

MINUTES

October 16, 2001
7:00 p.m.

Members Present

John M. Gillis, Chair
David Averette
Dallas Byrd
Charles Morris
Jerry Olsen

Members Absent

Clifton McNeill, Vice-Chair
Joe W. Mullinax
Marion Gillis-Olion

Others Present

Barry Warren
Hope Barnhart
Will Denning
Rick Heicksen
Gina Lane
Tom Lloyd
Barb Swilley
David Winstead
Grainger Barrett,
County Attorney

I. INVOCATION AND PLEDGE OF ALLEGIANCE

Mr. Morris delivered the invocation, and Chair Gillis led those present in the Pledge of Allegiance.

II. APPROVAL OF AGENDA/ADDITIONAL ITEMS

Case No. P01-88 was moved from Consent to Public Hearing items. A motion was made by Mr. Morris and seconded by Mr. Averette to approve the Agenda with the change. The motion passed unanimously.

III. PUBLIC HEARING DEFERRALS

There were no public hearing deferrals.

IV. ABSTENTIONS BY BOARD MEMBERS

There were no abstentions by Board members

V. POLICY STATEMENT REGARDING PUBLIC HEARING TIME LIMITS

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

VI. CONSENT ITEMS

A. APPROVAL OF THE MINUTES OF SEPTEMBER 18, 2001

A motion was made by Mr. Byrd and seconded by Mr. Morris to approve the Minutes of September 18, 2001 as written. The motion passed unanimously.

B. P01-68: CONDITIONAL USE OVERLAY DISTRICT AND PERMIT TO ALLOW TRADES CONTRACTOR, EXCLUDING OUTSIDE STORAGE, ON .55 ACRES, IN AN R6 DISTRICT AT 109 NEW STREET, OWNED BY STAN AND LISA SIMMONS.

The Planning staff recommended approval of the Conditional Use Overlay District based on the findings that the request is reasonable, not arbitrary or unduly discriminatory and in the public interest.

The Planning staff recommended approval of the Conditional Use Overlay Permit based on the findings that the proposal:

1. Will not materially endanger the public health and safety;
2. Will not substantially injure the value of adjoining or abutting property;
3. Will be in harmony with the area in which it is to be located; and
4. Will be in conformity with the 2010 Land Use and Thoroughfare Plans.

The Planning staff recommended the following conditions be added to the Conditional Use Overlay Permit:

1. A solid or vegetative buffer be placed along the northern and western boundaries;
2. All lighting is to be directed inward away from residential properties;
3. If the existing structure is more than 50 percent destroyed, it is to be reconstructed within the legal setbacks.
4. Parking and turn-around areas are to be designed in order to allow only forward ingress and egress onto streets.

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

A motion was made by Mr. Olsen and seconded by Mr. Averette to follow the staff recommendations and approve the Conditional Use4 Overlay District based on the findings that the request is reasonable, not arbitrary or unduly discriminatory and in the public interest. The motion passed unanimously.

A motion was made by Mr. Olsen and seconded by Mr. Byrd to follow the staff recommendations and approve the Conditional Use Overlay Permit, with conditions listed by staff, based on the findings that it: 1) Will not materially endanger the public health and safety; 2) Will not substantially injure the value of adjoining or abutting property; 3) Will be in harmony with the area in which it is to be located; and; 4) Will be in conformity with the 2010 Land Use and Thoroughfare Plans. The motion passed unanimously.

C. P01-81: REZONING OF .62 ACRES FROM R10 TO C(P), OR TO A MORE RESTRICTIVE ZONING DISTRICT, AT 128 CAROL STREET, OWNED BY THE TRUSTEES OF STEDMAN LODGE. (STEDMAN)

The Planning staff recommended approval of the C(P) Planned Commercial District based on the following:

1. The rezoning will place all zoning under the same ownership into the same zoning district; and
2. The uses allowed in the C(P) District are consistent with the character of the neighborhood.

The Planning staff found that the subject property is also suitable for the R10M and C1 Districts.

