

Lori Epler,  
Chair  
Cumberland County

Roy Turner,  
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



# COUNTY of CUMBERLAND

## *Planning and Inspections Department*

Thomas J. Lloyd,  
Director

Cecil P. Combs,  
Deputy Director

Walter Clark,  
Sara E. Piland,  
Cumberland County

Benny Pearce,  
Town of Eastover

Donovan McLaurin,  
Wade, Falcon, & Godwin

### MINUTES March 15, 2011

#### Members Present

Ms. Lori Epler, Chair  
Mr. Roy Turner, Vice-Chair  
Mr. Garland Hostetter  
Mr. Benny Pearce  
Mr. Donovan McLaurin  
Mr. Harvey Cain, Jr.  
Mrs. Sara Piland  
Mr. Walter Clark  
Mr. Charles Morris

#### Members Absent

Ms. Patricia Hall

#### Others Present

Mr. Tom Lloyd  
Mrs. Laverne Howard  
Ms. Patricia Speicher  
Mr. Rick Moorefield,  
County Attorney

#### I. INVOCATION AND PLEDGE OF ALLEGIANCE

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

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

Mr. Lloyd advised the Board that Case P11-10 would be pulled from Consent Items and moved to Contested Items.

#### III. PUBLIC HEARING DEFERRAL / WITHDRAWAL

There were none.

#### IV. ABSTENTIONS BY BOARD MEMBERS

There were none.

#### V. APPROVAL OF THE MINUTES OF FEBRUARY 15, 2011

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

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

Mr. Lloyd read the policy statement.

#### VII. PUBLIC HEARING CONSENT ITEMS

TEXT AMENDMENT

- A. **P11-15:** REVISION AND AMENDMENT TO THE TOWN OF STEDMAN ZONING ORDINANCE BY AMENDING ARTICLE IX SIGN REGULATIONS IN ITS ENTIRETY; ARTICLE X DEFINITIONS, BY DELETING ALL SIGN RELATED DEFINITIONS FROM THIS ARTICLE; AND UPDATING THE TABLE OF CONTENTS AS APPROPRIATE.

The Planning & Inspections Staff recommends approval of the text amendment based on the following:

1. This amendment modernizes the Town's current sign provisions and will allow for consistency between the Town and the County's respective zoning ordinances; and
2. The amendment was requested by the Town of Stedman.

**Mrs. Piland made a motion, seconded by Mr. Hostetter to follow the staff recommendation and approve case P11-15. Unanimous approval.**

REZONING CASES

- B. **P11-06:** REZONING OF 10.12+/- ACRES FROM R6 RESIDENTIAL TO M(P) PLANNED INDUSTRIAL OR TO A MORE RESTRICTIVE ZONING DISTRICT; LOCATED NORTHWEST OF SR 2311 (GILLESPIE STREET), SOUTHEAST OF NC HWY 87 (MARTIN LUTHER KING JR. FREEWAY); SUBMITTED BY TIM KINLAW ON BEHALF OF CUMBERLAND COUNTY BOARD OF EDUCATION (OWNER).

The Planning & Inspections Staff recommends approval of the M(P) Planned Industrial district for this request based on the following:

1. The district requested is consistent with the 2030 Growth Vision Plan, which calls for "urban" at this location, as well as meeting the location criteria for "heavy industrial/manufacturing" development as listed in the Land Use Policies Plan;
2. The location and character of the use will be in harmony with the surrounding area; and
3. Public utilities are available to the subject property.

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

**Mrs. Piland made a motion, seconded by Mr. Hostetter to follow the staff recommendation and approve case P11-06 for M(P) Planned Industrial district. Unanimous approval.**

- C. **P11-09:** REZONING OF .43+/- ACRES FROM R6A RESIDENTIAL TO C2(P) PLANNED SERVICE AND RETAIL OR TO A MORE RESTRICTIVE ZONING DISTRICT; LOCATED AT 4966 AND 4976 CUMBERLAND ROAD; SUBMITTED BY GLEN JERNIGAN, JR. AND HOLDEN REAVES ON BEHALF OF JERNIGAN HOLDINGS, LLC. AND REAVES HOLDINGS, LLC. (OWNERS).

