

**Minutes of the
New Hanover County Planning Board
September 3, 2009**

The New Hanover County Planning Board met Thursday, September 3, 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, Vice-Chair
Melissa Gott
Sue Hayes
Sandra Spiers
Ken Wrangell

Staff Present:

Chris O'Keefe, Planning Director
Sam Burgess, Principal Development Planner
Jae 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 August Planning Board meeting minutes; Richard Collier seconded the motion. The Planning Board voted 4-0 to approve the minutes.

Jay Williams stated that a request has been made by the petitioner to continue item # 2 (Z-897-8/09), to conditionally rezone approximately 9.93 acres at 611 Middle Sound Loop Road from R-15 residential district to CD(R-10) conditional district for the purpose of increasing residential density, until the December 3, 2009 Planning Board meeting. Mr. Williams stated that the applicant is awaiting the outcome of a proposed zoning text amendment that would create a new zoning district, Exceptional Design Zoning District (EDZD).

Richard Collier made a motion to continue the item until the December 3, 2009 Planning Board meeting. Melissa Gott seconded the motion. The Planning Board voted 6-0 to continue the item until the December Planning Board meeting.

Item 1: Rezoning Request (Z-896-8/09) – Request by Withers & Ravenel for Seabreeze Holdings, Inc. to rezone approximately 1.3 acres at the end of S. Seabreeze Road from R-15 residential district to B-2 Highway Business District (consolidating existing zoning and expanding to water body). The site is classified as Conservation on the 2006 CAMA Land Classification Map. Continued from the August 6 meeting.

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, and flood hazard areas.

Ms. Daughtridge provided the following full staff summary:

STAFF SUMMARY

The subject properties are located in the southern portion of the county in an area classified as Conservation on the 2006 CAMA Land Classification map. The property is accessed from S. Seabreeze Road. Seabreeze Road is a local road connecting the community to Carolina Beach Road just north of the Snow's Cut Bridge. Traffic counts in the area show about 9% increase in annual average daily traffic between 2008 and 2009. Carolina Beach Road has a 2007 LOS of C in this vicinity, meaning the road is operating below its design capacity with traffic flowed efficiently. However, the intersection of River Road and Carolina Beach Road and Seabreeze Road is locally viewed as a hazardous area for turning traffic. No traffic counts or level of service is available for Seabreeze Road.

Current zoning of the property is R-15 medium density residential, but this designation has been applied to the water area of the Intracoastal Waterway. Adjacent landward area is almost entirely zoned B-2 highway business.

The subject properties are located in Seabreeze watershed drainage area which is classified SA; HQW. Waters in the subject properties are open for shellfishing. The property is within the 100 year flood zone Special Flood Hazard velocity zone. Soils are primarily IV, unsuitable for septic. The applicant envisions that Aqua NC, a private provider in the area could provide water and sewer to serve this site if necessary.

Chris O'Keefe provided an analysis of the proposal in relation to the CAMA Land Use Plan and found that the proposal is contrary to Policy 3.1 and therefore recommended denial of the request. However, Mr. O'Keefe suggested B-2 rezoning for the portions of the proposal which are landward of the mean high water line because those portions of land would have less potential for detriment compared to the portions of submerged land.

Land Use Plan Considerations:

This proposal includes small portions of three parcels and the adjacent marsh and water areas associated with those parcels at the end of Seabreeze Road and east of the existing B-2 zoning district. This request is to expand the B-2 district so that landward parcels will not be split and so that the water area can be utilized for commercial marine uses consistent with the potential landward development. The parcel map shows a tax parcel owned by the Freeman heirs but which is submerged land under the existing pier. At the writing of this report, the applicant has not provided information and staff has been unable to determine if the State recognizes private ownership of the submerged land or if these rights have extinguished. A petition would have been filed and a decision made by the State property office.

The B-2 commercial district is described as one that provides for the proper grouping and development of roadside business uses which will best accommodate the needs of the motoring public and businesses demanding high volume traffic. The district's principal means of ingress and egress shall be along collector roads, minor arterials, and/or major arterials as designated on

the County's Thoroughfare Classification Plan. Although Seabreeze does not fit this description, the community has had a history of commercial use in this area which was carried forward into the initial B-2 zoning in 1971. Little of the past commercial vibrancy remains in Seabreeze today, and because of the number of small lots and special flood hazard considerations in the existing B-2 district, intensive commercial development will require significant assemblages of property and costly design elements. However, water-dependent commercial activity such as marinas could be viable.

