

# MINUTES

July 17, 2001  
7:00 p.m.

## Members Present

John M. Gillis, Chair  
David Averette  
Dallas Byrd  
Charles Morris  
Marion Gillis-Olion  
Jerry Olsen

## Members Absent

Clifton McNeill, Vice-Chair  
Joe W. Mullinax

## Others Present

Barry Warren, Director  
Rick Heicksen  
Tom Lloyd  
Donna McFayden  
Barbara Swilley  
Grainger Barrett, Co. Atty

### I. INVOCATION AND PLEDGE OF ALLEGIANCE

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

### II. APPROVAL OF AGENDA/ADDITIONAL ITEMS

Cases P01-52 and P01-53 were moved from Consent to Public Hearing items. A motion was made by Dr. Olion and seconded by Mr. Olsen to approve the Agenda as amended. The motion passed unanimously.

### III. FAREWELL TO JOHN TYSON

Chair Gillis presented former Chair John Tyson a plaque and resolution from the Board in appreciation of his eight-year term of service and leadership. In addition, Mr. Tyson was given an Annual Report of the Board's accomplishments during his last year as Chair. Mr. Tyson thanked the members and commended them on their hard work and long hours spent serving the citizens of the County. Mr. Bill Tew, a member of the Planning Board for over 20 years, also thanked Mr. Tyson for his continuing commitment to the County.

### IV. PUBLIC HEARING DEFERRALS

There were no public hearing deferrals.

### V. ABSTENTIONS BY BOARD MEMBERS

There were no abstentions by Board members.

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

Mr. Lloyd read the Board's policy regarding public hearing time limits.

### VII. CONSENT ITEMS

A. APPROVAL OF THE MINUTES OF JULY 3, 2001

A motion was made by Mr. Olsen and seconded by Mr. Byrd to approve the Minutes of July 3, 2001 as written. The motion passed unanimously.

REZONING CASES

- A. P01-54: REZONING OF 2.02 ACRES FROM M(P) TO C(P), OR A MORE RESTRICTIVE ZONING DISTRICT, AT 2824 LEGION ROAD, OWNED BY MILA S. MORGAN.

The Planning staff recommended approval of the C(P) Planned Commercial District based on the following:

1. The C(P) District is more compatible with the uses in the surrounding area than the current zoning

Note: The area shows a trend toward commercial/residential zoning/use and away from the industrial uses.

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

**A motion was made by Mr. Olsen and seconded by Dr. Olion to follow the staff recommendations and approve the C(P) Planned Commercial District. The motion passed unanimously.**

- B. P01-56: REVISIONS AND AMENDMENTS TO THE CUMBERLAND COUNTY CODE OF ORDINANCES, SECTION 7.23, "FENCES AND WALLS," BY ALLOWING FENCES AND WALLS CLOSER THAN 25 FEET TO THE STREET RIGHT-OF-WAY LINE UNDER CERTAIN CIRCUMSTANCES.

The Planning staff recommended approval of the amendment to the Ordinance based on the following:

1. The amendment was written at the request of the Board of Adjustment to assist in the rehabilitation of houses.

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

**A motion was made by Mr. Olsen and seconded by Dr. Olion to follow the staff recommendations and approve the amendment to the Cumberland County Ordinance. The motion passed unanimously.**

## PLATS AND PLANS

- A 01-154. CONSIDERATION OF THE JOHN E. AND PATRICIA W. FRANKLIN PROPERTY (GROUP DEVELOPMENT REVIEW) IN AN A1 AGRICULTURAL DISTRICT FOR APPROVAL OF ONE LOT IN A SUBDIVISION CONTAINING THREE ADDITIONAL LAND LOCKED LOTS OFF OF JOE HALL ROAD. (SUBDIVISION ORDINANCE)

**A motion was made by Mr. Olsen and seconded by Dr. Olion to follow the staff recommendations and approve the request. The motion passed unanimously.**

### VIII. PUBLIC HEARING ITEMS

- A. P01-51: REZONING OF 5.8 ACRES FROM PND TO C(P), OR A MORE RESTRICTIVE ZONING DISTRICT, AT 1815 BINGHAM DRIVE, OWNED BY IRIS LEE DRAUGHON.

