

MINUTES
September 4, 2001
7:00 p.m.

Members Present

John M. Gillis, Chair
Clifton McNeill, Jr., Vice-Chair
David Averitte
Dallas Byrd
Charles C. Morris
Joe W. Mullinax
Marion Gillis-Olson
Jerry Olsen

Others Present

Barry Warren, Director
Rick Heicksen
Thomas J. Lloyd
Donna McFayden
Barbara Swilley

Grainger Barrett,
County Attorney

I. INVOCATION AND PLEDGE OF ALLEGIANCE

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

II. APPROVAL OF AGENDA/ADDITIONAL ITEMS

Mr. Byrd asked that Case P01-53 be added to the Discussion items. Mr. Barrett reminded the members that they must follow specific procedure when readdressing cases and said for them to read the memo that was given out prior to the meeting.

Due to persons signing up in opposition, Case Nos. P01-72 and 74 were moved from Consent to Public Hearing items.

Case No. P00-63 was withdrawn at the request of the applicant.

A motion was made by Mr. Mullinax and seconded by Vice-Chair McNeill to approve the Agenda with the above addition.

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. MINUTES OF AUGUST 21, 2001

A motion was made by Mr. Olsen and seconded by Mr. Morris to approve the Minutes of August 21, 2001 as written. The motion passed unanimously.

ZONING CASES

- A. P01-73: REZONING OF 2.34 ACRES FROM R6A TO C(P) AT 3744 DUNN ROAD, THE PROPERTY OF RUTH AND CHARLIE S. CAIN, JR.

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

1. The 2010 and Eastover Land Use Plans call for commercial use at this location.

The Planning staff found that the intervening districts are not appropriate for this site.

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

A motion was made by Vice-Chair McNeill and seconded by Mr. Byrd to follow the staff recommendations and approve the C(P) District. The motion passed unanimously.

VII. PUBLIC HEARING ITEMS

- A. P01-51. CONDITIONAL USE OVERLAY DISTRICT AND PERMIT TO ALLOW MINI-WAREHOUSING IN A PND DISTRICT AT 1815 BINGHAM DRIVE, THE PROPERTY OF IRIS LEE DRAUGHON.

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 Conditional Use Overlay District based on the findings that the request is discriminatory and not in the public interest.

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

1. Will substantially injure the value of adjoining or abutting property;
2. Will not be in harmony with the area in which it is located; and
3. Will not be in conformity with the 2010 Land Use Plan.

Note: Bingham Drive is to be widened with the purchase of right-of-way to begin in 2005 and actual construction in 2005. This widening project will have a substantial impact on the subject property.

Mr. Lloyd asked that the packet material be accepted as part of the record.

Mr. Stuart Clarke appeared before the Board representing the applicant. He said that the proposal would not injure the value of property in the area. He added that the configuration of the subject property is not conducive to residential use, and the

proposal will increase the value of the subject property. In response to the staff's second point regarding the harmony of the area, Mr. Clarke listed various uses in the area—machine shop, auto detailing shop, day care, gym, auto service center, paint and body shop—and said that the proposed use would be in harmony with the area. Mr. Clarke said regarding the 2010 Land Use Plan, it was developed 11 years ago, and not strictly held to.

Mr. Jeff Allen appeared before the Board and said that he is a commercial real estate appraiser. He said that rezoning and setbacks are not the issue—it is the staff's desire to protect the residential community that has not been built and probably won't be. He said that the factors are: 1) the Outer Loop will affect the area; and 2) roads (Hope Mills and Cumberland Roads and Bingham Drive) are scheduled for widening. He said that there has been a dramatic traffic increase in the area, and it could possibly double after the completion of the Outer Loop. He said that increased density will create an increase in commercial demand. He said that the developer eliminated areas with no commercial land. He said that Bingham Drive has 180 prime acres, and the 2010 Land Use Plan no longer applies with all the transportation changes in the area. He added that the land will have a higher tax value if rezoned to commercial.

Mr. Lloyd said that there is a residence on the property that has access off of a 20-foot easement. He said that the house will remain a residence until a new Conditional Use Overlay Permit is submitted.

Vice-Chair McNeill asked about the six-foot berm along the northern boundary that was recommended by staff. Mr. Allen said that they would prefer to fence it.

Vice-Chair McNeill asked if the land wasn't developed residential, what would it be. Mr. Lloyd said that there is a node designated to the north that would offer commercial use. He said that the subject property would not likely be recommended for commercial.

Chair Gillis asked about the PND/CU property and was told that it is a multi-family residential project.

No one appeared in opposition to the request.

A motion was made by Mr. Averette and seconded by Mr. Byrd to approve the Conditional Use Overlay District after finding that the application is reasonable, neither arbitrary nor unduly discriminatory and in the public interest. The motion passed unanimously.

A motion was made by Mr. Averette and seconded by Mr. Olsen to approve the Conditional Use Overlay Permit after finding 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 land use plan, thoroughfare plan or other plan officially adopted by the Board of Commissioners. The following conditions are to apply to the CU: 1) a six-foot berm or privacy fence with appropriate evergreen vegetation be placed wherever

residential property abuts the subject property; 2) lighting is to be low-intensity and directed inward; and the tract made up of the corner lots on Pepperbush must be recombined and platted as a single lot.

Mr. Olsen asked about the house on the property. Mr. Barrett explained that any changes in the status of the house would have to go before the Board.

Vice-Chair McNeill asked about the staff's feelings about a berm versus fencing. Mr. Warren said that the entire area off of Pepperbush is residential, and a berm would be preferable. He said that fences are harder to enforce and maintain. Mr. Averette said that he agreed, but a six-foot berm would require a base of 24 to 25 feet.

Mr. Olsen asked if it would be impractical to fence except where it adjoins the houses. Chair Gillis said a berm would be preferable, but the Ordinance allows a fence to be used as a barrier. Mr. Warren reminded the Board of a previous case and the pictures that the staff provided of a bermed area on Pepperbush that served as a good buffer.

Mr. Allen offered to add cypress trees.

An amendment to the motion was made to state that a six-foot berm or privacy fence with appropriate evergreen vegetation be placed wherever residential property abuts the subject property [motion has been amended].

Upon a vote on the motion, it passed unanimously.

B. P00-63: A CONDITIONAL USE OVERLAY DISTRICT AND PERMIT TO ALLOW A BOAT REPAIR AND BAIT SHOP IN AN R6A/CUO DISTRICT, CONTAINING .79 ACRES AT 3924 CUMBERLAND ROAD, THE PROPERTY OF JAMES VALASCO AND RICHARD R. ALVAREZ

This case was withdrawn by the applicant.

C. P01-72: CONDITIONAL USE OVERLAY DISTRICT AND PERMIT TO ALLOW A CAR WASH IN AN HS(P) DISTRICT AT 4747 MAXWELL ROAD, CONTAINING 1.8 ACRES, THE PROPERTY OF LENNON FAMILY LIMITED PARTNERSHIP.

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 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.

Mr. Lloyd asked that the packet material be accepted as part of the record.

Mr. John Lennon, applicant, appeared before the Board and said that the property was rezoned 16 months ago, and the gas station/convenience store has been well accepted by the community. He said that a car wash would be tied in with the gas station. He said that he intends to purchase a unique total reclamation water system that keeps the water from being returned into the soil.

A letter in support of the project was read to the Board.