The Seabreeze Neighborhood Plan was prepared in 1988, and encouraged efforts to revitalize the commercial area. A recent review of that plan with the neighborhood indicated a desire for public water access with kayak and canoe launching opportunities as well as other recreational enhancements. In addition, the 2006 CAMA Land Use Plan adopted policies relating to commercial land uses. Policy 4.3 of the Land Use Plan promotes maximum effectiveness of commercial uses by assuring that land is available for commercial uses within close proximity to the markets they serve and by ensuring that such commercial uses do not diminish the quality of life in nearby residential areas.

The 2006 Update of the Joint CAMA Plan describes the purpose of the Conservation classification as providing for effective long-term management and protection of significant, limited or irreplaceable natural resources while also protecting the rights of the property owner. Management of these areas may be required for a number of reasons, including natural, cultural, recreational, productive or scenic values, but are primarily flood prone areas.

Lands placed in the Conservation class present challenges from a land use standpoint, as they are often the most desirable from a development perspective and they may be, at the same time, the most undesirable to develop from an environmental or public safety perspective.

Lands placed in the Conservation class are generally the least desirable for development because:

- 1 They are too fragile to withstand development without losing their natural value; and/or
- 2 They have severe or hazardous limitations to development; and/or
- 3 Though they are not highly fragile or hazardous, the natural resources they represent are too valuable to endanger by development.

The water bodies in the requested area are currently open to shellfishing. The water is classified as SA:HQW. Policy 3.1 in the CAMA plan calls for the preservation and restoration of shell fishing to all SA waters. Commercial activity extending into the water may have a detrimental impact to water quality in the area and may jeopardize shell fishing in one of the few areas remaining open to shellfishing and accessible to the public.

Public water and sewer lines have not been extended to this location but a private provider, Aqua NC, serves other properties in reasonable proximity. An intensive commercial use would certainly require public services in this area since the soils are poorly suited for septic tanks.

A traffic impact analysis (TIA) will be required for any development that generates more than 100 peak hour trips.

Staff feels this proposal is contradictory to policy 3.1 in the CAMA Land Use Plan and therefore recommends denial of this request. Staff would suggest rezoning the portions of the request landward of the mean high water line to B-2.

Jay Williams asked why Planning Staff are distinguishing mean high water from submerged land. Mr. Williams also asked staff to expound upon what are the implications the building a pier or marina and the acquisition of CAMA permits if the property is not rezoned to B-2.

Chris O'Keefe stated that staff was concerned with negative impacts caused by development over the water body. Mr. O'Keefe added that CAMA would not issue permits for the construction of a marina or pier if the proposed use was inconsistent with the CAMA Land Use plan.

Cindee Wolf, a landscape architect with Withers & Ravenel, representing Seabreeze Holdings, Inc. provided a geographic overview of the rezoning petition stating that the proposed rezoning includes a portion of marshland, which is below the 75-foot conservation overlay district (COD) setback which prevents the construction of any impervious surface and encompasses an existing dock situated over submerged land. Ms. Wolf explained that they have found that the Board of Education does not have a deed to the submerged land; that the land is the property of the State of North Carolina; and that they will have the tax records adjusted accordingly. Ms. Wolf stated that the existing dock serves commercial vessels. Ms. Wolf distributed copies of a recent shellfish resource survey prepared by the applicant's environmental consultant to the Planning Board and explained that the report found that the subject waters were below the threshold to consider it a significant clam resource area and is not considered a significant oyster resource area, although the number is admittedly very close to the threshold. Ms. Wolf argued that water dependent commercial activities are key to the revitalization of Seabreeze and that such businesses will not locate at Seabreeze if they cannot locate near the water. Ms. Wolf stated that the dock is an accessory structure to the land and it possesses riparian rights to the submerged land. Ms. Wolf added that she had been told that Mike Christenbury with the North Carolina Department of Environment and Natural Resource, Division of Coastal Management, the agency that issues CAMA permits based on consistency with certified land use plans, stated that the water dependent usage of the dock is consistent with the New Hanover County's CAMA Land Use Plan.

