

Donovan McLaurin,  
Chair  
Wade, Falcon & Godwin

Lori Epler,  
Vice-Chair  
Cumberland County

Garland C. Hostetter,  
Town of Spring Lake  
Harvey Cain, Jr.,  
Town of Stedman  
Patricia Hall,  
Town of Hope Mills  
Charles C. Morris  
Town of Linden



Thomas J. Lloyd,  
Director

Cecil P. Combs,  
Deputy Director

Clifton McNeill, Jr.,  
Roy Turner,  
Sara E. Piland,  
Cumberland County

Benny Pearce  
Town of Eastover

# COUNTY of CUMBERLAND

## Planning and Inspections Department

### MINUTES

February 19, 2008

#### Members Present

Mr. Donovan McLaurin, Chair  
Mrs. Lori Epler, Vice-Chair  
Mr. Clifton McNeill  
Mrs. Patricia Hall  
Mr. Garland Hostetter  
Mr. Harvey Cain, Jr.  
Mr. Benny Pearce  
Mrs. Sara Piland  
Mr. Roy Turner  
Mr. Charles Morris

#### Others Present

Mr. Cecil Combs, Deputy Director  
Ms. Patricia Speicher, Land Use Codes  
Mrs. Laverne Howard  
Ms. Annie Faircloth

#### I. INVOCATION AND PLEDGE OF ALLEGIANCE

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

#### II. APPROVAL OF/ADJUSTMENTS TO AGENDA

Ms. Speicher advised the Board that Case P08-011 was pulled from consent items and moved to contested items.

**Vice-Chair Epler made a motion to accept the adjustments to the agenda, seconded by Mr. Hostetter. Unanimous approval.**

#### III. PUBLIC HEARING DEFERRAL

Ms. Speicher advised Chair McLaurin that Case P08-10 would be deferred until the March 18, 2008 Planning Board meeting.

#### IV. ABSTENTIONS BY BOARD MEMBERS

There were no abstentions.

#### V. POLICY STATEMENT REGARDING PUBLIC HEARING TIME LIMITS

Ms. Speicher read the policy statement.

VI. APPROVAL OF THE MINUTES OF FEBRUARY 5, 2008

**A motion was made by Mr. Hostetter, seconded by Mr. McNeill, to accept the February 5, 2008 Board minutes as submitted. Unanimous approval.**

VII. PUBLIC HEARING CONSENT ITEMS

REZONING CASES

- A. **P08-03:** REZONING OF 0.23+/- ACRES FROM R10 RESIDENTIAL TO C(P) PLANNED COMMERCIAL OR TO A MORE RESTRICTIVE ZONING DISTRICT, LOCATED AT 3080 LEGION ROAD, SUBMITTED AND OWNED BY JAMES E. AND PEGGY L. EMANUEL.

The Planning Board originally heard this case at their January 15, 2008 meeting and at that time, the Board encouraged the applicant/property owner to consider amending the application to request a Conditional Use District and Permit. The Board's actions were primarily due to the original staff recommendation of denial. The applicant/property owner agreed to submit the amended application and is now requesting approval of a C(P) Planned Commercial/Conditional Use District [C(P)/CUD], with the initial use being an "ice house" and future allowable uses of "public/community utility station/substation and/or a "special information sign" (if the sign is approved by the County Board of Adjustment) and the Permit complying with the attached "Ordinance-Related Conditions" and the contents of the site plan and the application. The applicant/property owner also agrees to restrict this site to the requested uses only, eliminating all other uses normally allowed in the C(P) Planned Commercial district.

Based on the applicant's amended application, the Planning and Inspections Staff now recommends approval of the applicant's request for rezoning to a C(P)/CUD initially for an "ice house" and future allowable uses of "public/community utility station/substation and/or a "special information sign" (if the sign is approved by the County Board of Adjustment), eliminating all other uses normally allowed in the C(P) Planned Commercial district, based on the following:

1. Although the request is not consistent with the 2010 Land Use Plan, which calls for low density residential at this location, the request is reasonable and consistent with the uses in an area that is in transition due to the effect of right-of-way widening at this location.
2. The request, if approved will allow the property owner reasonable use of the property.

