

Clifton McNeill, Jr.
Chair
Cumberland County



Nancy Roy, AICP
Director
Thomas J. Lloyd,
Deputy Director

Charles C. Morris, Vice-Chair
Town of Linden
David Averette,
Dr. Marion Gillis-Olion
Mr. Roy Turner
Cumberland County

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

COUNTY of CUMBERLAND

Joint Planning Board

MINUTES
July 20, 2004

Members Present

Mr. Clifton McNeill, Chair
Mr. Charles Morris, Vice-Chair
Mr. David Averette
Mr. Donovan McLaurin
Mr. Joe W. Mullinax
Mr. Roy Turner

Members Absent

Dr. Marion Gillis-Olion
Vacant Stedman Rep

Others Present

Ms. Nancy Roy, Director
Mr. Tom Lloyd, Dep. Director
Ms. Donna McFayden
Ms. Barbara Swilley
Mr. Grainger Barrett,
County Attorney

I. INVOCATION AND PLEDGE OF ALLEGIANCE

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

II. APPROVAL OF/ADJUSTMENTS TO AGENDA

Mr. Lloyd asked that Cases P04-34, P04-47, P04-49 and P04-52 be pulled from the Consent items and placed under Public Hearing items. A motion was made by Vice-Chair Morris and seconded by Mr. McLaurin to approve the Agenda with the above changes. 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 JUNE 29, 2004

A motion was made by Mr. McLaurin and seconded by Mr. Mullinax to approve the Minutes of June 29, 2004 as printed. The motion passed unanimously.

B. P04-45: REZONING OF .48 ACRES FROM R10 TO C3 OR A MORE RESTRICTIVE ZONING DISTRICT AT 4452 CUMBERLAND ROAD, OWNED BY SAMUEL HENDERSON.

The Planning staff recommended approval of the C3 Heavy Commercial District based on the following:

1. The uses allowed in the C3 District are consistent with the existing uses in the area; and
2. This portion of Cumberland Road is in transition from residential to commercial land usage.

The Planning staff found that the subject property is also suitable for the C1 District.

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

A motion was made by Mr. McLaurin and seconded by Mr. Mullinax to follow the staff recommendations and approve the C3 Heavy Commercial District. The motion passed unanimously.

- C. P04-48: REZONING OF 3.25 ACRES FROM A1 AND A1/CUO TO R40A OR A MORE RESTRICTIVE ZONING DISTRICT AT 6849 ROSLIN FARM ROAD, OWNED BY THOMAS R. MCMILLAN.

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

1. The uses allowed in the R40A District are suitable and consistent with the land use and development in the area; and
2. This area is in a high growth pattern.

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

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

- D. P04-50: REZONING OF THREE TRACTS TALLING 10.298 ACRES FROM RR, RR/CUO, R10/CUO AND PND/CUO TO R6 OR A MORE RESTRICTIVE ZONING DISTRICT SOUTH OF MORGANTON ROAD, WEST OF MCFAYDEN DRIVE, SUBMITTED BY JAMES M. KIZER.

The Planning staff recommended approval of the R6 Residential District based on the following:

1. The site meets the locational criteria for medium-density development; and
2. The uses allowed in the R6 District are consistent with the land use and development in the surrounding area.

The Planning staff found that the subject property is also suitable for the R10 District.

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

A motion was made by Mr. McLaurin and seconded by Mr. Mullinax to follow the staff recommendations and approve the R6 Residential District. The motion passed unanimously.

- E. P04-51: REZONING OF TWO TRACTS TOTALLING 44.35 ACRES FROM RR TO R10 OR A MORE RESTRICTIVE ZONING DISTRICT SOUTH OF CLINTON ROAD, NORTH OF LOCKS CREEK CHURCH ROAD, OWNED BY NEILL P. AND DEANNA R. GUY III.

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

1. The uses allowed in the R10 Residential District are consistent with the land use and development in the surrounding area; and
2. The site contains public water and sewer.