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

A motion was made by Mr. Byrd and seconded by Mr. Morris to follow the staff recommendations and approve the C(P) Planned Commercial District. The motion passed unanimously.

D. P01-82: REZONING OF 1.41 ACRES FROM R10 TO R10M, OR TO A MORE RESTRICTIVE ZONING DISTRICT, AT 6858 NORTH STREET, OWNED BY DONALD AND EULA MAE SMITH. (STEDMAN)

The Planning staff recommends approval of the R10M Residential District based on the following:

1. The uses allowed in the R10M District are consistent with the character of the surrounding neighborhood; and
2. The Stedman Land Use Plan recommends low-density residential use at this location.

The staff found no intervening zoning districts to consider for suitability.

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

A motion was made by Mr. Byrd and seconded by Mr. Morris to follow the staff recommendations and approve the R10M Residential District. The motion passed unanimously.

E. P01-86: AMENDMENTS AND REVISIONS TO THE CUMBERLAND COUNTY ZONING ORDINANCE, SECTION 10.2, DEFINITIONS, TO ADD "MASSAGE AND BODY WORK THERAPY;" AND APPLICABLE SECTIONS TO ALLOW AS A PERMITTED USE IN THE C1, C(P) AND C3 DISTRICTS.

The Planning staff recommended approval of the Amendment to the Cumberland County Zoning Ordinance based on the following:

1. Massage and bodywork therapy is not currently addressed in the County's Zoning Ordinance.

No one appeared in favor of or in opposition to the amendments to the Ordinance.

A motion was made by Mr. Byrd and seconded by Mr. Morris to follow the staff recommendation and approve the amendments to the Cumberland County Zoning Ordinance. The motion passed unanimously.

- F. P01-87: CONDITIONAL USE OVERLAY DISTRICT AND PERMIT TO ALLOW A RECREATIONAL FACILITY ON 7.0 ACRES IN AN M(P) DISTRICT AT 2100 CLINTON ROAD, OWNED BY SUNDUST, LLC.

The Planning staff recommended approval of the Conditional Use Overlay District based on the findings that the request is reasonable, not arbitrary or unduly discriminatory and in the public interest.

The Planning staff recommends approval of the Conditional Use Overlay Permit based on the findings that the proposal:

1. Will not materially endanger the public health and safety;
2. Will not substantially injure the value of adjoining or abutting property;
3. Will be in harmony with the area in which it is to be located; and
4. Will be in conformity with the 2010 Land Use and Thoroughfare Plans.

The Planning staff recommends the following conditions be added to the Conditional Use Overlay Permit:

1. All lighting is to be directed inward away from surrounding properties; and
2. Future development will require buffering.

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

A motion was made by Mr. Olsen and seconded by Mr. Morris to follow the staff recommendations and approve the Conditional Use4 Overlay District based on the findings that the request is reasonable, not arbitrary or unduly discriminatory and in the public interest. The motion passed unanimously.

A motion was made by Mr. Olsen and seconded by Mr. Morris to follow the staff recommendations and approve the Conditional Use Overlay Permit, with conditions listed by staff, based on the findings that it: 1) Will not materially endanger the public health and safety; 2) Will not substantially injure the value of adjoining or abutting property; 3) Will be in harmony with the area in which it is to be located; and; 4) Will be in conformity with the 2010 Land Use and Thoroughfare Plans. The motion passed unanimously.

- G. P01-89. INITIAL ZONING OF 50.0 ACRES TO M(P), OR TO A MORE RESTRICTIVE ZONING DISTRICT, ON EAST MANCHESTER ROAD, OWNED BY THE TOWN OF SPRING LAKE. (SPRING LAKE)

The Planning staff recommends approval of the initial zoning to M(P) based on the following:

1. The M(P) is consistent with the Town of Spring Lake's long-range plan for an industrial park at this location.

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

A motion was made by Mr. Byrd and seconded by Mr. Morris to follow the staff recommendation and approve the initial zoning to M(P) Planned Industrial District. The motion passed unanimously.

