

Clifton McNeill, Jr.
Chair
Cumberland County

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



COUNTY of CUMBERLAND

Joint Planning Board

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

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

MINUTES
September 7, 2004

Members Present

Chair Clifton McNeill

Vice-Chair Charles Morris
Mr. David Averette
Mr. Donovan McLaurin
Mr. Roy Turner

Members Absent

Dr. Marion Gillis-Olion

Mr. Joe W. Mullinax
Vacant Stedman Rep.

Others Present

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

I. INVOCATION AND PLEDGE OF ALLEGIANCE

Vice-Chair Morris 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 Mr. Averette and seconded by Mr. Turner to approve the Agenda as submitted. The motion passed unanimously.

III. PUBLIC HEARING DEFERRALS

There were no public hearing deferrals.

IV. ABSTENTIONS BY BOARD MEMBERS

There were no abstentions by Board members.

V. POLICY STATEMENT REGARDING PUBLIC HEARING TIME LIMITS

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

VI. CONSENT ITEMS

A. APPROVAL OF THE MINUTES OF AUGUST 17, 2004

Chair McNeill pointed out in the minutes that "200" homes should have been "2,000" homes. A motion was made by Vice-Chair Morris and seconded by Mr. Turner to approve the Minutes of August 17, 2004 with the correction. The motion passed unanimously.

VII. PUBLIC HEARING ITEMS

- A. P04-52: REZONING OF 1.02 ACRES FROM RR TO C1/CU OR A MORE RESTRICTIVE ZONING DISTRICT AND A CONDITIONAL USE OVERLAY DISTRICT AND PERMIT FOR A CONVENIENCE STORE AND RESTAURANT, AT 6576 US HIGHWAY 301 SOUTH, SUBMITTED BY YOUNGER S. WOOD.

Maps and slides were displayed indicating the zoning and land use in the area. Mr. Lloyd reported that the staff recommended approval of the Conditional Use Overlay District based on the findings that the request is reasonable, not arbitrary or unduly discriminatory and in the public interest.

The Planning staff recommends approval of the Conditional Use Overlay Permit based on the findings 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 2010 Land Use and Thoroughfare Plans.

The Planning staff recommends the following conditions be added to the Conditional Use Overlay Permit:

1. The tract is to be buffered on each side starting 15 feet from the road right-of-way to the rear and the entire rear of the property; and
2. One 50-square foot sign per establishment is allowed.

Chair McNeill asked why the shape of the tract was different on the site plan than on the sketch map. Mr. Lloyd explained some of the corners of the lot had been changed in order to square off the lot as a result of a trade between the previous owner and the church, and the differences would have to be rectified between the property owner and the bank.

Chair McNeill asked how the buffering would be addressed with the differences. Mr. Barrett said that the buffering would be based on the legal description of the lot.

Mr. Lloyd introduced the packet materials into the record.

The public hearing was opened.

Mr. Stuart Clarke appeared before the Board and said that he represented the applicant. He said that the property was purchased after foreclosure and was operated as a store for 20 years prior to the foreclosure. Mr. Clarke said that this hard case cried out for compromise, and that is what the Commissioners suggested by sending it back to the Planning Board for a Conditional Use Overlay District/Permit. Mr. Clarke said that his client was willing to comply with the staff's conditions and was also not planning to have any on-premises alcohol sales. He said that he would like to have an off-premises alcohol license to sell beer and wine and would agree not to sell until after 2:00 p.m. on Sundays. He said Mr. Wood has cleaned up the abandoned property and invested a large amount of money into it. He said that he hopes the concessions would leave room for a compromise.

Mr. Clarke presented a notarized letter by the previous owner indicating that the convenience store existed on the site for 20 years and sold alcohol. He said that the Woods would be willing to buffer the site and added that the store is 130 feet from the church's property line and another 170 feet from the actual church building. He said that the Woods want to be good neighbors.