Mr. Byrd asked if Mr. Lennon had received a letter of approval from the Health Department. Mr. Lennon said that he is required to work with the State Department of Environmental Health and Natural Resources (DEHNR). He said that they cannot build the car wash until they receive a permit from the State. Mr. Bryd asked if the applicant had received notice from DOT regarding the new road. Mr. Lennon said that he had not. Mr. Lloyd said that what he received from DOT stated, "relocation of Highway 24 will not impact the site." He said that the realignment should not impact the subject property. Mr. Lennon said that all liquid from the operation will go into a filtering system and be reused. He said that it is a complicated way to reclaim water and must be approved by DENHR.

Mr. Byrd said that his concern is where the corridor will be. Chair Gillis said that DOT said that the property will not be impacted by the realignment.

Mr. Ray Bean, owner and operator of the business, appeared before the Board. He said that he had received many positive comments from his customers and no negatives regarding the car wash. He said that approximately 1,500 people per day go to the present location.

Vice-Chair McNeill said that he had some earlier concerns about the HS(P) zoning, but Mr. Bean now operates a first-class business as he had promised.

Mr. Robert Stephens appeared before the Board and said that he was concerned about the water, and after listening to Mr. Lennon, his questions have been answered.

A motion was made by Mr. Olsen and seconded by Mr. Morris to approve the Conditional Use Overlay District after finding that the application is reasonable, neither arbitrary nor unduly discriminatory and in the public interest. The motion passed 7 to 1 with Mr. Byrd voting in opposition.

A motion was made by Mr. Olsen and seconded by Mr. Byrd to approve the Conditional Use Overlay Permit after finding 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 land use plan, thoroughfare plan or other plan officially adopted by the Board of Commissioners. The motion passed 7 to 1 with Mr. Byrd voting in opposition.

D. P01-74: REZONING OF .28 ACRES FROM R10 TO R6A AT 167 ELM STREET, THE PROPERTY OF CYNTHIA P. HARRIS.

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 R6A Residential District based on the following:

1. The uses allowed in the R6A District are consistent with the character of the neighborhood.

The Planning staff found that the subject property is also suitable for the R6 Residential District.

Ms. Debra Weatherington appeared before the Board and said that she wants the rezoning in order to have a mobile home on the site.

Mr. Mitchell Morgan appeared before the Board representing himself and his mother-in-law. He said that he did not oppose the rezoning, but he works for the Sheriff's Department, and they have received over 130 calls regarding crime in the area. He said that he does not want to add another rental unit to the area to add more problems. He said that he is concerned about the future and doesn't want another mobile home park brought in if the current owner sells the property.

Ms. Weatherington appeared before the Board in rebuttal and said that there is a lot of prostitution in the area, and she intends to fence her property. She added that she wants the rezoning because she needs a larger home and wants to have a doublewide.

A motion was made by Dr. Olion and seconded by Vice-Chair McNeill to follow the staff recommendations and approve the R6A Residential District. The motion passed unanimously.

E. P01-75: REZONING OF 36.11 ACRES FROM A1 TO R15 ON OLD VANDER ROAD, NORTH OF MACEDONIA CHURCH ROAD, THE PROPERTY OF LANNIE A. HOMES.

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 R15 Residential District and approval of the R40 and R40A Residential Districts based on the following:

1. The 2010 Land Use Plan calls for farmland preservation at this location;
2. The density allowed in the R40 and R40A Districts is more appropriate in the farmland protected areas;
3. The R15 District is more urban in nature and not compatible with a rural atmosphere; and
4. The subject property is not currently served with water and sewer.

Mr. Winfred Powell appeared before the Board and said that he worked with Broadwell Land Company for six years and with Moorman, Kizer and Reitzel for 35 years. He said that he normally designs projects for other people, but this is his project. He said that he was surprised that the staff recommended denial, but it was because the water provider was uncertain. He said that Brookwood Water will provide water to the site. He said that there is housing in the area, and he intends to have a nice subdivision with public water.

Mr. Stanford Starling appeared before the Board in opposition. He said that his family has owned the adjoining land for nearly 100 years. He said that the area is rural, and they want it to remain that way. He said that there are already three trailer parks in the area with small lots, and there is too much traffic. He said that the area does not need more small lots or additional traffic.

Ms. Sandy Beard appeared before the Board and said that she has lived in the area all her life and built her home there in 1993. She said that the road is narrow and used to access Mac Williams and Cape Fear Schools and contains a dangerous curve. She said that the road cannot maintain the traffic. Ms. Beard said that she was required to have two acres for her home when she built, and she said that the rezoning will allow four houses per acre, and that would not be fair to the residents of the area.

Mr. Paul Carter appeared before the Board in opposition and said that he agreed with what had been said and added that he recently purchased 4.4 acres in the area that he wouldn't have purchased if he'd thought that the rezoning might take place. He said that the road is narrow, and additional traffic will cause problems for the school children. He said that the units shouldn't be that dense on the property.

Mr. Powell appeared before the Board in rebuttal. He said that four homes per acre is not correct. He said that the lots will be about 130 feet by 150 feet, and most will be over 15,000 square feet. He said that two homes per acre is more accurate.

Vice-Chair McNeill asked if the adjoining land is used for agriculture. Mr. Powell said that it is mostly an open field and has been farmed in the past. Mr. Carter said that there is some corn and tobacco grown nearby.

Mr. Lloyd said that the R40 zoning recommended by staff would allow one home per acre, and the R15 allows 2.8 units per acre. He clarified for the audience that the R15 does not allow mobile homes.

Mr. Olsen pointed out that the land only borders A1 property, and approving the R15 would mean that the Board was allowing the applicant privileges not enjoyed by his neighbors. He said that he could possibly support RR, but R15 is too large a jump. He also reminded the Board that farmland is not being made any longer.

Dr. Olion asked if the roads were considered when calculating the density. Mr. Lloyd said that they were.

Vice-Chair McNeill said that Mr. Olsen made a good point—it's a rural area, and the developer wants the density in order to make the project financially feasible. Mr. Lloyd said that traditionally in the past RR was approved if there is a utility.

Vice-Chair McNeill said that septic tanks are a concern. He said that he was inclined to follow the staff's recommendation.

A motion was made by Vice-Chair McNeill and seconded by Mr. Olsen to deny the R15 Residential District and approve R40 Residential District.

The members discussed the difference in R40 and R40A (R40A allows mobile homes). Dr. Olion asked about R30. Mr. Lloyd said that the R30 would allow 1.4 units per acre. Chair Gillis calculated that the R30 would allow 46 units, while the R40 allows 31.

Chair Gillis asked if any information was received from the Health Department regarding septic tanks. Mr. Lloyd said that they did not respond. Mr. Powell said that he had a soil scientist do borings on the site, and he confirmed that the property contains good, sandy soil.

Mr. Byrd asked the applicant if he would accept the R40 zoning. Mr. Powell said that he would prefer R15, and his second choice would be RR. He said that he understood if he had community water, R15 would be a good district.

Mr. Olsen said that he understood that RR would be preferable, but R40 would keep the property more in line with the neighborhood. He said that the development will tear up some prime farmland and create urban sprawl.

Upon a vote on the motion, it passed unanimously.

VIII. DISCUSSION

A. CASE NO. P01-53—DALLAS BYRD

Chair Gillis handed out a memo regarding procedures for dealing with a matter already voted upon by the Board that was provided by Mr. Barrett. He said that before the Board can take action or discuss a case, a motion would have to be approved by a majority of members to rescind the case. If the vote to rescind is approved, then notification would have to go out to all concerned that the case was again to be brought before the Board.