VII. PUBLIC HEARING ITEMS

- A. P01-83: REZONING OF 16.10 ACRES FROM A1 TO R30, OR TO A MORE RESTRICTIVE ZONING DISTRICT, AT 4091 MURPHY ROAD, OWNED BY 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.

A motion was made by Mr. Olsen and seconded by Mr. Morris to follow the staff recommendations and deny the request. The motion passed unanimously.

- B. P01-84: REZONING OF .49 ACRES FROM RR TO C1, OR TO A MORE RESTRICTIVE ZONING DISTRICT, AT 4415 CLINTON ROAD, OWNED BY WILLIAM AND MARTHA DOWNING.

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 C1 Local Business District based on the following:

1. The 2010 Land Use Plan calls for suburban density residential use at this location; and
2. There is ample vacant commercial property in the area to serve the needs of the surrounding population.

Mr. Neil Yarborough appeared before the Board representing the applicants. He said that the rezoning request would correct a mistake that was made during the

initial zoning of the property because it has always contained a country store and should have been zoned commercial from the beginning. He said that the owners have owned the property for many years and live behind the property. Mr. Yarborough said that the adjacent property owner doesn't object to the rezoning, and the C(P) District across the street will someday contain a shopping center. He said that the County has made a significant investment in the area with the new school, library and park. He said that the site has water and sewer and is appropriate for commercial use. He gave a letter from a neighbor in support of the rezoning to the Board.

Mr. Bradley Spain, registered engineer and resident, appeared before the Board in opposition and said that the rezoning would degrade the tenor of the area. He said that the store has been closed for 30 or 40 years because the neighborhood doesn't support it. He said that the C(P) across the road has been zoned since 1997 and has not yet been developed. Mr. Spain said that there is a new plaza proposed at Maxwell Road and Highway 24. He added that the lot is small and will add to traffic problems. He said that the neighbors enjoy the rural atmosphere, and many homes still use well and septic systems. He concluded by saying that there is sufficient commercial use and property nearby.

Ms. Carra Lee Spain appeared before the Board in opposition. She said that she moved to the area to be in a rural setting, and there is plenty commercial property in the area.

Ms. Elaine Godwin Nunnery appeared before the Board and said that the property used to belong to her family, and her father owned the store located on the site. She said that it closed 35 or 45 years ago. Ms. Nunnery said that she understood from Mr. Downing that someone wanted to use the property for a vegetable stand, and she agreed with that use, but she would not like to see a fast food establishment on the property.

In rebuttal, Mr. Yarborough said that the area has changed a lot, and Highway 24 is developing, with schools, library, and park, it is a rapidly developing area. He said that water and sewer serve the site. He said that he understood the sight limitations for traffic, and it will be up to NCDOT to approve whatever is necessary to keep the area safe. He said with the commercial across the street, he couldn't imagine how this request could be denied.

Mr. Olsen said that the site is commercial.

Chair Gillis asked how long the current property owner has owned the property. Mr. Yarborough said that he has owned the site for 12 years. Chair Gillis then asked if any feedback was received from DOT, and Mr. Lloyd said that they sent nothing adverse.

A motion was made by Mr. Byrd and seconded by Mr. Olsen to approve the C1 Local Business District. The motion passed 4 to 1 with Mr. Morris voting in opposition.

C. P01-85: REZONING OF 4.0 ACRES FROM C(P) TO R6A, OR TO A MORE RESTRICTIVE ZONING DISTRICT, AT 3996 GILLESPIE STREET, OWNED BY SUDIE TAYLOR AND KATHY MANNING.

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 R6A Residential District based on the following:

1. Public sewer is not available to the site;
2. The property does not meet the locational criteria for medium-density residential development;
3. The 2010 Land Use Plan calls for heavy commercial use at this location; and
4. Gillespie Street is a designated industrial corridor adopted with the 2010 Land Use Plan. Site plan review, to include buffering, required in this area would not be accomplished with residential zoning.

