

Clifton McNeill, Jr.
Chair
Cumberland County

Charles C. Morris, Vice-Chair
Town of Linden
David Averette,
John M. Gillis, Jr.
Dr. Marion Gillis-Olion
Cumberland County



COUNTY of CUMBERLAND

Joint Planning Board

Nancy Roy, AICP
Director
Planning & Inspections

Joe W. Mullinax,
Town of Spring Lake
Donovan McLaurin,
Wade, Falcon & Godwin
Frank Underwood,
Town of Stedman

MINUTES
December 16, 2003

Members Present

Mr. Clifton McNeill, Chair
Mr. Charles Morris, Vice-Chair
Mr. David Averette
Dr. Marion Gillis-Olion
Mr. Donovan McLaurin
Mr. Joe W. Mullinax
Mr. Frank Underwood

Members Absent

Mr. John M. Gillis

Others Present

Ms. Nancy Roy, Director
Mr. Tom Lloyd
Ms. Donna McFayden
Ms. Barbara Swilley

Mr. Grainger Barrett
County Attorney

I. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was delivered by Mr. Averette, and Chair McNeill led those present in the Pledge of Allegiance.

II. APPROVAL OF AGENDA/ADDITIONAL ITEMS

Mr. Averette asked that the Board reinstate action on Case P03-82. Mr. Barrett explained the procedure for reinstating a case. Mr. Averette asked that the matter be added to the Discussion items.

A motion was made by Mr. Mullinax and seconded by Mr. McLaurin to approve the Agenda as amended. 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 DECEMBER 2, 2003

A motion was made by Dr. Olion and seconded by Mr. Underwood to approve the Minutes of December 2, 2003 as written. The motion passed unanimously.

- B. P03-93: REZONING OF A 5.02-ACRE PORTION OF AN-18.06 ACRE TRACT FROM C(P) TO RR OR A MORE RESTRICTIVE ZONING DISTRICT AT 5418 CLINTON ROAD, OWNED BY MICHAEL L. NORRIS.

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

1. The 2010 Land Use Plan calls for suburban density residential use at this location.

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

A motion was made by Mr. Morris and seconded by Mr. McLaurin to follow the staff recommendation and approve the RR Rural Residential District. The motion passed unanimously.

- C. P03-94: REZONING OF 29.65 ACRES FROM HS(P)/CUO TO A1 OR A MORE RESTRICTIVE ZONING DISTRICT AT 6250 WADE-STEDMAN ROAD, OWNED BY RALPH P. AND MARTHA A. BOGLE.

The Planning staff recommended approval of the A1 Agricultural District based on the following:

1. The rezoning allows the current use to be in the district where it is allowed; and
2. The uses allowed in the A1 Agricultural District are consistent with the current uses in the area.

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

A motion was made by Mr. Morris and seconded by Mr. McLaurin to follow the staff recommendation and approve the A1 Agricultural District. The motion passed unanimously.

- D. P03-96: REVISION OF CONDITIONAL USE OVERLAY PERMIT TO ALLOW A PRODUCE STAND AND CAFÉ IN AN HS(P)/CUO AND RR/CUO DISTRICT ON 1.19 ACRES, AT 3353 DUNN ROAD, OWNED BY SUNDUST, LLC.

The Planning staff recommended approval of the Conditional Use Overlay Permit Revision.

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

A motion was made by Mr. McLaurin and seconded by Dr. Olion to approve the Conditional Use Overlay Permit Revision 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 motion passed unanimously.

VII. PUBLIC HEARING ITEMS

- A. P03-84: A CONDITIONAL USE OVERLAY DISTRICT AND PERMIT TO ALLOW A TRUCKING BUSINESS AND STORAGE OF EQUIPMENT ON 5.62 ACRES, IN AN A1 DISTRICT, AT 2690 INDIANA COURT, OWNED BY JAMES W. BOURGOYNE.

