

Minutes of the  
New Hanover County Planning Board  
October 3 2019

A regular meeting of the New Hanover County Planning Board was held on October 3, 2019 at 6:00 p.m. in the André Mallette Training Facility, 230 Government Center in Wilmington North Carolina.

Members Present

Thomas 'Jordy' Rawl, Chair  
Donna Girardot, Vice-Chair  
H. Allen Pope  
Ernest Olds  
Jeffrey B. Petroff  
Colin J. Tarrant

Staff Present

Wayne Clark, Planning & Land Use Director  
Ken Vafier, Planning & Land Use Manager  
Brad Schuler, Senior Planner  
Rebekah Roth, Senior Planner  
Gideon Smith, Current Planner  
Sharon Huffman, Deputy County Attorney

Members Absent

Paul Boney

Chair Thomas 'Jordy' Rawl called the meeting to order at 6:01 p.m. Planning Manager Ken Vafier led the *Pledge of Allegiance*. Chair Rawl read the procedures for the meeting and welcomed the audience.

Approval of Minutes

Board Member Ernest Olds made a motion, seconded by Board Member Jeffrey Petroff to approve the August 1 2019 minutes as drafted. Motion to approve carried 6-0.

Election of Officers

Deputy County Attorney, Sharon Huffman opened the nominations for Chair and Vice-Chair for the 2019-2020 Year.

Mr. Olds made a motion, seconded by Chair Rawl to nominate Donna Girardot for Chair. Motion carried 6-0.

Mr. Petroff made a motion, seconded by Donna Girardot to nominate Paul Boney for Vice-Chair. Motion carried 6-0.

- 1. Rezoning Request (Z18-16) – Requested by College Acres Development, LLC, on behalf of the property owner, Bennett Commercial, LLC to rezone approximately 9.14 acres of land located in the 5300 block of Carolina Beach Road, from R-15, Residential District, and B-2, Highway Business District, to (CZD) RMF-M, Conditional Residential Multi-Family Moderate Density Zoning District in order to construct a townhome development.**

Senior Planner Brad Schuler stated this proposal was continued from the October 17, 2018 planning board meeting because at that meeting the board had concerns related to the design and layout of the project. As a result, the applicant agreed to continue the item to a later date to allow for the site plan to be updated and address the concerns. Mr. Schuler provided a review of the original proposal, the applicant's revised proposal and provided information pertaining to location, land classification, access, level of service and zoning; showed maps, aerials and photographs of the property and surrounding area along with an overview referred to in the staff report. He concluded by stating overall the application was generally consistent with the Comprehensive Plan's recommended density and mix of uses for the area.

Chair Rawl opened the public hearing and recognized the applicant.

Land Planner Cindee Wolf of Design Solutions, LLC, representative for the applicant introduced the revised site plan intended to address the concerns and recommendations of the board from the October 2018 meeting. The modifications included the removal of one building that resulted in a reduced number of units to a maximum of 95 townhomes which allowed more space for additional parking spaces and included a vehicular turn-around at the southwest end of the site. She stated the plan was consistent with the Comprehensive Plan policies and guidelines and will have the landscaping street yards for interior and foundation planning required by the ordinance.

In response to Board questions, Ms. Wolf explained how the front of the site could be landscaped and buffered to limit impacts from the adjoining commercial area and Carolina Beach Road. She stated the proposed travel aisle would be wide enough to accommodate emergency vehicles. She discussed the potential locations on the site where a cluster mailbox could be installed, and stated that 5 units would be within each townhome.

Diane Burkhart, a resident of Antoinette Drive spoke in opposition of the project and stated she was concerned with parking, flooding, drainage, and emergency service access.

Phillip Martin, a resident of Brewster Lane expressed concerns regarding the removal of trees and privacy.

Kenny O'Leary, a resident of Antoinette Drive expressed concerns about having new housing close to his home, the additional traffic that will be using Antoinette Drive and impacts it will have at the road's intersection with Carolina Beach Road.

In response to neighbors' concerns, Ms. Wolf stated the buildings would be 2-story in height.

Tim Clinkscales, Professional Engineer with Paramounte Engineering, on behalf of the applicant, addressed drainage and explained how the stormwater facilities will be designed on the site.