The Planning & Inspections Staff recommends approval of the request for C2(P) Planned Service and Retail district based on the following:

1. The request is consistent with the 2030 Growth Vision Plan, which calls for "urban" development at this location; and

2. The subject property meets the location criteria for “light commercial” as recommended in the Land Use Policies Plan.

The C1(P) district could also be considered suitable for this location.

**Mrs. Piland made a motion, seconded by Mr. Hostetter to follow the staff recommendation and approve case P11-09 for C2(P) Planned Service and Retail district. Unanimous approval.**

## VII. PUBLIC HEARING CONTESTED ITEMS

**P11-10:** REVISIONS, AMENDMENTS AND UPDATES TO THE CUMBERLAND COUNTY ZONING ORDINANCE FOR THE CUMBERLAND COUNTY JOINT PLANNING BOARD’S ANNUAL REVIEW OF THE JUNE 20, 2005 ORDINANCE.

Below is a summary of the committee’s recommended changes to the County Zoning Ordinance for the 2010 review. The ordinance is available for viewing on the Planning & Inspections Department’s webpage: <http://co.cumberland.nc.us/planning.aspx>.

### Major Changes

1. Convert **Conditional Use District and Permit to Conditional Zoning** – If approved, this amendment will allow for rezoning with conditions as a legislative matter and since quasi-judicial hearing would no longer be required for this type of application, the two part motion requirement would be eliminated. (p. 35, Sec. 308, Art. III, Zoning Districts; p. 48, Art. V, Companion Districts – Conditional Zoning Districts; several other general references throughout the ordinance such as in the definitions for **Conditional Use** (p. 12) and **Quasi-Judicial** (p. 24) and Art. XV, Amendments)
2. Delete references to **all uses not listed are prohibited** concerning uses listed in the Use Matrix to ensure consistency with recent NC Court of Appeals case, specifically *Land v. Village of Wesley Chapel* (Aug, 2010) (p. 39, Sec. 401 & Sec. 402, Art. IV, Permitted, Conditional and Special Uses)
3. Clarified **schools** and **types of schools** and **districts where the schools are allowed** in the Use Matrix (p. 46, Sec. 403, Art. IV, Permitted, Conditional and Special Uses)
4. Modify the provisions for **attached signs** so that the requirements are consistent for all non-residential uses in non-residential zoning districts (pp 141-144, Art. XIII, Sign Regulations)
5. Repeal provisions allowing Planning Board to approve **alternate yard requirements** for planned zoning districts (p. 150, Sec. 1404, Art. XIV, Planned Districts)

### Minor Changes

1. Add definition for **Fences or Walls, Solid** (p. 15, Sec. 203, Art. II, Definitions)
2. Add definition for **Lateral Access** (p. 18, Sec. 203, Art. II, Definitions)
3. Add definition for **Mobile Storage Units** (p. 21, Sec. 203, Art. II, Definitions)
4. Change reference for **RR Rural Residential classification** that currently identifies this district as “**low**” density to “**suburban**” for consistency with Land Use Policies Plan (p. 32, Sec. 304, Art. III, Zoning Districts)

5. Clarify **type of street access** for non-residential uses allowed in residential and agricultural districts (**p. 91**, Sec. 916, Art. IX, Individual Uses)
6. Clarify when **outside storage** is allowed it must be buffered from view from public right-of-ways (**p. 107**, Sec. 1002, Art. X, Other Uses)
7. Revised the method for calculation of off-street parking spaces required for **lodges, fraternal and social organizations** so that the amount of spaces required are based on capacity rather than size of building (**p. 129**, Sec. 1202, Art. XII, Off-Street Parking and Loading)
8. Repeal the **mandatory permanent surfacing** requirement for required **off-street parking spaces** and drives (**p. 131**, Sec. 1202.D, Art. XII, Off-Street Parking and Loading)
9. Ensure that provisions addressing **temporary signs** are content neutral (**p. 138**, Sec. 1304, Art. XIII, Sign Regulations)
10. Add and clarify the provisions governing **entrance signs for developments** (**p. 139**, Sec. 1304, Art. XIII, Sign Regulations)

In addition to the above listed changes, the staff is currently working with a citizen committee to establish standards for outdoor shooting ranges. This amendment will be considered separately by the Land Use Codes Committee at a later date.

