

**Minutes of the
New Hanover County Planning Board
June 4, 2009**

The New Hanover County Planning Board met Thursday, June 4, 2009 at 5:30 p.m. in the Assembly Room of the Historic County Courthouse, Wilmington, NC to hold a public meeting.

Planning Board Present:

Jay Williams, Chair
Richard Collier
Melissa Gott
Sue Hayes
Sandra Spiers
Ken Wrangell

Staff Present:

Chris O’Keefe, Planning Director
Sam Burgess, Principal Development Planner
Jane Daughtridge, Senior Planner
Sharon Huffman, Assistant County Attorney

Absent:

Andy Heath

Jay Williams opened the meeting by welcoming the audience to the public hearing. Sam Burgess led the reciting of the *Pledge of Allegiance*.

Sue Hayes made a motion to approve the May Planning Board meeting minutes; Richard Collier seconded the motion. The Planning Board voted 3-0 to approve the minutes.

Item 1: Special Use Permit (S-592-6/09) – Request by Holt Moore, attorney, for Herbert Carlton Fisher, et al, for a special use permit to allow recycling collection with processing of used cooking oil at 3121 N. Kerr Avenue. The location is in an AI- Airport Industrial zoning district and is classified as Transition on the 2006 CAMA Land Classification Map.

Jane Daughtridge showed maps and photographs of the property and of the surrounding area. Ms. Daughtridge provided information pertaining to land classification, access, level of service, zoning, watershed, soils, and water and sewer. Ms. Daughtridge also showed interior and exterior photos of the current recycling operation and the proposed site plan.

Chris O’Keefe provided the following findings of fact:

Preliminary Staff Findings

- 1. The Board must find that the use will not materially endanger the public health or safety where proposed and developed according to the plan as submitted and approved.**
 - A. Public water and sewer serves the property.
 - B. The property accesses N. Kerr Avenue, an identified arterial

- C. Level of Service on N. Kerr Avenue is rated as F, meaning traffic exceeds the design capacity and delays of 45-60 seconds occur at intersections.
- D. Average daily traffic counts along N. Kerr Ave. in the vicinity increased by about 40% between 2007 and 2008.
- E. Traffic Impact Analysis is not required because traffic for this use will not reach the threshold of 100 peak hour trips.
- F. Fire Service is available from the Wrightsboro Volunteer Fire Department.
- G. The property is not located in a flood hazard area.
- H. The proposed facility is an industrial warehouse.
- I. Used cooking oil and grease will be filtered, heated and aerated on the site and then transferred to refineries for further processing into biodiesel fuel.

2. The Board must find that the use meets all required conditions and specifications of the Zoning Ordinance.

- A. The property is zoned AI Airport Industrial zoning district. Recycling processing facilities are allowed only by special use permit in this district under certain conditions outlined in Sec. 69.14-1(3).
- B. The facility and its appurtenant uses shall not be located closer than one hundred and fifty feet (150 ft) to any residentially zoned properties. The nearest residentially zoned property is approximately 385 feet to the west.
- C. The facility must meet the applicable setback and landscaping requirements of the ordinance. This proposal is occupying an existing warehouse facility permitted under county standards.
- D. All loading and exterior storage shall be to the side or rear of the building. The site plan illustrates loading and storage at the side and rear of the building.
- E. Storage or loading conducted on the side of the building shall be screened from view from the adjacent right of way. Screening is proposed to be added by the applicant along Commerce Drive and at the southwest corner of the property.
- F. All exterior storage shall be in containers or under shelters which are covered and secured and not visible from residentially zoned property. The applicant states that the process is conducted in wholly enclosed tanks.
- G. The facility must not emit dust, smoke, fumes, or vibrations detectable on adjacent properties. The applicant states that this process will create no undue noise, smell or emissions effecting neighboring properties.
- H. All other local, state and federal requirements must be met, including possible property upgrades to meet building codes and fire safety codes.

3. The Board must find that the use will not substantially injure the value of adjoining or abutting property or that the use is a public necessity.

- A. No evidence has been submitted that this project will decrease property values of surrounding properties. Industrial uses dominate the immediate area.
- B. The proposal is the first recycling operation of this type in the county.

