

**MINUTES OF THE  
NEW HANOVER COUNTY PLANNING BOARD MEETING  
November 4, 2004**

The New Hanover County Planning Board met Thursday, November 4, 2004 at 7:00 p.m. in the County Court House, 24 North Third Street, Wilmington, NC to hold a public meeting.

**Members Present:**

Walter Conlogue, Chairman  
David Girardot, Vice Chairman  
Robin Robinson  
Frank Smith  
Sandra Spiers  
David Adams  
Sue Hayes

**Staff Present:**

Dexter Hayes, Planning Director  
Baird Stewart, Senior Planner  
Sam Burgess, Planner  
Linda Keough, Administrative Secretary  
Holt Moore, Assistant County Attorney

Chairman Walter Conlogue opened the meeting by welcoming those present to the public hearing. Sam Burgess led the reciting of the *Pledge of Allegiance to the Flag*.

Chairman Conlogue proceeded with the approval of the minutes. David Girardot made a motion to approve October minutes. Sandra Spiers seconded the motion. The Board approved October 2004 minutes by a vote of 7-0.

**Item 1: Subdivision Appeal (Continued Item) – Appeal by Ocean Forest Lakes HOA & Lords Creek HOA to modify the decision by the County Technical Review Committee to approve Woodlake @ Lords Creek a 386 unit performance residential subdivision (SA-23, 06/04).**

Chairman Conlogue and David Adams recused themselves from discussion and voting on this agenda item. Chairman Conlogue passed the gavel to David Girardot to chair this portion of the meeting.

Holt Moore, Assistant County Attorney recommended that each party be given five minutes to summarize their position.

Alan Toll, of Stevens, McGhee, Morgan, Lennon & Toll, LLP summarized the Lord's Creek Homeowners' Association concerns regarding contiguity, welfare and safety concerning transportation on the roads, and their desire to have the roads brought up to DOT standards.

Bill Mason, of Shipman, Gore, Mason & Wright summarized Dominion Land Corporation's response regarding contiguity. Mr. Mason stated that the developer is very sensitive to this issue adding that they met with County Planning staff and the Legal Department to ensure that the requirements were met. Regarding traffic impacts, he added that they do not have the authority to hook into Halyburton Road. Therefore, the project should be approved as is.

Frank Smith asked if Halyburton Road is owned by the Board of Education and if they were denying access. Dexter Hayes stated that this is a county road on county owned property.

Jane Kopezynski, Ocean Forest Lakes Homeowners' Association president, stated that they would like the developer to provide a new entranceway. She stated that the existing roads in the development are substandard. Therefore, they would like the Planning Board to modify the developer's site plan to require the developer to bring his existing substandard roads up to DOT standards before the heavy construction traffic takes place.

Sue Hayes asked if there is a precedent regarding the contiguous issue with two parcels being called one. Dexter Hayes stated that an earlier project known as Veterans Park was approved but appealed due to the properties being too far apart. Since then the ordinance was amended to require that the properties be adjacent or within the same project. There was further discussion regarding contiguity.

Sandy Spiers confirmed that the staff supported the project as approved by TRC.

Robin Robinson confirmed that the Planning Board has the authority to make modifications to the TRC approved plan.

Nathan Sanders, developer of Woodlakes Subdivision, stated that when he bought the property he received the deeds to the roads and if he were to turn over the roads to Ocean Forest Lakes they would block the homeowners of Woodlakes Subdivision from use of the roads. Mr. Sanders added that he has built two houses along the roads in the subdivision. If the roads were made into public roads it would require an agreement of the homeowners. Mr. Sanders also stated that the only roads in Ocean Forest Lakes Subdivision that will be impacted by Woodlakes Subdivision are Okeechobee Road and Watauga Drive.

There was further discussion regarding the roads. Mr. Sanders stated that he would turn the roads over to Ocean Forest Lakes if they will not prevent him from developing his property.

Mark Carter stated that Lord's Creek Subdivision's objection is that if the roads in Ocean Forest Lakes are not made public roads Lord's Creek cannot use them.