The Planning & Inspections Staff recommends approval of the Conditional Use Permit, a direct result of the applicant/property owner satisfying every point of contention originally raised by the staff. This recommendation is based on the following:

1. The use will not materially endanger the public health or safety if located according to the plan submitted, specifically the developer has agreed to the NC Department of Transportation (NCDOT) mandate that the access be a "right in" from Legion Road with a "right out" to Mid Pine Drive;
2. The use will meet all required conditions and specifications if developed according to the site plan and application – a copy of the ordinance provisions pertaining to this site are attached;
3. The use will maintain or enhance the value of adjoining or abutting properties in that the uses requested if developed in accordance with the site plan and ordinance-related conditions, both of which offer protective measures to adjacent properties, will at a minimum maintain the adjoining or abutting properties; and

4. The location and character of the use, if developed according to the plan as submitted and recommended, will be in harmony with the area in which it is to be located and in general conform with the development ordinances and adopted planning policies.

There are no other suitable zoning districts to be considered for this site.

**A motion was made by Mr. McNeill and seconded by Vice-Chair Epler to follow the staff recommendations and approve C(P)/Conditional Use 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. McNeill and seconded by Vice-Chair Epler to approve the Conditional Use Permit for an ice house, public/community utility station/substations and special information sign after finding that when completed, the proposal: 1) will not materially endanger the public health and safety; 2) will not substantially injure the value of adjoining or abutting property; 3) will be in harmony with the area in which it is to be located; and 4) will be in conformity with the land use plan, thoroughfare plan or other plan officially adopted by the Board of Commissioners. The motion passed unanimously.**

- B. **P08-07:** REZONING OF 3.55+/- ACRES FROM R15 RESIDENTIAL/CU CONDITIONAL USE, EQUESTRIAN FACILITIES AND HORSE EQUIPMENT SALES, TO R15 RESIDENTIAL OR TO A MORE RESTRICTIVE ZONING DISTRICT, LOCATED ON THE EAST SIDE OF JUDSON CHURCH ROAD, SOUTH OF BULLARD COURT, SUBMITTED AND OWNED BY WAYNE T. YOUNTS.

The Planning & Inspections Staff recommends approval of the request for the R15 Residential district based on the following:

1. The request is consistent with the 2010 Land Use Plan; and
2. The request is consistent with the zoning and land uses within the surrounding area.

The applicant/property owner has been made aware that if the request is approved, the previously approved equestrian uses would no longer be an allowed use at this location.

There are no other suitable districts to be considered for this site.

**A motion was made by Mr. McNeill, seconded by Vice-Chair Epler to follow the staff recommendation and approve case P08-07 as submitted. Unanimous approval.**

- C. **P08-09:** REZONING OF 86.87+/- ACRES FROM M(P) PLANNED INDUSTRIAL TO RR RURAL RESIDENTIAL OR TO A MORE RESTRICTIVE ZONING DISTRICT, LOCATED ON THE NORTHWEST SIDE OF TRACY HALL ROAD, EAST OF NC HWY 87 SOUTH AND WILMINGTON HWY, SUBMITTED BY GRAHAM T. MOORE, OWNED BY G.T. MOORE INVESTMENTS LLC.

The Planning & Inspections Staff recommends denial of the RR Residential district but approval of the A1 Agricultural district for the subject property except where the *Special Flood Hazard Area* (SFHA) (previously known as: "100-year flood") and "floodway" is present; Staff recommends CD Conservancy district for that portion of the subject property - where SFHA and floodway is present, based on the following:

1. The request is not consistent with the 2010 Land Use Plan which calls for farmland at this location; the recommendation is consistent with the plan;
2. The soils of the subject property are not conducive to support the density of the requested district; the recommendation would allow for the reasonable use of the property accounting for the considerable amount of hydric and hydric inclusion soils being present;
3. Even though there is RR Rural Residential zoning on the adjacent properties, the A1 Agricultural and intervening large lot residential districts had not been adopted at the time of the initial zoning of this area; and
4. The recommendation for the CD Conservancy district for the portion of this tract located within the SFHA and floodway will allow for the preservation of open space without limiting the density for the overall tract and upon development could also be used to satisfy the parks, recreation and open space provisions.

The staff did not find any other suitable zoning districts that should be considered for this site. The applicant agreed with the staff recommendation.