Mr. Lloyd explained that this case was partially heard at a previous meeting and asked if the Board wished to continue from that point or rehear the entire testimony. Chair McNeill said that they would start at the beginning because Mr. Underwood was not present at the earlier meeting. Mr. Lloyd reviewed the application with the members.

Maps and slides were displayed indicating the zoning and land use in the area. Mr. Lloyd reported 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 recommended denial of the Conditional Use Overlay Permit based on the findings that the proposal:

1. Will materially endanger the public health and safety;
2. Will not be in harmony with the area in which it is to be located; and
3. Will not be in conformity with the 2010 Land Use and Thoroughfare Plans.

Note: The Department of Transportation has stated, "...the roads herein listed are inadequate to carry and would be injuriously affected by trucks or buses using the said roads and carrying the statutory road limits, unless restricted. The said highways are hereby designated as light traffic roads."

Chair McNeill opened the Public Hearing.

Mr. Lee Zuravel appeared before the Board representing Mr. Bourgoyne. He said that Mr. Bourgoyne wishes to continue his trucking business with storage and repair. He said that he owns three tractors and six trailers, two of which are refrigerator trailers. He said that there is no loading or unloading on the premises, and on the weekends three of the tractors and three trailers are parked on the premises, and the refrigerator unit is running. Generally, there are no trucks on the site. He said that the truck is parked behind the house, and Mr. Bourgoyne would buffer the area if the Board instructed him to do so. He said that the business operated prior to zoning. He said that Mr. Bourgoyne operates a small business that adds to the tax base, and he employs four County residents. He said in response to the above statements by staff: The rezoning will not materially danger the health and safety because it is a clean operation, and the well and land were tested and were clean. In addition, he had a letter from DOT with requirements for Mr. Bourgoyne to address the concerns of the above note. Regarding the use being in harmony with the area, Mr. Zuravel said that farmland and some commercial uses are in the area, and trucking is an integral part of farming. On the third point of being in conformity with the Plans, Mr. Zuravel said again that trucking is an integral part of farming.

Mr. McLaurin asked about there being six trucks on the site. Mr. Bourgoyne said that he owns six trailers and rotates them on three tractors. He said that they are gone during the week, and three tractors and three trailers are on the site on weekends.

Mr. Morris asked about the roads, and Mr. Zuravel told him that there is no weight limit on Matt Hairr Road, and his client is willing to pave the other roads where DOT requested.

Ms. Debbie Candelario appeared before the Board and said that her property joins the subject property, and she was speaking for the majority of the neighbors when she stated that she rarely hears the trucks and doesn't hear them at all at night. Ms. Candelario said that she has lived in the area for seven years, and Mr. Bourgoyne has helped every person in the neighborhood at one time or another, including those in opposition. She said that the neighborhood is close knit, and they watch out for each other. She added that Mr. Bourgoyne moved the area where he parks his trucks to cut down on the noise at night.

Mr. Bourgoyne appeared before the board and said until lately, his trucks were parked on Ms. LeBlanc's property, and she didn't object.

Ms. Jana Berg appeared before the Board in opposition representing Ms. Carolyn LeBlanc. She said that Ms. LeBlanc lives between two trucking operations—one acre to the north and five to the south. She said that the business as presently operating has not be in existence for 17 years. She said that it has taken years for it to build up to this size. She said that other truckers bring trucks in for repair. Ms. Berg gave pictures to the Board of what the property looks like and an affidavit from a real estate broker indicating her inability to get fair market value for the property because of the trucking operations. She said that the trucking operations are not suitable in the zoning district or the neighborhood. She said that there have been as many as 12 trucks on the site at one time, and it is a small lot that has been clear-cut, creating a very noisy situation. She added that there are 40 bus stops along the road, and there is a great potential for pollution with the discharge of fuels and gases. She said that the operation has lowered the property values, and the noise, smoke, dust and vibrations are detrimental to the children at the bus stops as well as the rest of the neighborhood. Ms. Berg said that there is increased traffic, and the use is not compatible with the neighborhood, the site contains hazardous materials, and barriers (trees) will not help with the noise.