Cheryl Freeman Cooper, Seabreeze resident spoke in opposition to the item stating that she heard that a 140-unit boat storage facility might be built on the subject property and expressed concern for safety and traffic.

James Bryant representing the Seabreeze Community Center spoke in opposition to the item stating that the Freeman heirs allege that they pay taxes on the submerged land and asked for confirmation from the Ms. Wolf or the Board.

Jay Williams stated that the Planning Board could not determine ownership of the property and suggested that Mr. Bryant consult with an attorney.

Tony Ross, Seabreeze resident spoke in opposition to the item stating that his interpretation of North Carolina state law finds that the submerged land is privately owned by the Freeman heirs and therefore cannot be rezoned by the petitioner.

Ken Wrangell asked Planning Staff if the submerged property is owned by a private trust.

Chris O'Keefe stated that the tax records indicate that the submerged property parcel is owned by the Freeman heirs and that they pay taxes on the parcel. Mr. O'Keefe stated that the database information could be inaccurate and that there have been several claims of ownership to the property since the 1970's.

Jay Williams stated that he believed that the statute of limitation for claims to the submerged land should have expired by now.

Sharon Huffman Assistant County Attorney stated that the submerged property is probably owned by the Freeman heirs but that anyone can file a petition for rezoning; it does not have to be the property owner. Ms. Huffman suggested that the Board consider rezoning only up until the mean high water mark and then a separate rezoning petition could be considered for the area east of the high watermark.

Jay Williams and Sharon Huffman both agreed that NC General Statutes grant a definite period of time to file a claim on submerged lands.

Cindy Wolf stated that County land records are not legal documents and are used primarily for taxation purposes.

Beau McCaffray, a Middle Sound resident spoke in opposition to the item stating that SA waters are increasingly rare and urged the Planning Board to abide by the recommendations of Planning Staff and the guiding CAMA land use plan document.

Ken Wrangell commented that the Land Management Group's findings narrowly missed the threshold for determining the subject area a significant clam resource. Mr. Wrangell stated that SA waters are disappearing and given the possible B-2 uses, he felt that the rezoning was not a good idea.

Melissa Gott stated that the scope of B-2 uses is way too broad for the area and would be more comfortable if the proposal was a conditional use rezoning which included a list of water-dependant uses.

Sue Hayes made a motion to recommend denial of the rezoning request. Melissa Gott amended the motion to recommend denial based on lack of consistency with the County's adopted plans and the determination that the change would not be reasonable and is not in the public interest.

Ken Wrangell seconded the motion.

Jay Williams stated that he is concerned that ownership of the submerged property is questionable and hopes that it can be resolved because he feels that the issue is likely to surface again.

The Planning Board voted 6-0 to recommend denial of the rezoning application.

Item 3: Rezoning Request (Z-898-9/09) – Request by New Hanover County Airport Authority to rezone approximately 1.96 acres at 1809/1821/1825/1829 Farley Dr. from AR Airport Residential to AI Airport Industrial. The parcels are 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, and zoning. Ms. Daughtridge explained that the subject parcels were purchased by the Airport Authority. Ms. Daughtridge also explained that the parcels are contained wholly within the airport's fencing and are remnant Airport Residential (AR) within a large Airport Industrial (AI) district.

Ms. Daughtridge provided the following full staff summary:

STAFF SUMMARY

The subject properties are located in the northern portion of the county in an area classified as Transition on the 2006 CAMA Land Classification map. The properties are formerly residential lots that are now part of Wilmington International Airport property. They front along Farley Drive, which intersects with N. Kerr Avenue. Traffic counts are not available for Farley Drive. N. Kerr Ave. is signalized at this intersection and level of service (LOS) changes significantly at the intersection from F on the south to A on the north. Average daily traffic counts on N. Kerr increased by about 1% between 2006 and 2007.

Current zoning of the property is AR Airport Residential, but other property west of Farley Drive is all zoned AI airport Industrial. A farm operation is still in production to the north of this proposal. Across the street on the east side of Farley Drive, the zoning is AR and residential uses are still active.