In response to Board questions, Mr. Clinkscales discussed the outfall drainage feature of the site, which consists of a 24-30-inch pipe under Antoinette Drive, and stated that a study of the downstream stormwater facilities has not been conducted at this time. He stated that the pipe under Antoinette Drive is located within a NCDOT right-of-way. He also stated the site will be designed to comply with the applicable regulations and described how the site's stormwater will be conveyed to the proposed pond.

Ms. Burkhart expressed additional concerns with the proposed stormwater pond's outfall and traffic. She also asked if the pond would have a fountain to prevent mosquitoes.

Kenny O'Leary expressed concerns with the ditch running through Antoinette Drive.

Chair Rawl closed the public hearing and opened the floor for Board discussion.

In response to Board questions, Mr. Schuler stated that the Fire Marshal would prohibit on-street parking on the proposed travel aisle within the development due to its width. Ms. Wolf stated the travel aisle will be designed with vertical curbs which helps prevent on-street parking.

Regarding the design of the stormwater facilities, Ms. Wolf stated that the site must be designed to accommodate the water running through the site and discussed how the facilities will be maintained. Mr. Clinkscales added the pond would be dug below the existing grade.

Regarding the buffering of the site, Ms. Wolf explained the different ways a buffer can be provided along the residential homes to ensure that it meets the County's opacity requirement.

In response to Board questions, Mr. Schuler stated that he was not aware of any conversation with NCDOT regarding improvements to Antoinette Drive.

Mr. Pope stated that it appears Antoinette Drive could be widened at the intersection with Carolina Beach Road and requested staff provide his comment to NCDOT for consideration during the driveway permitting process.

Chair Rawl expressed concerns regarding the potential downstream stormwater impacts from the proposed development.

Ernest Olds made a MOTION, SECONDED by Allen Pope to recommend to the Board of Commissioners to APPROVE the proposed rezoning to a Conditional Residential Multi-Family Moderate Density zoning district. He found it to be CONSISTENT with the purposes and intent of the Comprehensive Plan because the proposal would contribute to the mix

of uses envisioned for the Monkey Junction growth node, will provide an orderly transition of uses and densities, and it will contribute to the range of housing types available in the area. He also found approval of the rezoning request was REASONABLE and in the public interest because the proposed development will connect to water and sewer services, is accessed by an arterial street, and will include roadway improvements that mitigate the traffic generated by the development.

With agreed upon conditions of approval as follows:

1. A downstream stormwater analysis of the existing infrastructure serving the site shall be conducted. The analysis shall include the ownership of the infrastructure, and the party or parties responsible for its maintenance and improvement.
2. The stormwater pond shall be aerated.
3. The townhomes shall be limited to two stories.
4. The required bufferyard shall be opaque.

Chair Rawl asked the applicants representative to come forward and answer if they would agree to table this item past the October 21<sup>st</sup> Board of Commissioners meeting to allow time to conduct a downstream study. Ms. Wolf agreed to have the item placed on the Board of Commissioners November 4<sup>th</sup> meeting.

Upon vote, five in favor, one opposed. Motion to approve carried 5-1.

**2. Special Use Permit Request (S19-02) – Requested by Tribute Companies on behalf of the property owner, Coswald, LLC, for a special use permit to develop residential uses within a commercial district on approximately 15.6 acres of land located in the 200 block of Lendire Road, near the 7200 block of Market Street.**

Deputy County Attorney Sharon Huffman gave an overview of quasi-judicial hearings including the standards for the evidence which the Board could consider when making their recommendation and witnesses were sworn in by Ms. Huffman.

Senior Planner Brad Schuler provided information pertaining to location, land classification, access, transportation and zoning, showed maps, aeriels, and photographs of the property and the surrounding area and gave an overview of the proposed application and staff report. He stated the proposed mixed use development was consistent with the type and intensity of uses intended for that area and provided an orderly transition. He explained the board must make four conclusions to recommend approval. 1. That the use will not materially endanger public health and safety. 2. That it meets all required conditions and specifications of the zoning ordinance. 3. The use will not substantially injure the value of adjoining or abutting property. 4. The use is in harmony with the area in general conformity of the comprehensive plan.