Mr. Barrett added that he had received two different answers regarding reopening a public hearing from the Institute of Government. He said that there was disagreement regarding public notification with one person saying it is not a statutory requirement, and the other stating that it would be the correct procedure.

A motion was made by Mr. Byrd and seconded by Vice-Chair McNeill to rescind the Joint Planning Board's previous action on Case No. P01-53 based on the fact

that the owner of the sewer system has not approved the applicant's site for use of the sewer system, and the action of the Board was erroneous.

Mr. Morris asked the current status of the case. He was told that the case went before the County Commissioners at their meeting last month, and they deferred action on it until September 17, 2001. Chair Gillis said that the Commissioners did not refer the case back to the Planning Board for further action—they deferred it in order to gain additional information. Mr. Morris asked if notice was given to the parties concerned and if there would be a conflict if the Planning Board voted to rescind the action. Mr. Barrett said that there would not be a conflict. He said that North Carolina law does not require a public hearing before the Planning Board; it merely requires that the Board make a recommendation to the governing body. He said that statute requires a public hearing by the Commissioners. He said that the Commissioners adopted procedures and policies and approved the Zoning Ordinance, which contains a section stating that the Planning Board may hold a public hearing. He said that it is a matter of practice.

Mr. Morris asked if the Commissioners would be able to hear the case as scheduled if the Planning Board nullifies the previous action. Mr. Barrett said that there are differing views on the issue. He said that there would still be a public hearing before the Commissioners. He said if the object of the Board's motion would be to recommend denial instead of approval, that could change the way that the Commissioners view the case. He said that the Board should determine the purpose of the action being considered.

Mr. Olsen asked if the Commissioners were aware that the Board made the recommendation based on inexact information. Mr. Barrett said that they were told. Mr. Olsen asked what then would be the purpose of the Board's action.

Vice-Chair McNeill said that he missed the Planning Board meeting and attended the Commissioners' meeting, and he did not hear the Commissioners say that they wanted to send the case back to the Planning Board for further consideration. He said that the Commissioners just wanted to gather more information.

Chair Gillis said that Mr. Byrd is the representative from Stedman, and the Board's practice is to entertain concerns and comments of each representative of a municipality. He said that he personally didn't know that what they could add would make much difference to the Commissioners in their decision, but whatever decision is made should be based on accurate information. He added that Mr. Byrd indicated that the Board may or may not have had all of the information.

Dr. Olion asked if the Commissioners treat the Board's recommendations differently if they are unanimous or not. Chair Gillis said that they do not, but they do consider whether the recommendation is for approval or denial. Mr. Barrett said that differing views by the Board may give a case a different weight.

Mr. Mullinax said that he also missed the meeting where the case was discussed. He asked if there was new documentation to be considered that would change the vote.

Mr. Warren said that it would be information from PWC regarding the Town of Stedman's ownership issues.

Chair Gillis said that the Board's decisions are not based on services available—that's the concern of the developer. He said that the Board is to be concerned about the underlying zoning, and the information and discussion between Stedman and PWC and staff shouldn't swing the opinion of the Board one way or the other. He added that Commissioner Henley's opinion was if the Commissioners needed more information from the Planning Board, they would have sent the case back.

Chair Gillis said that Mr. Byrd's motion addresses a septic issue. He said that he met with Mr. McNeill of PWC, and he said that PWC has control over sufficient capacity (220,000 gallons per day, and the project would use 18,000 per day) to handle the project. He added that Mr. McNeill said there are also alternative options for the developer if he is denied use of the Stedman line. He said that the Board is not to be concerned about services—they are to look at the appropriateness of the zoning district at the location.

Mr. Morris said that the site is an island—not at all appropriate for residential use. He said that he had not heard enough to rescind his vote.

Mr. Byrd said that the points are: 1) Stedman owns the sewer line; and 2) no one knows where the road will actually be within the corridor. He said that more precise information is needed for a proper decision.

Mr. Mullinax asked if there was additional supporting documentation. Mr. Warren said that it was included in the packets.

Mr. Warren said that in the meeting for the staff recommendation, Ms. Chapman realized that a more current DOT plan for Highway 24 was available. She asked that a recommendation not be made until the latest map could be reviewed. Once that was reviewed, the staff recommended approval. He added that no one knows where DOT may ultimately decide to build the road.

Dr. Olion asked who would suffer if the road goes through the property. Chair Gillis said that the corridor is not currently protected by statute, and permits cannot be pulled if it is protected.

Vice-Chair McNeill noted that in a typical rezoning case, neighbors usually show up at the meetings if they are opposed to a rezoning. He said if notification had extended to a larger area, there may have been some residents nearby in opposition.

Vice-Chair McNeill said that the vote to rescind is precedent setting, and he was reluctant to do that, but he believed the matter was important enough to consider rescinding the previous action.

Mr. Olsen said that the Commissioners can vote without additional input from the Board, but he suggested that the matter be brought back before the Board.

Mr. Morris said that proper notice was given, and the information was available upon which to base a decision. He said that it is up to the Commissioners, and the Board did what they were supposed to do.

Mr. Mullinax asked if the Board would meet again before the Commissioners if they voted to rescind the action. Mr. Barrett said that they would not, and he didn't say that a public hearing was in order.

Chair Gillis asked if there was anything that occurred that would change the staff's recommendation. Mr. Warren said that he couldn't speak for the entire staff.

Mr. Mullinax said if the Board rescinded the action, there would have to be a second action. Chair Gillis said yes, either another public hearing or go forward without the public hearing process. He asked if the new information would change the Board's recommendation. He said that the new information is about where the sewer tap will be made—not whether or not it will be made. He said that will be a technical/political decision.

Mr. Mullinax said if the motion to rescind is approved, there will have to be another motion to bring it back before the Board, and the next Board meeting is after the next Commissioners' meeting, so that takes the matter out of the Board's hands. Chair Gillis added that anything that would take place at a Planning Board public hearing can take place at the Commissioners' meeting, and rescinding the action would only delay the action and not necessarily bring out any new information.

Vice-Chair McNeill asked if there was anything that would keep the Commissioners from taking action. Mr. Barrett said that the law states that no recommendation from the Planning Board for 30 days would assume approval of the request, and there is nothing that would keep the Commissioners from taking action on September 17.

Dr. Olion asked if the information received had any impact on the Town and the sewer line. She said that she was confused about whether the issue is environmental or a negative impact on the Town of Stedman if the project taps on to their sewer line, or whether it's just a matter of who decides who can tap in. She was told that it is the latter.

Vice-Chair McNeill asked if the map presented to the Board was a DOT or consultant map. Mr. Heicksen said that the map was released by DOT, prepared by a consultant.

Mr. Averette said that the motion to rescind would allow the Board to revisit the issue, and that's what had just been accomplished. He said that whatever the sewer situation is does not concern the Board. He said that the issue is whether or not the property is appropriate for the commercial zoning. He added that the highway can change, and that's the developer's problem—not an issue that the Board should be concerned about. He said that he saw no reason to rescind.

Dr. Olion moved to vote on the previous motion.

Chair Gillis called for a vote on Dr. Olion's motion, and it was approved unanimously.

Upon a vote on the motion to rescind, it failed by a 2 to 7 vote with Mr. Byrd and Vice-Chair McNeill voting to approve the motion.

