, Thoroughfare and other plans officially adopted by the Board of Commissioners.

The packet materials were entered into the record.

Mr. Mark Nichols appeared before the Board and said that he has tried to keep his business in compliance. He said that he had a home occupancy permit, but that can't be used now because they no longer live at the site. He said that his business provides employment and brings money into the local economy. He said that there would be no additional vehicles, no sign and no materials stored on the property. He asked that the beginning hour be changed from 7:30 a.m. to 8:00 a.m. in consideration of the neighbors.

Ms. Terri Lee appeared before the Board in opposition and said that she purchased her property in 1991. She said that this business endangers the public health of residents in the area. She said that there are materials stored on the site, and there is a smell of solvent. She said that resale value on her home has been affected, and the applicants are breaking the zoning laws. Ms. Lee said that the business does not fit in with anything on Strickland Bridge Road, and finally, the business does not conform to the uses in the area. She said that the residents do not want Strickland Bridge Road to turn into another Hope Mills Road. She said that there are between four and 10 vehicles on the property on any given day. She said that the applicants have been cited by the Inspections Department. She said that a dog has remained after the applicants moved from the site, and the dog is also a nuisance. She said that the vehicles are easily seen from the homes that abut the property.

Ms. Lee said that she and her husband are real estate brokers, and the applicants broke the zoning regulations from the day that they purchased the property. She asked the Board to protect the integrity of the neighborhood by denying the request. Ms. Lee referred to a packet that she had given to the Board members with pictures and a petition signed by neighbors who oppose the request.

Mr. Gillis asked that the petition and pictures be entered into the record.

Mr. Barrett explained that the Board may consider hearsay when voting on the district, but not the permit. He said that the photos can be considered with both the district and permit if someone introduces them.

Mr. Robert Lee, Sr. appeared before the Board in opposition. He said that he took the pictures and explained that a large vehicle and flatbed with bobcat were on the property but removed prior to the video. He said that the vehicles are in direct view from his home. He said that some of the vehicles are higher than the fence. He said that he also feared that the operation is a fire hazard because he can smell solvents.

Ms. Tracy Spoor appeared before the Board in opposition and said that the dog is loud, and there are many vehicles stored on the site in full view. She said that she is also concerned about additional crime brought to the area if the request is approved.

Ms. Jamie Miller appeared before the Board in opposition and said that he owns property to the rear of the subject property. She asked how the paint could be safe for the neighbors. She added that employees and vehicles are a problem.

Ms. Angela Nichols appeared before the Board in rebuttal. She said that there has never been a paint can stored on the property because they are reclaimed. She said that there has not been a problem with crime. She said that they moved in a year after they purchased the property and used the site as a home occupation and were in compliance. She said that the property is beautiful, and she puts many hours a week into keeping it looking good. She said that the dog's nose was torn off by the pit bull in the yard behind her property, and she had to install a privacy fence. She added that the carnival ride and large truck belonged to her ex-husband and have been permanently removed from the property. She said that the wrecker belongs to a tenant and is parked there only at night. She said that they have put a lot of time and money into beautifying the property, and it is much nicer now than when they purchased it.

Mr. Reitzel asked about the business. Ms. Nichols said that they are a paint/home improvement company. She said that they give a lot back to the community. She said that they painted the new lodge at Fort Bragg and several restaurants in the area. Mr. Reitzel asked about the number of employees—permanent and contracted. Ms. Nichols said that they employ four full-time people and subcontract as many as five people depending on the size of a job. She said that they did \$460,000 in business last year. Ms. Nichols added that outside people do not go to the site. She said that two tenants live in the structure, and there are currently five vehicles parked on the site—three are personal and two belong to the company. Mr. Reitzel commented that it sounded like a substantial business.

Mr. Barrett asked if Ms. Nichols wished to introduce into evidence the pictures that she presented of other businesses on Strickland Bridge Road. Ms. Nichols responded that she did, and her husband took the pictures.

Vice-Chair Reitzel asked why staff recommended approval of the district and denial of the permit. Mr. Lloyd explained that outside storage and parking of vehicles were the items that caused staff to recommend denial of the permit. Mr. Barrett said in this case, because of existing commercial use only one block from the subject property, a CU District could be reasonable, but the proposed use requiring a permit may not.