The Planning staff found that the subject property is also suitable for the R15 District.

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

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

VII. PUBLIC HEARING ITEMS

- A. P04-34: REZONING OF 10.0 ACRES FROM A1 TO R40 OR A MORE RESTRICTIVE ZONING DISTRICT EAST OF STEWART ROAD, SOUTH OF SAMBO JACKSON ROAD, OWNED BY WILLIAM C. VANN.

Mr. Lloyd explained that the Board originally heard this case on May 18, 2004. He said that the original request was for around 20 acres, and the Board asked that the staff research soil suitability and look at additional options. He said that the applicant is now requesting that 10 acres be rezoned.

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 R40 Residential District based on the fact that the uses allowed in the R40 District are consistent with those allowed in the farmland preservation areas.

The Planning staff found that the subject property is also suitable for the R40A District.

The public hearing was opened, and Mr. William C. Vann appeared before the Board and said that the residents in opposition to the rezoning are not adjoining landowners. He said that all adjoining landowners are in favor of the rezoning.

Mr. Calvin Smith appeared before the Board in opposition to the rezoning. He said that the schools are already overcrowded in the area and suggested that the Board consider the overcrowded schools throughout the County before rezoning sites. He added that there are also not enough teachers to teach the number of students.

Ms. Patricia Godwin appeared before the Board and said that for the following reasons she opposed the rezoning: 1) It will affect the agricultural character of the area; 2) The current zoning requires two acres per unit; 3) The schools are overcrowded; 4) The rezoning will bring additional traffic to the area; 5) The water level is low, and some residents already have problems with the water; and 6) The danger that the fast drivers will cause to the school children.

Mr. Doug Stephens appeared before the Board in opposition to the rezoning. He said that for two years he looked for a good rural setting to raise his family. He said that he read the 2010 Land Use Plan and zoning maps and concluded that this was a good place to purchase property. He said that he bought 60 acres of land near the subject property, and the rezoning will heavily impact it. He said he did all the research, and if the rules are going to change, there is no use having the Land Use Plan and zoning regulations. He said that there is no pressure for development in the area, and the rezoning goes against all guidelines for the area.

Mr. Vann appeared before the Board in rebuttal and said that he didn't understand why the residents were not in favor of progress.

Mr. McLaurin addressed some of the concerns of the residents. He said that using a center pivot for agriculture uses a tremendous amount of water. He said that schools have always had huts, and the only way to build classrooms is for residents to move into the area and increase the tax base. Regarding the rural environment, Mr. McLaurin read several of the uses allowed in the current zoning (sawmill, automobile repair, etc.) and said they'd be worse for the environment.

A motion was made by Mr. McLaurin and seconded by Mr. Morris to follow the staff recommendations and approve the R40 District.

Mr. McNeill said that he doesn't like situations that dictate what a person can do with his land. He said that density is a concern, but so are the allowed uses, and those allowed in the R40 District are suitable for the site.

Upon a vote on the motion, it passed unanimously.

B. P04-47: REZONING OF 29.54 ACRES FROM RR TO R10 OR A MORE RESTRICTIVE ZONING DISTRICT NORTH OF HUMMINGBIRD PLACE, WEST OF BENT GRASS DRIVE, OWNED BY GENE F. WILLIFORD, SR.

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 R10 Residential District based on the following:

1. The Eastover Land Use Plan calls for low-density residential use at this location;
2. The uses allowed in the R10 District are consistent with the land use and development in the area; and
3. Urban services are available to the site.

The Planning staff found that the subject property is also suitable for the R15 District.

The public hearing was opened. Mr. Gene Williford appeared before the Board and said that he has lived in Fayetteville most of his life. He said water and sewer are available to the site, and he wants to slowly develop the property with homes similar to those in the Baywood Subdivision. He said that he has a much larger investment in the property than anyone in Baywood, and he would not develop anything that would be detrimental to the area. He said that the current zoning allows trailers. Mr. Williford explained that he has

incurred expenses to make water and sewer available, and he wants to finish out Baywood Subdivision.