B. CONDITIONAL USE OVERLAY DISTRICTS—BARRY WARREN

Mr. Warren reviewed the handout contained in the packets regarding Conditional Use Overlay Districts (see attached) and instructed the Board on how conventional versus conditional zoning should be used.

IX. ADJOURNMENT

There being no further business, the meeting adjourned at 10:00 p.m.

MINUTES

August 21, 2001
7:00 p.m.

Members Present

John M. Gillis, Chair
Clifton McNeill, Vice-Chair
David Averette
Dallas Byrd
Charles Morris
Joe W. Mullinax
Marion Gillis-Olion
Jerry Olsen

Others Present

Barry Warren,
Planning Director
Thomas J. Lloyd
Donna McFayden
Barbara Swilley
John Henley, County
Commissioner
Grainger Barrett,
County Attorney

I. INVOCATION AND PLEDGE OF ALLEGIANCE

Dr. Olion delivered the invocation, and Chair Gillis led those present in the Pledge of Allegiance.

II. APPROVAL OF AGENDA/ADDITIONAL ITEMS

Mr. Byrd asked that Case P01-53 be added to Discussion items. Mr. Olsen asked that Case P01-69 be moved from Consent to Public Hearing items. Mr. Warren reported that there was opposition to Cases P01-59 and P01-63 and asked that they be moved from Consent to Public Hearing items.

A motion was made by Vice-Chair McNeill and seconded by Mr. Mullinax to approve the Agenda with the above changes. The motion passed unanimously.

III. PUBLIC HEARING DEFERRALS

Mr. Lloyd reported that the applicant requested that Case P01-68 be deferred until the September 18, 2001 meeting. Chair Gillis asked if anyone in the audience would object to the deferral. No one responded.

A motion was made by Mr. Mullinax and seconded by Vice-Chair McNeill to defer hearing Case P01-68 until September 18, 2001. The motion passed unanimously.

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 AUGUST 7, 2001

A motion was made by Mr. Mullinax and seconded by Mr. Olsen to approve the Minutes of August 7, 2001 with two corrections to the first page. The motion passed unanimously.

ZONING CASES

A. P01-62: INITIAL ZONING OF 1.66 ACRES TO R10 ON BLAKE ROAD ADJACENT TO THE STEDMAN CITY LIMITS, OWNED BY FIRST BAPTIST CHURCH OF STEDMAN.

The Planning staff recommended approval of the R10 Residential District based on the following:

1. The uses allowed in the R10 District are consistent with the character of the existing neighborhood.

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

A motion was made by Mr. Mullinax and seconded by Mr. Olsen to follow the staff recommendations and approve the R10 Residential District. The motion passed unanimously.

B. P01-64: REZONING OF .41 ACRES FROM R10 TO R6A AT 3105 ASHBORO STREET, OWNED BY REESE MOZINGO, JR.

The Planning staff recommended approval of the R6A Residential District based on the following:

1. The uses allowed in the R6A District are consistent with character of the neighborhood; and
2. The R6A District is consistent with recent Planning Board decisions in the area.

The Planning staff found that the property is also suitable for the R6 Residential District.

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

A motion was made by Mr. Mullinax and seconded by Mr. Olsen to follow the staff recommendations and approve the R6A Residential District. The motion passed unanimously.

- C. P01-66: REZONING OF 2 ACRES FROM A1 TO R40A AT 2745 MCCALL ROAD, OWNED BY ODESSA COUNCIL.

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

1. The Planning Board's policy is to allow R40 and R40A Districts within the Farmland Protection area on smaller tracts of land.

The Planning staff found that the subject property is also suitable for the A1 Agricultural District.

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

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

- D. P01-67: REZONING OF 28.54 ACRES FROM A1 TO R40 ON JOHN NUNNERY ROAD SOUTH OF STONEY BRANCH ROAD, OWNED BY BILLY D. AND FAY J. HORNE.

The Planning staff recommended approval of the R40 Residential District based on the following:

1. The uses allowed in the R40 District are consistent with the transition of the area.

The Planning staff found that 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. Mullinax and seconded by Mr. Olsen to follow the staff recommendations and approve the R40 Residential District. The motion passed unanimously.

- E. P01-71: REZONING OF 2.15 ACRES FROM A1 TO R40A AT 2341 SMITH ROAD, OWNED BY BERNICE U. AND SHIRLEY L. TEW.

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

1. The 2010 Land Use Plan calls for low-density residential development at this location; and
2. The uses allowed in the R40A District are consistent with the existing development in the area.

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

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

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

PLAT

- A. 01-193. CONSIDERATION OF THE TOWN OF STEDAN BOOSTER PUMP STATION, (C(P) SITE PLAN REVIEW) IN A C(P) DISTRICT FOR APPROVAL OF ALTERNATE YARD REQUIREMENTS IN A PLANNED DISTRICT ON THE SOUTH SIDE OF CLINTON ROAD, WEST OF SHELTON BEARD ROAD, SECTION 12.45, CUMBERLAND COUNTY ZONING ORDINANCE.

After consideration of the information in the packets, a motion was made by Mr. Mullinax and seconded by Mr. Olsen to follow the staff recommendations and approve the alternate yard requirements. The motion passed unanimously.

VII. PUBLIC HEARING ITEMS

- A. P01-59: REZONING OF 5.13 ACRES FROM M2 AND A1 TO R40A AT 4472 FERRAND DRIVE, OWNED BY ROCKY W. GASKINS.

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 R40A District based on the following:

1. The 2010 Land Use Plan calls for low-density residential development at this location;
2. The uses allowed in the R40A District are consistent with the development in the area; and
3. The uses allowed in the M2 District are out of character with the existing zoning and uses in the area.

The Planning staff found that the subject property is also suitable for the A1 and R40 Districts.

Mr. Rocky Gaskins appeared before the Board and said that he wants the rezoning in order to have smaller lots for family members, and it will be cheaper for taxes. He added that the smaller lots will be easier to maintain.

Mr. George B. Harsch appeared before the Board in opposition. He said that the M2 should be rezoned, but the A1 should not. He said that the residents maintain Port Ritchie Road except for Mr. Gaskins, and the property cannot support extra septic tanks and additional traffic on a private street. He said that all of the property owners were aware when they purchased their property that two acres are needed for each lot. He said that money is not a reason to rezone property.

Ms. Becky Garcia appeared before the Board in opposition. She said that she agreed about the road and septic tanks because neither will support additional people.

Ms. Marie Cox appeared before the Board in opposition and said that she has lived in the area for 16 years, and she wants to keep the neighborhood nice—not turn it into a trailer park.

Ms. Beth Ellis appeared before the Board and said that she moved to the area to get away from trailer parks and for peace and quiet.

Ms. Rachel Hudson, resident of the area, appeared before the Board in opposition and said that her rezoning request was recently denied. She said that she doesn't want a trailer park situation on Port Ritchie Lane, and the residents don't need additional traffic.

Mr. Roy Thomas Singletary appeared before the Board in opposition and said that he was one of the first residents on Port Ritchie Lane, and the recent rain has torn up the road. He asked how one person (Mr. Gaskins) can maintain the road for five additional families.

Mr. Gaskins appeared before the Board in rebuttal. He said that he didn't know where the residents got the idea that he was going to put in a trailer park. He said that he had not driven or even walked on the road. He said that he only plans on two more lots.

