

Charles C. Morris,  
Chair  
Town of Linden  
Donovan McLaurin,  
Vice-Chair  
Wade, Falcon & Godwin

Garland C. Hostetter,  
Town of Spring Lake  
Harvey Cain, Jr.,  
Town of Stedman  
Pat Hall,  
Town of Hope Mills



## COUNTY of CUMBERLAND

### Planning and Inspections Department

MINUTES  
APRIL 17, 2007

Thomas J. Lloyd,  
Director  
Cecil P. Combs,  
Deputy Director

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

#### Members Present

Mr. Charles Morris, Chair  
Mr. Donovan McLaurin, Vice-Chair  
Mrs. Patricia Hall  
Mrs. Sara Piland  
Mr. Garland Hostetter  
Mr. Roy Turner  
Mr. Harvey Cain, Jr.  
Commissioner Diane Wheatley

#### Others Present

Mr. Cecil Combs, Deputy Director  
Mrs. Annette Nunnery  
Mr. Grainger Barrett, County Attorney  
Ms. Donna McFayden  
Ms. Patti Speicher

#### I. INVOCATION AND PLEDGE OF ALLEGIANCE

Commissioner Wheatley delivered the invocation and led those present in the Pledge of Allegiance.

#### II. ADJUSTMENTS TO AGENDA - Mr. Combs requested that case P07-20 be moved from Consent to Public Hearing and to move case P07-04 to Consent.

#### III. PUBLIC HEARING DEFERRALS

Mr. Combs asked that P07-29 be deferred until May 15, 2007 and that case P07-10 be deferred until July 17, 2007. **A motion was made by Vice-Chair McLaurin, seconded by Mrs. Piland, to accept the adjustments and deferrals to the agenda. Unanimous approval.**

#### IV. ABSTENTIONS BY BOARD MEMBER - There were no abstentions.

#### V. POLICY STATEMENT REGARDING PUBLIC HEARINGS

Mr. Combs read the policy statement regarding public hearings.

#### VI. CONSENT ITEMS

##### A. APPROVAL OF THE MINUTES OF MARCH 20, 2007

**Vice-Chair McLaurin made a motion, seconded by Mr. Hostetter, to accept the minutes as submitted. Unanimous approval.**

#### CONDITIONAL USE DISTRICT AND PERMIT

- A. P07-04: REZONING OF 44.32+/- AC FROM A1 TO R15/DENSITY DEVELOPMENT/CONDITIONAL USE DISTRICT & PERMIT OR TO A MORE RESTRICTIVE ZONING DISTRICT, LOCATED ON THE WEST SIDE OF OLD VANDER ROAD, NORTHWEST OF SIMMONS CARTER ROAD, OWNED BY GERTRUDE V. HARRIS.

The Staff recommended approval of the R40/Density Development/Conditional Use District based on the following:

1. The request is reasonable and consistent with the existing lot sizes, zoning and land uses within the general area; and
2. The request is consistent with the 2010 Land Use Plan which calls for “farmland” at this location. Note: The 2010 LUP finds the R40 zoning district to be suitable in areas designated for “farmland”.

The Staff recommended approval of the Conditional Use Permit based on:

1. The use will not materially endanger the public health or safety if located according to the plan submitted and recommended – the site plan as submitted meets or exceeds the minimum development standards for subdivisions within the County, as well as complying with the criteria established in Article VIII of the County Ordinance, the adopted minimum submission criteria for approval of a Density Development.
2. The use meets all required conditions and specifications – the owner’s written confirmation of her agreement with the Ordinance Related Conditions is attached;
3. The use will maintain or enhance the value of adjoining or abutting properties – the developer is aggressively pursuing the extension of public water and sewer to the site, working in conjunction with the Public Works Commission and the applicant is proposing a quality development that should aid in the enhancement of the property values within the area;
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 conformity with Cumberland County’s most recent Land Use Plan and adopted planning policies – as stated above, the request is consistent with the Land Use Plan and is also within keeping of the character of the general area.

**A motion was made by Mrs. Piland and seconded by Vice-Chair McLaurin to follow the staff recommendations and approve R40/Density Development/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 Mrs. Piland and seconded by Vice-Chair McLaurin to approve the Conditional Use Permit 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 conformity with the land use plan, thoroughfare plan or other plan officially adopted by the Board of Commissioners. The motion passed unanimously.**

#### REZONING CASES

- B. P07-24: REZONING OF .34 ACRES FROM R10 TO C1(P) OR TO A MORE RESTRICTIVE ZONING DISTRICT, AT 3639 BOONE TRAIL, OWNED BY JUDY L. (SUGGS) MORRIS.

