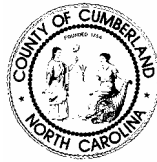


Clifton McNeill, Jr., Chair
Cumberland County

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



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

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

COUNTY of CUMBERLAND

Joint Planning Board

MINUTES

May 18, 2004

Members Present

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

Member Absent

Mr. Frank Underwood

Others Present

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

Mr. Grainger Barrett
County Attorney

I. INVOCATION AND PLEDGE OF ALLEGIANCE

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

II. APPROVAL OF/ADJUSTMENTS TO AGENDA

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

III. PUBLIC HEARING DEFERRALS

Mr. Lloyd explained that staff had not been able to reach the applicant on Case P04-36 to get additional information from him that affects the case. No one was present in favor of or in opposition to the case.

A motion was made by Mr. Averette and seconded by Mr. McLaurin to defer action on Case P04-36 to allow time for staff to speak with the petitioner. The motion passed unanimously.

IV. ABSTENTIONS BY BOARD MEMBERS

Vice-Chair Morris said that he would abstain from discussion and voting on Case P04-38 due to financial interests in the case. A motion was made by Mr. Averette and seconded by Dr. Olion to allow Vice-Chair Morris to abstain from discussion and voting on Case P04-38. The motion passed unanimously.

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 MAY 4, 2004

A motion was made by Dr. Olion and seconded by Mr. Averette to approve the Minutes of May 4, 2004 as printed. The motion passed unanimously.

REZONING CASES

- A. P04-37: REZONING OF A 12.69-ACRE PORTION OF A 24.93-ACRE TRACT FROM C(P) TO R5 OR A MORE RESTRICTIVE ZONING DISTRICT AT 3429 BLACK AND DECKER ROAD, SUBMITTED BY PASTOR ALLEN COLLINS.

The Planning staff recommended approval of the R5 Residential District based on the following:

1. The type and intensity of the existing adjacent M(P) District is compatible with residential use; and
2. Utilities will be available for development of this site.

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

A motion was made by Mr. Averette and seconded by Mr. McLaurin to follow the staff recommendations and approve the R5 Residential District. The motion passed unanimously.

- B. P04-39: REZONING OF A 1.95-ACRE PORTION OF A 39.45-ACRE TRACT FROM HS(P) TO A1 OR A MORE RESTRICTIVE ZONING DISTRICT ON THE NORTH SIDE OF WADE-STEDMAN ROAD, EAST OF I-95, OWNED BY RALPH AND MARTHA BOGLE.

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

1. The uses allowed in the A1 District are compatible with the land use in the area; and
2. The 2010 Land Use Plan recommends farmland at this location.

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

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

VII. PUBLIC HEARING ITEMS

REZONING CASES

- A. P04-33: REZONING OF 30.90 ACRES FROM A1 TO RR OR A MORE RESTRICTIVE ZONING DISTRICT AT 5869 MURPHY ROAD, SUBMITTED BY THURMAN CARROLL.

The public hearing was opened. Maps and slides were displayed indicating the zoning and land use in the area. Mr. Lloyd explained that the Planning staff recommended denial of the RR Rural Residential District based on the following:

1. The 2010 Land Use Plan specifies farmland at this location;
2. The staff recommends that utilities be available to RR tracts; and
3. The Board's policy is to deny requests for R40 in farmland areas when the tracts are larger than 10 acres.

Mr. Thurman Carroll appeared before the Board and said that his father left the property to be split between four heirs. He said that he would like to divide the 30 acres into four sections for the four children. He said that they intend to put in a Class A road and divide the remaining property between the four heirs' children.

Mr. McLaurin asked if soil samples had been taken and if the land was suitable for wells and septic tanks. Mr. Carroll said they had lots adjoining the subject property checked, and the soil was fine. He said that the rear of the tract is elevated.

Mr. Charles Carroll said that he agreed with what Mr. Thurman Carroll said.