Vice-Chair McNeill asked how many tracts were part of the request. Mr. Lloyd said that there are two tracts—one along Ferrand and one off of Port Ritchie Lane. He explained that Mr. Gaskins wants to create two lots out of the A1 property. He noted that three or more mobile homes would constitute a mobile home park, and that would not be allowed.

Mr. Morris asked what is located on the M2 lot. Mr. Lloyd said that it contains one trailer and is legal nonconforming.

Mr. Morris asked Mr. Gaskins if he was also told that two acres were required for each lot. Mr. Gaskins said that is because A1 requires two acres per residence. Mr. Morris asked if Mr. Gaskins agreed to the two-acre lots when he purchased the land. Mr. Gaskins said that the agreement was because the zoning was A1.

Vice-Chair McNeill said that he hoped the Board would not miss the opportunity to clean up the M2 lot because it would be better used as R40. He said that he had reservations about the A1 lot on Port Ritchie Lane.

Mr. Averette asked if Port Ritchie Lane and Ferrand Road are public or private roads. Mr. Warren said that they are both private roads maintained by residents.

Chair Gillis asked how a subdivision would be treated with regard to a private dirt street. Mr. Lloyd said that a request would go before the Board because of the number of lots would exceed the number allowed on a private street. Chair Gillis asked how a

group development would be treated. Mr. Lloyd said that two units are currently allowed on the A1 (due to rounding up), and if rezoned, three would be allowed. He said that the M2 property would allow another three lots if rezoned, but three mobile homes could not be placed on the lots because that would constitute a mobile home park.

Mr. Olsen said he'd be in favor of rezoning the M2 tract.

A motion was made by Vice-Chair McNeill and seconded by Mr. Mullinax to approve the R40A Residential District for the tract that is currently zoned M2, and to deny the rezoning of the tract that is currently zoned A1 District.

Mr. Lloyd clarified that Ferrand Road is an easement and has not been approved as a private street. He again explained how many units would be allowed per lot under current and proposed zoning.

Mr. Morris asked if the Board could approve A1 for the M2 Tract. Mr. Lloyd said that they could.

Mr. Averette asked why not approve R40A for both lots. Mr. Olsen said that he thought a precedent had been set on an earlier case. Mr. Lloyd said that the Planning Board approved an earlier R40A request, but the Commissioners denied it.

Vice-Chair McNeill said that the M2 isn't appropriate for A1 because it will further create a hardship on the property owner because others in the area have RR. He said that the current A1 tract is surrounded by A1 on three sides.

Upon a vote on the motion, it passed unanimously.

B. P01-60: REZONING OF .66 ACRES FROM R10 TO RR, OR A MORE RESTRICTIVE ZONING DISTRICT, AT 6213 ROCKFISH ROAD, OWNED BY DONALD F. AND WANDA HORNE.

Maps were displayed outlining the zoning and land use in the area. A video of the site was shown. Mr. Lloyd pointed out that public water is available, and the site currently uses well and septic. Mr. Lloyd said that the Planning staff recommended denial of the RR Rural Residential District based on the following:

1. The uses allowed in the RR District are not consistent with the character of the neighborhood.
2. The 2010 Land Use Plan calls for low-density residential development at this location; and
3. Approval of the rezoning would allow the landowner privileges not currently granted to neighboring landowners.

The Planning staff found that there are no intervening districts to consider for suitability.

Ms. Edina Amundsen appeared before the Board representing the owners. She said that she is trying to help them sell the property. She said that the house is too large for people without children, and the traffic isn't conducive to children. She said that the home has been on the market for one year at the current zoning and has not sold. She said that the interested buyers are looking for commercial zoning.

Mr. Rayford Hunt, Jr. appeared before the Board and said that he would like to purchase the site to operate a day care. He said that he has been looking for a suitable site for a day care, and this one is very suitable. He said that the area is growing, and his wife is very qualified and runs a three-star home day care that is filled to capacity. He said that this site is near two schools and would be a very good location for a day care.

Mr. Carlton Chase appeared before the Board in opposition. He said that the rezoning would be an injustice to the area that is currently 90 percent R10 and 10 percent R6. He said that the rezoning will lower the property values, turn the area into a less desirable place to live and lower the tax base. He showed the Board on the map where he lives.

Ms. Sondra Bemederfer appeared before the Board in opposition. She gave the Board two letters from neighbors also opposed to the rezoning. She said that a day care is to open nearby, and another one isn't needed. She said that another day care would not benefit the community, and would only create more traffic and noise and decrease property values. She said that approval of the request would grant the property owner privileges not enjoyed by others in the area. She said that the R10 zoning would maintain the quality of life in the area.

Mr. Thomas Faucete appeared before the Board and said that the R10 District allows day care establishments. He said that he opposed the rezoning because the property is not tied in to County water, and there is oil in nearby ground. He added that Rockfish Road is a main corridor into Hope Mills, and also if it is widened, it won't be a safe site for a day care.

Ms. Elbulah Watson appeared before the Board and said that she lives on Sturbridge Road and opposes the rezoning for reasons already stated.

Ms. Dorothy Smith appeared before the Board and said that she also lives in the Timberlake Subdivision, and they don't need down zoning in the area. She said that a day care exists nearby that has been through many owners.

Ms. Bemederfer was recognized by a Board member and reported that the preacher from the church near the subject property could not make the meeting but wanted to let the Board know that he was opposed to the rezoning because of the uses allowed in the RR District.

Mr. Horne, current property owner, appeared before the Board in rebuttal. He said that he plans to put in another septic tank after the land is sold, and he already removed a kerosene drum from the ground, and the property is free of contaminants.

Mr. Hunt appeared before the Board in rebuttal and said that a developer is planning an apartment complex for the area, and a day care would enhance future development. He said that the subject property is not adjacent to Sturbridge Road, and the day care nearby is in poor condition and has been closed for a year.

Mr. Byrd asked if the property had been cited for violations. Mr. Lloyd said that it has not, and no permits have been applied for. Mr. Byrd asked if the septic tank is bad, and Mr. Warren said that there had not been a report of septic tank failure.

Chair Gillis asked if the residence is occupied. He was told that the residence has not been occupied for three years.

Dr. Olion asked about the day care being allowed as a Specified Conditional Use under the R10 District. Mr. Lloyd explained that the R10 restricts day care to 2,500 feet, and there is a day care within 2,500 feet of the subject property. He added that the RR allows day care as a permitted use; however, the other uses allowed must also be considered.

Chair Gillis asked if day cares are permitted in any other districts. He was told that they are allowed in the C(P) and C3. Chair Gillis asked about a Conditional Use Overlay District, and Mr. Lloyd said that the County Attorney and Board of Adjustment determined that a CUO couldn't be used to bypass the Specified Conditional Use Process.

Mr. Olsen noted that approving the RR would almost constitute spot zoning.

Vice-Chair McNeill said he found the 2,500 feet requirement interesting because of the way the area is growing with the number of children exceeding the distance requirement, but he acknowledged that is the current rule with which the Board must comply. He said that he believed that the day care would be beneficial to the community, but the RR District opens the door to too many other uses that are not advantageous for the community.

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

C. P01-63: REZONING OF 0.8 ACRES FROM R10 TO R6A AT 3917 AND 3921 DONNA STREET, OWNED BY KENNY W. TEW.

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 R6A Residential District based on the following:

1. The 2010 Land Use Plan calls for medium-density residential development at this location;
2. The R6A District was created to be an inner mixture of single-family use consistent with the existing neighborhood.