After additional discussion, Robin Robinson made a motion to deny the appeal thereby upholding approval of approving the preliminary plan with the following modifications:

1. Require turn lanes from Watagua Road to River Road.
2. Stub into property to the north of McQuillen Drive.
3. Require the developer to contribute to the maintenance of Okeechobee and Watauga Roads.
4. Tie in with a stub at Halyburton Memorial Parkway with the permission of the County and the School Board.

Following additional discussion of the maintenance and access issues Robin Robinson amended her motion as follows:

1. The developer shall pay \$100.00 per lot into a capital fund for repair and maintenance of Watauga and Okeechobee Roads in addition to the prorata amount for road maintenance in Ocean Forest Lakes.
2. Turn lanes at River Road and Watauga Road per Traffic Impact Analysis (TIA).
3. Developer shall send a letter to the School Board and Board of County Commissioners requesting one access road in Ocean Forest Lakes be connected and constructed to Halyburton Memorial Parkway at the expense of the developer.

Frank Smith seconded the motion. The Board approved the motion with a vote of 4 to 1. Sue Hayes was opposed.

**Item 2: Rezoning (Continued Item) – Request by Shellington Properties Inc. to rezone approximately 1.40 acres of property located in the 6500 block of Gordon Road from R-15 Residential to R-10 Residential (Z-781, 08/04).**

Baird Stewart presented the slides and gave a brief review of the site's history, agency comments and related information.

James Wicker, applicant, explained the request.

Chairman Conlogue asked what the density change would be. Dexter Hayes replied that it would allow 5 units instead of 4 units.

**STAFF SUMMARY:**

The petitioner has revised his rezoning petition from a request for O&I Office & Institutional to a request for R-10 Residential. This change is largely a result of feedback from the August Planning Board meeting and Staff's concern with expansion of nonresidential uses for the subject property and nearby properties.

With the revised petition the subject property is approximately 1.40 acres and has approximately 150 feet of frontage on Gordon Road. Under the current zoning, the property could accommodate 4 units. The proposed zoning change would allow 5 units. The adjacent parcels to the east including Wyck Farm Subdivision are zoned R-10 Residential. The majority of the adjacent Mission Hills Subdivision to the west was developed in the late 70's. With sewer now available, the remainder of this R-15 subdivision is currently being developed. The subject property is within the urban growth boundary and is classified as Developed in the Comprehensive Plan. The proposed zoning is consistent with the established policies for this land classification and the adjoining neighborhood. Staff recommends approval.

Robin Robinson made a motion to approve the zoning request. David Girardot seconded the motion. The Board approved the motion with a vote of 7-0.

**Item 3. Special Use Permit – Request by the New Hanover County Airport Authority to locate aviation safety equipment in an R-15 Residential District located in the 7800 block of Sidbury Road (S-524, 11/04).**

Baird Stewart presented the slides and gave a brief review of the site's history, agency comments and related information.

Julie Wilsey, Deputy Director of Airport Authority, explained the request and the need for improving airport operations along Runway-24.

**PRELIMINARY STAFF FINDINGS:**

1. The Board must find that the use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved.
  - A. The site is located in the Ogden Fire District.
  - B. The site is served by private well and septic
  - C. The site has access to Sidbury Road which is classified as an Arterial Road by the Thoroughfare Classification Plan.
  
2. The Board must find that the use meets all required conditions and specifications of the zoning ordinance.
  - A. A site plan showing a fenced area approximately 350'x230', with a 6.8' shelter, a short antenna and overhead wires approximately 50' above finished grade.
  - B. The project will have no affect on automobile traffic.
  - C. No signage is proposed.
  
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. The equipment is necessary for aviation safety at the airport.
  - B. The location cannot be seen from the public right of way.
  - C. Adequate landscaping can be provided along the security fence to mask the shelter and antenna.
  - D. No evidence has been presented that this facility will decrease the value of adjoining property.
  
4. The Board must find that he 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 1999 Land Classification Plan identifies this area as Rural. The purpose of the Rural class is to provide for areas of low intensity land uses, such as agriculture, forest management, mineral extraction, and other traditional agrarian uses. This classification discourages the premature conversion of these lands into urban-type and the subsequent loss of resource production.
  - B. The property is currently forested and not used for traditional agrarian uses.