**A motion was made by Mr. McNeill, seconded by Vice-Chair Epler to follow the staff recommendation and approve case P08-09 as submitted. Unanimous approval.**

#### VIII. PUBLIC HEARING CONTESTED ITEMS

- A. **P08-11: REZONING OF 0.60+/- ACRES FROM A1 AGRICULTURAL DISTRICT TO C(P)/CUD CONDITIONAL USE DISTRICT FOR A CREMATORY AND THE PERMIT OR TO A MORE RESTRICTIVE ZONING DISTRICT, LOCATED AT 6771 SANDY CREEK ROAD, SUBMITTED BY GARRIS N. YARBOROUGH, OWNED BY DAVID M. CAMPBELL.**

Ms. Speicher reviewed the site information and stated the staff recommends approval of the requested rezoning to C(P) Planned Commercial/Conditional Use District [C(P)/CUD], with the applicant/property owner voluntarily restricting the allowable use of the subject property to a "crematorium" and eliminating all other uses normally allowed within the C(P) Planned Commercial district, based on the following:

- Although the request is not consistent with the 2010 Land Use Plan, which calls for farmland at this location, the request is consistent with the existing use of the subject property and is reasonable with the use being centered on a large tract and not in close proximity to adjacent or abutting properties.

The Planning & Inspections Staff also recommends approval of the Conditional Use Permit, based on the following:

1. The use will not materially endanger the public health or safety if located according to the plan submitted, though this type of operation is strictly monitored by the State and outside the scope of zoning, the applicant/property owner has agreed to all ordinance-related requirements;
2. The use will meet all required conditions and specifications if developed according to the site plan and application – a copy of the Ordinance-Related Conditions pertaining to this site is attached;

3. The use will maintain or enhance the value of adjoining or abutting properties in that the use is pre-existing to zoning of this area and the developer has agreed to construct or put in place all zoning measures intended to protect adjacent properties – see attached Ordinance-Related Conditions; and
4. The location and character of the use, if developed according to the plan as submitted and recommended, will be in harmony with the area in which it is to be located and in general will be brought into conformance with the development ordinances and adopted planning policies.

There are no other suitable zoning districts to be considered for this site.

Ms. Speicher asked that if the Board considers approving this application, to clarify for the record and for the applicant that condition number eleven under ordinance-related conditions calls for all utilities to be underground. We would like to make it clear that we are talking about any new utilities that are installed.

Public Hearing opened and Chair McLaurin swore in all speakers.

Neil Yarborough spoke in favor and represented the owner Mr. David Campbell. Mr. Yarborough stated that this matter resulted from the lack of Mr. Campbell's knowledge in zoning. Mr. Campbell was not aware of the fact that he needed to apply for rezoning. Another point I want to make is that what brought this to Mr. Campbell's attention is that he did an expansion about four years ago to the pre-existing use. When he did this, it was done to improve the working area, and to put in a new furnace. The new furnace had enhanced pollution control facilities; it was a newer and more environmentally friendly facility. Thinking that he had already been permitted initially having a permit from the North Carolina Crematory Review Board he moved forward and did not get a zoning permit. This facility that we are talking about has been in operation in its current state for three and a half years. It has been inspected by the North Carolina Crematory Authority, North Carolina Department of Environment and Natural Resources, Air Quality Division, OSHA, and found to be in compliance with all regulations, not in any kind of violation and does not pose an environmental impact. Additionally, it's been inspected by the local Fire Marshall, there were several violations found by the Fire Marshall, he needed to refurbish his fire extinguisher and he needed an emergency exit sign, but there were no significant fire hazards. Mr. Campbell has owned this property since 1990, this facility has been in place and operating since 1992. At the time it was built this part of the County was not zoned. It's been in operation with no violations, other than the noted zoning violation. The site plan has been done in conformity with all of the ordinance requirements. It would be appropriate for you to pass this application and request, and we would ask you to do so.

Chair McLaurin asked Mr. Yarborough what the total years of operation were.

Mr. Yarborough stated that the crematorium had been in operation since 1992, with an older furnace system. A new more updated, environmentally friendly furnace was put in, and additional space was added to the facility. We do not anticipate any greater use and haven't experienced any greater use in the three and a half years since this facility has been in operation in its current state. We do not believe it would cause any greater imposition on the community, than the existing use is. Please remember this, we're not asking, at this point in time, to add anything. Unfortunately, we are asking for approval for something that occurred from an oversight or lack of knowledge on Mr. Campbell's part.