In response to questions from the Board, Mr. Schuler stated that site is currently zoned B-2, Highway Business, which permits by-right big box stores like Wal-Mart in addition to several other commercial uses like auto repair shops, storage business, retail establishments, offices, and restaurants. In regards to area of the parcel which abuts the proposed SUP boundary which is not included in the SUP application, Mr. Schuler stated that it is his understanding that applicant will own this area but did not want to include it in the application as they do not have a specific plan for it at this time and that the applicant can provide more information.

Regarding the status of Lendire Road, Mr. Schuler stated that NCDOT recently took ownership of the road and that they are aware of the maintenance needed to be done on the road. He explained NCDOT is currently looking into ways to perform maintenance work on the road.

Chair Rawl opened the public hearing and recognized the applicant.

Matt Nichols, an attorney representing the applicant, gave an overview of the Special Use Permit application and the required criteria. He explained the benefits of the proposal versus what could be developed by-right under the current B-2 zoning of the site, including that it provides a transition to the abutting single-family housing and that conditions can be placed on the development. He stated the applicant is proposing and has agreed to three conditions including

installing fence in the bufferyard, designing the stormwater facilities to the 100-year storm event, and installing a multi-use path along Lendire Road.

Josh Mihaly, a landscape architect for the applicant, provided an overview of the design and layout of the conceptual site plan.

Tim Clinkscales, professional civil engineer for the applicant, provided an overview of the proposed stormwater design for the project, including that the site will be designed to accommodate the 100-year storm and that all stormwater generated by the site will be conveyed away from Market Street and toward Lendire Road.

Tim Lowe, professional engineer for the applicant, provided an overview of the estimated trips that would be generated by the proposed development. He explained that the proposed development would generate less traffic than a typical commercial development permitted under the site's current B-2 zoning.

Mr. Nichols explained that the proposed development meets the first and second criteria required for a Special Use Permit. Specifically, that the use will not materially endanger the public health or safety and that it complies with all of the standards of the Zoning Ordinance.

Cal Morgan, a North Carolina certified real estate appraiser, explained that the proposal meets the third and fourth criteria required for a Special Use Permit. He stated the use will not substantially injure the value of adjoining or abutting property, and explained that he conducted a review of several apartment communities and mixed-use projects in Wilmington to determine the impact to property values and found no impact to adjacent properties.

In response to Board questions, Mr. Nichols explained that the 24 residential units located within the proposed mixed-use buildings is included in the total proposed 288 units for the development.

Howard Christ, a resident of Smallwood Court, expressed concerns about runoff water from this project and asked staff to verify where the stormwater will flow offsite. Mr. Schuler responded that the outfall flows toward Howe Creek which is south of the subject site. Mr. Christ stated if the water is not flowing toward Smith Creek then he does not have any comments.

Larry Hobbs, a resident of Smallwood Court, expressed concerns with flooding that is occurring around Torchwood Boulevard and the Glen Ridge subdivision. He asked the Board to not approve the development until the flooding issue is addressed. Mr. Hobbs read an article published by Port City Daily regarding the flooding in the Torchwood area which quoted the County Engineer, Jim Iannucci. He further discussed how the area has been developed and that newer subdivisions have been constructed to better standards, but that Glen Ridge sits lower compared to those developments.

Betsy Albright, a resident of Bloomington Lane, expressed concerns with flooding that is occurring on Bloomington Lane. She stated that existing wetlands on the site will flood across Market Street toward Ogden Tap Room and then to Bright Leaf Road. She provided the Board with pictures of the area. Ms. Albright stated that people are being told not to buy property near her neighborhood or the Torchwood area due to the flooding.

Wayne Jeffcoat, a resident of Smallwood Court, expressed concerns with stormwater runoff and stated the Torchwood area flows toward Smith Creek near the Hanover Reserve subdivision and Military Cutoff extension. He explained there are existing issues with ditches in the area that are causing flooding to occur in and around his neighborhood.

In response to the opposition's concerns and Board questions, Mr. Clinkscales, stated no stormwater would flow toward Market Street and that the project will be designed to the 100-year storm event. He explained that the post-development discharge rate will not exceed the pre-development discharge rate for a 100-year storm. Mr. Clinkscales further explained the existing drainage of the site and stated that with the proposed development all of the stormwater will be conveyed to the proposed stormwater pond.