Mr. Brad Newton appeared before the Board in opposition to the rezoning and said that he lives near the subject property. He said that Mr. Williford did a good job in developing Baywood, and his concerns are about the construction traffic and inadequacy of the roads to handle 100 more homes. He said that he thought that the property was landlocked. He noted that the site is prime property running adjacent to the golf course. He said he was not opposed to development, but had questions regarding access and others issues. He said that he didn't want trailers and added that the R15 District might be better zoning for the site.

Mr. Thomas Rupert appeared in opposition to the request and said that he lives on adjoining property and had some questions about where the entrance would be.

Ms. Ruby Bullard appeared before the Board in opposition to the rezoning and said that she lives in Baywood. She said that there would be a lot more traffic because of the rezoning. She added that a person's home is his biggest investment. She said that the R10 zoning in the area is subject to restrictive covenants, and the ½-acre lots cannot be subdivided. She said that she would prefer the R15 District because if something happened to Mr. Williford, she'd prefer that a new owner would have to follow the density required in the R15 District.

Mr. Richard Hammond appeared before the Board in opposition to the rezoning and said that his lot backs up to the subject property. He asked about the size and type of homes that would be built and how many were to be built.

In rebuttal, Mr. Williford said that he understood the concerns of the speakers and pointed out that the Baywood Subdivision is zoned R10. He said that the proposed development will be much like Baywood and not likely to have the number of homes allowed. He said when the project is finished, he was sure that the residents would be happy with it.

Chair McNeill asked Mr. Williford about access, and Mr. Williford said that access would be a 60-foot entryway to the east. He said he didn't intend to tie into Hummingbird Street and would only tie in if the neighborhood wanted him to. He said that he intends to build about 40 to 60 homes, and that number should not have a big effect on the traffic.

Mr. McLaurin asked Mr. Williford if he would agree to the R15 zoning that the residents preferred since he doesn't plan to build more than 40 to 60 homes. Mr. Williford said that he would not because he wants the option to put in some smaller villas (1,500 to 1,600 square feet) to the rear of the site. Mr. McLaurin asked if he would consider zoning just the rear area R10 and the rest R15. Mr. Williford said that he would not because his plans were not finalized, and he doesn't want to be locked into R15 at this time.

Mr. Averette pointed out that the R10 zoning is much more restrictive in allowed uses than is the RR District. He added that the density would double from 51 to 103.

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

Chair McNeill said that the concerns of the residents seemed to have been addressed, and he said that Mr. Williford has done a fine job thus far in Baywood.

C. P04-49: REZONING OF 32.87 ACRES FROM M(P) TO R5A OR A MORE RESTRICTIVE ZONING DISTRICT NORTH OF MIDDLE RIVER LOOP, WEST OF RIVER ROAD, SUBMITTED BY JOHN KOENIG.

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 R5A Residential District based on the site meeting the locational criteria for medium-density development in that it contains urban services and appropriate access to handle the projected traffic increase.

The Planning staff found that the subject property is also suitable for the R15, R10 and R6 Districts.

The public hearing was opened. Mr. John McCauley appeared before the Board and said that he would speak after those in opposition spoke.

Mr. Frank Edge appeared before the Board in opposition to the request. He said that he was raised in the area and was speaking for all of his relatives who still live there. He said that the rezoning will allow too many homes, and he had concerns about the land being so low. He said that there wouldn't be opposition to the rezoning if the applicant had requested a district that would allow one-half of the number that the R5A District allows. Chair McNeill asked how many units would be allowed, and Mr. Lloyd said that the R5A would allow about 299 units on the nearly 33 acres.

Mr. McCauley appeared before the Board and said that he has lived in the area nearly his entire life. He said that he wants to maintain Eastover as a desirable place to live. He said that he will build a nice, well thought out development. He said that he lives two miles from the subject property and plans to live there the rest of his life. He said that the proposal is for a nice mixed-use development built properly and in good taste.