David Girardot asked if landscaping would be done.

Julie Wilsey replied that they would do landscaping if that is required.

Sandra Spiers made a motion to approve the Special Use Permit with adequate landscaping. David Girardot seconded the motion. The Board approved the motion with a vote of 7-0.

**Item 4. Rezoning – Request by Buck O’Shields to rezone approximately 5.90 acres of property located at 7325 Darden Road on the west side between Middle Sound Loop Road and Wendover Lane from R-20 Residential to R-15 Residential (Z-787, 11/04).**

Baird Stewart presented the slides and gave a brief review of the site’s history, agency comments and related information.

Buck O’Shields explained the rezoning request and his proposal to subdivide the property.

William Aaron, 232 Wendover Lane, stated that he is against the rezoning request for this property due to traffic and drainage impact and would like the property to remain with R-20 zoning.

Buck O’Shields stated that the rezoning change would only create four (4) additional units. He added that he does not feel that the additional 4 units would create a substantial addition to the traffic.

Bob Parr, 6706 Falcon Point Drive, provided photos of parked cars and the traffic in the area and expressed his concerns for health and safety issues for the area if this rezoning is approved. Buck O’Shields stated that the photos were taken during a school event. Mr. Parr stated that this is going to be a difficult area to meet stormwater runoff requirements into SA waters. He added that he felt that the use would be injurious to property values, it is not in harmony with existing land uses in the area, and there is no plan to be reviewed along with the rezoning request.

Buck O’Shields stated that he does not plan to change anything about the land use.

Dexter Hayes provided staff recommendations and staff summary.

**STAFF SUMMARY:**

The subject property is located on the west side of Darden Road between Middle Sound Loop Road and Wendover Lane. The petitioner is requesting a rezoning from R-20 Residential to R-15 Residential. Zoning in the Middle Sound area was established in 1970.

With the exception of the coastal frontage, the majority of Middle Sound, including the subject parcel, was originally zoned R-15 Residential. In the late 1980’s concerns about growth lead to a mass rezoning of most of the undeveloped land in Middle Sound. This rezoning effort resulted in the R-15 areas being rezoned to R-20 and the R-20 areas being rezoned to R-20S. The subject property is on the border of that rezoning effort and is directly adjacent to an R-15 residential district. In spite of this rezoning effort Middle Sound like other parts of the County has experienced continued growth throughout the

1990's and into 2004. In 1980 the three primary concerns noted during the rezoning effort were; traffic, development and the environment. Today these issues continue to affect the area and were the subject of several planning efforts. Those efforts resulted in improvements for the Darden Road, Middle Sound Intersection, more restrictive environmental rules, a residential stormwater management ordinance, and County sewer is about to be activated.

While this petition is the only rezoning petition for the subject property it is the third time that there has been a development application in front of the Board for this parcel in 2004. The first two applications were for uses permitted by special use permit. Ultimately the Board determined that these uses were not in harmony with the residential zoning similar to what surrounds the parcel. The subject property is adjacent to two subdivisions that were developed under the R-15 performance residential guidelines and is also adjacent to an undeveloped tract of R-15. If developed under the current R-20 zoning, the subject property is permitted 11 residential units. Under the proposed R-15 rezoning, the property can accommodate 15 total units. Therefore, the net increase in dwelling units is four units.

The property is classified as Resource Protection by the New Hanover County Comprehensive Plan. Density within the Resource protection class should not exceed 2.5 units per acre. The proposed rezoning request is consistent with the Comprehensive Plan and the additional 4 units should have minimal effect on the area. **Staff Recommends Approval.**

David Adams asked about more than 50% of surrounding properties being R-15 and the need to change to R-15. He stated that he is opposed to the request. David Girardot stated that the addition of four lots is inconsequential and agrees with staff. Robin Robinson stated that R-15 is in character with the surrounding area. Sue Hayes stated her concerns for protecting the welfare of the residents in the area and felt that there is no guarantee that the property will be developed as residential. Chairman Conlogue stated that the last two cases that came before the Planning Board for this property were commercial operations.