Mr. Barrett explained that the Ordinance should be amended because as it reads, an area may be appropriate for a district, but because uses are not specified, not all uses are suitable for the district. Therefore, staff may find that an area is appropriate for a CU District, but not for the proposed use.

After a lengthy discussion, Mr. Barrett suggested that the Ordinance should be more specific so that the recommendation from staff could be consistent with districts and permits.

Mr. Olsen pointed out that although there is commercial not far from the site, the site is surrounded by residential use.

Vice-Chair Reitzel asked if the CU District would allow a use not allowed in the underlying district. He then asked if the Board approves the district and denies the permit, could another applicant submit another permit request. Mr. Barrett said that they could not because the permit is tied to the district, so this request would be limited to office type commercial use. Mr. Barrett said that this is another area that needs clarification in the Ordinance.

Mr. Gillis asked if the permit issued for home-based business is allowed only if the owner lives in the home. Mr. Lloyd responded that the owner must live in the home, and the business can only be in 25 percent of the structure. He said that the home occupation permit for this business was rescinded because it was violated.

Mr. McNeill asked if the conditions are standard on home-based businesses. Mr. Lloyd said that they are, and this one was violated because the business was in more than 25 percent of the structure, and the owners moved from the site. Mr. Barrett added that conditions for home occupation business are limited to uses that are appropriate in residential areas.

Mr. Gillis said that the business appears to have become so successful that it outgrew the area. He said that this is a good example of how Hope Mills Road began. He added that the existing businesses on Strickland Bridge Road probably

existed at the time of initial zoning. Mr. Lloyd said that one was approved in 1991 as a CU and then rezoned to C(P) in 1995.

Mr. Byrd asked how the Board was supposed to intelligently vote on the staff recommendations. Mr. Barrett said that the vote is made independent of the staff recommendations, and the Board must reach its own conclusion that the district and permit are either both appropriate or not. If the district is appropriate for the use, then the permit is also, and if the permit is not appropriate, then probably the district is also not appropriate.

Vice-Chair Reitzel said that the Board's decision is easier if the district is tied to the use because in this case potentially something could be compatible, but maybe not a paint business.

Mr. Olsen said to vote for the request would require that the Board find that the proposal is in the public interest, and he could not support the district because he doesn't feel that it is.

A motion was made by Mr. Olsen and seconded by Mr. Gillis to deny the Conditional Use Overlay District because the proposal is not in the public interest.

Vice-Chair Reitzel congratulated the owners on a thriving business, but added at some point they will have to find a commercial site. He said that the volume has exceeded the neighborhood.

Mr. Gillis said that the property is very nice, and the third unit should just be converted back to residential. He said that the Board's action should not kill the business.

Upon a vote on the motion, it passed 6 to 1 with Mr. Byrd voting in opposition.

IX. DISCUSSION

A. JOINT CITY/COUNTY PLANNING MEETING ON MAY 29, 2001

The members were reminded of this meeting, and agenda was reviewed.

B. WORK PROGRAM – BARRY WARREN

Mr. Warren asked for Board input on how they would like the Department work program prepared for the upcoming fiscal year.

Vice-Chair Reitzel said that he would prefer the same format used the last few years with a grid indicating the project with activities listed under date to be undertaken and completed.

Mr. Warren said that a draft work program would be prepared for the second meeting in June.

X. FOR YOUR INFORMATION

A. DIRECTOR'S UPDATE

Mr. Warren said that he attended the Greater Fayetteville Futures Project meeting last week, and they will meet again on May 24. He said that the group is looking at solutions to economic issues that are unique to Fayetteville and the County. He asked the members to fill out the survey at www.kenaninstitute.unc.edu so that the committee can receive the input needed to turn the economy around.

Mr. Warren reported that the Commissioners are to vote on a replacement for Chair Tyson at their May 21 meeting.

Mr. Warren informed the Board that the Planning Department/Board will be the topic of the television show that Commissioner Lee Warren hosts and is aired on June 11 and 25. He said that he plans to cover the current projects and give a brief overview of the mission of the Department and Board.

B. MANUFACTURED HOUSING TASK FORCE

Vice-Chair Reitzel informed the Board that the Manufactured Housing Task Force will hold its first meeting on Tuesday, May 22, at 4:00 p.m. in Room 107 of the Old Courthouse to begin work on their recommendations for the Commissioners.

XI. ADJOURNMENT

There being no further business, the meeting adjourned at 9:35 p.m.