Ms. Kathy Taylor Manning appeared before the Board and said that she represented her mother, who has owned the property for 40 or 50 years. She said that they would like to develop the property into a small mobile home park and want to rezone from commercial to residential.

Mr. Ronnie Locklear, adjoining property owner, appeared before the Board in opposition. He said that the County needs tax dollars, and the land brings in more tax revenue zoned commercially. He said if the Board decided to rezone the site, he would request that there be paved streets and water and sewer. He said that the rezoning will allow six trailers, and they should have to pave the area and connect to public water. He said that the rezoning will allow the owners to have any kind of trailer on the site.

Mr. Barrett cautioned the Board to consider all uses allowed under the rezoning and not to rezone for the stated use.

Ms. Manning appeared in rebuttal and said that they want to place just a few units on the property that are newer than 1998. She said that they are not required by law to have public water. She added that all commercial properties are on the main road, and this development will be back in a residential area.

Mr. Morris asked if Tart Street is paved. Mr. Winstead said that it is paved to Catherine Street. Mr. Morris asked if there are residents on the unpaved section, and Mr. Winstead said that there is one resident on the unpaved area. He noted that internal road would have to be paved within the subject property if the site is used for a mobile home park.

Mr. Lloyd was asked about future plans for sewer, and he responded that there is no sewer in the area at this time, and he hasn't heard about future plans.

A motion was made by Mr. Morris and seconded by Mr. Olsen to follow the staff recommendations and deny the R6A Residential District.

It was noted that the property is surrounded on five of the six sides by C(P).

Upon a vote on the motion, it passed unanimously.

D. P01-88. REZONING OF 1.2 ACRES FROM R10 TO C1, OR TO A MORE RESTRICTIVE ZONING DISTRICT, AT 590 NORTH REILLY ROAD, OWNED BY JOE O. AMBERGER.

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 C1 Local Business District for the western portion of the subject property. The zoning line is to be a straight line between the rear property lines of the two adjoining properties that front Reilly Road. This recommendation is based on the following:

1. The Reilly Road Plan designates Reilly Road as a Limited Business Street, and the C1 Local Business District is an appropriate district on this street; and
2. The Plan encourages the zoning line to be consistent along both sides of the road.

Mr. Mark Sarisky appeared before the Board representing the owner of the property. He said that the property needs to be rezoned in order to sell it, and the applicant wants an additional 300 feet to accomplish what the buyer has planned for the site. Mr. Sarisky said that the request only affects one residential property, and the additional area is needed for parking. He said that the buyer wants to put in a nicer business on the site if he has the additional parking space.

Mr. Lloyd pointed out that the back portion of the lot that is zoned R10 can be used for parking as it is currently zoned.

Mr. Tom Parent appeared before the Board and said that the neighbors don't oppose rezoning the tract located on Reilly Road, but they oppose rezoning the lot that infringes into the residential area. He said if the current zoning allows parking in the rear lot, the residents oppose the entire rezoning. He said that there are also wildlife concerns. Mr. Parent added that the current businesses on Reilly Road have not built nice commercial structures on the existing commercial property.

Mr. Joe Bath appeared before the Board in opposition and said that he lives behind property zoned C1 and spent \$70,000 to renovate his home, and if the rezoning is approved, he'll be looking at a parking lot. He said that the rezoning will devalue his property and added that the applicant also owns adjoining properties.

Ms. Sharon Valentine appeared before the Board in opposition and said that the neighborhood is mainly military and retired families. She said that there are many 70 to 80 year old pine trees in the area. She said that Mr. Bath's home is now worth \$200,000, and to rezone property for someone who has never contributed to the area to the detriment of a homeowner who has done much to improve the area would be a shame. Ms. Valentine added that the area also contains red cockaded woodpeckers, and a committee is working to have the area taken in for protection.

Mr. Lou Swiderski appeared before the Board and said that he represents many residents of the area who oppose the rezoning and were unable to attend the meeting. He said that the residents don't want any more commercial property in the area and just want peace and tranquility.