Mr. Averette said that he thought that the area would be getting water from Vander in three or four years.

Chair McNeill asked the size of the front lots, and Mr. Carroll said that some were one and one-half acres, and some were larger.

No one appeared in opposition to the request.

The public hearing was closed.

Mr. Lloyd said that the acreage could be divided into three 10-acre tracts without rezoning. He suggested that the case be deferred.

Chair McNeill asked if staff would recommend RR or R40. Mr. Lloyd said that the staff would prefer the tract to be zoned R40.

Chair McNeill explained the recommendation to the Carrolls. They agreed to the deferral.

A motion was made by Mr. Gillis and seconded by Mr. Mullinax to defer action on Case P04-33 until July 20, 2004 for staff to work out other options with the applicant. The motion passed unanimously.

- B. P04-36: REZONING OF 2.10 ACRES FROM M(P) TO RR OR A MORE RESTRICTIVE ZONING DISTRICT AT 1440 KINGSTOWN COURT, SUBMITTED BY DENVER MCCULLOUGH.

This case was deferred in order for staff to obtain additional information from the applicant.

C. P04-34: REZONING OF 22.60 ACRES FROM A1 TO R40 OR A MORE RESTRICTIVE ZONING DISTRICT AT 5233 STEWART ROAD, SUBMITTED BY WILLIAM C. VANN.

The public hearing was opened. Maps and slides were displayed indicating the zoning and land use in the area. Mr. Lloyd explained that the Planning staff recommended denial of the R40 Residential District based on the following:

1. The 2010 Land Use Plan recommends farmland at this location;
2. The Board's policy is to deny requests for R40 in farmland areas when the tracts are larger than 10 acres.

Mr. William Vann appeared before the Board and said that there are seven heirs in his family who would like to sell the land and split the money. He said that the land would not be farmed again.

Ms. Patricia Godwin appeared before the Board in opposition and said that she lives nearby. She said that Mr. Gordon Williams owned much of the land in the area and had the area zoned A1 20 years ago in order to protect the landowners. She said that the A1 requires two-acre lots, and if the rezoning is approved, it would be spot zoning and allow about 20 homes. She said that the rezoning would affect the community forever, creating more traffic, adding to the overcrowded schools, as well as affecting the police, fire and emergency response times. She said that the current zoning allows nine or ten homes. She said that she was also concerned about the other uses allowed in the R40 District.

Mr. Lloyd explained that the uses in the R40 District are far more restrictive than the nonresidential uses allowed in the A1 District.

Ms. Mary Smith appeared before the Board in opposition and said that she lives nearby. She said that the property is nearly her closest neighbor, and she is concerned about the impact that the rezoning would have on the population. She said that the area will already be impacted by Highway 13 and a new Walmart. She added that another concern is the water table. She said that she had trouble with her well two years ago, and 20 new homes will add to the problems. She said that the development could force the area to hook up to public water, and many of the residents are on fixed incomes and couldn't afford to hook up. She added that the classrooms are already full and asked that the owners consider other alternatives. She said that other farmers in the area might want to purchase the property.

Mr. Doug Stephens appeared before the Board in opposition and said that the rezoning would contradict the farmland protection goals and the 2010 Land Use Plan recommendations. He said that the soil types in the area are suitable for crops, but not for development using septic tanks. He said that the land is low and perfectly suited for farming. Mr. Stephens said that he is a certified appraiser, and most of the land in the area is agricultural and is not suitable for development with higher density than what the A1 allows, especially without public sewer service.

In rebuttal, Mr. Vann said that 16 homes would probably be the maximum that could be built on the land because of the wetlands. He said that he lives in the area as do his brothers, and they've never had problems with their wells. He added that he hadn't heard about anyone else in the area having problems with their wells. He said that he would rather have 15 or 16 nice homes on the tract, than two-acre lots that would allow mobile homes. He repeated that the land would not be farmed again.

The public hearing was closed.