The subject properties are located in Smith Creek watershed drainage area which is classified C, Sw and is within a secondary aquifer recharge area. The property is not within the 100 year flood zone. Soils are primarily Class III with severe limitations for septic. The Airport Height Ordinance applies in this location.

Chris O'Keefe recommended approval of the rezoning request stating that the proposal is reasonable and consistent with the CAMA land use plan and the Wrightsboro small area plan. Mr. O'Keefe acknowledged that the current zoning provides somewhat of a buffer for the residential parcels at the south end of Farley Road but added that if industrial development was

to occur, that the county's development standards would provided buffering and additional requirements to protect the residential parcels.

Mr. O'Keefe provided the following analysis of the proposal in relation to the CAMA land use plan:

Land Use Plan Considerations:

This proposal includes four parcels on the west side of Farley Drive and inside the fenced airport property. The lots were formerly developed with residential uses but are currently vacant.

The AI airport industrial district is described as one that provides for indoor manufacturing and distributive type operations that are compatible with airport facilities, generally protecting the lives and property of the users of the airport and occupants in the vicinity. The district is designed to prevent destruction or impairment of the utility of the airport and the public's investment in it.

A small area plan, "Wrightsboro, An Eye on the Past . . . A Step Towards the Future," was prepared and adopted in 1991 and discussed the AR and AI districts, but none of the objectives or actions in the plan addressed airport issues. In addition, the 2006 CAMA Land Use Plan adopted Policy 19.5 relating to Wilmington International Airport, stating that the county would cooperate with the Airport Authority to increase competitiveness while being mindful of the compatibility with adjacent businesses and homes. Further policies for industrial land use are outlined under Policy 4.2 of the plan, which encourages delineation of areas that will maximize the efficient use of infrastructure while protecting fragile ecosystems from harm and protecting residents from undue impacts.

The 2006 Update of the Joint CAMA Plan describes the purpose of the Transition classification as providing for future intensive urban development on lands that have been or will be provided the necessary urban services for maximum efficiency in land utilization and public service delivery.

A traffic impact analysis (TIA) would be required for any new use that generates more than 100 peak hour trips. Industrial uses as allowed in AI districts would be possible in this location if the lots are rezoned as proposed.

Staff acknowledges that the current zoning creates a sort of safeguard for the residents at the south end of Farley Drive from potential industrial development across the street on the airport property, but staff feels the proposed zoning pattern is reasonable and consistent with the plan. Furthermore, the county's development standards would address any buffering or other requirements if development occurs. Staff recommends approval.

Whitney Prease, with the Wilmington International Airport stated that they are requesting the rezoning to provide Airport Industrial (A-I) zoning consistency and that the subject parcels are completed enclosed within the airport's perimeter fencing.

No one spoke in opposition of the item.

Ken Wrangell made a motion to recommend approval of the rezoning petition from Airport Residential (AR) to Airport Industrial (A-I) based on the consistency with adjacent properties. Melissa Gott seconded the motion. The Planning Board voted 6-0 to recommend approval of the rezoning request.

Item 4: Rezoning Request (Z-899-9/09) – Request by Steve Hall of Maus, Warwick, Matthews & Co. on behalf of H.L. Smith, Dan Inman, and Laurens C. Davis to rezone approximate 2.53 acres at 2600/2604/2608/2612 Castle Hayne Rd. and 3516/3512 N. Kerr Ave. from R-20 Residential and AR Airport Residential to B-1 Neighborhood Business District. The area 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, and zoning.

Ms. Daughtridge provided the following full staff summary:

STAFF SUMMARY

The subject properties are located in the northern portion of the county in an area classified as Transition on the 2006 CAMA Land Classification map. The properties are accessed from Castle Hayne Road and N. Kerr Avenue. Both roadways are arterials and the intersection is signalized. Traffic counts in the area show about 18% decrease in annual average daily traffic between 2006 and 2007. Castle Hayne Road has a 2007 LOS of E from the intersection northward and F from the intersection southward, meaning the road is operating at or above its design capacity with traffic congestion at peak hours. No traffic counts or level of service was available for N. Kerr Ave. in this location.