Mr. Jim Wade Goodman spoke in opposition. Mr. Goodman represented the Dunn's who are adjacent property owners of the subject property. The reason we are here is because the use is

nonconforming, and in fact was expanded and in violation of the code, and a notice of citation was issued. It would not be appropriate to grant the relief that is being sought. It is up to the petitioner to prove that the provisions of Section 504 of the County Ordinance are met. Those conditions have not been met and the applicant has not shown that those provisions have been met. This is an incinerator facility, a commercial and industrial use, which is in the middle of an agricultural and residential area. The use does materially endanger the public health or safety of the people in the surrounding area, particularly the folks in the residential area. Emissions from crematorium units, like this, can be very toxic. Dioxins are emitted, heavy metals, such as mercury are emitted, and hydrogen chloride from plastics from prosthetics may be emitted from these facilities, as well as nitrogen oxide and sulfur dioxides. This is not someone just burning wood in their fireplace. This is a very serious incineration operation, the use of which has in terms of the number of bodies burned, more than doubled since zoning was put into effect in this area in 1996. I would like to submit for evidence documents from the Board of Funeral Services of North Carolina and attached to those are the crematory license and renewal applications that show year by year the increase in the number of bodies burned and the emissions made from this facility over that period of time. We are looking at the possibility of another increase in the size of the facility and the level of emissions, again if this application is approved. Mr. Goodman presented a chart of the number of bodies burned each year. In 1996 there were approximately three hundred thirty-five bodies burned at this facility. In 2006 the last year that we have full numbers for, over seven hundred and fifty bodies were burned at this location. The applicant has not proven that the conditions in Section 504 a have been met with respect to the permitted variance that is being sought (Staff note: Variance has not been requested by applicant). Allowing this facility of a commercial and industrial nature to continue to operate, and perhaps even expand in a predominately residential and agricultural area, will have a detrimental effect on the value of adjoining and abutting property. Industrial incinerator activity such as this is not in harmony with the agricultural use in this area, and certainly not, with respect to the rather dense residential development that is in this area.

Vice-Chair Epler asked Mr. Goodman if it was a homeowner that lived adjacent to the subject property.

Mr. Goodman stated that he represented the Dunn's who own property that is adjoining the applicant's property. That is not their residence, but it is their property.

Mr. Turner asked if there were any statistics on people with adverse reactions health wise, because of this operation.

Mr. Goodman stated that he was not aware of any reported cases.

Mr. Morris asked where Mr. Goodman received his information in regards to the chemicals that were previously mentioned.

Mr. Goodman stated that the information came from a reported North Carolina case involving the City of Clinton where the respondent there had attempted to have property rezoned in an area to permit this particular use. The City Council denied that use, the petitioner appealed to the Superior Court, who upheld the City Council's decision. The factors they looked at in reaching the decision to not allow the permit are not dissimilar at all to the requirements of Section 504. In that case they talked about the emissions that are created by a crematory operation. The name of the case is Butler vs. City of Clinton, 2003 case from the Court of Appeals. I would be happy to provide a copy of the case.

Margarette Dunn spoke in opposition. My husband and I have owned this property that is beside, behind, and across from Cape Fear Crematorium. We've owned it since 1972. We bought it as investment property and potentially as a home. This is the first opportunity that we have had to object to this crematorium or accept it, because there was no zoning when it was built. It has escalated tremendously as you can see on this graph. Our land values have fallen; our potential for development is decreased, because of these potential emissions. The mercury is a serious issue with residential and children. There are some unmonitored things, you can not completely clean the air. It goes up and it comes down, crematoriums are the third highest emissions for dioxin, which is a toxin. This is substantiated in a report by a school in Florida in 2001 and again this was a major concern in the Clinton case that Mr. Goodman presented to you. You cannot ignore this; you cannot guarantee that there is not potential damage here to our property, the neighbors, and the young children in this area. For fifteen years we say he has been in existence, poorly monitored at times, the records clearly show. One oven was not equipped with monitoring devices according to the Funeral Board in Raleigh. We don't have data; I believe he will have to come under the Clean Air Act of North Carolina, because of his volume. I think that this should be in an industrial site, where it can be properly monitored.