Mr. Gillis asked the maximum number of homes that could be built on the property under the A1 zoning. Mr. Lloyd said that they could get 12 with private streets.

Chair McNeill said everything in the area is A1 except for a small tract of RR and another of R40A.

Vice-Chair Morris said that this case presents a classic dilemma. He said that with Highway 13 coming to the area and the City of Fayetteville's expansion, farmland has a greater value when developed for residential use. He said that he would have thought that the community would appreciate the more restrictive R40 District because it would maintain the integrity of the neighborhood.

A motion was made by Vice-Chair Morris and seconded by Mr. McLaurin to approve the R40 District.

Chair McNeill said he was still concerned about the R40 in the middle of the A1.

Mr. Gillis said that he initially agreed, however, the A1 District allows manufactured homes. He said if the land can't support wells and septic tanks, then they won't be allowed to build, so safeguards are in place to offset the concerns about the soil. He said if the lot doesn't perk, the developers will have to combine lots. He said he supported the R40 rezoning.

Dr. Olion said that the case was similar to the previous case that was deferred because it was larger than what the Board usually approves for R40.

Mr. Lloyd said that the other property was heir property with different owners, and traditionally the Board wouldn't want to set a precedent to go against their own policy.

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

Mr. Vann was recognized, and he said that he would think the neighbors would prefer pretty homes to trailers.

Mr. McLaurin said that the entire area is developing, and it is a gateway to Falcon from Highway 13. He said to safeguard the neighbors and protect the integrity of

the community; the R40 is a better district. He said that the uses allowed in the R40 District also fit in better with the neighborhood.

Dr. Olion asked if the case could be given the same option as the previous case—subdividing into 10-acre lots.

A motion was made by Mr. McLaurin and seconded by Vice-Chair Morris to defer action on Case P04-34 until July 20, 2004 to check on soil suitability and look at additional options.

Chair McNeill explained the option of subdividing to the petitioner.

Mr. Vann said that the land belongs to seven people, and they all want to sell it. He said he tried to sell the land zoned A1 and can't get a reasonable price it. He said he'd rather defer the case to look at options than have it denied.

Upon a vote on the motion, it passed six to one with Mr. Averette voting in opposition.

D. P04-38: REZONING OF A 186.33-ACRE PORTION OF A 217.67-ACRE TRACT FROM RR TO R10, R5A, O&I AND C(P), OR A MORE RESTRICTIVE ZONING DISTRICT, ON THE NORTH SIDE OF RAEFORD ROAD, EAST OF THE COUNTY LINE, SUBMITTED BY LARRY KING AND ASSOCIATES.

Vice-Chair Morris left the room. The public hearing was opened. Maps and slides were displayed indicating the zoning and land use in the area. Mr. Lloyd explained that the Planning staff recommended approval of the R10 and R5A Residential, O&I Office and Institutional and most of the C(P) Planned Commercial Districts based on the following:

1. The uses allowed in the above districts are compatible with the existing land use in the area;
2. Public utilities are in place; and
3. The rezoning follows the transitional zoning concept.

The Planning staff recommended denial of the 7.84+ acre strip of C(P) zoning on the eastern portion of the tract based on the following:

1. The location of the 7.84+ acre tract would encourage commercial strip development along Raeford Road if rezoned to C(P) at this location; and
2. The R5A District is a logical transition from commercial to residential use.

Mr. Ralph Huff appeared before the Board and said that he is a partner desiring to develop the subject property. He said that a traffic impact study was performed, and a stoplight is recommended at the corner of the Hoke Loop Road and Highway 401. He said that 750 homes are already being developed north of the tract. He said that the proposed R10 will include a pool, clubhouse, park, soccer field, school drop off and sidewalks in addition to the homes. He said that the development will be a well planned and self contained community.