Ms. Delia Peterson appeared before the Board and said that she opposes the rezoning.

In rebuttal, Mr. Smithers said that he respected the rights of the property owners, and he loves trees and birds also, but the buyers want to put something at the location to benefit the neighbors. He said that the owner can legally cut all the trees on the lots now, but he was encouraged not to do so. He said that Reilly Road is commercial, and he was sorry that the homeowners bought in an area that is turning commercial.

Mr. Averette asked where the tree line is located, and it was pointed out beginning about 175 feet back from Reilly Road. He was told that the property owners offered to purchase the adjoining property containing the trees, and the owner did not sell it to them.

Mr. Olsen agreed that Reilly Road is commercial, and the front part of the subject property should be zoned for commercial use.

A motion was made by Mr. Olsen and seconded by Mr. Averette to follow the staff recommendations and approve the C1 District for the front half of the property.

Mr. Morris asked how much of the property was recommended for rezoning. Mr. Lloyd pointed out the line that would connect the same zoning line on both sides of the subject property. Mr. Morris asked if the Board could require buffering. He was told that they could not add conditions to rezoning cases, and parking would be allowed on the back portion of the lot currently zoned R10. Mr. Lloyd said that a Conditional Use Overlay District could be used to require buffering and restrict the parking area. Mr. Morris said that he agreed that the corridor is commercial, but he would prefer a Conditional Use Overlay District for the reasons expressed.

Mr. Lloyd was asked if any type permit is required for parking. He said that a permit is not required, and parking is allowed in the residential districts.

Chair Gillis asked if the staff had any information on endangered species in the area. Mr. Lloyd said that he had no information. Chair Gillis asked that staff check into it. Mr. Barrett said if there are supporting documents regarding endangered species, they should be submitted; otherwise this is only an assertion by the neighbors.

Mr. Olsen asked Mr. Smithers if there was urgency to the request. Mr. Smithers said that the contract to close the sale is November 15. It was mentioned that the Commissioners will not hear the request until November 19, 2001.

Messrs. Olsen and Averette withdrew the motion.

A motion was made by Mr. Olsen and seconded by Mr. Averette to refer the case back to the Planning staff to allow the applicant to submit a Conditional Use Overlay District and Permit Application at no additional charge, and staff to include conditions to address the concerns of the neighborhood on the eastern half of the property. The motion passed unanimously.

VIII. PLATS AND PLANS

A. 01-227. CONSIDERATION OF THE JOSEPH F. & BRENDA CONNORS PROPERTY, SUBDIVISION REVIEW IN AN UNZONED AREA BETWEEN BOOGIE BOTTOM LANE AND GRIMBLE DRIVE, WEST OF COATS ROAD FOR AN EIGHTH LOT ON AN EXISTING CLASS "C" PRIVATE STREET, MINIMUM DESIGN SPECIFICATIONS, CUMBERLAND COUNTY PRIVATE STREET MANUAL.

Mr. Lloyd explained that a group development was submitted and approved in 1997 to allow a second unit on Lot 3, and now the applicants want to split the lot to allow an eighth lot on a Class C Road.

Mr. Joe Connors appeared before the Board and said that the lot is 2.73 acres and has contained two homes since 1995, each with its own septic tank. He said that six months ago his daughter had a child with critical medical problems, and they would like to deed a portion of the land to her so that she can qualify for a land package loan.

Ms. Brenda Connors appeared before the Board and said when they purchased the land, they bought it for themselves and their children. She said that she helps will the critically ill child, and they need the family's united efforts to help the child. She said that it's not fair for a piece of paper to keep the family from living together to help the child.

Mr. Averette asked how the situation could legally be remedied. Mr. Barrett said that possibly joint tenancy would work. After discussion, it was determined that this might not work because of the mortgage being involved.

Ms. Cherisse Shepard (daughter) appeared before the Board and said that she just wants a portion of the land to qualify for a mortgage loan. She said that she cannot afford a large down payment, and deeding the land would allow her to qualify for the loan.

