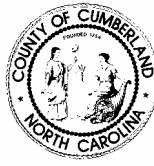


Clifton McNeill, Jr.
Chair
Cumberland County

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
November 18, 2003
7:00 p.m.

Members Present

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

Members Absent

Mr. Joe W. Mullinax

Others Present

Ms. Nancy Roy,
Planning Director
Mr. Will Denning
Mr. Tom Lloyd
Ms. Donna McFayden
Ms. Dana Stoogenke
Ms. Barbara Swilley
Mr. Grainger Barrett
County Attorney

I. INVOCATION, PLEDGE OF ALLEGIANCE AND INTRODUCTION

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

Chair McNeill recognized Will Denning to introduce the newest member of the staff, Dana Stoogenke, Planner I with the Comprehensive Planning Section. The Board welcomed Ms. Stoogenke.

II. APPROVAL OF AGENDA/ADDITIONAL ITEMS

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

III. PUBLIC HEARING DEFERRALS

Mr. Lloyd reported that the attorney representing the applicants in Cases P03-84 and P03-85 requested a deferral of the cases. He said that the attorney for the opposition agreed to the deferral.

A motion was made by Mr. Underwood and seconded by Dr. Olion to defer action on Cases P03-84 and P085 until December 16, 2003. 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 NOVEMBER 4, 2003

Mr. Morris asked that a statement regarding his owning 600 acres be changed to state that he represents a client who owns 600 acres. Dr. Olion asked that the time of the meeting be changed from 7:00 p.m. to 5:00 p.m.

A motion was made by Mr. Morris and seconded by Mr. Gillis to approve the Minutes of November 4, 2003 with the corrections. The motion passed unanimously.

ZONING CASES

A. P03-90: REZONING OF .48 ACRES FROM R10 TO C1 OR A MORE RESTRICTIVE ZONING DISTRICT AT 4444 CUMBERLAND ROAD, OWNED BY EARNEST D. POWELL AND WIFE, ALICE F. BAKER-POWELL.

The Planning staff recommended approval of the C1 Local Business District based on the following:

1. The uses allowed in the C1 District are consistent with the development and zoning of the surrounding area.

Note: The staff found that this area is in transition and no longer suitable for residential use.

A motion was made by Mr. Gillis and seconded by Mr. McLaurin to follow the staff recommendations and approve the C1 Local Business District. 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.

This case was deferred until December 16, 2003.

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.

This case was deferred until December 16, 2003.

C. P03-89: REZONING OF A 1.2-ACRE PORTION OF A 2.0-ACRE TRACT FROM R10 TO C1, OR A MORE RESTRICTIVE ZONING DISTRICT, AT 590 NORTH REILLY ROAD, OWNED BY JOE O. AND EVA G. AMBERGER.

Maps and slides were displayed indicating the zoning and land use in the area. Mr. Lloyd said that the request was before the Board one year ago. Mr. Morris asked if this was the case that ended up with a moratorium on parking being allowed on residential lots adjoining commercial uses. Mr. Lloyd said that it was.

Mr. Lloyd reported that the Planning staff recommended approval of the C1 Local Business District for a depth of 150 feet from Reilly Road to line up with the existing commercial line along Reilly Road based on the following:

1. The 2010 Reilly Road Plan calls for commercial use at this location.

Mr. Walter Smithers appeared before the Board representing the owners. He said that they want to put something nice on the lot, and the site should be rezoned because the adjoining lots along Reilly Road are commercial.

Mr. Joe Bath appeared before the Board in opposition. He said that the lot has gone before the Board three times for rezoning. He said that the residents agree that the lot should be rezoned to commercial along the same line as the rest of the commercial lots on Reilly Road. He said that the residents don't need the added burden on their septic tanks or additional traffic and parking problems. He said that the line should not go beyond the lines of the other commercial lots.

Mr. Loy Swiderski appeared before the Board in opposition. He said that he is a long-time resident of the established neighborhood and opposes the rezoning because of the commercial encroachment into the living area. Mr. Morris asked if Mr. Swiderski agreed with the one-lot depth being rezoned to C1. Mr. Swiderski said that he was, but he was concerned about additional traffic and accidents.

Mr. Tom Parent appeared before the Board and said one lot deep is a good recommendation for the commercial rezoning. He said that the lot actually goes back to Garfield Drive; so parking could go six lots deep into the neighborhood. He said that children play on the street where the rear access would probably be if rezoned as requested. He said nothing has been resolved regarding parking on residential lots adjoining commercial property in the last year since this case went before the Commissioners. He added that the entire area is to be annexed on July 1 of next year. Mr. Parent informed the Board that there is a strip mall nearby with eight units, and only two used. Down the road is a commercial area with 11 units, where six are used. He said that there is also vacant commercial property across Reilly Road. He concluded stating that people will exit from the property through the residential area.