Mr. Combs reviewed the case information and stated that staff recommends approval of the C1(P) district based on the findings that although the C1(P) zoning district is not consistent with the 2010 Land Use Plan, which calls for Low Density Residential at this location, the subject property is located in an area of transition from residential to commercial zoning; the subject property is located on a Major Thoroughfare; and the C1(P) zoning district is in character with the current zoning of the general area. There are no other suitable zoning districts to be considered for this request.

**Mrs. Piland made a motion, seconded by Vice-Chair McLaurin, to follow the staff recommendation and approve case P07-24 as submitted. Unanimous approval.**

- C. P07-26: REZONING OF A .24 ACRE PORTION OF A 26.18 ACRE TRACT, FROM A1 TO R15 OR TO A MORE RESTRICTIVE ZONING DISTRICT, LOCATED SOUTH OF SAND HILL ROAD, WEST OF TOWER ROAD, OWNED BY TERRY SPELL LAND DEVELOPMENT LLC.

Mr. Combs reviewed the case information and stated that staff recommends approval of the R15 district based on the findings that the R15 zoning district is consistent with the 2010 Land Use Plan, which calls for Low Density Residential at this location; and rezoning this property will place the entire tract under one zoning classification. The rezoning of this property would rectify a staff mistake on Case P06-37. The other suitable zoning districts to be considered for this site are R40, R40A, R30, R30A, R20, and RR.

**Mrs. Piland made a motion, seconded by Vice-Chair McLaurin, to follow the staff recommendation and approve case P07-26 as submitted. Unanimous approval.**

- D. P07-27: REZONING OF THREE PARCELS TOTALING 47.24 ACRES FROM R6A TO A1, LOCATED ON THE SOUTH SIDE OF TOM STARLING ROAD, AT INNISFREE PLACE, OWNED BY PATRICIA LEAHY.

Mr. Combs presented the case information and stated that staff recommends approval of the A1 district based on the findings that although the A1 zoning district is not consistent with the 2010 Land Use Plan, which calls for Medium Density Residential at this location, the zoning district is more restrictive; and public utilities are not serving the subject property. The other suitable zoning districts to be considered for this site are R40, R40A, R30, R30A, R20, R20A, RR, R15, and R10.

**Mrs. Piland made a motion, seconded by Vice-Chair McLaurin, to follow the staff recommendation and approve case P07-27 as submitted. Unanimous approval.**

- E. P07-28: INITIAL ZONING OF .92 ACRES TO RR, LOCATED ON THE WEST SIDE OF MISSION HILL ROAD, SOUTH OF OAK HAVEN ROAD, OWNED BY DAWN AND WILLIAM STOCK.

Mr. Combs presented the case information and stated that staff recommends approval of the RR district based on the findings that although the RR zoning district is not consistent with the 2010 Land Use Plan, which calls for Suburban Density Residential at this location, the request is consistent with the current zoning of the area; and this request is a staff-initiated zoning due to the property not being initially zoned after de-annexation by the State legislature on June 30, 1995. There are no other suitable zoning districts to be considered for this site.

**Mrs. Piland made a motion, seconded by Vice-Chair McLaurin, to follow the staff recommendation and approve case P07-28 as submitted. Unanimous approval.**

- F. P07-30: REZONING OF .28 ACRES FROM R10 TO O&I(P) OR TO A MORE RESTRICTIVE ZONING DISTRICT, AT 1449 E. MANCHESTER ROAD, SUBMITTED BY COLON L. JAMES JR, OWNED BY MALCOLM JAMES.

Mr. Combs reviewed the site information and stated that staff recommends approval of the O&I(P) district based on the findings that although the O&I(P) zoning district is not consistent with the 2010 Land Use Plan, which calls for Low Density Residential at this location, the district would act as a buffer from the commercial property to the east; and the subject property is located on a Major Thoroughfare. There are no other suitable zoning districts to be considered for this site.

**Mrs. Piland made a motion, seconded by Vice-Chair McLaurin, to follow the staff recommendation and approve case P07-30 as submitted. Unanimous approval.**

#### REVISION & AMENDMENT

- G. P07-21: REVISION AND AMENDMENT TO THE FALCON ZONING ORDINANCE, ARTICLE III. PERMITTED PRINCIPAL USES AND STRUCTURES, TABLE 1-D, PERMITTED AND SPECIFIED CONDITIONAL USES RESIDENTIAL DISTRICT – R15A. (FALCON)

Mr. Combs reviewed the revision and amendment and stated that staff recommends approval of the amendment based on the findings that the revision will establish more unification between the Permitted uses in the R15 zoning district and the Specified Conditional Uses in the R15A zoning district; and the amendment is to clarify any discrepancies that could be deemed arbitrary.