Mr. Lloyd reviewed the changes to schools that were proposed by the Land Use Codes Committee. Mr. Lloyd stated that firing ranges were not included in these changes, the reason it's not included is that there is a special committee that has been convened of experts dealing with firing ranges that are coming up with standards; they will then be brought back to the Codes Committee. Part of what will be recommended outside of those standards is, if in fact there is a firing range included with any other use, it will then not only have to follow the standards for firing ranges it would then be essentially a firing range in the fact that it would have to go to, if it's a special use, to the Board of Adjustment. The big change will be that there will be standards for firing ranges and then if in fact there is a principle use that has a firing range, it will be treated as a firing range with respect to that.

Chair Epler recapped for the audience the changes that Mr. Lloyd reviewed.

Mr. McLaurin stated that what was discussed prior to the meeting, if a use falls in RR or in A1, as it's permitted now, instead of being a use that would go before the Board of Adjustment we would put it in an "X" (conditional use) which would make it come before the Planning Board, then it would also have to go to the Commissioners' that would make the school possible in that area and give the people that have property around it the assurance that it would go before the Board and there would be a public hearing.

Mr. Lloyd stated that there was one other suggestion and that would be not including schools as a use in post secondary in those districts and leave it in the districts that are shown in the existing table, that is the other option.

Chair Epler reminded all speakers that what was before the Board to be voted on was the Text Amendments to the Ordinance, not any specific projects or cases.

Public hearing opened.

Mr. Kevin West spoke in opposition. Mr. West stated that he had several concerns over some of the proposed changes. First, the change in A1 to allow for basically any type of school, secondly, following this concern would be allowing such schools to be permitted and thus allowing the planning director or his staff to approve such operations, which in effect would do away with this board in that particular instance and also do away with the people who are being affected by whatever the operation might be. Thirdly, deleting references in the paper work where all uses not listed are prohibited, this would allow in our opinion, far too much freedom for so called schools to get permitted for one thing and then kind of tweak what they want to do once they get their initial permit. Mr. West referenced Section 101, 2<sup>nd</sup> paragraph and Sec 105 of the County Ordinance and stated that he doesn't see where any of the changes would benefit the residents of the County. Mr. West addressed the last issue under minor changes, the citizen committee working on the standards for firing ranges. He stated that there were concerns about the criteria and who was on the committee and if they were qualified. Mr. West stated that his property adjoins the TigerSwan property, and he can get within 300 yards of where they are shooting, and that is a concern. Finally, Mr. West stated that all of the proposed changes should concern all property owners in the County and hopes that the Board will follow their purpose in application as stated in the administrative provisions when considering these changes.

Mrs. Doris Fort spoke in opposition. Mrs. Fort addressed two concerns in the proposed changes to the ordinance. The first issue is on page 50 and 51, "action by the Planning Board"; Mrs. Fort asked why those five items were being removed. On page 51 about the Board of Commissioners' deletes references requiring disclosure of any site visit or any incidental ex parte contact with any affected party. Mrs. Fort asked why these safeguards would be removed, and in removing them makes it look like they are trying to avoid transparency, and surely that is not what is intended. The second issue is major change #3, concerning the definition of schools and districts where they are allowed. Extreme broadening of schools and then making it a permitted use in all A1 and RR zones is dangerous and can have unintended consequences. The planning staff could approve any activity that could call itself a school in all A1 and RR zones. Not all County citizens are aware of the possible result of this type of change of definition, but all these people here from Cedar Creek know very well, last June the Planning Department decided that a military type training facility is a school and approved one in the middle of a rural area with close residents. Without your review or notification to residents, the Planning Department approved 7 outdoor firing ranges, one ½ mile sniper range in a proposed 60 foot tower for firing from an elevated position, firing 7 – 15 million rounds a year.....

Chair Epler reminded Mrs. Fort that TigerSwan would not be discussed at this meeting.

Mrs. Fort asked the board to consider that currently if someone wants to put two houses on a one acre lot it has to be rezoned, neighbors are notified, signs are put up and public notices made. Public hearing is conducted and citizens concerns are heard, you'll do that for one house, yet with these proposed changes any operation that calls itself a school, will be approved with none of these procedures. All it takes is Planning Department sign off and you as a Planning Board will not be able to review it, and how much sense does that make? We depend on your good judgment and beg you not to approve these changes that will be detrimental to the future of our County and especially to those citizens who live or own property in or anywhere near A1 or RR zones.