Mr. Barrett said that the Town of Spring Lake's policy is not to support commercial use or accessory to commercial use on adjoining residential lots. Mr. Lloyd said that the Commissioners one year ago suggested the County take the same approach, and this is being addressed in the changes staff is proposing to the Zoning Ordinance to go before the Board in the next few months.

Mr. Lloyd was asked if the residential lot would be allowed to support the commercial use if the current case was approved at this time. Mr. Lloyd said that it has been allowed in the past, but he would defer the matter to the County Attorney because the Commissioners no longer want the practice to continue.

Mr. Barrett said that this issue has troubled him for some time. He said that local law was adopted to allow residential lots to support commercial uses, but the current Commissioners do not want the practice to continue. He said that there

have been no cases to challenge this since this one went before the Commissioners one year ago.

In rebuttal, Mr. Smithers said that the applicants are only asking for 175 feet of depth, and they need at least 250 feet for any type of building. He said as far as vacant business in the area, there is someone interested in developing this property. He added that the applicants are willing to rezone and agree not to use the property beyond 250 feet for parking.

Mr. Morris asked about the differences in the C1 and C(P) Districts. Mr. Lloyd said that the Ordinance provides that for commercial lots less than 150 feet in width, only one side of the property has to follow the side yard setback.

Mr. Averette asked about the zoning decision one year ago. Mr. Lloyd said that the Planning Board approved it, but the Commissioners did not vote when they learned that the adjoining residential lots could be used for parking from the commercial establishment. He said that the applicant then submitted a Conditional Use Overlay District and Permit Application, and the Commissioners denied it because of the neighborhood objection to removal of the tree cover, and the trees have since been removed.

Chair McNeill noted that the setbacks would be from the lot line, not the zoning line as explained by Mr. Lloyd.

A motion was made by Mr. Morris and seconded by Mr. Gillis to follow the staff recommendations and approve the C1 Local Business District for 150 feet from Reilly Road to line up with the existing commercial line along Reilly Road. The motion passed unanimously.

D. P03-91: REZONING OF A 1.0-ACRE PORTION OF A 3.21-ACRE TRACT FROM A1 TO M(P) OR A MORE RESTRICTIVE ZONING DISTRICT ON THE NORTHEAST SIDE OF WHITEHEAD ROAD, NORTH OF NC HIGHWAY 24, OWNED BY ZARKO JOHNSON.

Maps and slides were displayed indicating the zoning and land use in the area. Mr. Lloyd said that the rezoning is the result of a violation for open storage. Mr. Lloyd reported that the Planning staff recommended denial of the M(P) Planned Industrial District based on the following:

1. The 2010 and Eastover Land Use Plans call for low-density residential development at this location; and
2. All surrounding uses on the same side of Whitehead Road are of an agricultural or rural nature.

Mr. Zarko Johnson appeared before the board and said that commercial property is directly across the street. He said that he is an asphalt contractor and wants to store equipment and vehicles on the site.

No one appeared in opposition to the request.

Mr. Lloyd said that Mr. Johnson is aware that the open storage will have to be moved on to the lot if it is rezoned.

Mr. Gillis asked if the M(P) property was zoned during initial zoning. Mr. Lloyd said that he thought it was because the file indicates that it was M(P) 10 years ago.

Dr. Olion asked if the staff considered the uses across the street. Mr. Lloyd said that they did, but didn't feel it was a good practice to introduce industrial use to this side of the street.

Mr. Barrett said that zoning practice is to use streets as zoning dividers; however, with M(P) across the road, it would not be spot zoning and qualifies for the size needed because it joins the M(P). Mr. Lloyd added that approval would correct a zoning violation.

Chair McNeill asked if one acre is a minimum size request. Mr. Lloyd said that it is not, but the setbacks are great in the M(P), and an acre would be needed.

Mr. Gillis asked who owned the property. Mr. Johnson said that he has owned it for 12 years and stored equipment there for the past year. He added that vandalism is high in the area.

Mr. Gillis asked if a Conditional Use Overlay District and Permit would be a better way to approach the situation and in the long-term interest of the Land Use Plan.

A motion was made by Mr. Gillis and seconded by Mr. Underwood to defer action on Case P03-91 to allow the applicant to submit an application for a Conditional Use Overlay District and Permit with no additional fee and to retain the woods as buffer.

Mr. Morris reminded the Board that Mr. Barrett always mentions conforming to the use and asking what the use will be. He said that the Board has just done both. He said that this is a zoning violation on agricultural land, and the Board is talking about changing the situation to allow the violation.