Mr. McLaurin asked if Mr. Bourgoyne repairs trucks other than his own. He was told that he does, and Ms. Berg added that there is pollution resulting from this. Mr. Barrett said that there is no restriction in the application for the number of trucks he repairs and for whom.

Ms. Carolyn LeBlanc appeared before the Board in opposition and said that she has lived on the property for 16 years, and the land was given to her and her husband in 1994. She said that Mr. Bourgoyne's wrecker was parked on her property, and no other trucks. Ms. LeBlanc said that her home gets the noise. She said that she and her husband have asked them to lower the noise. She said that they pressure wash and paint trucks on the premises. She said that she had petitions signed with complaints about the increased traffic, speed of the trucks and safety of the children at the bus stops. She said the business started small and has grown. She said that she has had to leave her home at night to go elsewhere in order to sleep.

Ms. Cheryl Bass appeared before the Board and said that she lives near the subject property and has been a friend of Ms. LeBlanc's for nearly 30 years. She said that Mr. Bourgoyne has lived in the community for 17 years, and the garage business has not been operating for very long. She said that trucking businesses are fine, but not in the area.

Mr. Morris asked how long the business has been operating, and Ms. Bass said about two years because Mr. Bourgoyne drove a truck for several years prior to opening the business. She said that he was gone for weeks at a time, and the current business bothers many of the neighbors.

Mr. Zuravel appeared before the Board in rebuttal and said that Mr. Bourgoyne has operated the larger business for more than two years, and Ms. Bass lives over two miles from the site. He added that DENR came because Ms. LeBlanc complained, and they found it to be a clean operation. He said that Mr. Bourgoyne does repair other trucks.

Mr. Barrett asked if Mr. Bourgoyne would accept a limitation of no outside repair, and Mr. Bourgoyne said that he would.

The public hearing was closed.

Mr. McLaurin said that earlier it was stated that Mr. Bourgoyne could operate a garage, and now it sounds like he can't. Mr. Barrett said that is true because Mr. Bourgoyne agreed not to do outside repair work.

Chair McNeill asked for neighbors in favor of the request to raise their hands. About a dozen people raised their hands. He then asked for those opposed to raise their hands, and about six people raised their hands.

Mr. Barrett reminded the Board that the motion required two steps: a vote on the district and a vote on the permit—basing both on whether they meet the established criteria. He added that the restrictions in the application are binding and don't need to be included in the motion.

Mr. McLaurin asked the Board to consider the following conditions:

1. No outside repair work to be performed. Bourgoyne vehicles only.
2. Only three tractors and three trailers allowed to be parked on the site at any one time.
3. A buffer along Indiana Court that is to begin 80' from the centerline of Matt Hair Road and extend up Indiana Court to a point approximately 20' past the truck shop. This is approximately 360' of buffer.
4. The buffer is to include Leland Cypress planted 6' from the side of Indiana Court right of way to the center or trunk of the tree. The trees are to be planted 10' apart using the center or trunk of the tree as the point of measure for the distance of approximately 360', which would take 37 trees a minimum of 4' high. The trees are to be well maintained and replaced if any die for any reason.
5. The buffer is to include a Shadow Box fence with a dog eared top. The fence is to be constructed from treated yellow pine, composite wood or plastic and is to be a minimum height of 7' and a maximum distance from the ground of 1'. The fence boards should be 5.5" wide and have a maximum spacing of 2.5". The fence is to be well maintained. Any leaning of the fence or broken board are to be repaired.
6. No large vehicles are to be driven on Indiana Court. Only private vehicles with a licensed weight of less than 26,000 lbs.
7. The shop is to be modified so that operations take place to the south side of the buffer.
8. Pressure washing and drained fluids are to be handled in a manner that complies with DENR Water Quality regulations. All gases are to be handled in a manner that complies with DENR Air Quality regulations.
9. All lighting is to be directed away from Indiana Court.
10. All instructions from DOT regarding paving of roads are to be followed.