Mr. Robi Mulier spoke in opposition. Mr. Mulier stated that he was confused about what was being considered and asked if how schools would be addressed in the ordinance was what the discussion was about.

Chair Epler stated that there were several changes to the ordinance that were before the board and asked if he received a packet with all of the changes.

Mr. Mulier stated that he did receive a packet and was opposed to all of the changes and was in agreement with the previous speakers. Mr. Mulier stated that in regard to schools, he doesn't understand why the definition of the word school is being changed. In his research, a recent Superior Court case, a judge sided with the County on their current interpretation of school, why does it need to be changed? Mr. Mulier said that he hadn't seen a clear and convincing business case that has been presented this evening nor that he's read about that proves that the current ordinance as written is ineffective and does not serve its intended purpose, nor has it been shown that the current ordinance contradicts or is in conflict with the adopted 2030 Cumberland County Growth Vision Plan. To the contrary the proposed amendments, he believes, are inconsistent with and in conflict with the adopted 2030 Growth Vision Plan. Mr. Mulier stated that he believes when major amendments are proposed to the zoning ordinance, clear and convincing fact based business cases should be made for them. These cases should show why the current ordinance is ineffective and how they have impaired economic development in accordance with the adopted 2030 plan, and then they should show how the proposed amendments will improve upon the zoning ordinances. The cases haven't been made here this evening. Furthermore, in accordance with the direction of the adopted 2030 Growth and Vision Plan public participation should be central and an ongoing feature of planning. It has not been shown that public participation was central to these amendments, nor has it been shown that there is a consensus among all parties. As such, the community represented here asks that the board reject and deny the proposed major amendments to the ordinance on the agenda presented to the board this evening.

Chair Epler explained to Mr. Mulier that the board regularly visits the ordinances. There is a committee formed by the board and members of the board with the help of county counsel and planning staff. We routinely visit the ordinances and in order to clarify those ordinances and keep up with development that is going on, on a daily, weekly, and monthly, yearly basis, there is a need to revise our ordinances. I would dare say, that you would not be happy if we were operating under the ordinance we had 10 or 15 years ago. We do that on a regular basis.

Mr. Mulier stated that he agreed, but also thinks that there also needs to be a clear and convincing case.

Mr. McLaurin stated that the change in the schools, as far as the public, private, elementary, and secondary, the reason that change is being proposed is just to make it your K, 1 through 12<sup>th</sup> grade is a case that has been discussed, thinks that possibly the private part of that was used possibly for that school to be put into the A1 zone. So what we're trying to do is to take any vagueness, anything that is not transparent out of that part and just say that is just going to be the school as you know that your children go to from K, 1 up through high school, so there will be no confusion. The private part will be out, even though there are private schools, but the kind of schools we are talking about we are better defining it are just your regular educational schools for children. That's really clarifying it and taking some vagueness out. So that way it will be spelled out, cut and dry.

Mr. Mulier stated that he is an educator and understands what Mr. McLaurin said, but thought he also heard Mr. McLaurin say that post secondary would come before the Board of Adjustment.

Mr. McLaurin stated that wasn't what he said, what he said was the proposed change was why it was brought up, would be to make it an "X" just like a quarry or a prison, so that it would have to go before the Planning Board and also go to the commissioners' which would also give citizens plenty of input, contact with their commissioners, and the commissioners' will have the final say.

Mr. Lloyd addressed some of the questions that were presented to the board. The first question was about "delete references to all uses not listed are prohibited"; well a recent court case said if the uses aren't listed as being prohibited, you can't prohibit them. So we did it because of a court case, if it's not specifically listed as prohibited then it's allowed, NC Court of Appeals case *Land v.*

*Village of Wesley Chapel* (Aug, 2010), so we did that because of a court case. Hopefully, this is one reason the audience will understand why we revisit this every year is because there are new uses every year. There is always something new coming up that we don't have a classification for, if nothing else we have to include it somehow in this table or you get to the situation where the administrator of the ordinance has to interpret what's the closest thing to that. Case in point firing ranges. Secondly, what we're doing is conditional zoning; everything that was taken out about ex parte communication doesn't need to be in there. It's no longer going to be quasi-judicial so you and the commissioner's can talk to citizens and citizens can talk to you, you can talk to each other. There's no need in you saying you talked to this person because it will be treated like any zoning case, you will be able to talk to the citizen's and the commissioner's now. The City of Fayetteville has conditional zoning, Charlotte, Greensboro, most cities have it. All we're doing is taking out the conditional use zoning process you have now, not making it quasi-judicial, we're making it like a regular zoning case and everybody can talk to everybody. That's why that is taken out, because there will be no need to reveal who you're talking to.