Mr. Huff said that Messrs. Williams and Gregory have owned the land for over 100 years. He said that a written offer has been submitted, but the owners wanted to establish a value according to actual zoning. He said that they also own more than 500 acres in Hoke County. He said that he would like to have the area rezoned soon because the offer expires on July 1, 2004. Mr. Huff handed out an overlay of the development plans, which also indicated a green buffer along Highway 401 for half of the frontage, so that the condominiums and apartments would not be visible from the road. He said that the area is not country anymore. Mr. Huff said that the traffic on Highway 401 dictates a high value for land fronting it. He added that the 150-foot right-of-way off of Highway 401 is enough to protect the property owners. He said that the high density could not be built in Hoke County because of the lack of sewer.

Mr. Huff explained that the 7.84 acres that the staff recommended for residential use is separated from the residential area by a 40-foot ravine, and a two-acre substation is contained on the front corner of the acreage.

Mr. Huff handed out a letter of value from Tom Keith, letter of intent to purchase and a letter allowing him to represent the owners for the rezoning. He added that there is a large area on the tract that contains wetlands and ravines and is useless for development.

Mr. Malcolm McFayden appeared before the Board and said that his family is involved in developing the R10 tract. He said that they chose to partner with Messrs. Huff and Bradford because their word is good, and they build first class developments.

Mr. William Wanovich appeared before the Board in opposition. He said that he has lived in Fayetteville since 1982, and he represented the residents of the subdivisions in the area who oppose the rezoning. He pointed out that the area is to be annexed by the City of Fayetteville in 34 days, and said the City—not the County—should determine the zoning. A copy of Mr. Wanovich's objections and concerns is attached.

In rebuttal, Mr. Huff said that Mr. Wanovich represented members of only two subdivisions. He said that there are over 200 homes in the area, and only a few people in the audience. Mr. Huff read from a letter that was sent out to the neighborhood encouraging the residents to oppose the rezoning. He concluded by saying that the development is good planning.

The public hearing was closed.

Chair McNeill complimented both sides on their research and the hard facts that were presented.

Mr. Averette said it is obvious that the petitioner did a lot of planning, and the staff concurred with the rezoning except for the 7.84 acres. He said after hearing about the topography, he would also support rezoning the 7.84 acres for commercial use.

A motion was made by Mr. Averette and seconded by Mr. McLaurin to approve the entire rezoning request.

Chair McNeill said that he was also in favor of rezoning the 7.84 acres because of the separation by the ravine.

Upon a vote on the motion, it passed unanimously.

Vice-Chair Morris returned to the room.

CONDITIONAL USE OVERLAY CASES

- A. P04-32: CONDITIONAL USE OVERLAY DISTRICT AND PERMIT TO ALLOW AN AUTOMOTIVE REPAIR SHOP IN AN R40 DISTRICT ON 6.49 ACRES AT 3488 NASH ROAD, OWNED BY DAVID L. AND KELLY A. CRAWFORD.

The public hearing was opened. Maps and slides were displayed indicating the zoning and land use in the area. Mr. Lloyd explained that the Planning staff recommended denial of the Conditional Use Overlay District based on the following:

1. The purpose of Conditional Use Overlay Districts is not to remedy violations of the Zoning Ordinance.

Note: The A1 District allows the requested use as a specified conditional use that is heard by the Cumberland County Board of Adjustment after the rezoning is approved.

Mr. David Crawford appeared before the Board and said that he has been doing automobile repair work on the site for two or three years. He said that an inspector told him that the use wasn't allowed in the R40 District and that he needed to get a Conditional Use Overlay District and Permit.

Mr. Brian Harris appeared before the Board in opposition and said that he lives in the area and is concerned about water quality. He said that a garage could allow hazardous materials to leak into the water, and there are some wet areas and standing water in the vicinity. He said that the soil has severe wet conditions, and an automotive business uses additives and chemicals that could be harmful to residents in the area. He said that residential use surrounds the subject property, and he didn't want the character of the neighborhood changed. Mr. Harris said that there are also horses all around, and if something toxic gets into the water, it could create significant problems for the horses and other animals.