Mr. Yarborough spoke in rebuttal. We are in compliance with the ordinance, we are eligible, and it would be appropriate to issue this permit. I think that what we are looking at is a trend. This is a universal trend in our nation, as the popularity of cremation comes about. There really hasn't been much substantial growth since 2004 at this site. The other thing I want to point out by the opposition's affidavits are that Mr. Campbell has been in constant permit status since 1992, in this facility. The issue before you is not whether there is going to be a crematory there or not, it's whether this crematory is going to use 1992 technology or 2004 technology. When you have OSHA and the North Carolina Department of Air Quality inspecting your property, and the North Carolina Crematory Authority, who is charged with protecting the public health, they are constantly permitted and approved by them, that is actual, factual evidence. Mr. Campbell's facility does not pose a health risk to our community and the surrounding neighborhood. Anything that you have heard about other places or possibilities of this is purely anecdotal and has no relationship to this particular facility. Again, we maintain that it would be better for all to have a 2004 technology in place than a 1992 technology in place; we believe that had Mr. Campbell been more sophisticated in his knowledge of the zoning laws, this matter would have been resolved in 1994 or 1996 when the property was initially zoned. I would also like to say that there is no evidence that this facility has reduced property values.

Mr. McNeill asked Mr. Yarborough about the air monitoring that goes on at the crematorium.

Mr. Yarborough stated that this facility has been inspected on a regular basis by Air Quality.

Mr. McNeill asked how often they are inspected.

Mr. Yarborough stated that he believes the inspections are periodically, part of the annual certification program by the North Carolina Crematory Authority, who is charged with protecting the public health in this matter. The continued renewal is also compelling evidence. We would say that this is a safe and well run operation.

Mr. McNeill asked if that was an annual renewal.

Mr. Yarborough stated that yes, it was an annual renewal. If there were any problems they wouldn't be renewed.

Mr. Goodman stated that it has been his clients' experience that air monitoring in the area is sporadic and spotty at best. Are we going to allow a commercial/industrial use to continue and potentially expand in a residential and agricultural area? I think the answer to that question should be no, and I would respectfully request that you not favorably recommend this matter to the County Commissioners.

Mr. McNeill asked Mr. Goodman if he was implying that something was going at the crematorium because of his references to commercial and industrial use.

Mr. Goodman stated that he didn't think anything other than what meets the eye, but they are burning human bodies and that is going to give emissions of the type that you would have in an industrial area.

Mr. McNeill asked Mrs. Dunn if there was any evidence that property values were going down.

Mrs. Dunn stated that yes, her property is used for dumping; I sit and see the heat emission coming from the stacks, there are unmarked vans coming and going, and it's unsightly. The crematorium shouldn't be in this community, it should be in an industrial area so proper monitoring can take place. The Funeral Board depends on the local inspections and zoning to keep them informed. He must be in compliance with them to pass in Raleigh. He has passed in Raleigh, but they were not aware that there were no permits when he had expanded. He has violated that part for several years.

Mr. Yarborough stated that this has passed. There are no building violations or anything like that outstanding other than having to clear up this particular zoning issue. This facility has been in place since 1992. In the exhibit that was passed out it was stated that in November 2003 the unit did not have pollution monitoring system, that is the impetus for putting in this system.

Mr. Morris asked if there was a building permit issued for the expansion.

Mr. Yarborough stated that initially there was a permit issued in 1992. But there was not a permit for the expansion.

Mrs. Hall asked if the original building permit was issued by the County.

Mr. Yarborough responded yes.

Ms. Speicher stated that Johnny Scott, our staff Code Enforcement, that cited the violation and has done research on this, said that permits were issued in the beginning when he originally started the business.

Public Hearing closed.

Vice-Chair Epler asked if this request is denied, is his only alternative, if he wants to keep running his business, to go back to the way the building was prior to the expansion, put the old furnace back in and continue his cremation business.

Ms. Speicher stated as far as zoning is concerned, yes.

Mr. Morris stated that we run into this all the time, there are existing businesses that have been there, but the zoning comes and goes, then something happens and these uses pop up. I don't think we've ever been in the situation where we have an existing business that was done during

the non zoning period that we reversed what that use was. Although we may not like it, I think we should grant the request.

Chair McLaurin stated that he agrees with Mr. Morris.