Chair McNeill asked about sewage, and Mr. McCauley said that he is working with Mr. Kizer, of Moorman, Kizer & Reitzel, on capacity and will work out the logistics with PWC. Mr. Averette asked if he would be annexed into the City. Mr. McCauley said that he would be required to petition the City for annexation if he intends to use PWC utilities.

Mr. McLaurin said that he understood Mr. Edge's concerns about the number of people. He said that the actual effect would be to reduce sprawl, and the development would be one of quality. He said that the current zoning allows mobile home sales, septic disposal sites, sexually oriented business, etc.

A motion was made by Mr. McLaurin and seconded by Mr. Morris to follow the staff recommendations and approve the R5A Residential District.

Chair McNeill said that the map indicates a lot of M(P) in the area, and this was a valiant effort by Mr. McCauley to preserve the character of the area.

Mr. Averette said that he supported the motion and hoped that the new residents would not complain about the sausage plant that was there before they were.

Upon a vote on the motion, it passed unanimously.

D. P04-52: REZONING OF 1.02 ACRES FROM RR TO C1 OR A MORE RESTRICTIVE ZONING DISTRICT AT 6576 HIGHWAY 301 SOUTH, SUBMITTED BY YOUNGER S. WOOD.

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 C1 Local Business District based on the subject property meeting the purpose and intent statement of the C1 District.

Note: There is a discrepancy between the deed's legal description submitted with the request and the most recent plat and deed on record. It is recommended that the applicant have the property boundary clarified for title purposes.

The public hearing was opened. Mr. Wood appeared before the Board and said that he has remodeled the structures on the property and put a lot of work into cleaning up the site. He said when he purchased the property, he thought that commercial use was allowed because it existed previously, and his banker financed the loan based on commercial use. He said he would never have purchased the property if he had known he couldn't use it for commercial use. He said that he wants to have a convenience store on the site and noted that there are many subdivisions nearby. He said that the discrepancy in the deed is due to the previous owner squaring off the lot and trading an area with the church on the adjacent property.

Mr. Averette asked Mr. Wood if he wanted to rezone all of the land, and Mr. Wood said that he did. He explained that the acreage is about the same, but the lot is squarer than indicated on the map. He said that the previous landowner widened the road frontage.

Mr. Morris asked when the last time was that the property was used as a commercial establishment. Mr. Wood said that the previous owners filed bankruptcy, and it took a long time to resolve everything, so it has not been used for about two years.

Ms. Lillian Maynor appeared before the Board in opposition to the request and asked others in the audience who opposed the rezoning to stand. About 30 people stood. She said that they are members of the church on the adjacent property and are concerned about alcoholic beverages being sold on the site. She said that they did not oppose a store, just the sale of alcohol.

Mr. Walter McPherson appeared before the Board in opposition to the request. He said that the land is not zoned for commercial use, and it was an eyesore in the past and not conducive to making money. He said that the business failed because of the location, and he's afraid that the same thing will happen again, and if it begins to fail, Mr. Wood will begin to sell more and more liquor. He said that the RR District is the best zoning for the community.

In rebuttal, Mr. Wood said that he understood the concerns of the church. He said that serving alcohol would require an on-premises license, and all neighbors would be part of the permitting process. He said that to sell liquor, he must have an off-premises license. He said that he intends to have a convenience store and mom and pop restaurant with no alcohol served. He said that he plans to have an off-premises license to sell alcohol. He said that he sold everything he owned to buy the land, and it's all he has.

Mr. Averette asked if the store would have to be closed if the land was not rezoned. Mr. Lloyd said that it would.

Chair McNeill explained that the Board's responsibility is to rezone property based on all of the allowed uses in the district—not a specific use. He asked if those in opposition would object if Mr. Wood sold and did not serve alcohol. Mr. McPherson said it would probably be worse if alcohol was sold because folks would buy it and go to the church property to drink it and leave a mess.