The Planning staff found that the subject property is also appropriate for the R6 District.

Note: Health Department regulations dictate density because of well and septic distance requirements.

Mr. Warren Copenhaver, real estate broker, appeared before the Board representing the applicant. He gave pictures to the Board showing the effort that the owner has put into the neighborhood. He said that the owner renovated one unit in 1992 and three in 2000. He said that he has been working to improve the area and hopes to sell the renovated properties, but has had to rent most of them thus far. He said that Mr. Tew brought PWC water to the area at his own cost and is prepared to run it to the subject property. Mr. Lloyd said that the staff received a letter from PWC indicating that PWC water does not run to the area.

Chair Gillis said that PWC doesn't have the ability to track the water through easements, but some residents run it across their own properties. Mr. Tew said that he extended the water from Cumberland Road. Chair Gillis said that water and sewer are really not the Board's concern, and they must focus on the suitability of the uses allowed in the requested rezoning in a particular area.

Mr. Barrett reminded the Board that the pictures they received are for information only and not to be used when determining the suitability of the zoning for the site. He said that the applicant is not held to any standards shown in the pictures.

Mr. Furman Blanton, Jr. appeared before the Board in opposition. He said that he understood that the rezoning request included property in the Belhaven Subdivision. He said that he didn't want R6A zoning for more trailers in the area. He asked that the land remain R10.

Mr. Copenhaver appeared before the Board in rebuttal and said if the land remains R10, it's not likely to rent or sell. He said that the best chance to approve the area is to rezone the property to R6A.

Mr. Averette asked the petitioner if he would consider R6 zoning. After an explanation that R6 does not allow trailers, Mr. Tew said that he would not.

Vice-Chair McNeill asked where the water is currently available. Mr. Copenhaver pointed out the properties that now contain water and how Mr. Tew would run the water to the subject property.

A motion was made by Mr. Averette and seconded by Vice-Chair McNeill to follow the staff recommendations and approve the R6A Residential District. The motion passed unanimously.

D. P01-65: REZONING OF .46 ACRES FROM R10 TO R6A AT 3921 ELON STREET, OWNED BY JOSEPH WILSON.

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 originally on the Agenda as a

consent item, but he received a letter in opposition. He said that the Planning staff recommended approval of the R6A Residential District based on the following:

1. The 2010 Land Use Plan calls for medium-density residential development at this location; and
2. The R6A District was created to be an inner mixture of single-family use consistent with the existing neighborhood.

The Planning staff found that the subject property is also appropriate for the R6 District.

Note: Health Department regulations dictate density because of well and septic distance requirements.

Mr. Joseph Wilson appeared before the Board and said that he owns the property and would like to have it rezoned to R6A.

Chair Gillis read the letter and entered it into the record. The letter asked that the rezoning be denied because the area is becoming congested with trailers. They asked that the Board rezone the site to R6, rather than R6A. The letter was signed by Woodrow and Frostene Swain.

Mr. Wilson stated in rebuttal that there are many mobile homes in the area, and he brought some of them. He said that they look better than some of the homes in the area.

A motion was made by Mr. Olsen and seconded by Mr. Averette to follow the staff recommendations and approve the R6A Residential District. The motion passed unanimously.

- E. P01-68: REZONING OF .55 ACRES FROM R6 TO C3, OR A MORE RESTRICTIVE ZONING DISTRICT, AT 109 NEW STREET, OWNED BY STAN AND LISA SIMMONS.

Action on this case was deferred until September 18, 2001.

- F. P01-69: REZONING OF 1.34 ACRES FROM RR AND A1 TO C(P) AT 8171 GODWIN-FALCON ROAD, OWNED BY ABDO ALSAEDE.

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 C(P) Planned Commercial District based on the following:

1. The uses allowed in the C(P) District are consistent with the character of and existing zoning in the area;
2. Commercial uses are appropriate at the interchange; and
3. Plan review is desirable because of the location of the corridor to the entrance of the historic Averagesboro Battlefield.

The Planning staff found that the HS(P) Planned Highway Service District is also suitable for the subject property.

Mr. Roger Figg appeared before the Board and said that the area had been rundown for years and was used for drugs and prostitution before he cleaned it up. He said that he had received no violations and is licensed by Animal and Plant Health Inspections Services (AAPHIS). He said that he could live on the site, but he would prefer creating a tourist industry at the intersection. He said that there was only one neighbor who objects, and he didn't know why.

Mr. Barrett asked Mr. Figg who AAPHIS is, and Mr. Figg responded that they are a division of the Department of Agriculture. Mr. Barrett asked if the permit is good only for the state of New York. Mr. Figg said that it is good in North Carolina also.

Mr. Olsen asked if the area had been inspected by the Fire Marshal. Mr. Figg said that they had not inspected his property and had spoken to his attorney. He said that he was issued a summons without an inspection.

Mr. Robert Card appeared before the Board and said that he is helping Mr. Figg clean up the area and would like the Board to approve the rezoning.

Mr. Abdo Alsaede, property owner, appeared before the Board and said that Mr. Figg leases the property, and his lease has expired. He said that if there are objections to Mr. Figg's operation, he doesn't have to stay there.

Chair Gillis said that the Board is only concerned about the rezoning, not licensing or leasing, which are matters between an owner and tenant. He asked Mr. Alsaede if he wants the property rezoned, and Mr. Alsaede said that he does.

Mr. Olsen said that C(P) is the correct zoning for the intersection. He noted that there is a residence behind the commercial building and asked if it will become nonconforming if the property is rezoned to C(P). Mr. Lloyd said that it will. Mr. Olsen said that he didn't like creating a nonconforming situation. Mr. Olsen said a separate septic tank is needed for a residence and said he didn't think that there is sufficient space for an additional septic tank. Mr. Lloyd said that the Health Department determines the issue, and the Planning staff addresses the suitability for rezoning.

Vice-Chair McNeill asked Mr. Alsaede if he was aware of the nonconformity created by the rezoning. Mr. Alsaede said that the septic tank is part of the business, and the trailer on the site is used for an office. Mr. Warren explained that mobile homes are legally considered a residence—even if used for storage or office space—so the mobile home is subject to septic tank requirements of a residence.

Mr. Olsen asked Mr. Figg about how animal waste is handed, and he was told that it is disposed of in an off-site commercial dumpster.

A motion was made by Mr. Averette and seconded by Vice-Chair McNeill to follow the staff recommendations and approve the C(P) Planned Commercial District. The motion passed unanimously.

G. P01-70: REZONING OF .69 ACRES FROM R6A TO O&I, OR A MORE RESTRICTIVE ZONING DISTRICT, AT 831 MANLEY STREET, OWNED BY RONALD W. FORBES.

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 O&I Office and Institutional District based on the following:

1. All of the uses allowed in the O&I District are not appropriate for the site; and
2. Approval of the O&I District will allow further encroachment of nonresidential uses into a residential area.

Mr. Ronald Forbes appeared before the Board and said that he has been using this space for an office since 1992. He said that the video showing cars in the yard is not how the yard normally looks. The cars are normally stored elsewhere. He said that there are only about six to eight customers that go to the office per month to pay bills. He said that he owns the property across from the office and runs a garage. He said that he also owns property to the west and is trying to purchase the lot on the other side. He said that he has not had problems with any neighbors.