Ms. Sherry Wood appeared before the Board and said that she is willing to work with the church if they're willing to work with the Woods. She added that she doesn't want to be a bad neighbor.

Mr. Lloyd informed the Board that he has a print out from the State website establishing that an ABC Permit was issued from 1986 through 2003.

Mr. Steve Wood appeared before the Board and said that he intends to operate a convenience store. Chair McNeill asked about the restaurant requested in the permit. Mr. Wood said that it would be four to six years before they could open the restaurant, and no alcohol would be served in the restaurant.

Mr. McLaurin asked if the property was represented as commercial or residential when Mr. Wood purchased it. Mr. Wood said that he was told it was commercial property. Mr. McLaurin asked what type loan was received, and Mr. Wood said he believed it was a commercial loan. He said that he, the bank and the realtor understood that the property was grandfathered and didn't realize that the site not operating for one year meant that the commercial status lapsed. Mr. McLaurin asked if there was any recourse, and Mr. Wood said that he didn't know what could be done at this point.

Mr. McLaurin asked if there were any other deeds, and Mr. Wood said that he was not aware of any. He indicated the current property lines.

Mr. Turner said that there is another convenience store $\frac{3}{4}$ mile from the subject property. He asked how long it had been operating, and someone from the audience said it had been in operation for several years.

Mr. Willie Chaison appeared before the Board and said that he lives near the other convenience store (Pit Stop), and there have been many accidents near it. He said that if the Woods open this store, it should alleviate some of the danger from people turning into the other store and possibly avoid accidents.

Mr. Anthony Ford, pastor of the AME Church that adjoins the subject property, appeared before the Board and said that the church's objection is alcohol sales next to the church building. He said that the previous speaker wants to alleviate traffic down the road and put it at this location, and it is already difficult to get out of the church parking lot. He said that the church wasn't financially able to purchase the property when it was available. Mr. Ford said that 65 percent of the patrons at the Pit Stop are black and purchasing alcohol. He said one store selling alcohol in the area is enough.

Chair McNeill said that the Board does not have authority to issue ABC Permits and explained the Board's function in approving rezoning.

Mr. Ford asked what an overlay is, and Chair McNeill said that the Woods requested straight zoning at the last meeting, and the Board recommended denial. He explained that the overlay could restrict a site to specific uses at the applicant's request.

Chair McNeill further explained that the Board considers Conditional Use Overlay Permits based on whether the requested use(s) would be appropriate for a particular area. He said that the Board can place conditions on things like hours of operation, buffering and parking, but generally not what is sold inside the store.

Chair McNeill asked if Mr. Ford agreed with the hours of operation and buffering that the staff recommended. Mr. Ford said that the church wants to put in a Family Life Center, and the buffering may in fact not be good.

Mr. Barrett said that the philosophy and approach that staff has brought to the Board has a foundation of uses recognized in the Zoning Ordinance, and there is no category just for the sale of alcohol, which is included under food sales. He said that the Board considers the uses allowed in an underlying zoning district and the parallel districts that would be appropriate.

Mr. Lloyd said that the RR District allows clubs and lodges as a Specified Conditional Use, and clubs and lodges may or may not have alcohol sales.

Mr. Barrett said that the Board addresses the uses requested, eliminates the other allowed uses and issues and approves a permit that imposes conditions to protect the area and how the activity is operated.

Ms. Lillian Maynor appeared before the Board in opposition and said that she doesn't want alcohol sold because of the youth in the area and the detriment to the neighborhood. She said that the church is nearly 123 years old and wants to keep the neighborhood nice.

Mr. McLaurin asked if the church had any problems when the other store was open, and Ms. Maynor said that she didn't know of any.

Mr. Walter McPherson appeared before the Board in opposition and said that he has been a member of the church for 15 years, and the Pit Stop has been there all that time. He said that there has never been any congestion at the Pit Stop, and drunk drivers—not congestion—cause the accidents.