Mr. Averette said he was familiar with the store, and there is another a few miles away. He said that the problem he had was that the commercial zoning would be right in the middle of residential and agricultural zoning. He also said he had a problem with all of the uses allowed in the C1 District being appropriate for the area. He asked if the use is allowed in the A1 District, and Mr. Lloyd said that it is. Mr. Averette continued that he had concerns about what would happen to the property if it was not rezoned in that if unused, it would deteriorate and again be an eyesore.

Mr. McLaurin said the Board denied R40 when individuals had garages in their backyards. He said that the RR District is for the protection of other property owners in the area.

A motion was made by Mr. McLaurin and seconded by Mr. Mullinax to deny the C1 Local Business District.

Mr. Averette said he wasn't comfortable putting someone out of business before they even got started.

A substitute motion was offered by Mr. Averette to deny the C1 District and approve A1. The motion died for lack of a second.

Mr. Averette reminded the Board that the staff recommended approval. He said he was inclined to follow the staff's recommendation.

Chair McNeill said he'd like to see a way that the Board could help Mr. Wood, but the zoning and what was allowed should have been confirmed prior to purchase.

Upon a vote on the motion, it passed four to two with Messrs. Averette and Turner voting in opposition.

VII. PLATS AND PLANS

- A. 04-138: ROBERTS & COUNCIL SUBDIVISION REVIEW ON THE NORTH SIDE OF COUNTY LINE ROAD, WEST OF COUNCIL ROAD, FOR A VARIANCE FROM SECTION 3.2.D "LOT STANDARDS," CUMBERLAND COUNTY SUBDIVISION ORDINANCE.

Mr. Lloyd that this case involves an existing easement that the flag lot crosses, and the owner agreed to put in a private Class C Street. He said that staff recommended approval a Class C Street to serve five lots without crush and run gravel on the road. He said that the lots were illegally created prior to 1984.

Chair McNeill said that he had spoken with the applicant, and he further explained the circumstances of how the road would actually serve four lots, but some lots were illegally cut out in 1984. He said that approval would correct a 20-year old problem.

Mr. Barrett said this would not be a perfect solution, but it would be a fair one.

Mr. Morris pointed out that the Ordinance calls for gravel when more than four lots connect to a private street.

There was discussion regarding moving the easement and the actual frontage.

Mr. Barrett said if the easement could be adjusted, the variance wouldn't be necessary. He said that the Class C Street could serve lots 2, 3 and 4.

A motion was made by Chair McNeill and seconded by Mr. Turner to follow the staff recommendation and grant the variance. The motion failed with a three to three vote. In favor were Chair McNeill and Messrs. McLaurin and Turner. In opposition were Vice-Chair Morris and Messrs. Averette and Mullinax.

A motion was made by Vice-Chair Morris and seconded by Mr. Mullinax to not grant the variance and refer the case back to staff to resolve.

Mr. Lloyd said that the applicant could take the road to the third lot, and then if the fifth lot is developed, he'd have to put gravel in.

The motion, it passed four to two with Vice-Chair Morris and Messrs. Averette, McLaurin and Mullinax in favor and Chair McNeill and Mr. Turner in opposition.

VIII. DISCUSSION

A. REPORT FROM THE LAND USE CODES COMMITTEE—DAVID AVERETTE

Mr. Averette said that the Committee met prior to the Planning Board meeting and would continue the meeting on August 3, 2004 at 6:00 p.m.

B. CANCELLATION OF AUGUST 3, 2004 MEETING

Chair McNeill said that there is no business scheduled for the August 3, 2004 meeting, so it would be cancelled, and the Land Use Codes Committee would meet on that evening.

C. WELCOME NEW MEMBER—ROY TURNER

Chair McNeill and the members and staff welcomed the new member representing the County—Roy Turner.

IX. ADJOURNMENT

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