Regarding the flooding concerns from the existing wetland, Mr. Clinkscales stated that NCDOT will improve the piping under Market Street with the median project currently under construction.

In response to Board questions, Mr. Clinkscales stated that a big box commercial center would typically have about 70-75% of impervious surface and that the proposed development is under 60%.

Alison Butcher, a resident of Sapling Circle, expressed concerns with the proposed impervious surface and asked staff to verify the watershed where the site would drain. Mr. Schuler stated that based on the County's watershed maps, staff initially believed the site flowed toward Smith Creek, however, county engineering staff examined the area and determined it flowed toward Howe Creek.

Cynthia Boulet, a resident of Comet Court, expressed concerns with drainage and flooding in the area. She stated the flooding impacts the value of the homes in the area.

Mr. Hobbs stated that even with new developments installing stormwater ponds, flooding is still occurring in the area.

Everyone being given the opportunity to speak in favor or opposition, Chair Rawl closed the public hearing and opened the floor for Board discussion.

In response to Board questions, Mr. Schuler provided the zoning and development history of the site and surrounding area, stating that most of the nearby subdivisions were constructed in the mid-90s prior to the County's stormwater regulations. Mr. Schuler also provided an overview of the density allowed in the County's multi-family districts and with the high density Special Use Permit.

In regards to the area of the parcel abutting the proposed development's boundary, Mr. Schuler explained that area could be developed under the standards for the B-2 zoning district which includes the site plan review process, and discussed potential driveway locations.

Chair Rawl made a MOTION, SECONDED by Mr. Petroff to recommend to the Board of Commissioners to APPROVE; as the Board found that the application for a Special Use Permit met the required conclusions based on the findings of fact included in the Staff Summary.

Staff Suggested Conditions:

1. The project's Stormwater facilities must be designed to accommodate a 100-year storm event.
2. A six-foot-tall solid wood fence shall be installed within the buffer yard located along the northwestern property line which abuts the Jacobs Ridge neighborhood.
3. As proposed and agreed to by the applicant, a 10-foot multi-use path shall be installed along the site's frontage on Lendire Road and be extended south along the road so that it would connect to the future multi-use path to be installed by NCDOT near Ogden Business Lane as part of the Military Cutoff extension project (U-4751). Installation of the multi-use path shall be coordinated with the County and NCDOT and be constructed in accordance with NCDOT's standards. The applicant is not required to obtain additional right-of-way in order for the multi-use path to be extended to the future multi-use path to be installed by NCDOT near Ogden Business Lane.

The motion to approve carried 6-0.

3. **Rezoning Request (Z19-10)** – Requested by TDR-HL, LLC, to rezone approximately 5.28 Acres of land located north of the existing Hanover Reserve Subdivision, in the 7300 Block of Springwater Drive, from R-15, Residential District, to R-5, Moderate-High Residential District.

Current Planner Gideon Smith provided information pertaining to location, land classification, access, level of service and zoning; showed maps, aerials and photographs of the property and surrounding area along with an overview referred to in the staff report. He concluded by stating the property was within the Community Mixed Use place type and was generally consistent with the 2016 Comprehensive Plan because the proposal provided an orderly transition between the existing lower density residential areas and the anticipated higher intensity development adjacent to Military Cutoff Road and provided for a range of housing types along an anticipated major roadway and therefore staff recommended approval of the application.

Chair Rawl opened the public hearing and recognized the applicant.

Attorney Matt Nichols, representative of the applicant, William Bland of TDR-HL, LLC, gave a brief overview and stated the intent of the R-5 Moderate-High Residential District was to provide moderate to high density residential development on smaller lots with a walkable development pattern. The proposed R-5 Zoning would allow for a range of housing types that could be developed in conjunction with a non-residential district to create a mixed-use development pattern and serve as a transition between mixed-use or commercial development. Mr. Nichols explained the property consisted of roughly five acres, which is directly adjacent to the existing Hanover Reserve subdivision to the south. He stated they had received confirmation that they had allocations for septic with a proposed 37-units. He concluded by stating they believed the proposed rezoning to be consistent with the Comprehensive Plan goals and policies, and it is an opportunity to be a positive addition to this area of the County, while providing commercial goods and services with planned infrastructure projects in the future Military Cutoff extension.