4. The Board must find that the location and character of the use if developed according to the plan as submitted and approved will be in harmony with the area in which it is to be located and in general conformity with the plan of development for New Hanover County.

- A. The 2006 Land Use Plan Update identifies this area as Transition. The Transition Class is to provide for future intensive urban development on lands that have been or will be provided with necessary urban services.
- B. The Airport Industrial Zoning District is to provide for a planned, restricted industrial district used for indoor manufacturing and distributive operations compatible with airport facilities.
- C. Policies in the 2006 Land Use Plan encourage industrial uses in locations with adequate land area, outside environmentally sensitive areas and with access to necessary infrastructure.

STAFF COMMENTS

Staff feels that these findings are positive.

Sue Hayes asked staff to confirm that there was a 40% increase in traffic along North Kerr Avenue between 2007 and 2008.

Chris O'Keefe agreed that there has been a significant increase in traffic along North Kerr and provided a few examples of intersection improvement projects in the vicinity. Mr. O'Keefe stated that there are more proposed in the future with the development of Blue Clay Farms.

Holt Moore an attorney for the property owner, Carlton Fisher and representing Eco-Collection Systems stated that they are requesting a special use permit to allow processing of cooking oil to their current cooking oil collection operation. Mr. Moore explained that the processing component would include three non-intensive phases: filtration, heating to 140°, and aeration. Mr. Moore stated that the majority of the operations are contained within the building and the proposal would add two tanks to the side exterior and two underground tanks to the rear. Mr. Moore explained that the operation is environmental friendly; that byproducts are clean enough to be expelled through County sewer systems; and that minimal odors are emitted only twice daily when the oils are transferred from the tanks, which occurs inside the building. Mr. Moore stated that the proposal is appropriate for the airport industrial zoning and has spoke to the Wilmington International Airport and they have not raised any objections to the proposal. Mr. Moore stated that he agreed with the staff's findings of fact and submitted supplemental findings of fact that he hoped that the Planning Board and County Commissioners would adopt. Mr. Moore stated that the proposal would not increase traffic and the current building footprint would not change.

Mark Bennett, representing adjacent property owner K&D Properties spoke in opposition to the item stating that the proposal would omit a pervasive and unpleasant odor which would cause a negative impact on surrounding businesses. Mr. Bennett explained that K&D performed research on a similar cooking oil recycling and processing facility in efforts to ascertain what effects the proposal would have. Mr. Bennett distributed copies of their study of Carolina By-Products in Fayetteville which documents the comments of nearby businesses that attest to a foul odor omitted from Carolina By-Products. Mr. Bennett asked that the Planning Board deny or at least delay approval of the request, so that further research could be conducted to fully understand the proposal's effects.

Holt Moore stated in the rebuttal period that the scope of the two facilities is different, citing that Carolina By-Products is a much larger operation at 100,000 square feet that processes several million gallons of product; that Carolina By-Products heats their oil to a much higher temperature between 350°- 400°; and that Carolina By-Products processes dead animals and extracts the fat.

Mark Bennett stated in the rebuttal period that he is not against recycling but is presently opposed because he would like a full understanding of the impacts of the proposal. Mr. Bennett stated that Mr. Moore was unable to identify a similar facility when asked. Mr. Bennett added that a better understanding of the facility and its effect should be ascertained before approval especially given that this would be the first of its kind in New Hanover County.

Sue Hayes asked the petitioner whether the underground tank used for aeration was vented or not.

Cameron Calhoun with Eco-Collection Systems stated that during the underground aeration process any odors are displaced into the ground to control the odor.

Sandy Spiers asked if finding of fact 2.G would ensure that the facility would not omit fumes and asked what type of action or penalty would occur if an odor was produced by the facility.

Chris O'Keefe stated that the findings of fact contain information submitted by the petitioner and that the petitioner stated that no smell would be omitted by the facility.

Jane Daughtridge explained that the facility would be in violation if it omitted odors and the findings of fact for the special use permit stated that it would not omit odors.

Sue Hayes asked the applicant how he could be positive that the facility would not omit fumes if there are no other known facilities to point to as examples.