Mr. Doug Taylor appeared before the Board in opposition and said that he has lived on Nash Road since 1980. He said that other property owners are also violating the Ordinance by having commercial uses in residential zoning. He said that the area does not need the environmental impact or traffic that the rezoning would create. He added that this type of business needs regulation.

In rebuttal, Mr. Crawford said that he is not trying to grow his business, he just wants to make a living. He said he has one of the nicest homes in the neighborhood and doesn't want to damage the area.

The public hearing was closed.

Chair McNeill said that the operation appears to be very neat. He said that the problem is that it is being conducted in the R40 District. He said if the property was zoned A1, it would be allowed with a Specified Conditional Use Permit from the Board of Adjustment.

Mr. Averette agreed with the staff's recommendations and said a Conditional Use Overlay District and Permit should not be used to remedy violations even though it has been done for years.

Vice-Chair Morris said that the R40 District is designed to provide certain protection for the neighborhood.

Mr. McLaurin added that Mr. Crawford realized that the property was zoned for residential use when he purchased it.

A motion was made by Mr. McLaurin and seconded by Vice-Chair Morris to follow the staff recommendation and deny the request.

Mr. Lloyd reminded the members that the case could not be heard again for a year unless they included a statement in the motion to allow it to be heard before the year is up.

Upon a vote on the motion, it passed unanimously.

B. P04-35: CONDITIONAL USE OVERLAY DISTRICT AND PERMIT TO ALLOW A PRODUCE MARKET AND RETAIL SALES OF MERCHANDISE IN AN R6A DISTRICT ON 1.0 ACRE AT 415 BUHMANN DRIVE, OWNED BY CHRISTINE B. FARMER.

The public hearing was opened. Mr. Lloyd said that the structure was completed on the property without obtaining proper permits.

Maps and slides were displayed indicating the zoning and land use in the area. Mr. Lloyd explained that the Planning staff recommended denial of the Conditional Use Overlay District based on the following:

1. The 2010 Land Use Plan recommends medium-density residential use at this location; and
2. Retail use is not appropriate within a medium-density residential development.

Mr. Richard Farmer appeared before the Board and said that he has been selling produce from the rear of the lot, and some of the residents felt it was unsafe to go to the rear by the woods to buy produce. He said that he called the Inspections

Department when he decided to build the structure, and he was told that he didn't need permits because the structure was on a farm. He said that an inspector was in the area recently inspecting some of the mobile homes nearby, and she told him that he would need permits if he sold anything other than the produce he grew on the farm. He said he also sells meat and fruit grown elsewhere and wanted to make sure that his operation was legal, so he went to the Inspections Department and submitted the proper drawings. He said that the plumbing and electrical permits have already been approved. Mr. Farmer added that the produce stand is an asset to the community and looks good.

Mr. McLaurin asked where the farm is located, and Mr. Farmer said it consists of five or six acres surrounding the subject property where the produce is grown.

Mr. Barrett asked if it was Mr. Farmer's intention to sell mostly produce raised at the site, and Mr. Farmer said that it was. He said he sells a very small percentage of fruit and meat. Mr. Barrett said that he would like to research the matter.

Chair McNeill said if the percentage is right, it might preclude his need for approval of a Conditional Use Overlay District and Permit. Mr. Barrett agreed and said he would review the statutes.

Mr. Gillis asked if Mr. Farmer could continue to operate the business if the Board deferred the case for a few weeks. Mr. Lloyd said that he could because no violation has been issued.

Ms. Susan Follum appeared before the Board and said that she works for Mr. Farmer and lives nearby. She said that the business is an asset to the community, and the residents enjoy buying the produce and their children experiencing the farming operation. She said that the building is much safer than having to buy the produce from the back of the lot near the woods. She added that the area is to be annexed soon and asked if the case would be heard prior to annexation.