There was discussion with Mr. Bourgoyne whether he would agree to the conditions. He was concerned about the fencing along Indiana Court, but eventually agreed to all of the conditions.

A motion was made by Mr. McLaurin and seconded by Mr. Averette to approve 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 motion passed four to three with Chair McNeill, and Messrs. Averette, McLaurin and Underwood voting in favor and Messrs. Morris and Mullinax and Dr. Olion voting in opposition.

A motion was made by Mr. McLaurin and seconded by to approve 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**
3. **Will be in conformity with the 2010 Land Use and Thoroughfare Plans.**

The motion continued that the Board approve the request based on its being developed according to the application and subject to conditions listed above and made part of the record.

Dr. Olion asked who would ensure compliance with the conditions and according to what time frame. Mr. Barrett said that the conditions should be in place prior to issuance of a permit, or the Board could allow 60 or 90 days.

Mr. Morris said that it appeared that the Board was trying to create an expense to satisfy a neighbor. He said that the real question is whether this is an appropriate use in an A1 District. He said he hasn't seen an industrial use like this allowed in A1 since he has served on the Board.

Mr. McLaurin said that the buffer is required to enhance the quality of the life for the neighborhood and allow the small trucking business to continue. He said he wouldn't call three trucks an industry, and he was trying to help Mr. Bourgoyne make a living and protect the value and integrity of Ms. LeBlanc's property.

Mr. Lloyd pointed out some of the uses allowed in the A1 District.

Chair McNeill said that during this day and time, many farming operations use tractor/trailers. He said that the efforts are to buffer the operation from the neighbors, and if the request is denied, it puts Mr. Bourgoyne out of business.

Upon a vote on the motion, it passed four to three with Chair McNeill, and Messrs. Averette, McLaurin and Underwood voting in favor and Messrs. Morris and Mullinax and Dr. Olion voting in opposition.

- B. P03-85: A CONDITIONAL USE OVERLAY DISTRICT AND PERMIT TO ALLOW A TRUCKING BUSINESS AND STORAGE OF EQUIPMENT ON 1.14 ACRES, IN AN A1 DISTRICT, AT 5694 MATT HAIR ROAD, OWNED BY JOHN R. LEBLANC.

Maps and slides were displayed indicating the zoning and land use in the area. Mr. Lloyd reported 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 recommended denial of the Conditional Use Overlay Permit based on the findings that the proposal:

1. Will materially endanger the public health and safety;
2. Will not be in harmony with the area in which it is to be located; and
3. Will not be in conformity with the 2010 Land Use and Thoroughfare Plans.

Note: The Department of Transportation has stated, "...the roads herein listed are inadequate to carry and would be injuriously affected by trucks or buses using the said roads and carrying the statutory road limits, unless restricted. The said highways are hereby designated as light traffic roads."

Chair McNeill opened the Public Hearing.

Mr. Lee Zuravel appeared before the Board representing Mr. LeBlanc. He said that he wants the Conditional Use Overlay District and Permit in order to continue his trucking business and park his tractor/trailers on the site. He said that Mr. LeBlanc has seven employees (including himself and his wife and daughter), and the employees don't remain on the premises. He said that the business operates 24 hours a day, seven days a week with five tractors and five trailers and one refrigerated tractor/trailer. He said that there is usually one truck on the premises during the week, and the refrigerator unit is on the premises on the weekends. He said that Mr. LeBlanc is willing to put up buffering. He said that the business has been in operation for 14 years, and is not a danger to the health and safety of the neighbors (DENR didn't find any problems with the water when they checked it). He said Mr. LeBlanc does not repair vehicles, and the area is agricultural with some commercial businesses, so this use fits in with the area. He added that trucking is an integral part of a farming operation, and this business is appropriate in the area. He said that the business benefits the County as it is a small business providing employment to residents of the County and increasing the tax base.

Mr. McLaurin questioned the number of trucks. He was told that there are five trucks, and they don't normally park on the site. He said that one tractor stays on the property and one loaded trailer and one empty trailer.