Cameron Calhoun stated that there are bio-diesel facilities such as Piedmont Biofuels or Triangle Biofuels that he could take Mr. Bennett on a tour of to demonstrate that they are odorless operations. Mr. Calhoun stated that these bio-diesel operations are much larger than his proposed facility and that they actually manufacture bio-diesel as compared to his proposed facility that would only collect and clean used cooking oil. Mr. Calhoun reported that the only odor that the proposed operation would omit, is when fluid is moved from one tank to another but that the brief odor would be contained within the building.

Richard Collier confirmed with Mr. Calhoun that Eco-Collections is currently storing bio-fuel but not processing it.

Cameron Calhoun stated that Mr. Collier is correct; they are collecting 10,000 gallons of product a month and he believed that his neighbors were unaware of the operation given the non-invasive operation.

Ken Wrangell stated that they were already performing a type of processing through filtration.

Cameron Calhoun stated that they are not performing filtration but only allowing water to separate from the oil by gravity.

Richard Collier asked if the tanks shown in the photographs will be used for processing and if they are adding any tanks.

Cameron Calhoun stated that they would like to locate tanks in the back of the building to collect and treat water and sludge from the used cooking oil and use it for fertilizer.

Richard Collier asked Mr. Calhoun if anything left the tanks during the process.

Cameron Calhoun stated that the tanks are completely contained and permitted through the Department of Natural Resources.

Sue Hayes asked if Mr. Calhoun was amenable to the following conditions if the Planning Board were to recommend approval:

1. That the cooking oil not be heated above 140 degrees; and
2. That no noise, smell, or emissions be emitted which affect neighboring properties.

Cameron Calhoun stated that he had no problem with the second condition but that he was concerned about being in violation of the first condition if the cooking oil was to be at 141 degrees. Mr. Calhoun asked if the threshold could be set higher at 150 degrees.

Sue Hayes asked Mr. Calhoun if 150 degrees was sufficient.

Cameron Calhoun stated that 150 degrees was sufficient.

Sandra Spiers stated that the Ms. Hayes' concern about the smell, noise, and emissions was controlled for under 2G of the staff's findings of fact.

Melissa Gott asked the petitioner if he agreed to all of the findings of fact plus the addition of a maximum temperature of 150 degrees.

Cameron Calhoun stated that he agreed with the findings of fact.

Sandra Spiers made a motion to recommend approval of the item with the condition that the temperature not exceed 150 degrees.

Melissa Gott seconded the motion.

Jay Williams encouraged Mr. Calhoun to meet with Mr. Bennett to answer any outstanding questions prior to the County Commissioners meeting.

The Planning Board voted 6-0 to recommend approval of the item with a condition.

Sam Burgess provided an update of the Technical Review Committee's (TRC) activity for the month of May:

1. **Nautical Green** - The TRC voted 3-1 to approve a request to amend the approved plan to provide for an emergency access easement with gate leading into the Linksider townhomes.
2. **Woodlake @ Lords Creek** – The TRC voted 4-0 to preliminary re-approve the subdivision for 246 lots with conditions.
3. **Rockhill** – The TRC voted 4-0 to extend preliminary approval of the 37 lot project for one year with all original terms and conditions.

Ken Wrangell asked if the access easement issue with Becker Woods has been resolved.

Sam Burgess stated that the issue has been settled by the developer paying a large sum of money to retain rights to the rights of way to gain primary access into his project.

Sam Burgess stated that the TRC would most likely meet next on June 10, 2009.

Jane Daughtridge stated Planning Staff is improving the conservation overlay district section of the zoning ordinance because it is difficult to understand. Ms. Daughtridge stated that their improvements efforts are modeled somewhat on the City of Wilmington's recently updated conservation overlay district and that the members of the development and environmental community would have an opportunity to comment. Ms. Daughtridge also stated that Planning Staff would like to develop exception design standards because they are referenced in the land use plan and could use the City of Wilmington's exceptional design standards as a model to an extent. Ms. Daughtridge stated that staff would like to schedule a Planning Board work session to discuss both of these items later this month.

The work session was scheduled for June 25 from 9:00 a.m. – 1:00 pm at Government Center.

Jay Williams adjourned the meeting 6:25 p.m.