Maps were displayed outlining the zoning and land use in the area. Mr. Lloyd gave a brief history of the area and said that the Board approved a PND/CU nearby a few months ago. A video of the site was shown. Mr. Lloyd said that the Planning staff recommended denial of the C(P) Planned Commercial District based on the following:

1. The 2010 Land Use Plan calls for low-density residential use at this location;
2. The uses allowed in the C(P) District are not consistent with the character and development of the neighborhood;
3. All uses allowed in the C(P) District are not appropriate for the area; and
4. Heavy commercial use is generally designated at nodal locations.

The Planning staff found that the subject property is also not suitable for the intervening districts.

Mr. Stuart Clarke appeared before the Board representing the applicant. He said that the site is not good for residential use. He noted that a machine shop, auto detailing shop, gym, day care, auto service center, graphics place, and paint and body shop currently surround the site. He said that only two districts allow mini-warehousing. Mr. Clarke pointed out that there is no public sewer in the area, and the proposed use will not need it. He said that he had a site plan to show the Board. Mr. Barrett said that the Board could not consider the site plan because their decisions are based on all allowed uses in the requested district—not a specific use.

Mr. Clarke continued that the proposed use is consistent with uses in the area. He said that he was told that a single-family unit had not been built in the area in 15 years. Mr. Clarke pointed out a gas station and couple of churches nearby. He said that low-density residential use as called for in the Land Use Plan would not be practical because bringing sewer to the area is financially prohibitive. He added that no one was present who opposed the rezoning.

Mr. Jim Kizer appeared before the Board and said that bringing sewer to the area would require an extension to the rear with easements through existing developed lots, and that would be cost prohibitive.

Mr. Julian Mann appeared before the Board and said that he is the proposed buyer and developer and has had an office in the area since 1987. Mr. Mann said that he has developed millions of dollars worth of property in the area. He noted that there are no single-family homes from Bailey Lake Road to his office. He said that he owns about 100 units across from the subject property. He added that there has been a big jump in traffic in the last few years. Mr. Mann said that the rezoning will allow the highest and best use of the property. He said that the site is not good for residential development because of the cost to develop in that the configuration will not allow enough homes to be worthwhile. He said that he would put in a first class operation and not open anything detrimental to the area.

The public hearing was closed.

Mr. Averette asked what residential density the PND allows. Mr. Lloyd said that PND is developed at R10 standards.

Mr. Byrd noted that water and sewer are available to the Bear Creek Subdivision. Mr. Lloyd said that sewer runs down Pepperbush, and water is available to the site. Mr. Byrd asked if sewer could be brought down from Pepperbush. Mr. Lloyd said that it could be, and it would be very costly to the developer.

Mr. Averette asked if the sewer could be run from Pepperbush. Mr. Kizer said that it could not because it is too shallow, and it would have to come from Spindle Tree to the east across properties owned by others.

Mr. Olsen said that the uses allowed in the C(P) District are not good for the area.

A motion was made by Mr. Olsen and seconded by Dr. Olion to deny the request.

Mr. Averette again said that the property is not good for residential or professional use because it isn't economically feasible because of the cost to bring sewer to the property.

Mr. Olsen said that he understood the comments, but it isn't the Board's job to change the character of a neighborhood to suit one request. He said that the site is not suitable for all uses allowed in the C(P) District.

Mr. Averette said C(P) is already in the area, and the land will be lost if not rezoned.

Mr. Lloyd said that the Planning Board approved the nodal policy in the Land Use Plan, and the staff does not want to see Bingham Drive turn into strip commercial.

Chair Gillis said that PND allows a certain amount of commercial use. He asked if it could be considered at this location because 50 acres of PND would allow about this size tract to be commercial. Mr. Lloyd said that nothing really qualifies for commercial because the PND is so fragmented.

Chair Gillis asked what the minimum needed for the project would be. He was told that six to seven acres are needed for the intended use, the site is the minimum size.

Chair Gillis asked if the staff talked about a Conditional Use Overlay District with the applicant. Mr. Lloyd said that they did not because the staff recognizes that CUs are not used to accommodate a specific use, but to accomplish mixed-use development.

Mr. Warren cautioned that the Board must be extremely cautious when using CUs so as not to zone by request.

Mr. Olsen said that the Board was focusing on a specific use, and he would be afraid to do anything except deny the request.

Chair Gillis called on Mr. Clarke. Mr. Clarke said that the applicant would be more than receptive to a CU.

Mr. Barrett said that the Planning Board can refer the case back with consent of the petitioner for a CU application to be submitted.