Ms. Lillie Council appeared before the Board and said that she lives next to Mr. LeBlanc, and the trucks don't bother her—day or night.

Ms. Donald Lewis appeared before the Board and said that he lives on Matt Hairr Road, and the trucks don't bother him or his mother and sisters, who also live in the area. He said that he was raised in Cedar Creek, and the business should be allowed to continue.

Ms. Jana Berg appeared before the Board representing the opposition—Ms. Carolyn LeBlanc, and said that the business is not appropriate in an agricultural area. She said that it is depressing the property values—one of the findings that the Board must make. She asked the Board to deny the request, and if they approved it, she asked that they attach all of the conditions in Case P03-84 as well as the following: 1) Restrict the hours to Monday through Friday until 8:00 p.m.; 2) Refrigerator trucks not be running while on the premises; 3) The business not be allowed to operate until all conditions are met. She said that her client does not want the business to be eliminated—just that it be operated at a different location. She said that freon not be put in the trucks on the premises.

Ms. Carolyn LeBlanc appeared before the Board in opposition and said that she has lived at this location since 1987, before Mr. LeBlanc built his home in 1989 or 1990. She said that the trucks run at his home, and she doesn't know how he could buffer the area because of the power lines. She said that all of his trailers are refrigerated—not just one. She said that there was an oil spill, and oil is changed on the site. He said that he is renting a place on Dunn Road to park his trailers, and she suggested he move the operation to Dunn Road. She said that Mr. LeBlanc backs his trailers near her horse pasture. She said that Mr. LeBlanc is a relative, and the only reason her house is on the market is because of the noise, which can sometimes be heard over the vacuum cleaner.

Ms. Cheryl Bass appeared before the Board in opposition and said that she hoped the issue wouldn't get this far when Mr. LeBlanc learned of the neighborhood opposition. She said that the trucks are loud even as far away as her home, and her brother and mother hear the noise at their homes also.

In rebuttal, Mr. Zuravel said that the operation has been in existence since before initial zoning of the area, and the noise doesn't bother Ms. Council, who lives next to the property. He asked that the Board approve the request and place conditions on it.

The public hearing was closed.

Mr. McLaurin asked if the pump houses shown in the site plan were operational. Mr. LeBlanc said that one is.

Chair McNeill noted that the trucks are indicated on the south side of the property next to Ms. LeBlanc's property on the site plan. Mr. LeBlanc said that he would move his fence and put the trucks next to his house to satisfy the problem.

Mr. Morris questioned the weight of the trucks and curb cuts. He asked if the Board's policy is to allow direct access off of a main road with no driveway. Mr. Lloyd said in most situations, the staff would designate forward ingress and egress at the time of site plan review.

Chair McNeill said that the petitioner said no more than two trucks would be parked on the premises at one time, yet there were four or five parking spaces on the site plan. Mr. LeBlanc said in four months he has only had one truck park on the premises besides the one that stays there.

Mr. Averette asked about the entrance off of Matt Hair Road. Mr. LeBlanc said he was using the driveway. Mr. Barrett said that the site plan might be inaccurate if they are using a driveway. Mr. Lloyd said the applicant prepared the site plan. He said that access should be addressed. Mr. Barrett advised the Board not to redesign the site plan at a meeting, but to give it to staff to do.

Chair McNeill said that there was concerned about the proposed parking on the south side of the lot.

A motion was made by Mr. McLaurin and seconded by Mr. Averette to defer action on Case P03-85 until January 20, 2004 in order for the applicant to submit an accurate site plan and to address the excess number of parking spaces, parking on the south side and have the applicant submit proposed buffer areas.

Mr. Morris said that any power line easements would eliminate buffering on the south side and rear of the lot. Mr. Averette said they could buffer outside of the easements.

Upon a vote on the motion, it passed four to three with Chair McNeill and Messrs. Averette, McLaurin and Underwood voting in favor and Messrs. Morris and Mullinax and Dr. Olion voting in opposition.