No one appeared in opposition to the request.

Vice-Chair McNeill asked what uses allowed in the O&I would not be appropriate for the area. Mr. Lloyd said that Todd Street is a nice residential street, and the staff felt like any use other than residential would not be appropriate. He listed some of the uses allowed in the O&I District and said they'd be an encroachment.

Mr. Olsen asked if the O&I District isn't usually the best buffer between the commercial and residential. Mr. Lloyd said that it is. Mr. Olsen pointed out that the applicant owns the commercial property across the road and plans to continue his operation. He said that the O&I would serve as a buffer for the residents.

Vice-Chair McNeill agreed because the property backs up to truck storage.

A motion was made by Vice-Chair McNeill and seconded by Mr. Byrd to approve the O&I Office and Institutional District. The motion passed unanimously.

VIII. DISCUSSION

A. REPORT ON COMMISSIONERS' MEETING—VICE-CHAIR McNEILL

Vice-Chair McNeill reported that the Commissioners followed the Board's recommendations on all cases except one. The case on Maxwell Road was deferred until their September meeting. Chair Gillis explained that several Commissioners have technical questions regarding the case as to the status of PWC's right to allow someone to tie on to a sewer line that is owned by the Town of Stedman. In addition, they want more information regarding the proposal as it relates to the position within the 1,000 foot corridor. He said that the Commissioners didn't refer the case back to the Board and are relying on staff and other parties to provide the needed information. He said that the Commissioners didn't have any questions regarding the Board's action.

B. CASE NO. P01-53—DALLAS BYRD

Mr. Barrett cautioned the Board that they approved this case at their last meeting, and under Roberts Rules of Order, a motion would be needed to reconsider or rescind the action. He said that a motion to reconsider must be made at the same meeting, and if the Board wishes to rescind their action, it would only be procedurally fair to notify the applicant before taking such action.

Mr. Byrd said that he failed to read the support documentation regarding this case before he voted on the matter at the last meeting. He said if he had been aware of it, he would not have voted as he did. He said that the Town of Stedman paid \$400,000 for the sewer main, and PWC paid \$140,000 to enlarge the line. He said that he didn't realize how severely impacted by the proposed Highway 24 that the case was because the location of the road could completely change what can be done with the property. He said that he was glad that the Commissioners have requested the additional information.

IX. FOR YOUR INFORMATION

A. DIRECTOR'S UPDATE

Mr. Warren reported that the staff is working on the group home issue under direction of the County Manager. Commissioner Henley added that the Commissioners would like the Planning Board to address the group home issue jointly with the City. He said that the Commissioners don't want Cumberland County to become a depository for group homes for the State because of the added stress to schools, medical facilities, etc.

Mr. Barrett said that he has grave concerns about group homes, and it was more litigated than any other zoning issue in the country in the 1990s. He said that there are several traps—singling out handicapped or disabled being one. He said there is a need to address all group homes (assisted living in unrelated conditions), and the area is treacherous legally. He said that State law allows them in residential districts in North Carolina with ½-mile being the longest distance requirement. He said that the Federal Courts have overruled some state regulations, and the whole issue is very complicated. He said that he will be looking at the broader view of group homes—unrelated persons

living together—with consideration to impact on medical, educational, etc. institutions in the County.

Commissioner Henley said that group homes are needed, and the County needs to look at the issue legally because inadvertently a disproportionate share of group homes in Cumberland County has been created. He said that there is also a need to educate the community. Mr. Warren said that the County's Ordinance does not address group homes.

Mr. Barrett said that the law requires equal—not greater—opportunity for group homes. He said that it is important that Legal work on this before the staff or Board consider it.

B. GRANT TO TOWN OF WADE—JERRY OLSEN

Mr. Olsen reported that the Town of Wade received a \$2.68 million grant to assist with a sewer system for the area. He said that an agreement must first be created with three counties involved to receive the funds. He said that the Department of Agriculture is also going to grant \$4 million and loan the group \$1 million (total of \$7.68 million) to assist with the project. He said that the Towns will still need to come up with \$1.6 million to complete the sewer system. He said that the tri-county water/sewer organization will be called "Norcross".

X. ADJOURNMENT

There being no further business, the meeting adjourned at 9:40 p.m.

MINUTES
August 7, 2001
7:00 p.m.

Members Present

John Gillis, Chair
Director
Clifton McNeill, Vice-Chair
David Averette
Dallas Byrd
Charles Morris
Joe W. Mullinax
Marion Gillis-Olion

Members Absent

Jerry Olsen

Others Present

Barry Warren,

Thomas Lloyd
Donna McFayden
Barbara Swilley
Grainger Barrett,
County Attorney
John Henley, Co.
Commissioner

I. INVOCATION AND PLEDGE OF ALLEGIANCE

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

II. APPROVAL OF AGENDA/ADDITIONAL ITEMS

A motion was made by Mr. McNeill and seconded by Dr. Olion to approve the Agenda as presented. The motion passed unanimously.

III. PUBLIC HEARING DEFERRALS

Case No. P01-51 was deferred until September 4, 2001 because a site plan was not received.

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 JULY 17, 2001

A motion was made by Dr. Olion and seconded by Mr. Morris to approve the Minutes of July 17, 2001 as written. The motion passed unanimously.

- B. P01-58. REZONING OF 2.75 ACRES FROM R6A TO M(P), OR A MORE RESTRICTIVE ZONING DISTRICT, AT 176 AND 180 AIRPORT ROAD, OWNED BY VICKIE H. LUCK.

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

1. The 2010 Land Use Plan calls for industrial use at this location; and
2. The uses allowed in the M(P) District are consistent with the development in the area.

The Planning staff found that none of the intervening districts are appropriate for the subject property.

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

A motion was made by Dr. Olion and seconded by Mr. Morris to follow the staff recommendations and approve the M(P) Planned Industrial District. The motion passed unanimously.

VI. PUBLIC HEARING ITEMS

- A. P01-50: REZONING OF 2.78 ACRES FROM R5A TO C1, OR A MORE RESTRICTIVE ZONING DISTRICT, AT 6340 APPECROSS ROAD, OWNED BY 1ST SPANISH BAPTIST CHURCH

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 District and approval of the O&I Office and Institutional District based on the following:

1. All of the uses allowed in the CI District are not appropriate for the site;
2. The O&I District offers a good transition between the residential and commercial uses in the area; and
3. The uses allowed in the O&I District are more consistent with the character of the surrounding area.

The Planning staff found that the subject property is also suitable for the R5 District.

Mr. Julio Santana appeared before the Board and said that the rezoning was requested in order to expand the church's ministry. He said that the value of the property would be increased, and they would like to build another church building and provide resources to pay for it.

Mr. McNeill asked Mr. Santana if the O&I would work for him. Mr. Santana said if there was no other recourse, the O&I would be acceptable.

Mr. David Rivera appeared before the Board and said that he would prefer having commercial zoning on the corner. He assured the Board that the church would maintain control of how the area was developed and make sure that it followed their beliefs—God's word.

Mr. Jonathan Elliot appeared before the Board in opposition. He said that the current R5A District assures the best use of the property. He said that he owns property nearby that is zoned for office and retail, and he plans to quadruple the development, but he has not because of lack of demand. He said that there is a lot of commercially zoned property in the area with no demand for commercial use. He noted that the Board recently denied a request for commercial rezoning nearby. Mr. Elliot said that the church can do whatever they want related to church activities under the current zoning. He said that the only reason to rezone is to lease or sell some of the property. Mr. Elliot said that the subject property was a dairy farm where he was raised, and his family still owns a large quadrant to the north and across the road.