Mr. Olsen and Dr. Olion withdrew their motion.

**A motion was made by Mr. Olsen and seconded by Dr. Olion to defer action on Case No. P01-51 until August 7, 2001 in order for the applicant to submit a Conditional Use Overlay District application. The motion passed unanimously.**

B. P01-52: REZONING OF 1.18 ACRES FROM R10 TO R6A, OR A MORE RESTRICTIVE ZONING DISTRICT, AT 3580 STATE STREET, OWNED BY PHILIP AND JONI SMITH.

Maps were displayed outlining the zoning and land use in the area. A video of the site was shown. Mr. Lloyd said that the Planning staff recommended approval of the R6A Residential District based on the following:

1. Approval of the rezoning places all property under one ownership under the same zoning classification; and
2. The uses allowed in the R6A Residential District are consistent with the development in the area.

The Planning staff found that the subject property is also appropriate for the R6 Residential District.

Mr. Phil Smith appeared before the Board and said that he runs a top class mobile home park on the property and has had no problems. He said that the area is clean, and he runs a tight ship. He said that the subject property is a small portion of his entire tract, and he wants it zoned to R6A to be consistent with the rest of the property.

Mr. Ray Thorne appeared before the Board in opposition and said that he owns five acres of undeveloped R10 property adjacent to the subject property bordering Carolina Avenue and Duke Street. He said that he wants the area to remain at R10 standards, and it will be difficult to develop his property at R10 if the subject property is rezoned, and the R6A will reduce the value of the surrounding properties.

Mr. Smith appeared before the Board in rebuttal and pointed out several mobile homes and mobile home parks in the area. He repeated that his mobile home park is top

quality and not a threat to the community. He said that it is in compliance, a good park with good families who maintain it well.

Mr. Olsen asked if Mr. Smith intends to add more units to the site, and Mr. Smith said that he does not. Mr. Lloyd said that mobile homes and the septic tanks are in place, and no more units can be added.

Mr. Olsen said that the request would not change anything, merely bring all the property under the same zoning district.

**A motion was made by Mr. Olsen and seconded by Mr. Averette to follow the staff recommendations and approve the R6A Residential District. The motion passed unanimously.**

C. P01-53: REZONING OF 25.5 ACRES FROM RR TO C(P), OR A MORE RESTRICTIVE ZONING DISTRICT, ON THE NORTHEAST CORNER OF MAXWELL ROAD AND HWY 24, OWNED BY ELEASE JOHNSON KENYON.

Maps were displayed outlining the zoning and land use in the area. A video of the site was shown. Mr. Lloyd said showed a current map indicating where the proposed Highway 24 is to be built. He said that the property is not served by utilities, however PWC is willing to put in a lift station if the property is rezoned.

Mr. Lloyd said that the Planning staff recommended approval of the C(P) Planned Commercial District based on the following:

1. The Maxwell Road/Highway 24 intersection is a logical location for planned commercial use to serve local neighborhood needs.

The Planning staff found that the intervening districts are not suitable for the property.

Mr. Joe Riddle appeared before the Board and said that he plans to purchase and develop the property if it is rezoned. He said that the community needs a shopping center, and he intends to extend water from Cape Fear High School and is working with PWC regarding a lift station for the area. Mr. Riddle said that the proposed Highway 24 has been redrawn many times, and the latest plan will take 50 feet off of the northern part of this property, and he plans to ask that 20 feet be added to the southern side.

Ms. Elease Kenyan, owner, appeared before the Board and said that she is the third generation to own the property, and it is no longer productive as farmland. She said that the purchaser has a good reputation, and if she doesn't sell the land, it will end up being auctioned in the future because she is 79 years old. She said that the proposal will benefit the community.

Mr. Larry Kenyan, son of the owner, appeared before the Board and said that his mother has been considering sale of the property for a long time, and the decision was a painful one because the land was handed down. He said that his mother placed restrictions on the buyer knowing that she risked losing the sale, but she did not want to sell the land if it would be used in a manner that would be detrimental to the neighbors.

Ms. Dora Hall appeared before the Board and said that she lives next to the subject property, and the residents of the area need a good shopping center. She said that she was in favor of the rezoning, and added that there are many new families in the area.