C. P03-95: CONDITIONAL USE OVERLAY DISTRICT AND PERMIT TO ALLOW A BEAUTY SHOP IN AN R5 DISTRICT, CONTAINING 1.62 ACRES, AT 1439 SEVENTY-FIRST SCHOOL ROAD, OWNED BY LYNN D. SMITH AND WIFE, YANG-CHA SMITH.

Maps and slides were displayed indicating the zoning and land use in the area. Mr. Lloyd reported 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 recommended denial of the Conditional Use Overlay Permit based on the findings that the proposal:

1. Will not be in harmony with the area in which it is to be located; and
2. Will not be in conformity with the 2010 Land Use and Thoroughfare Plans.

In addition, approval of the Conditional Use Overlay Permit would introduce a commercial use into a residential neighborhood.

The petitioners were not present. They were called and said they didn't realize that the meeting was this date, and they would not be attending.

Chair McNeill opened the Public Hearing.

Mr. Edward Adams appeared before the Board in opposition because of additional traffic that would be generated. He said that kids walk along the road, and school buses use the route. He said that the area is residential.

Ms. Selena Kinsey appeared before the Board in opposition and said that she recently purchased a home near the property, and if the beauty salon is allowed, and the present owner sells the land, then a different commercial use could be there. Chair McNeill explained that the application is specifically for a beauty salon, and no other use would be allowed under the Conditional Use Overlay District and Permit.

Mr. Roy Belin appeared before the Board in opposition and said that he moved to the area in September of 1996 and has retired there. He said that he checked out many areas and chose this subdivision because schools and other residential areas surrounded it. He said allowing commercial in the area changes the climate of the neighborhood.

Ms. Ora Aney appeared before the Board in opposition and said that her backyard touches the subject property, and she doesn't want a business there—she just wants peace.

A motion was made by Mr. Morris and seconded by Mr. Mullinax to deny the Conditional Use Overlay District based on the findings that the request is not reasonable, is arbitrary and unduly discriminatory and not in the public interest.

Since the Board denied the District, it was not necessary to vote on the Permit.

VIII. DISCUSSION

A. RECONSIDERATION OF P03-82—DAVID AVERETTE

Mr. Averette explained that there was a misunderstanding when the applicants applied for rezoning in November, and they didn't realize that they had to wait one year to reapply. He said that he would like the Board to reinstate P03-82.

A motion was made by Mr. Averette and seconded by Dr. Olion to reinstate P03-82 and go through the formal public hearing process with fees as usual.

Mr. Morris asked which case this was, and Mr. Averette explained that it was a case on Cliffdale Road that went before the Commissioners on November 17 for rezoning from R10 to R6. He said that the instruction from staff wasn't clear, and the property is to be annexed next year into the City, and the applicant would like the matter concluded before annexation. Mr. Lloyd explained that the applicants thought that a Conditional Use Overlay District wasn't treated the same as rezoning, and they weren't clear that they couldn't reapply within one year.

Mr. Mullinax asked if the Board could do this. Mr. Barrett said that the Planning Board and the County Commissioners both have the authority to lift the one-year delay.

Mr. Morris said he didn't want to set a precedent, and if this was due to a misconception, it needs to be clearly noted. Chair McNeill said that the Board would be rectifying a communication problem.

Upon a vote on the motion, it passed unanimously.

B. REPORT ON COUNTY COMMISSIONERS' MEETING—CHAIR McNEILL

Chair McNeill said that Board's recommendations were followed on both cases.

Chair McNeill said that there was discussion regarding joint planning with the City, and the Commissioners appear to want the City and County to work together on planning matters.

IX. FOR YOUR INFORMATION

A. DIRECTOR'S UPDATE

Ms. Roy reported that the 250th Anniversary celebration will be March 26—28, 2004, and the Historic Courthouse will be a focal point. The website is www.cumberland250.com.

X. ADJOURNMENT

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