Mr. Byrd asked for a clearer picture of the property owned by Mr. Elliot's family. Mr. Elliot pointed out the property on the map and also indicated a large C1P parcel inside the City limits owned by the Riddle Corporation.

Mr. Santana spoke in rebuttal and explained that the reason for the rezoning request is so that the church can be of service to the community and for future resources for the church.

Mr. Averette asked if religious worship is allowed in R5A. Mr. Lloyd said that it is. Mr. Averette asked why rezoning is necessary, and Mr. Lloyd said that the specific use could not be discussed.

Mr. Lloyd further explained that offices as an accessory use are also allowed under the current zoning, as well as day care for church parishioners. Mr. McNeill asked if day care facilities are allowed in the O&I District. Mr. Lloyd said that they are, and they require Board of Adjustment approval in both districts.

Mr. Barrett said that the R5A would generally allow day care for church parishioners, whereas the O&I would allow it for community use. Mr. Warren explained that the O&I would allow more flexibility with the property for office and institutional uses, and it is a good transition district.

Mr. Morris asked Mr. Elliot if he agreed to the O&I District. Mr. Elliot again stated that the church can do anything that is church related with the current zoning, and the O&I would allow them to lease it out or sell it. He said if it is leased or sold, the church loses control.

Mr. Barrett disagreed with Mr. Elliot and noted that certain types of uses are allowed in the O&I that are not allowed in the R5A—credit union, book store, home for the aged, etc. that could be used by the Spanish speaking community.

Mr. McNeill said that there is already an excess of commercial property in the area, and no demand, so it's not likely to be used if it is rezoned to commercial. He said that the O&I would be a good transition district.

A motion was made by Mr. McNeill and seconded by Mr. Byrd to follow the staff recommendations and deny the C1 Local Business District and approve O&I Office and Institutional District. The motion passed unanimously.

B. P01-51. CONDITIONAL USE OVERLAY DISTRICT AND PERMIT TO ALLOW MINI-WAREHOUSING IN A PND DISTRICT AT 1815 BINGHAM DRIVE, THE PROPERTY OF IRIS LEE DRAUGHON.

Consideration of this case was deferred until September 4, 2001.

VII. PLATS AND PLANS

- A. 01-179. CONSIDERATION OF AN M(P) SITE PLAN REVIEW FOR AAA—ALL AMERICAN SELF STORAGE, LLC PHASE THREE IN AN M(P) DISTRICT FOR ALTERNATE YARD REQUIREMENTS IN A PLANNED DISTRICT, SECTION 12.45, CUMBERLAND COUNTY ZONING ORDINANCE, ON THE SOUTHWEST SIDE OF MID PINE ROAD AND THE SOUTHEAST SIDE OF CAMDEN ROAD.

Mr. Lloyd explained that the case is a request for alternate yard requirements.

Mr. Jeff Allen appeared before the Board and said that his engineer was unable to attend the meeting. He gave the history of the property and said that the front yard setbacks on either side of the property are about 50 feet. He said that his options were to request rezoning to M1 or M2 or ask for the adjustment in the setbacks. He said that he thought the Board would prefer to Keep the M(P) District zoning because it requires site plan approval. Mr. Allen showed the Board photographs of self-storage facilities he has built. He said that they are the best built facilities in the State—bricked, fenced, paved, controlled access, climate controlled storage, landscaping and individual theft alarms.

Mr. Allen asked that the Board approve 30-foot side yard and 45-foot front yard setbacks for the subject property. He said that this would be about the same as the C(P) that adjoins the property.

Mr. Averette said that the Board would lose control if they opted to rezone the property to M1 or M2, and he'd prefer approving the alternate setbacks.

Mr. Barrett said that the Board should also look to the legal authority contained in Section 1245 of the Zoning Ordinance which states that the Board may approve an adjustment to "provide a more logically planned development."

Vice-Chair McNeill complimented Mr. Allen on his presentation. He asked about the setback being measured from the right-of-way. Mr. Barrett said that Mr. Allen agreed to begin the setback based on the expanded right-of-way. Mr. McNeill said that he agreed with Mr. Averett that it would be wise to keep the site plan approval.

Mr. Lloyd said that the Board should make it clear that this does not establish a precedence of 45-foot setbacks on Mid Pine Road. Mr. Barrett said that it is important legally that a basis for granting a particular adjustment be consistent—not arbitrary. He said that this would be a very limited precedent because much of the property is already developed. He cautioned the Board to word their motion properly so that it cannot be interpreted as a precedent. Mr. Lloyd noted that the double front yard in this situation would keep this action from setting a precedent.

Mr. Morris if the adjusted setbacks would fall in line with the C1 District setbacks, and Mr. Lloyd said that they would.

Chair Gillis asked if the tract is combined it would make Mid-Pine a front or rear yard. Mr. Lloyd said that it would probably be considered two front yards, but the decision would be made by the Inspections Department. Mr. Barrett said that it could be considered a rear yard, and Chair Gillis noted that this would be closer to the desired setback.

A motion was made by Mr. Averette and seconded by Mr. McNeill to grant the setback adjustments with the condition that the two lots will be combined, and the 45-foot setback on Mid-Pine Road be measured from the expanded right-of-way after finding that the consensus of the Board is that the adjustments will provide for a more logically planned development. The motion passed unanimously.

VIII. DISCUSSION

A. ACCESSORY STRUCTURE IN UNZONED AREAS—TOM LLOYD

Mr. Lloyd said that the Ordinance is written in such a way that accessory structures are to be 25 feet from the property line, and the intent is that they can be within five feet of the property line. He said that he is preparing an amendment that will be taken before the Board in about a month.

B. ANNUAL REPORT—BARB SWILLEY

Ms. Swilley asked if the Board's Annual Report that was handed out at the last meeting could be sent to the governing bodies if there were no corrections. She was directed to send the reports to the governing bodies.

C. CONDITIONAL USE OVERLAY DISTRICT—BARRY WARREN

Mr. Warren did a brief training session on Conditional Use Overlay Districts that included a clarification of spot and contract zoning. A question/answer session followed. He said that he would continue the sessions after the Planning Board meetings for the next few months.

IX. FOR YOUR INFORMATION

A. DIRECTOR'S UPDATE

Mr. Warren called the Board's attention to a memo in the packets explaining the staff findings regarding whether the NC Hwy 24/Maxwell Road area should reflect a commercial node in the 2010 Land Use Plan. He said that due to the number of people in the area, the staff recommended the change, and it would require a short study of trends and offer projections for the Board's consideration. Mr. Morris asked if the staff would also look at screening, etc. Mr. Warren said that berm and vegetation as well as signage will be reviewed and recommendations made.

A motion was made by Vice-Chair McNeill and seconded by Mr. Mullinax to add the study to this year's work program. The motion passed unanimously.

B. LETTER FROM JOHN TYSON—CHAIR GILLIS

Chair Gillis read a letter from previous Board Chair, John Tyson, thanking the Board for recognizing his service to the Board. Judge Tyson said that it had been an honor serving, and he appreciated the friendship of the members and cooperative spirit.

X. ADJOURNMENT

There being no further business, the meeting adjourned at 8:35 p.m.