Chair McNeill said that the staff recommended approval of the Conditional Use Overlay Permit with conditions. He asked Mr. McPherson how he felt about the hours alcohol would be sold being limited. Mr. McPherson said that the previous owner may have had an ABC permit, but he never saw alcohol on display at the store. He said that he was opposed to the sale of alcohol that close to the church. He said that the church is used to keep people off of the streets, and alcohol doesn't help.

Chair McNeill asked what nights services were held at the church building. The members said that activities are held several nights a week, such as Bible studies, choir practice, and it is also used on Saturday mornings.

In rebuttal, Mr. Clarke said that he consulted with Mr. Wood, and he is sympathetic to the church and is willing to close the convenience store from 10:00 p.m. Saturday evening until 2:00 p.m. on Sunday.

Mr. Turner asked about the buffer. Mr. Lloyd said that it would follow the Ordinance requirements unless the Board members chose to change it. He said that they could make whatever reasonable changes they desired.

Vice-Chair Morris asked if the Commissioners have authority to regulate alcohol sales. Mr. Barrett said that the issue could be challenged, and added that the petitioner according to North Carolina law must agree to any condition placed on a Conditional Use Overlay Permit. Chair McNeill noted that the owner had agreed to the conditions thus far.

Chair McNeill said that he had sympathy for the Woods because of the unfair situation that was created from the realtor and bank not being aware of the circumstances. He said that there seems to be very little give on either side—little concession from Mr. Wood or from the church members. He said that the other storeowners had the right to sell alcohol, and there were no problems in the past, but the church isn't willing to even consider the conditions recommended to be placed on the Conditional Use Overlay Permit that could lead to a good compromise. He said because of this, it will be up to the Board and County Commissioners to make a decision for them. He said that they were given an opportunity to work it out.

Mr. Barrett said that he was just informed that Mr. Wood was willing to close the convenience store all day on Sundays.

Mr. McLaurin said that on an earlier case, the Board agreed to buffering, and then the Commissioners changed it, so it didn't seem to be worth much for the Board to place restrictions on the applicants. He noted that Mr. Barrett had said earlier that the applicants must agree to the conditions and asked why that didn't matter at the Commissioners' meeting. Mr. Barrett said that the applicant does have to agree, but the Commissioners have the right to change the conditions, again with the applicant's agreement.

Vice-Chair Morris asked what the main objection was, and Mr. Ford said that the sale of alcohol because it undermines what the church is trying to accomplish—to bring the community together.

Vice-Chair Morris then asked Mr. Wood if alcohol sales are a must for his business to be viable. Mr. Clarke said that sale of alcohol is necessary to make a go of the business, and it would not be economically viable without it.

Mr. Turner said that the Board members had heard good discussion and points from both sides. He said that the neighbors need to show compassion to each other. He said that Ms. Maynor said that there had not been problems in the past with the other store, and alcohol sales are legal in the County. He said he'd like for everyone to show compassion and realize that no one is out to get anyone else.

Chair McNeill asked what days and hours regular worship services were held. Mr. Ford said that they are Sunday at 9:45 a.m. and again at 6:00 p.m. and Wednesday,

from 7:00 p.m. until 8:30 p.m. Chair McNeill asked if this schedule had been in place for years, and Mr. Ford said that it had.

Chair McNeill asked why 24 hours, seven days a week was requested in the application. Mr. Wood said that he was anticipating future hours. Chair McNeill asked what hours would be required for the operation of the store. Mr. Wood said that they would like to operate from 6:00 a.m. until 10:00 p.m. six days a week. Chair McNeill asked if they would be willing to close at 7:00 p.m. on Wednesday. Mr. Wood said that they would.