Mr. Barrett cautioned the Board that every time they follow their hearts and vote based on emotions, it makes it more difficult to follow and enforce the ordinances. He said that the Board disregards the Ordinance for humanitarian reasons and added that in his capacity, he is obligated to say this to the Board.

Mr. Averette said if there are no alternatives, he'd vote to approve the request.

Mr. Lloyd said that he had already received calls on another request on a nearby lot.

Mr. Olsen said to the Connors that the Board would like to help them, but there has to be a legal reason to grant an exception. He asked how they could approve their request without approving similar requests for all of their neighbors. Mr. Barrett added that zoning and subdivision ordinances deal with land and uses, not with people and circumstances.

Mr. Byrd said that ordinances are man made, and the Board has the authority to readdress them. He said he'd be in favor of looking at working with the ordinances to address special issues. Mr. Barrett said that the statutes don't give the Board that authority—there are legal limitations.

A motion was made by Mr. Averette and seconded by Mr. Morris to defer this case until November 20 for the petitioner to work with the neighbors and staff on access and other issues to legally work out a solution to the problem. The motion passed unanimously.

IX. DISCUSSION

A. COUNTY COMMISSIONERS' MEETING REPORT—DAVID AVERETTE

Mr. Averette reported that the Commissioners followed all of the Planning Board's recommendations except on the case on Gillis-Hill Road. That case has been sent back to the Planning Board.

B. JOINT PLANNING BOARD MEETING OF OCTOBER 30, 2001

Mr. Warren asked for agenda items for the joint meeting with the City and Hope Mills. The members agreed that the City's annexation plans and the 2030 Land Use Plan should be included on the Agenda for October 30.

C. 2002-08 METRO TRANSPORTATION IMPROVEMENT PROGRAM

Ms. Land reported on the Metropolitan Transportation Improvement Program (MTIP). She said that the document has been given to the Board for their input and concerns prior to December 12, 2001.

Mr. Olsen asked how soon they could receive input from the Rural Planning Organizations (RPO). Mr. Heicksen said that the job description has been written to hire a planner for the RPO to be housed in the Old Courthouse.

B. SPRING LAKE LAND USE STUDY—WILL DENNING

Mr. Denning gave a presentation on the proposed Spring Lake Land Use Plan. He reviewed some of the maps and data included in the study.

Mr. Warren said that the Town is currently seeking a Transportation Enhancement Grant, and the Plan will assist in their obtaining the grant. He said that Spring Lake is committed to improving the Town and willing to pay their share of the grant.

A motion was made by Mr. Olsen and seconded by Mr. Morris to refer the Spring Lake Land Use Study to the Comprehensive Planning Committee. The motion passed unanimously.

VI. FOR YOUR INFORMATION

A. DIRECTOR'S UPDATE

Chair Gillis announced that the Planning and Inspections Departments have been combined to form the Cumberland County Planning and Inspections Department, headed by Mr. Warren.

Mr. Warren said that the first change to be made is that the inspectors will be cross trained to accomplish their jobs in a more effective manner with a substantial savings to the County to be evidenced in the next two to three years. The number of trips made to make inspections will be reduced, and more efficient use of inspectors' time will also assist the public in a more timely manner.

B. COMPREHENSIVE PLANNING COMMITTEE REPORT—JOE MULLINAX

The Comprehensive Planning Committee is currently reviewing the Maxwell Road/ Highway 24 Study.

C. REPORT FROM LAND USE CODES COMMITTEE—JERRY OLSEN

Mr. Olsen reported that the Land Use Codes Committee is currently working on the Private Streets Ordinance, and will also resume work on the Landscape Ordinance.

Mr. Warren added that at the last meeting, Mr. Denning reviewed all of the projects that the Comprehensive Planning Section is currently working on that will go before the Committee during the upcoming year.

II. ADJOURNMENT

There being no further business, the meeting adjourned at 10:05 p.m.