Current zoning of most of the property is R-20 low density residential along Castle Hayne Road and most of Kerr Avenue, with one parcel zoned AR Airport Residential. B-1 neighborhood business zoning is present to the east of these properties, B-2 highway business district lies south of the area and SC shopping center district is across Castle Hayne Road to the west.

The subject properties are located in Ness Creek watershed drainage area which is classified C, Sw, which refers to fresh waters best used for aquatic life propagation, fishing, wildlife, secondary recreation and agriculture. Swamp waters have low velocities and other natural characteristics which are different from the adjacent streams. The proposal is within a secondary aquifer recharge area. The aquifers in this secondary recharge area are permeable in most places and vulnerable to pollution due to its shallow depth and high water table. In this case, public water and sewer will serve the sites. The property is not within the 100 year flood zone. Airport Height Ordinance does not influence the parcels included in this proposal.

Chris O’Keefe recommended approval of the rezoning request stating that the proposal is reasonable and consistent with the CAMA land use plan.

Mr. O’Keefe provided the following analysis of the proposal in relation to the land use plan:

Land Use Plan Considerations:

This proposal includes six lots on the corner of Castle Hayne Road and North Kerr Avenue. There are four (4) vintage dwelling units on the six lots. One of the dwellings is being condemned. All of the other corners at this intersection have transitioned to commercial use.

The B-1 commercial district is described as one that provides for convenient shopping of necessity goods and personal services required to serve a neighborhood.

A small area plan, “Wrightsboro, An Eye on the Past . . . A Step Towards the Future,” was prepared and adopted in 1991. Goals and Actions focused a great deal on traffic issues, including preferences for widening Castle Hayne Road, signalizing major intersections and constructing turn lanes. This location exemplifies improvements that have occurred since the plan was adopted. The intersection is signalized and there are now turn lanes off N. Kerr. In addition, the 2006 CAMA Land Use Plan adopted policies relating to commercial land uses. Policy 4.3 of the Land Use Plan promotes maximum effectiveness of commercial uses by assuring that land is available for commercial uses within close proximity to the markets they serve and by ensuring that such commercial uses do not diminish the quality of life in nearby residential areas. The plan also encourages location of commercial activities at key intersections.

The 2006 Update of the Joint CAMA Plan describes the purpose of the Transition classification as providing for future intensive urban development on lands that have been or will be provided the necessary urban services for maximum efficiency in land utilization and public service delivery.

Public water and sewer lines will serve these sites. Wrightsboro Volunteer Fire Department is located directly to the south across N. Kerr Avenue.

A traffic impact analysis (TIA) will be required for any development that generates more than 100 peak hour trips. Traffic will obviously increase if the uses transition to commercial, but the location at a signalized intersection will provide managed flow of the increase. Furthermore, NCDOT will likely require improvements as needed when driveway permits are issued.

Staff feels the request is reasonable and consistent with the plan.

Steve Hall with Maus, Warwick, Matthews & Co, representing the property owners of the subject properties stated that they are seeking the rezoning in efforts to make the properties more viable for sale and ask that the Planning Board following Planning Staff’s recommendation for B-1 rezoning.

No one spoke in opposition of the item.

Jay Williams asked what happens to the small sliver of Airport Residential (AR) zoning leftover on North Kerr Avenue.

Chris O'Keefe stated that it is a good idea to clean-up any remnant slivers of previous zoning and that the Planning Board could include that in their recommendation to the County Commissioners.

Richard Collier made a motion to recommend approval of the rezoning request and that the adjacent rights of way on Castle Hayne Road and North Kerr Avenue be rezoned to B-1 Neighborhood Business District. Sue Hayes seconded the motion. The Planning Board voted 6-0 to recommend approval of the rezoning request including the adjacent rights of way.

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

1. **Heglar Commons** - The TRC voted 5-0 to preliminary approval 190 units with public streets and additional conditions.
2. **Goldeneye Court**– The TRC voted 5-0 to approve the preliminary right of way dedication.

Sam Burgess stated that the TRC will meet on September 9, 2009.

Jay Williams adjourned the meeting at 7:10 p.m.

Chris O'Keefe, Planning Director