Mr. Robert Stephens appeared before the Board in opposition. He said that the recently built service station that joins the subject property has not created problems, but he is concerned about water and sewer in the area. He said that wells are shallow, and there is no sewer system. He said that placement of the road is not definite, and the next public hearing is not until 2003. Mr. Stephens said that there is a graveyard on the subject property containing 35 to 40 graves. He said that his main concern is the water because it is good now, but that could change.

Mr. Riddle appeared before the Board in rebuttal. He said that the cemetery occupies about  $\frac{3}{4}$  of an acre, and he plans to plant grass, fence and gate the area so that it will be easy for family members to visit the gravesites. Mr. Riddle said that the reason he chose the area for a shopping center is because it is a good growth area, and PWC has agreed to allow the lift station. He said that he has built about 15 shopping centers and still owns and maintains them. They have good lighting and are well built and maintained. He said that he would not develop something that the residents of Vander wouldn't be proud of, and he would not develop until he has an agreement with a good store to go into the shopping center.

Mr. Byrd noted that the Board approved property nearby for a shopping center about three years ago. He asked if this would not be too close to that property. Mr. Lloyd said that no plans have been submitted for a shopping center in the area, and this location is a good commercial site. An audience member said that there were no plans for the property at this time.

Mr. Warren reminded the members that the staff does not consider specific uses and bases their recommendation on whether the site is appropriate for all uses allowed in the particular district.

Mr. Olsen asked why HS(P) was approved on the adjoining lot, and staff recommended C(P) for the subject property. Mr. Lloyd said that the two districts allow similar uses, but because the intersection should serve the commercial needs of the community, the staff recommended C(P) as opposed to HS(P) which was designed to serve transient needs.

Dr. Olion asked if the families of people in the cemetery were notified of the rezoning. Mr. Warren said that they were not. Mr. Barrett said that any proposal to move the graves would require notification. Mr. Riddle said that he cannot move or disturb the graves. He added that the site contains 25 acres, and the shopping center requires only six. He said that the cemetery will be better maintained than it is presently, and he would provide security if necessary. Ms. Kenyan agreed because she said that most of the family members don't presently help with maintenance of the cemetery.

Mr. Byrd said that the HS(P) zoning approved a couple of years ago turned out to be a blessing for the community.

**A motion was made by Mr. Byrd and seconded by Mr. Morris to follow the staff recommendations and approve the C(P) Planned Commercial District. The motion passed unanimously.**

D. P01-57: REZONING OF .33 ACRES FROM R10 TO R6A, OR TO A MORE RESTRICTIVE ZONING DISTRICT, AT 2516 AKE STREET, OWNED BY GORDON IVEY JR.

Maps were displayed outlining the zoning and land use in the area. A video of the site was shown. Mr. Lloyd said that the Planning staff recommended denial of the R6A Residential District based on the following:

1. The 2010 Land Use Plan calls for low-density residential development at this location;
2. The Cumberland Road Study approved by the Planning Board and County Commissioners in 1998 recommends low-density residential development at this location; and
3. The R6A Residential District adds to the potential for higher density development in the future.

The Planning staff found that the subject property is also not suitable for the R6 Residential District.

Ms. Linda Ivey appeared before the Board and said that she represented her parents, the applicants. She said that they would like to tear down the old house that they have lived in for 36 years and put a doublewide mobile home on the site. She said that the house has cracks where daylight can be seen, no heat and poor plumbing.

No one appeared in opposition to the request.

Mr. Byrd asked if the Health Department had been approached for a septic tank. Mr. Barrett said if the current septic tank malfunctions, and sewer is available within 300 feet, then the owners will be required to hook on to it and bear the cost. He said if the septic tank is not malfunctioning, then this would not apply. Mr. Byrd asked how far sewer is located from the subject property. He was told that it is about 95 feet from the site.

Chair Gillis said that his concern was that the current zoning does not allow mobile homes, and the R6 District allows more density, which would need water and sewer. Mr. Barrett suggested that the staff obtain more information on Health Department requirements on septic systems. Mr. Lloyd said if the rezoning is approved, then the applicant will have to go to the Health Department, and they'll check the septic tank.

Mr. Barrett said that the purpose of the R6A District is to allow mobile homes, and the staff's concern is density with major concern regarding sewer.

Mr. Averette said that there is no way to allow two units because the site isn't large enough for additional well and septic. He said that the applicant could possibly build a stick-built home with the existing well and septic tank. He said that the issue is whether the area is low-density, and he didn't think that it is. He said that he would support the R6A District.