The Board questioned if the intent was to access the Murrayville extension. Mr. Nichols stated that the proposal will access Murrayville extension when it is constructed in the future. Currently, he noted that the initial access to the subject site would be via Springwater Drive, which is a private road within the existing Hanover Reserve subdivision. The Board asked about the timing of the project in relation to the future Military Cutoff and Murrayville Road extensions and noted that the application would be more appropriate and a better transition for the area if these roadways were already installed. The Board had concerns about the infrastructure due to an uncertain timeline and whether or not the future improvements would be sufficient to support the current proposal. The Board did agree that once these two roadways were constructed, interconnectivity will increase and the project will aid in doing so. In conclusion, the Board did not feel the proposal was fitting at the current time, when considering the future roadway improvements coming to the area.

Mr. Nichols requested to table the proposal to obtain more information based upon comments from the Board and allowed the 15-minute rebuttal period from citizens. He noted that the applicant would consider the comments made during the hearing and incorporate the current proposal into a larger mixed use/commercial use area on the property to the north of the subject site. He thanked everyone for their time and they looked forward to coming back to the board with a modified version.

Chair Rawl opened up the floor for speakers in opposition.

Jim Henry, resident of Golden Grove stated his first concern was the site plan showed no exit. And the second concern was that water seemed to go to Smith Creek and when it gets to that point it overflows into the Smith Creek area exasperating the problem. He asked if there would be a retention pond.

Frank Reynolds, resident of Springwater Drive stated he thought the applicant was unprepared. He stated Smith Creek was behind my house and during the last storm, it flooded halfway up his backyard. He stated he thought it would be an issue because his yard tends to slope.

Kelly Butler, resident of Murrayville Road said she had not heard any mention of the storm water situation. She added when the construction began, that is when she noticed the flooding began. She stated that during Hurricane Florence they were rescued out at 4:00 a.m. in the morning but prior to the construction they had never flooded.

Steven Butler, resident of Murrayville Road stated his biggest concerns were traffic and flood water.

Brad Jacobs, resident of East Born Road stated that the retention pond overflowed and flooded his home during Hurricane Florence and nearly flooded his home during Hurricane Dorian.

Danielle Jernigan, resident of Eastbourne Drive stated she disagreed with Mr. Nichols who stated 'the size of the townhomes would not create as much traffic as a single family home because the townhomes are large three-bedroom with two car garages. Concluding she also disagreed that the retention pond wouldn't create flooding.

Troy Kirchner, resident of Springwater Drive stated there was no privacy barrier going from a single resident home to a townhome. And Springwater Drive is a private road and these roads are maintained by HOA fees. All of the extra traffic, the maintenance of the roads, how the townhome residents travel to the dwellings, he stated is the big question some of us brought up.

Patrick Cobbler, resident of Sanctuary Drive stated most of us have been here less than four years and were told when we moved here, it would remain R15 and would continue expansion with the same layout and design. He commented that he thought the owner has gone on a different path.

Everyone being given the opportunity to speak in favor or opposition, Chair Rawl closed the public hearing. He stated a motion was not required but asked the Board for a vote for all in favor of tabling the request. Upon vote, unanimous 6-0.

#### **4. Text Amendment Request (TA19-03) – Requested by New Hanover County to amend Articles II and VI of the Zoning Ordinance to establish new standards for the protection of large trees.**

Planning Director, Wayne Clark gave a brief overview of the status of the car wash plans on Market Street that initiated this code amendment. He briefed the Planning Board on the variances that the car wash site was granted that will help save the large Live Oaks. He clarified this amendment was specific to large Live Oaks and how this short-term action was not considered as a holistic approach to tree preservation. He added a broader discussion will take place next year in the Unified Development Ordinance (UDO) process. Mr. Clark summarized the proposed ordinance amendment would include changes to definitions, prohibiting removal of large Live Oaks; clarifying exceptions, variances, mitigation fees and penalties.

Mr. Petroff suggested incorporating preservation components, including a sliding scale of the value of replacement and consult with local professionals to weigh in before changes are made to the UDO.

Mr. Pope stated that as far as preservation on these significant trees, it may be considered, all specimens of trees have different root systems. The Live Oaks have a tremendous root system way beyond the drip line of the tree. He suggested to look at the root system for the significant trees as a part of that ordinance.