Mr. Barrett said that the use would be allowed in the County because this is a bona fide farm, however Mr. Farmer may be at risk in the City because they may not allow the use based on the percentage of food that is sold and not grown by him. He said that Mr. Farmer could continue to operate unless the use is discontinued for more than 180 days.

Chair McNeill asked if the case would get to the Commissioners in time if it were deferred until the second meeting in June. He was told that the Commissioners would not hear it because annexation would be July 1, and they couldn't hear it until August. Chair McNeill asked if a two-week deferral would get it to the Commissioners in time. Mr. Lloyd said that it would, and it would give he and Mr. Barrett a chance to check on everything.

Ms. Sylvia Bisbee appeared before the Board in favor of the request. She said she lives in the Beaver Run Subdivision, and it's nice to have fresh produce available. She said that the use is much more desirable than other new businesses that have recently opened on Cliffdale Road.

Mr. Farmer asked what legalities Mr. Barrett planned to check. Mr. Barrett explained that the County allows bona fide farms, but because some of the items sold at the produce stand were not grown on the site, he wants to make sure what the percentages need to be to make sure that the use is allowed. He said that the City doesn't have the same exemptions for bona fide farms, so when the property is annexed, it will be nonconforming, and he wanted to give Mr. Farmer the assurance that he would be able to continue the operation.

Mr. Gillis asked Mr. Farmer if he had a farm identification number, and Mr. Farmer said that he did. Mr. Gillis said that the City recognizes farms with an identification number in a different status.

No one appeared in opposition to the request.

The public hearing was closed.

Vice-Chair Morris asked why the Board couldn't approve the Conditional Use Overlay District and Permit and add a stipulation that it be supported legally. Mr. Barrett said that the stipulation wasn't necessary, and it wouldn't hurt for the Board to approve the request.

A motion was made by Mr. Gillis and seconded by Vice-Chair Morris to approve the Conditional Use Overlay District because the application is reasonable, neither arbitrary nor unduly discriminatory and in the public interest. The motion passed unanimously.

A motion was made by Mr. Gillis and seconded by Vice-Chair Morris 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 statement was added to the motion: The property is to be continuously owned and operated as a bona fide farm with sales from the tract being predominantly from produce raised on the tract and abutting tracts.

The motion passed unanimously.

VIII. DISCUSSION

A. REPORT ON COMMISSIONERS' MEETING—DR. OLION

Dr. Olion said that the Commissioners approved all cases as the Board recommended except one. She said that the case off of Ramsey Street was discussed for nearly an hour, and the Commissioners approved R20, where the Board had recommended R15.

B. UPDATE FROM LAND USE CODES COMMITTEE—MR. GILLIS

Mr. Gillis reported that the Committee met last week and accomplished a lot on the Zoning Ordinance rewrite.

Ms. Roy asked that the May 25th meeting be cancelled and the Committee meet after the June 1 Planning Board meeting. The members agreed.

C. CHANGES IN MEETING DATES

After discussion regarding the Land Use Codes Committee and the need for a Nominations Committee meeting, the following schedule was agreed upon.

June 1, 2004:	6:30 p.m.	Nominations Committee meeting
	7:00 p.m.	Planning Board meeting to review matters for the June 7 meeting with Commissioners
	7:30 p.m.	Land Use Codes Committee meeting
June 7, 2004:	6:00 p.m.	Meeting with County Commissioners to discuss joint planning
June 15, 2004:	7:00 p.m.	Planning Board meeting
June 22, 2004:	7:00 p.m.	Land Use Codes Committee meeting (with members of the development community and a speaker knowledgeable in Ordinance matters)
June 29, 2004:	7:00 p.m.	Planning Board meeting for presentation of the revised Zoning Ordinance
July 6, 2004:		Cancel Planning Board meeting

A motion was made by Vice-Chair Morris to approve the above schedule. The motion passed unanimously.

IX. ADJOURNMENT

There being no further business, the meeting adjourned at 10:15 p.m.