Mr. Turner read the purpose of the C1 Local Business District and said that it fits the criteria of the request. He said Mr. Wood had made many concessions to accommodate the church. Chair McNeill said given the fact that the store has been there and has probably sold alcohol in the past, he asked if the concessions would make the proposal any more palatable to the church. Mr. Ford said that they have and asked if they would be in writing. Mr. Barrett said that the stipulations once approved would be in writing, and any modifications to them would require another public hearing, and the church would be notified. He said that the stipulations are as permanent as any law and can be changed just like legislators have the power to change laws.

Mr. Ford said that first this Board denied the request, now they're approving it, and everything could change in the future. Chair McNeill said that the Board voted against the request last time because it was a rezoning request and contained no restrictions. He said that it is different now, and the Commissioners asked the Board to consider something more restrictive than the straight rezoning request.

Mr. McLaurin asked about the future restaurant, and Mr. Wood said it would be in the distant future. He asked about the 15-foot area that was not to be buffered, and Mr. Lloyd said it was for the line of sight and safety. He said he thought there had been an exchange with the church of two triangular pieces to square off the lot.

Mr. Roy Morrison said that he was a trustee at the time that the exchange was made. He indicated on the map where the line was and what two triangular pieces had been exchanged in order to square off the lot and add more frontage. He added that he had never seen alcohol sold at the previous store. Chair McNeill said that the staff had a copy of the ABC Permit allowing alcohol sales at the store.

Mr. McLaurin asked if the house could be used as a residence under the proposed zoning. Mr. Lloyd said that it could not.

A motion was made by Mr. McLaurin and seconded by Mr. Turner to follow the staff recommendations and approve the C1/Conditional Use Overlay District based on the findings that the request is reasonable, not arbitrary or unduly discriminatory and in the public interest.

Mr. Averette asked if the C1 Local Business District should be approved separately, and Mr. Barrett said it could be accomplished with this motion.

Upon a vote on the motion, it passed unanimously.

A motion was made by Mr. McLaurin and seconded by Mr. Turner to follow the staff recommendations and approve the Conditional Use Overlay Permit based on the findings 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 2010 Land Use and Thoroughfare Plans.**

The motion included the following conditions:

- 1. A seven-foot tall shadowbox, dog-eared fence is to be placed no more than one foot off of the ground on one side 15 feet from the street right-of-way around to the rear where the subject property abuts the church property and with greenery on the church side of the fence planted no more than 10 feet apart. The fence and greenery are to be maintained in good repair and repair, and the vegetation nurtured;**
- 2. The hours of operation are to be 6:00 a.m. until 10:00 p.m. Monday and Tuesday, 6:00 a.m. until 7:00 p.m. on Wednesday and 6:00 a.m. until 10:00 p.m. Thursday through Saturday, and closed on Sunday;**
- 3. No on-premises consumption of alcohol is allowed;**
- 4. The future restaurant is to be eliminated from the request; and**
- 5. One 50 square foot sign is allowed for the convenience store.**

Mr. Turner asked who would make sure that the conditions are kept. Mr. Barrett said that the Code Enforcement Officers respond to complaints and do spot checks.

Mr. Barrett asked the Chair to ask the petitioner if he agreed to all of the conditions. Mr. Clarke said that Mr. and Mrs. Wood agree to all of the conditions.

Upon a vote on the motion, it passed four to one with Vice-Chair Morris voting in opposition.

VIII. DISCUSSION

A. REPORT ON LAND USE CODES COMMITTEE—DAVID AVERETTE

Mr. Averette said that the engineers and surveyors said that they hadn't had enough time to review the proposed Zoning Ordinance, and he said that the Committee voted to give them 30 days to review the document and submit their comments. He said that they hope to bring the Zoning Ordinance to the full Board by October 19.

IX. FOR YOUR INFORMATION

A. DIRECTOR'S UPDATE

Mr. Lloyd reported that Ms. Roy is on a cruise to Nova Scotia.

X. ADJOURNMENT

There being no further business, the meeting adjourned at 8:35 p.m.