Mr. Gillis asked if the zoning violation was a complaint or discovered by staff. Mr. Johnson said that Mr. Peabody said no one complained, he just found it.

Dr. Olion asked if Mr. Johnson wanted to store equipment on the site, or if he intended to open a business. Mr. Johnson said that he would not be operating a business on the site.

Mr. Gillis said that a Conditional Use Overlay District and Permit would limit the use, hours, vehicles allowed, maintenance of vehicles, etc.

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

E. P03-92: REZONING OF 3.8 ACRES FROM R6A TO C(P) OR A MORE RESTRICTIVE ZONING DISTRICT AT 1419 BRAGG BOULEVARD, OWNED BY H&R KING. (SPRING LAKE)

Maps were displayed indicating the zoning and land use in the area. Mr. Lloyd reported that the Planning staff recommended approval of the C(P) Planned Commercial District for a portion of the property as shown on the map based on the following:

1. The Spring Lake Land Use Plan calls for planned commercial use and low-density residential development at this location.

Mr. Ken Lancaster appeared before the Board representing the owners. He said that he has lived in Cumberland County for 60 years and been a real estate broker for more than half of that time. He said in the past, the property contained a 30-unit mobile home park for 30 or 40 years. He said that he has tried unsuccessfully for three years to sell the property for residential use. He pointed out the C3 on the west that contains a junkyard. He said that there is also C3 across the street. He said that the Spring Lake Town Manager told him in September that he would like to see the site become a sales tax revenue-producing piece of property. He said that the staff proposes splitting the zoning on the lot, and the staff from Spring Lake has proposed that 200 feet off of the back of the property not be rezoned. He said that removing 200 feet would leave 196 feet of depth and destroy the value of the property for commercial use. He said that the site is excellent for commercial use. He said that there are homes behind the property, and the developer has repeatedly told him he would like to purchase the property, but he's never made an offer. He said recognizing the surrounding uses, this proposal is the highest and best use for the property.

Mr. Averette asked which proposal Mr. Lancaster preferred. Mr. Lancaster said he would prefer to zone the whole tract commercial because he couldn't see what the rear piece could be used for. He said that the rezoning would be an improvement over what is currently on the lot.

Ms. Pat Baros appeared before the Board in opposition and said that Mack Street is a nice neighborhood. She said commercial zoning will change the character of the neighborhood and added that she would prefer the line be an even 200 feet back along the entire rear portion of the property. She said if the request is approved, this could be the beginning of commercial moving into the area.

Mr. William Unsworth appeared before the Board in opposition and said he lives on Manchester Road and would like to see the property owners in the area protected. He said if the line goes 200 feet back on both sides, four homes could be built on the residential part, which would protect the property values and homeowners in the area. Mr. Unsworth said that the subdivision is well kept, and if the request is approved, it would interject commercial into a residential area.

In rebuttal, Mr. Lancaster said that he respected the opinions of the residents, but he didn't see how the dividing line recommended by the Planning staff would allow any commercial to front Mack Street. He said good commercial lots are difficult to find, and the 200-foot division of the property will make it too small to market. He added that the staff's line would protect the neighborhood.

Chair McNeill asked what could be done on the rear lot if it was separated. Mr. Lancaster said that commercial real estate mandates at least 200 feet of depth, and he wasn't sure what could be done in the rear.

Mr. Averette said that only two homes could be built in the rear as the staff proposed the division, but the setbacks would hurt the development. He asked about the C1 setbacks, and Mr. Lloyd said that 80 feet would have to be allowed for the setback. Mr. Averette said that 200 feet taken away from the property would kill the commercial use.

Mr. Lancaster said that he agreed with protecting the neighborhood, and if the neighbors object to having commercial across the street, it isn't probable that homes abutting the commercial lot would be saleable.

The public hearing was closed.

Mr. Gillis asked if the letter received from the Town of Spring Lake was in lieu of testimony. Mr. Spinks, Spring Lake Planner, said that the Town would like to have 200 feet along Mack Street remain residentially zoned. He said that the Mayor and Town Manager asked that the integrity of the neighborhood be protected.

A motion was made by Mr. Gillis and seconded by Mr. Underwood to reopen the public hearing to accept the letter from the Town of Spring Lake (see attached). The motion passed unanimously.

Mr. Morris asked if the letter was the consensus of the staff and Town leaders. Mr. Spinks said that it was. Mr. Barrett asked if it reflected a stand from the Town Board. Mr. Spinks said that it did not. Mr. Barrett asked if buffering was required. Mr. Spinks said that the Town would require screening and regular setbacks.