Executive Officer Cameron Moore of Cape Fear Home Builders Association and President Tyler Newman of NCBASE both spoke in support of the amendment. They explained both had met together with the Tree Alliance and that a certified tree arborist and landscape architect had been present which helped facilitate a good compromise.

There being no one present to speak in opposition, Chair Rawl closed the public hearing.

Chair Rawl made a MOTION, SECONDED by Vice-Chair Donna Girardot to recommend to the Board of Commissioners to APPROVE the amendment to New Hanover County's Zoning Ordinance. He found it to be CONSISTENT with the purposes and intent of the Comprehensive Plan because the proposal provided flexibility in site design to accommodate business success while protecting large Live Oak trees that are important to the character of the area. He also found recommending APPROVAL of the amendment was reasonable and in the public interest because it would encourage conservation and enhance the unique environment, character, and history of the County.

The motion carried 6-0.

**5. Text Amendment Request (TA19-02) – Requested by New Hanover County to amend the Flood Damage Prevention Ordinance to incorporate updated Flood Insurance Rate Map data and amend the requirements of the Coastal A Special Flood Hazard Area, and to amend Section 51 of the Zoning Ordinance to address building height requirements in the Coastal A Special Flood Hazard Area.**

Planning Manager Ken Vafier stated there were three action items in this request. He stated the primary item was for the Flood Insurance Rate Map and the requirement to adopt flood insurance study as required by FEMA and for the zoning ordinance to clarify construction standards and building heights in the Coastal A Flood Hazard Area. He added that New Hanover County made action to adopt all flood maps but was subsequently informed that certain flood insurance rate map panels did not become effective in August 2018. Therefore, NHC was being required to adopt a single panel prior to December 6, 2019 with the remaining 17 panels to be adopted in the future. He stated the next amendment proposed is to provide consistency between the building code requirements and construction requirements for the Coastal A Zone. He explained the final component would be to the zoning ordinance. This addresses the primary single family districts, RA, R20, R20S, R15, R10, and R7 within the districts where a structure is within the Coastal A Zone. He explained the proposal was to raise the maximum building height to 44’ feet. Currently, there is an allowance of structures in these districts to fall into the V-Zone or Ocean Hazard area going up 44’ feet, not in a V- Zone, the height limit is 35’ feet with other areas in the zoning. Because both the building code and what we propose in Flood Damage Prevention Ordinance will require V-Zone construction and staff is proposing the language be amended to allow the 44’ foot height allowance for the Coastal A Zone. He concluded staff found it consistent with a purpose of the Comprehensive Plan and being reasonable and in public interest.

Chair Rawl stated there were no other comments and moved forward with a motion.

Chair Rawl made a MOTION, SECONDED by Vice-Chair Donna Girardot to recommend to the Board of Commissioners to APPROVE the amendment to New Hanover County’s Zoning Ordinance. He found it to be CONSISTENT with the purpose and intent of the 2016 Comprehensive Plan because it promotes environmentally responsible growth by identifying those areas most at risk for flooding impacts in the unincorporated county and provides for measures to mitigate the effects of flooding on development in those areas consistent with minimum NFIP requirements. In addition, the amendment will allow structures in the Coastal A Special Flood Hazard areas to have the one to three story buildings recommended for single-family and multi-family residences across place types. He also found APPROVAL of the proposed amendment was reasonable and in the public interest because the proposal incorporates and codifies the most up to date Flood Insurance Rate Maps and Ordinance provisions, providing mitigation measures for those areas determined to be most at risk for flooding impacts in the unincorporated County. Additionally, adoption of the request ensures continued eligibility in the NFIP and provides consistency in the application of ordinance provisions for structures in Special Flood Hazard Areas.

The motion carried 6-0.

**OTHER BUSINESS**

**6. Items from Staff – Development Code Update (“Unified Development Ordinance Project”)**

Senior Long Range Planner Rebekah Roth gave a brief update on Phase Two of the development code update, the reorganized code document. She explained that no changes to regulations would be included and that she would be providing a presentation at the November Planning Board Meeting outlining the formatting changes.

Chairman Rawl with no other business, adjourned the meeting at 10:15 p.m.

*Please note: that the above minutes are not a verbatim record of the New Hanover County Planning Board Meeting.*