Mr. McNeill stated that Mr. Yarborough is right. With this business being in place in 1992 and the zoning taking place in 1996, it is standard procedure in Cumberland County that if initial zoning takes place and there is a business or property that is of a different zoning need than what the initial zoning calls for, for a period of six months, it's an open door policy. If Mr. Campbell had requested changing to commercial zoning on this parcel at that time, it would have automatically been granted. That is standard procedure. I think Mrs. Epler made a good point, if it were for some reason denied he could go back to doing what he was doing from 1992 to 2003 with the same equipment, and that probably isn't nearly as good equipment and monitoring as he's had since he put in the new furnace. I agree that we need to approve this request.

Vice-Chair Epler asked if he had come in when he did the expansion and applied for the permits that he needed, would he have had to meet some kind of criteria for zoning.

Ms. Speicher stated that he would have had to submit for rezoning.

**A motion was made by Vice-Chair Epler and seconded by Mr. McNeill to follow the staff recommendations and approve C(P)/Conditional Use District because the application is reasonable, neither arbitrary nor unduly discriminatory and in the public interest. The motion passed with 7 in favor with Mr. Turner voting in opposition, Mr. Pearce did not vote.**

**A motion was made by Vice-Chair Epler and seconded by Mr. McNeill to approve the Conditional Use Permit as recommended by the staff with the addition to condition number eleven on the ordinance related condition sheet that all new utilities except for 25 kv or greater electrical lines must be underground after finding that when completed, the proposal: 1) will not materially endanger the public health and safety; 2) will not substantially injure the value of adjoining or abutting property; 3) will be in harmony with the area in which it is to be located; and 4) will be in conformity with the land use plan, thoroughfare plan or other plan officially adopted by the Board of Commissioners. The motion passed with 7 in favor with Mr. Turner and Mr. Pearce voting in opposition.**

- B. **P08-08: REZONING OF 1.17+/- ACRES FROM RR RURAL RESIDENTIAL TO C(P) PLANNED COMMERCIAL/CUD CONDITIONAL USE DISTRICT FOR A TRADE CONTRACTOR (ELECTRICAL) WITH OUTSIDE STORAGE AND THE PERMIT OR TO A MORE RESTRICTIVE ZONING DISTRICT, LOCATED AT 4341 SWINDON DRIVE, SUBMITTED AND OWNED BY ANGELA LEE NAYLOR.**

Ms. Speicher reviewed the site information and stated the staff recommends denial of the C(P) Planned Commercial/ Conditional Use District [C(P)/CUD] for a trade contractor business with outside storage, based on the following:

1. The district requested is inconsistent with the Eastover Area Detailed Land Use Plan which calls for one acre residential lots at this location;
2. Consideration of the C(P) district for this area is arbitrary and would not serve a viable public interest; and

3. The degree of difference in uses allowed between the existing surrounding zoning and the proposed zoning and use requested, qualify this request as being unreasonable.

The Planning & Inspections Staff also recommends denial of the Conditional Use Permit based on the following:

1. Swindon Drive is a Class "C" (dirt) private street which is not suitable and not intended to serve commercial operations especially those with vehicles used in conjunction with the business;
2. The use is a danger to the public health and safety due to the increased traffic creating an unsafe environment for the residents in the area when walking and/or playing in close proximity to the dirt street and due to increased dust particles being disbursed into the air;
3. The use is not in harmony with the area in which it is located – the subject property is completely surrounded by residentially-zoned properties; and
4. The degree of difference in this specific use and site layout requested as related to the existing surrounding uses makes this request unreasonable.

There are no other suitable districts to be considered for this request.

Public Hearing opened and Chair McLaurin swore in all speakers.