Mr. Lancaster asked if the Town is willing to approve the request with the rear 200 feet to remain residential. Chair McNeill said that Mr. Spinks indicated that the Mayor and Town Manager support that stand. Mr. Lloyd pointed out that the setbacks would be taken from the property line, not the zoning line, so the building could be right on the zoning line next to the residential use.

Dr. Olion asked if the current owners owned the trailer park. Mr. Lancaster said that they did not, but purchased the property from the owner of the trailer park.

Mr. Gillis said as a practical matter, if the zoning line is moved to 200 feet back from Mack Street, anyone purchasing any subdivided lots would be aware of the zoning and conditions at the time of purchase. Mr. Barrett said unless the lot is subdivided, it is still consider one lot, and if it is commercial in the front, a residential use is not usually allowed in another portion. Mr. Spinks said that residential use would be allowed under a group development.

Mr. Morris said this is one parcel with two zones. He asked if storage and parking would be allowed on the rear portion of the lot. Mr. Spinks said that the uses are not allowed in R6A. Mr. Barrett agreed.

Mr. Morris asked if a buffer would be required along Mack Street if the property was zoned C(P). Mr. Spinks said if the entire lot was C(P), the Town could require a 200-foot buffer during the site plan review process. Mr. Lloyd added that the Town does their process differently than the County. The Town reviews the request, and then it is given to the Planning staff for their recommendation.

Chair McNeill said that the 200 feet proposed by the Town would mean that the real would connect to two different lot lines.

Mr. Averette said the 200 feet might go back further than the two adjoining lots. Mr. Averette said that the Board needs to recommend the best possible solution to the Town. He said that the staff's recommendation is best because it leaves enough property for a decent commercial development and room for a house in the rear and a natural buffer.

A motion was made by Mr. Averette and seconded by Mr. McLaurin to follow the staff recommendations and approve the rezoning as shown on the map presented by staff.

Mr. Gillis said that Spring Lake can rezone according to the Board's recommendation or any other that they might choose. He said given the strength of the argument from Mr. Spinks, it looks like the Town would oppose the recommendation made by the motion. He said that Mr. Lancaster said that the owners could live with the Town's recommendation.

Mr. Averette said that Mr. Lancaster also said that cutting 200 feet off of the lot wouldn't make the property viable for commercial use. He said at least as the staff recommended, it protects the neighborhood and allows commercial use to exist.

Mr. McLaurin asked if Spring Lake's Ordinance calls for commercial use one lot deep. Mr. Lloyd said that the Spring Lake Land Use Plan does. Mr. McLaurin said that he thought that Mr. Gillis is correct in his assumptions about the Spring Lake Board's actions.

Dr. Olion said that she was concerned that if the whole lot wasn't zoned commercial, the rear portion would turn into a junkyard. She said that C(P) would allow staff to require buffering.

Mr. Morris said it was a trailer park with septic tanks, and if it's not feasible for commercial use, action taken might prolong the vacant property, and that's not beneficial for the neighborhood or the Town.

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

A motion was made by Mr. Morris and seconded by Dr. Olion to rezone the entire tract to C(P) with the understanding that proper buffering would be required by staff as indicated in the Ordinance.

Chair McNeill said if the Board approves the rezoning request, site plan approval is required, and adequate buffering would be required. He said that this action probably offers more than what the staff recommended.

Upon a vote on the motion, it passed unanimously.

VIII. DISCUSSION

A. UPDATE FROM COMPREHENSIVE PLANNING COMMITTEE—DAVE AVERETTE

Mr. Averette reported that the Comprehensive Planning Committee met with representatives of the farm community prior to the Planning Board meeting. He said that they put into motion the formation of a Farmland Advisory Committee, and the staff is to prepare a purpose and bylaws. He said that the Committee will meet again at 6:00 p.m. on January 6, 2004.

B. REPORT ON COMMISSIONERS' MEETING—JOHN GILLIS

Mr. Gillis reported that the Commissioners approved everything as the Board recommended except the case on Palestine Road. He said that the applicant asked for R20 because of the other R20 in the area, and the Board recommended R40 because the actual uses in the area aren't indicative of the R20 density. He said that the Commissioners approved R20. Mr. Morris said that as long as the zoning doesn't reflect the uses and densities in the area (in this case single-family homes on four- and five-acre lots), the Commissioners will continue to vote like this.

IX. FOR YOUR INFORMATION

A. DIRECTOR'S UPDATE

Ms. Roy reported that Zoning Ordinance revisions will be ready for review by the Land Use Codes Committee beginning in January.

B. NOTE FROM CHAIR

Chair McNeill said that he would not be at the first meeting in December, and Vice-Chair Morris has said he'll be available to chair the meeting.

X. ADJOURNMENT

There being no further business, the meeting adjourned at 9:10 p.m.