David Girardot made a motion to approve the rezoning request. Robin Robinson seconded the motion. The Board approved the motion with a vote of 5-2. Sue Hayes and David Adams were opposed.

**Item 5: Rezoning – Request by Howard Capps for Atlantis Holdings LLC to rezone approximately 23.20 acres property on the northeast side of Carolina Beach Road across from Silva Terra Drive from a combination of CD(B-1) and R-15 Residential to CD(B-2) Conditional Use Highway Business (Z-760, 11/04).**

Baird Stewart presented the slides and gave a brief review of the site's history, agency comments and related information.

Howard Capps, landscape architect for Atlantis Holdings, stated that the rezoning of this property is needed in order to place a movie theatre on the property and to accommodate the additional parking.

## STAFF SUMMARY:

The petitioner is requesting a revision and expansion for an existing Conditional Use B-1 Neighborhood Business District. The basis for the revision from CD(B-1) to CD(B-2) is because of an error in the proposed list of uses that was approved with the original proposal in March 2003. Specifically the list of uses on the approved site plan included Movie Theaters. The applicant marketed his project for a year and half based on the approved site plan and list of uses. The applicant has a movie theater that is interested in the location and in a recent telephone conversation staff noted that Movie Theaters are not permitted in the B-1 Neighborhood Business District. Therefore, the applicant is requesting a revision to Conditional Use B-2 Highway Business, which allows Movie Theaters. In 2003 during the original site plan review there was significant discussion about the list of uses including “Convenience Food Stores” and “Automobile Service Stations”. However, there was no mention or discussion about a Movie Theater.

In addition to the change of zoning district classification, the petitioner is asking to expand the Commercial portion of his project by approximately 10.6 acres for a total of approximately 23 acres. While the proposed theater might fit within the original boundaries of the commercial district, the character of the project would be severely impacted. The additional acreage allows the flexibility to address the main street design with building fronts while hiding the parking from the traveling public.

The property is located at an existing controlled intersection on the northeast side of Carolina Beach Road across from Silva Terra Drive and is approximately 1.2 miles from the developing commercial node at Monkey Junction. As part of the original approval the applicant is developing plans to improve the signalized intersection to accommodate expected traffic. The applicant has also been working with County and City Staff and his neighbor to complete the road connection to St. Andrews Drive.

The conditional use site plan is presented and designed in the context of a larger development that would incorporate a variety of housing types. The road configurations within the project create a desirable connection between Carolina Beach Road and South College Road, which interconnects this project with the Johnson Farm Development. The project will also serve the existing communities in Silva Terra and if the connection to St. Andrews Drive is completed the project can also serve those multi-family developments. The applicant has worked with NCDOT to develop suitable standards to incorporate traffic circles as calming devices to discourage high speed cut through traffic on Pine Hollow Drive and the plan shows sidewalks and street landscaping to encourage pedestrian access from nearby neighborhoods.

The subject property is located in the Developed Land classification and is within the urban services boundary. Policies in the Comprehensive Plan promote development in these areas. Other policies in the Plan support locating commercial services in close proximity to the markets they serve and support mixed use development in undeveloped areas to reduce dependency on automobiles, while preserving valuable natural resources including open space. The Comprehensive Plan also supports providing street connectivity to reduce impacts of traffic on our major thoroughfares. The proposed project accomplishes the Comprehensive Plan objectives and provides desirable traffic improvements to the area. **Staff Recommends Approval.**

There was discussion regarding the landscaping and the view of the buildings from the road particularly on the backside next to Carolina Beach Road.

Mark Tinkler, Transportation Planner for MPO, stated that there was a traffic impact study done in 2003, which was revisited with this rezoning request. The engineers looked at the additional trips that would be generated. He stated that the engineers found that the infrastructure would be able to handle the additional trips, which he concurred with.

Frank Smith made a motion to approve the rezoning request with the conditions that were placed on the property when approved on April 7, 2003. He proposed all services for the buildings and dumpsters be hidden from view from adjacent right of ways and the roof lines viewed from adjacent rights of ways on all structures should not be mono-pitch type and should be gable or hip. Sandra Spiers seconded the motion. The Board approved the motion with a vote of 7-0.