Mr. McLaurin said as far as the points made about protecting the neighborhood, if you go back, as Mr. West read all those things are basically covered in the definition of zoning more or less, they're already there.

Mr. Lloyd said there's not going to be a district and a permit, that's why there's no reason to list that, they were listed under permit. Now it's either you're going to have it or you're not going to have it. That's why it's taken out because we're changing it from one type of conditional use zoning to another.

Mr. McLaurin said it will be more transparent because of the ability for citizens to call anyone on the board or talk to the commissioner's, where the way it is now, generally, they are not supposed to talk to anyone or even go out and look around and get knowledge about a case.

Mr. Lloyd said as far as public input, this was advertised the way these zoning amendments and all zoning is advertised. The whole community, the County had an opportunity to come here, you're representatives, that's what you're up there for, you are appointed by the Commissioners to represent the citizens of all of the municipalities in the County and so are the Commissioners, so obviously there is public input, it's going on tonight, so the process is working.

Mr. Lloyd made a suggestion about using an "X" for schools, as you can see this conditional use is really only two uses in there, and they are two noxious uses really when it comes to being anywhere residential; prisons and quarry's. It would probably be a better suggestion, and feels that staff would agree; if instead of "X" for schools in A1 and RR, just not allowing them in those districts and not including schools in the same categories you would prisons and quarry's. The board agreed that in light of the Commissioners' having the final approval the "X" would be a better idea.

Public hearing closed.

Mrs. Piland asked where there are the two categories of schools, one with elementary and secondary and then there is another category of schools listed post secondary, trade, vocational, avocational, and fine arts, what is being suggested now rather than allowing those in A1 and RR we would delete those two from this matrix and only allow them in O&I, C1(P) and the commercial.

Mr. Lloyd stated that was correct.

Mrs. Piland said so the two that are highlighted on the matrix would be deleted (Mr. Lloyd responded yes), Mrs. Piland said she would agree with that.

Mr. McLaurin asked the firing ranges now are permitted under recreation and amusement outdoor for profit.....

Mr. Lloyd stated if a straight firing range came in and we had at this point and time to make some interpretation, which would, like I say, we're going to hold off until the standards come back.

Mrs. Piland stated that firing ranges weren't being discussed in the two categories highlighted in the matrix. So we have just schools elementary and secondary and then schools for these other purposes, but not firing ranges.

Mr. Lloyd stated that was correct, and if someone comes in with a firing range, the Codes Committee will be in front of this board before that gets processed to come in front of the board. So it will be subject to the new amendment on firing ranges, if an application came through.

Mr. Morris asked Mr. McLaurin if he would bring the committee report forward as a motion, with the exception of eliminating the A1 and RR in post secondary.

Mr. McLaurin said yes.

**Mr. McLaurin made a motion to follow the Land Use Codes Committee report adopted as is with the exception of eliminating the schools business, commercial, post secondary type schools, keep them in the zones they are currently in and do not add any additional zones, seconded by Mr. Morris. Unanimous approval.**

#### VIII. DISCUSSION

There was none.

#### IX. FOR YOUR INFORMATION

##### DIRECTORS UPDATE

- VANDER CIVIC ASSOCIATION, INC. SIDEWALK WAIVER

Mr. Lloyd stated that he and Mr. Moorefield, County Attorney, discussed adding a definition of development in the Subdivision Ordinance as to what that governs, which is subdivision of property, planned districts, and group developments.

Mr. Moorefield stated that the way the subdivision ordinance reads it doesn't even apply to the Vander project. It only applies to actual subdivision of property or a single parcel being converted into multiple ownership; such as a condominium or duplex, or something like that.

#### X. ADJOURNMENT

There being no further business, the meeting adjourned at 8:00 p.m.