Rudolph Singleton Jr. spoke in favor and represented the owner Angela Naylor and her son Eddie Naylor, Mr. Naylor is the principal in TNN Electrical Company. Mr. Singleton showed photos of the subject property. Mr. Naylor has been operating an electrical office and company which primarily serves new construction residential houses. He's been doing this for approximately five years after he moved onto the property, which is owned by his mother. Mr. Naylor is here tonight because he received a call from the inspections department not a violation notice, but a complaint. Mr. Singleton submitted a petition that was signed by the seven property owners around the area. He is trying to conform his nonconforming use; he's trying to get it right. Mr. Naylor has a company that operates basically with an office there. There are seventeen employees. The employees come in the morning down the dirt road, which he maintains and has for the benefit of the people who live on both sides of the road, they come in about eight or nine cars in the morning approximately two to a car or pickup truck, and are there for about fifteen minutes at staggered times to pick up a kit, and are gone for the rest of the day. There is no heavy traffic there, only in the morning. I am disappointed that the staff recommended denial; we will do anything reasonably necessary to conform. There is no problem on parking, and it would seem totally unnecessary to request pavement at the end of a non-paved road, but we will do what is necessary. The first time we came we asked for a Conditional Use for the entire 3 acres and we were informed that it would be better to come back and do it for 1.3 acres. That's why it is conformed the way it is. This is a viable home business, there is an office there and that is all he needs to operate this electrical kit supply, once a day as they come out.

Ms. Speicher stated that because the document submitted is a petition and the parties who have signed are not present, real weight cannot be given to that document.

Mr. Tart objected to the petition being entered for the record.

Mr. Morris asked Mr. Singleton if the property was going to be subdivided.

Chair McLaurin stated that the Board could not accept the petition, because the people that signed were not present to testify.

Mr. Singleton stated that the property was not going to be subdivided. The property is Rural Residential, the entire three acres and we want to get a Conditional Use, we understood from the planning part, that we needed a Conditional Use only for what we needed and the only thing we needed was for 1.3 acres. The first time we came we submitted a plan for all 3 acres to become planned commercial, and we were told that we didn't need to go that much, so we went back, at our expense, and cut back to the 1.3 acres.

Chair McLaurin asked how many residences were on the street.

Mr. Naylor responded about sixteen or seventeen.

Sherwood Tart spoke in opposition. Mr. Tart stated that he owns ten residences on Swindon Drive, and each family has children to his knowledge. The road is in decent shape, Mr. Naylor has recently acquired a tractor and has done some dragging of it. I opened that road back in the early 1990's, and have graded it and kept it suitable for people to travel it. The issue about his business, I'm not against it, I've been in business since 1963 In Cumberland County, but all my business was headquartered and operated off of commercial property. That's not the issue either, the issue is this is a residential street, it was designated to be that. There are children on it and with the commercial trucks in and out, it's hazardous to the children that are on the road. It's not right for that road to be changed to commercial.

Vice-Chair Epler asked Mr. Tart if he understood that if the Board recommended approval and the Commissioners go along with the recommendation, that means that it would be very site specific. That means he cannot add any additional building without coming before the Board and the Commissioners, he can't put any other business in there, he has to comply with exactly what he has now with a long list of conditions that cannot be changed within any ruling.

Mr. Tart stated that he understood. The land was sold to both he and Mr. Naylor for residential use.

Mr. Singleton spoke in rebuttal. If we are going to talk about traffic, I don't know if a pickup truck is any more dangerous than any of our automobiles and of course there are children everywhere. I'm going to ask Mr. Naylor to explain what the daily traffic is like.

Mr. Naylor stated that his vehicles are half ton trucks, just like any other. As far as the kids, we're in from six thirty in the morning to seven thirty in the morning and to my knowledge there are no kids on the road at that time. My guys only come in the morning they don't come back in the evening.

Mr. McNeill asked if most of the employees come in the morning through the site, than leave to go to work, and if they come back in the afternoon.

Mr. Naylor stated that they do not come back in the afternoon.

Mr. McNeill asked what type of outside storage was on the property and if any big trucks bring anything in.

Mr. Naylor responded that there are temporary poles and a few rolls of wire. Once a week there is a truck that comes in to bring supplies, it's about as big as a UPS truck.

Vice-Chair Epler asked Mr. Naylor how many vehicles he used for his business.

Mr. Naylor stated that they have about fourteen vehicles. We're not growing right now, and I've only got nine of those vehicles in use right now.

Vice-Chair Epler asked if they were stored on site at night.

Mr. Naylor said no. His employees keep their vehicles at their homes.

Mrs. Hall asked Mr. Naylor how long he had been operating his business out of the subject property.

Mr. Naylor responded five years.

Public Hearing closed.

Mr. Tart spoke in rebuttal. Mr. Tart stated that he wanted to see people succeed in business, he himself did well. But it was done on commercial property. Mr. Tart doesn't feel that commercial property is appropriate for that road, with residences and children on it.