**Vice-Chair McLaurin made a motion, seconded by Mr. Hostetter, to follow the staff recommendation and approve case P07-21 as submitted. Unanimous approval.**

#### VII. PUBLIC HEARING ITEMS

##### REZONING CASES

- A. P07-20: REZONING OF THREE PARCELS TOTALING 43.36 ACRES FROM A1 TO R30 OR TO A MORE RESTRICTIVE ZONING DISTRICT, LOCATED SOUTH OF DUNN ROAD, EAST OF RINGWOOD DRIVE, SUBMITTED BY TAMMY CAIN BARRY, OWNED BY CAIN BUILDERS, INC.

Mr. Combs reviewed the case information and stated that staff recommends denial of the R30 district and approval of the R40 district based on the findings that the R40 zoning district is consistent with the Eastover Land Use Plan, which calls for One-Acre Residential lots at this location; the R40 district is consistent with the character and lot sizes in the general area; and there are hydric soils on the property. The applicant sent an e-mail to indicate they are in agreement with this staff recommendation. There are no other suitable zoning districts to be considered for this request.

The Public Hearing opened.

Tammy Barry spoke in favor of the request. She stated that she and her brother were going to build a nice subdivision and that the lots would be from 1 to 2 acres in size. The requested zoning would allow for maximum lot development and the property would be served by a state maintained road.

Morgan Johnson spoke in opposition of the R30. He distributed pictures of the area showing standing water and swampy conditions. He stated that as Chairman of the Eastover Sanitary District he would concur with the staff recommendation of R40.

Janet Idol spoke in opposition and distributed photos to the Board to show her concern with drainage problems in the area. She stated that septic tanks were not suitable for this area. She requested that any rezoning allow for as small a number of lots as possible.

Tammy Barry spoke in rebuttal and stated that she was aware of drainage and runoff concerns and that those issues would be addressed during development.

The Public Hearing closed.

Mrs. Piland stated that she is aware of the drainage and runoff problems in the area, as she lives within one mile of the proposed subdivision. She stated that R40 is more appropriate for the area and is in agreement with the Eastover Land Use Plan. She stated that any development there would still be difficult without water and sewer.

Vice-Chair McLaurin advised the Board that he was also familiar with the area and that a majority of the property is on a sand ridge. The ridge is where the houses will be built. He stated that a ditch on the property does fill with water but the ridge area is certainly appropriate for houses. Vice-Chair McLaurin stated that soils should have no problem sustaining septic tanks.

**Mr. Turner made a motion, seconded by Mr. Cain, to follow the staff recommendation and approve R40. Unanimous approval.**

- A. P07-22: REZONING OF 2.2 ACRES FROM A1 TO R20 OR TO A MORE RESTRICTIVE ZONING DISTRICT, AT 871 REMLEY COURT, OWNED BY BRIAN DAIGNEAULT.

Mr. Combs reviewed the site information and stated that staff recommends denial of the R20 zoning district and recommends that the applicant submit for a Conditional Use District and Permit based on the finding that Remley Court is a Class "C" Private Street, in which the Planning & Inspections Staff could ensure through a Conditional Use Permit that the streets are brought up to current standards prior to any subdivision. There are no other suitable zoning districts to be considered for this request.

The Public Hearing opened.

Brian Daigneault addressed the Board in favor of the request. He asked that a written statement be submitted for the file. He advised the Board that NC DOT had just taken over Remley Court and that it would now be a state maintained road. He stated that he further wants to amend his request to R40. He stated his purpose was to place a stick-built home on the extra lot. He further stated that he felt approval of the request would increase property values in the area.

The Public Hearing closed.

Chair Morris asked staff to verify the number of lots served by the existing Remley Court. Staff responded that there were 7 lots. Chair Morris asked if the property lines ran to the middle of the street and if so, how was it possible for the state to take the road? Staff responded that the property lines were accurate as shown and that they had received no verification from NC DOT. Staff further stated that this was a major reason for the staff's request to recommend denial of the original request and for the petitioner submit for a conditional use on the property.

Chair Morris explained the ordinance requirements pertaining to the number of lots served by a class "C" street to the petitioner. He asked Mr. Daigneault if would agree to a deferral for the purpose of verification from NC DOT or to explore an R40 conditional use and permit. Mr. Daigneault agreed to the deferral.

**There being no objection, Chair Morris deferred Case P07-22 for 30 days.**

- B. P07-25: REZONING OF 1.0 ACRES FROM R6A/CU TO C(P) OR TO A MORE RESTRICTIVE ZONING DISTRICT, AT 1227 SHAW ROAD, OWNED BY RODNEY S. GARRETT.

Mr. Combs reviewed the site information and stated that staff recommends denial of the C(P) district based on the findings that the C(P) zoning district is not consistent with the 2010 Land Use Plan, which calls for Medium Density Residential at this location; and rezoning this parcel would introduce commercial zoning into a primarily residential district. There are no other suitable zoning districts to be considered for this request.