**Item 6: Rezoning – Request by Jeffrey Keeter for Cape Fear Marina Village LLC to rezone approximately 30 acres of property located in the 1500 block of US Highway 421 just south of the Isabella Homes Bridge from CD(B-2/R-15) to I-1 Light Industrial (Z-559, 11/04).**

Baird Stewart presented the slides and gave a brief review of the site's history, agency comments and related information.

Jeff Keeter, representing Cape Fear Marina Village LLC, explained the request and the need to revert to the Light Industrial classification.

#### STAFF SUMMARY:

The petitioner is requesting to rezone approximately 30 acres of property from a combination of Conditional Use B-2/R-15 to I-1 Light Industrial. The property is located on the western shore of the Cape Fear River which has traditionally been designated as the County's Industrial Corridor. However, in 1996 the current owner of the subject property had a vision to create a mixed-use project on the land formerly utilized by the Wilmington Shipyard for ship repair. The proposed project included 27 single-family homes, 12 townhouses, a hotel, 75,000 square feet of retail/office uses and a 115-slip marina and clubhouse. As clean up began and construction plans were developed the owner ran into multiple complications including some environmental contamination from the previous use, permitting issues with regulatory agencies and inadequate utilities.

Ultimately in 1999 the conditional use permit was revised. The revised conditional use permit abandoned the on land residential component of the project and concentrated uses on the river for floating homes and a multi use marine resource center offering services and space for the North Carolina Aquarium, Cape Fear Rowing Club, the Museum and other educational groups. Based on the fact that there is currently only one floating home at the marina it appears that the floating home concept did not materialize.

While some of the original innovative concepts for the property have not been successful, the owner has significantly improved the property, cleaned up the environmental contamination established a location for the Cape Fear Rowing club which has grown and recently hosted the first Head of the Cape Fear regatta. Other marine oriented businesses have also been successful at this location.

Because the property is entirely within the Floodplain it is classified in the Comprehensive Plan as Conservation. Policies within the conservation classification state that these areas should be reserved for water dependent uses that cannot function elsewhere, shared industrial corridors, and those exceptional development proposals which are sensitively designed so as to effectively preserve the natural functions of the site. The applicant has demonstrated an interest in re-establishing the natural functions of the site while also utilizing its proximity to the River. The site is located in the County's Heavy Industrial Corridor and uses in the proposed I-1 Light Industrial district are more compatible with the downtown waterfront than the surrounding I-2 Heavy Industrial. For all of these reasons **Staff Recommends Approval.**

Frank Smith stated that he had concerns regarding the gateways and major corridors entering into the city. He expressed concerns for an industrial use not being as attractive and a blanket rezoning of the parcel to industrial use without some sort of protection to make it as attractive as possible. He suggested that the owner/developer come back with some sort of layout on how the parcels are intended to be developed. Sue Hayes agreed with Mr. Smith's concerns.

Mr. Keeter stated that a good portion of the property is wetlands with limited utilities and cannot be developed. He added that I-1 zoning is required for marina activities.

Robin Robinson made a motion to approve the rezoning request as petitioned. David Girardot seconded the motion. The Board approved the motion with a vote of 5-2. Frank Smith and Sue Hayes were opposed.

Frank Smith provided an update on the Land Use Plan stating that there have been two public meetings, which were poorly attended, and three other meetings. They are currently working on the criteria for a land suitability map, which is being overlaid to the existing land use map. He stated that this is an interesting process with great potential.

Sam Burgess stated that the Technical Review Committee (TRC) did not meet in the month of October and the next TRC meeting is scheduled on November 10, 2004.

Robin Robinson made a motion to nominate Sandra Spiers to serve as a member of the Water Development Task Force. David Girardot seconded the motion. The Board approved the motion with a vote of 7-0.

Being of no further business, David Girardot made a motion to adjourn the meeting. Sandra Spiers seconded the motion, which the Board unanimously approved. The meeting adjourned at 11:15 p.m.

Dexter Hayes, Planning Director