Mr. Pearce stated that there had been discussion about how to make Eastover the way that it should be for the future and many years to come. This is just one situation that would not be in compliance with what our wishes would be. I am speaking as an individual not for the Town of Eastover.

Mr. McLaurin stated that he himself started his business at home but once he had two employees and his relatives started to complain, he became aware that it was time to move to an appropriate area.

Mr. McNeill stated that a lot of times you can get by with just one or two employees in a residential setting like this. It's obvious that this business has grown, with seventeen employees. It's just not appropriate at the end of a cul-de-sac in a residential neighborhood. Mr. Naylor is successful to the point that he should go out and get a piece of commercial property and continue to grow and expand. I as a Board member could never approve a Conditional Use Overlay on something like this.

**A motion was made by Mr. McNeill, seconded by Mr. Morris that the Joint Planning Board fails to find that this Conditional Use District application is reasonable, neither arbitrary nor unduly discriminatory, and in the public interest, and that it therefore be denied. Unanimous denial.**

## IX. CONTESTED PLATS & PLANS

- A. **CASE NO. 07-199:** CONSIDERATION OF A WAIVER REQUEST FOR THE CROSSMAN, CASTLE AND MORINO PROPERTY, SUBDIVISION REVIEW, SECTION 3.20.2 MUNICIPAL INFLUENCE AREA COMPLIANCE (MIA) WAIVER REQUEST REGARDING SIDEWALK CONSTRUCTION; ZONING: M(P); TOTAL ACREAGE: 7.79 +/- (PARENT TRACT: 78.83 +/-), LOCATED ON THE SOUTH SIDE OF SR 1451 (W MANCHESTER ROAD), WEST OF NC HWY 87 (N BRAGG BLVD). (COUNTY JURISDICTION – SPRING LAKE MIA)

The developer of this tract has received preliminary subdivision approval for one 7.79 acre lot that is located within the County's jurisdiction but also within the designated Spring Lake *Municipal Influence Area* (MIA). Condition number "1" of the attached conditional approval instructed the developer to contact the Spring Lake staff in order to determine whether or not a sidewalk along the right-of-way of West Manchester Road, where it abuts the subject tract, would be required. The Spring Lake staff made the determination that a sidewalk is required at this location. The developer has since requested a waiver from the sidewalk condition, which was heard by the Spring Lake Town Board of Aldermen for recommendation on January 28, 2008.

The Spring Lake Town Board of Aldermen heard the developers' request and voted unanimously to recommend denial of the waiver and that the developer be required to construct a sidewalk, complying with the town standards, along SR 1451 (W Manchester Road). The position of the Board of Aldermen is that the Town has been working toward getting sidewalks along all their streets as subdivisions and developments occur and would like this to extend into their MIA.

Ms. Speicher reviewed the site information and stated the staff recommends denial of the sidewalk waiver based on the following:

1. This tract does not have any unusual physical conditions due to topography or nature of adjoining areas, which would prevent the construction of the sidewalk along SR 1451 (W Manchester Road), strict compliance with the subdivision provisions of the Subdivision Ordinance
2. would not cause a special and unnecessary hardship to the property owner and be inequitable;
3. The public purposes of the Subdivision and Zoning Ordinance will not be served to an equal or greater degree, in that the Town of Spring Lake's desire for sidewalks would not be met; and
4. The property owner would be afforded a special privilege denied to others since the Town of Spring Lake has required sidewalks to be placed within their Town limits for newly created subdivisions in similar situations.

**Vice-Chair Epler made a motion to deny the waiver request regarding sidewalk construction, seconded by Mr. Morris. Unanimous denial.**

## X. DISCUSSION

Mrs. Piland gave the Board an update on the County Commissioners meeting. Mrs. Piland stated that the Commissioners supported the Planning Board on the Lake Lynn case and on the Franklin Johnson case there was a lot of discussion and a lot of information about water contamination. They did two things, they approved a motion to investigate the water to the south point area because of water contamination and delayed action on the case for 30 days, to get more information on water contamination in that area.

## XI. FOR YOUR INFORMATION

### A. DIRECTOR'S UPDATE

There was no director's update.

## XII. ADJOURNMENT

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