Ms. Speicher advised the Board that a conditional use overlay was approved on this property in 1993 for a greenhouse/plant husbandry operation and explained the overlay concept. She advised the Board that the petitioner now wants to add an office for his business on the site.

Mr. Barrett stated that this C(P) request would require the Board to consider all allowable uses in that district.

The Public Hearing opened.

Rodney Garrett spoke in favor of the request and stated that he wanted to remodel an existing building to allow him to operate an office for the business. He stated that all of his neighbors were in favor of this and that he felt the change would improve the neighborhood.

No one appeared in opposition. The Public Hearing closed.

Chair Morris reviewed the high traffic count in the area and stated that the existing number of abandoned mobile homes in the area makes it clear that the area is transitioning away from residential uses.

Vice-Chair McLaurin asked if the applicant was aware of the possibility of a conditional use. Ms. Speicher stated that the applicant had been informed of that and had received an application but that he preferred a straight rezoning request at this time.

Mr. Garrett stated that he felt sure his request would improve the area and that all he wanted was an office to conduct his existing business in. Chair Morris clarified for Mr. Garrett that the Board's hesitation centered on the other allowable uses within the C(P) zoning. Discussion followed on what the petitioner could ask for and the possibility of exploring a conditional use on the property to exclude undesirable uses.

**Mr. McLaurin made a motion, seconded by Mr. Cain, to defer case P07-25 for 30 days to allow the petitioner time to consider submitting a Conditional Use application. Unanimous approval.**

- C. P07-31: REZONING OF 2.71 ACRES FROM A1 TO R30A OR TO A MORE RESTRICTIVE ZONING DISTRICT, AT 1188 CYPRESS LAKES ROAD, OWNED BY JOHN L MCARTHUR JR.

Mr. Combs reviewed the site information and stated that staff recommends denial of the R30A district based on the findings that the R30A zoning district is not consistent with the 2010 Land Use Plan, which calls for Low Density Residential at this location; and the subject property is located on a Major Thoroughfare. If rezoned, the Planning & Inspections Staff also recommends a Conditional Use District and Permit to require conditions for the clean-up of the property. There are no other suitable zoning districts to be considered for this site.

The Public Hearing opened.

John McArthur Sr. addressed the Board and stated that a staff member, Ms. Collins, had called him last week and advised that he would need a conditional use district and permit on the property and asked the Board to defer his case for 60 days to allow him to speak with staff.

Chair Morris advised Mr. McArthur that the staff request was inappropriate in that they were using the existing zoning ordinance to try to correct violations over which they did not have the authority to address. He further stated that if the petitioner wanted to proceed with the original request, the Board would hear it at this time. Mr. McArthur stated that he was just following Ms. Collins' advice and that he would do whatever he needed to.

Vice-Chair McLaurin asked if the petitioner planned to build stick-built homes on the property. Mr. McArthur stated that he was planning only stick-built housing.

Chair Morris advised him that R30 would serve his purposes without allowing the placement of manufactured homes. Mr. McArthur stated that he did want that but staff had told him he could not request R30, but would have to ask for R30A. Ms. Speicher told the Board that Ms. Collins advised R30A due to an existing mobile home on the property that would become non-conforming under R30.

Chair Morris advised Mr. McArthur that the existing manufactured home would be allowed to remain but if it were destroyed by more than 50% then it could not be replaced with another manufactured home. Mr. McArthur stated that he understood and accepted that.

Mr. McArthur asked the Board to consider deferring his case for 60 days to allow him time to speak to staff and consider his options.

Joseph Christopher appeared in opposition to a 60 day deferral. He is a neighbor and will be out of the country at that time. He stated that his objection is to an R30A request but that he would accept R30.

Mike Axelrod appeared in opposition and stated that he wants to preserve the existing woodlands on the property. He is not opposed to a deferral but asked that the Board consider the environmental aspect of the request when they hear the case again.

The Public Hearing closed. **There being no opposition, Chair Morris deferred the case for 60 days.**

#### VIII. DISCUSSION / DIRECTOR'S UPDATE

Chair Morris stated that he was concerned with staff's use of the Zoning Ordinance to enforce other violations. He expressed his concern that staff had crossed clear boundaries in doing so. He stated that staff should confine their decisions to the parameters of the Zoning Ordinance and refer other violations to the appropriate agency or department for follow-up. Ms. Speicher explained to Chair Morris that "open storage" in a residential district is a zoning issue, which is why the staff recommendation addressed this in case P07-31.

#### IX. ADJOURNMENT

There being no further business, the meeting adjourned at 8:08 p.m.