Mr. Morris noted that the adjoining property is zoned R6A. He asked how many mobile homes were on the property. Mr. Averette said that he didn't see any. Ms. Ivey said that there are three mobile homes across the road and one behind her folks' property. Mr.



Morris asked if two mobile homes would be allowed on the subject property under R6A zoning. Mr. Lloyd said that two would be allowed with Health Department approval. Mr. Morris said that he agreed with Mr. Averette because there is already R6A in the area, and he didn't think the Board should be concerned with the water and sewer issue.

**A motion was made by Mr. Averette and seconded by Mr. Morris to approve the R6A Residential District.**

Mr. Olsen said if a new septic tank is needed, then the applicants would have to run a 100-foot line from the sewer or put in a new tank. He asked which would be most costly. Mr. Averette said that the sewer line would cost about \$20,000 because PWC requires the owners to go to the end of the property. He said if the Health Department requires this, it would not be economically feasible, and the owners can request a variance from the Health Department. He added that the Board's concern is rezoning—not water and sewer.

Chair Gillis said that the Board's concern is that the R6A allows two units on the tract. He said that an R10A District would solve the problem, but there is not such a district.

**Upon a vote on the motion, it passed unanimously.**

- E. P01-58: REZONING OF 2.75 ACRES FROM R6A TO C(P), OR TO A MORE RESTRICTIVE ZONING DISTRICT, AT 176 AND 180 AIRPORT ROAD, OWNED BY VICKIE H. LUCK.

Maps were displayed outlining the zoning and land use in the area. A video of the site was shown. Mr. Lloyd explained that the Airport Road is an entrance corridor, and the request is for commercial use. He said that the staff does not favor strip commercial use on an entrance corridor.

Mr. Lloyd said that the Planning staff recommended denial of the C(P) Planned Commercial District based on the following:

1. The 2010 Land Use Plan calls for heavy industrial use at this location;  
and
2. The C(P) District has the potential to begin strip commercial use in the area.

The Planning staff found that the subject property is also not suitable for the intervening districts.

Ms. Vickie Luck appeared before the Board and said that there are two trailer parks on both sides of the property, and she is unable to maintain the house on the land, so she would like to rezone for commercial use and sell the land.

Ms. Cary Terry, Ms. Luck's daughter, appeared before the Board and said that they have been maintaining the house for two years, and steadily trash is dumped on both sides of the property. She said that they thought that it would be better to zone the site commercial so that something nice could be built and maintained there.

No one appeared in opposition to the request.

Mr. Averette asked if the staff advised them that the area was an industrial area, and the M(P) would be more appropriate. Mr. Lloyd said that they did not because the applicants thought that the commercial district would make the property easier to sell.

**After discussion, a motion was made by Mr. Averette and seconded by Dr. Olion to defer action on Case No. P01-58 until August 7, 2001 for the staff to meet with the petitioner to explain the industrial zoning.**

Mr. Lloyd said that FAEDC considers the individual lots in the area too expensive for industrial use.

**Upon a vote on the motion, it passed unanimously.**

IX. DISCUSSION

A. WORK PROGRAM

Mr. Warren reported that he received no additional input from the municipalities on the Work Program. He said that the staff will follow the Work Program as submitted last month, and any new items will be brought before the Board as he receives them throughout the year.

B. REPORT ON COMMISSIONERS' MEETING—BARRY WARREN

Mr. Warren updated the Board on the cases heard by the Commissioners on July 16. He said that they followed the Board's recommendation on all but one case.

C. COMMITTEE ASSIGNMENTS—CHAIR GILLIS

Chair Gillis passed out the Committee Assignments for the upcoming fiscal year.

X. FOR YOUR INFORMATION

A. DIRECTOR'S UPDATE

Mr. Warren took a few minutes to explain to the Board why the staff makes the recommendations on cases that they do and how they base those decisions. He said that it is important that the Board remain consistent on how they vote in case they should ever be challenged in court. He reminded the Board to always consider the allowed uses in a district they are considering, and not be concerned about what an applicant may say he intends to do with the property. Chair Gillis agreed that the Board needs to be cautious and stay away from contract zoning.

Mr. Warren reviewed an article included in the packets on sprawl and discussed neighborhood planning (neo-traditional) and creating mixed-use districts. He added that staff is working on making the Ordinances more user friendly.

XI. ADJOURNMENT

There being no further business, the meeting adjourned at 9:50 p.m.