

**MINUTES OF THE
NEW HANOVER COUNTY PLANNING BOARD MEETING
March 3, 2005**

The New Hanover County Planning Board met Thursday, March 3, 2005 at 7:00 p.m. in the County Court House, 24 North Third Street, Wilmington, NC to hold a public meeting.

Members Present:

David Girardot, Vice Chairman
Robin Robinson
Frank Smith
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

Members Absent:

Chairman Walter Conlogue
Sandra Spiers

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

Vice Chairman Girardot proceeded with the approval of the minutes. Robin Robinson made a motion to approve the February minutes. Sue Hayes seconded the motion. The Board approved February 2005 minutes by a vote of 5-0.

Item 1: Special Use Permit – Request by Linda Crafts for a Special Use Permit to locate a Residential Duplex in an R-10 Residential District located at 605 Shawnee Trail (S-527, 03/05).

Baird Stewart gave a brief review of the request, agency comments and related information.

Linda Crafts, applicant, explained that the reason for her request is to add an addition on to her home to provide her in-laws with a place to live independently. She added that the Special Use Permit is required to add the kitchen area with a stove and refrigerator.

Herb Taylor, Lot #3 Red Heart Drive, stated that there are other duplexes in the area. Therefore, he does not feel that property values will be affected by adding this duplex to the area.

Dexter Hayes provided Preliminary Staff Findings.

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 subject property is located within the Myrtle Grove VFD.
 - B. The site fronts on Shawnee Trail and has access to Red Heart Drive, which is a public right-of-way.
 - C. The site is served by City Water and County Sewer.
 - D. The proposed duplex is an addition to the side of the existing home and contains independent cooking and sleeping facilities.
2. The Board must find that the use meets all required conditions and specifications of the zoning ordinance.
- A. The subject parcel is within the R-10 Residential Zoning District and is approximately 20,800 s.f.
 - B. The proposed project meets all required setbacks.
 - C. Duplexes are permitted by special use permit in the R-10 Residential District provided the lot is a minimum of 15,000 s.f.
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 subject property is located in an R-10 residential district. Duplexes are permitted by special use permit in the R-10 district.
 - B. No evidence has been presented to indicate that the proposed use will injure property values.
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 site is classified as Developed by the New Hanover County Comprehensive Plan. The purpose of the developed class is to provide for continued intensive development and redevelopment of existing urban areas.
 - B. Housing policies in the comprehensive plan state that “The County and City shall continue to support and enhance a broad range of affordable housing programs and increase affordable rental housing.”

Staff Comments:

Recently there have been several inquiries about residential duplexes in the R-10 District. Since R-10 is our most dense district and since R-10 districts are at a minimum served by either public water or public sewer, it may be worth discussing the necessity for these requests to go through a special use permit process. Staff welcomes comments from the Board on this topic.

David Girardot clarified that the reason for the request is because they are adding a kitchen. Dexter Hayes stated that since they are adding a kitchen it makes it a separate dwelling unit, which is considered a duplex.

Robin Robinson asked if there are any restrictions that would prohibit the owners from renting the unit out to a third party in the future. Dexter Hayes replied that there are no restrictions in the ordinance.

Frank Smith asked if allowed "By Right" would it open up density for more than 2 ½ units per acre. Dexter Hayes stated that the ordinance already allows for variations for duplexes in R-10 zoning districts.

Sue Hayes stated that she has some concern for having a large number of duplexes in the area.

David Adams made a motion to recommend approval of the Special Use Permit request. He also made a suggestion that staff prepare a proposal for allowing the use by right for future consideration. Robin Robinson seconded the motion for approval of the Special Use Permit request. The Board approved the motion with a vote of 5-0.

Item 2: Rezoning – Request by SAMM Inc. for David Green to rezone approximately 4.1 acres of property located at 8704 Market Street between Futch Creek Road and Creekwood from R-15 Residential to B-1 Neighborhood Business (Z-794, 03/05).

Baird Stewart gave a brief review of the request, agency comments and related information.

Tim Fuller, representing the petitioner, stated that Mr. Green knows that his land is in a growing business area and it is only a small part of a larger trend in the area. He further stated that even though staff is recommending against the rezoning he feels that setting limits on the north south access of the Market Street corridor is not the best approach. He added that a more appropriate location for setting commercial limits would be on the east west access of the corridor. He stated that it is appropriate for the property to be rezoned. However, he feels that a conditional use might be something they would like to discuss and consider. This would allow the Planning Board to use additional tools to ensure that the corridor is built in a way that is beneficial to the entire area and the county as a whole.

David Adams asked if Mr. Fuller is suggesting that the petition be withdrawn. Tim Fuller responded that the applicant submitted for rezoning to B-1 but being sensitive to the staff concerns they are amenable to other rezoning.

Dexter Hayes provided Staff Summary.

STAFF SUMMARY:

The petitioner is requesting a rezoning of 4.2 acres of property from R-15 Residential to B-1 Neighborhood Business. In April 2004 the Board of Commissioners approved a 2-acre conditional use rezoning for a hardware store directly adjacent to the subject property. Further north and adjacent to the hardware store the Board approved a B-1 neighborhood business rezoning for 10 acres in May 2003.

Like the adjacent property, the subject property has frontage on a service road being constructed with the (I-140) 17 By-Pass. For residents along Futch Creek Road and other neighborhoods east of Market Street, the service road will become the primary access to Market Street and the (I-140) By-Pass.

The property is located in the Futch Creek watershed and is classified resource protection by the Comprehensive Plan. The purpose of the Resource Protection class is to provide for the preservation and protection of important natural, historic, scenic, wildlife and recreational resources. The resource protection classification does not preclude commercial development and no County regulated resources have been identified onsite. Several conservation activities have been undertaken on nearby properties to protect the Futch Creek watershed. The existing County stormwater management regulations combined with the state water quality requirements for commercial development should minimize impacts in the watershed. Other policies in the Comprehensive Plan support establishing commercial services in close proximity to the markets they serve.

Last year when the adjacent property was rezoned, Staff noted that the combination of the I-140 Interchange, new subdivisions, and the extension of public utilities would likely result in multiple rezoning requests along this proposed service road. Several of these new subdivisions will have direct access through the 10 acre B-1 district that is currently undeveloped.

While the intersection of the service road and Market Street will have a large volume of traffic staff believes that the existing commercial node at Porters Neck Road Intersection provides adequate services for the neighborhoods nearby. Expanding another commercial center at this new intersection and along the service road is unnecessary. The establishment of the adjacent Conditional Use District effectively established the limits of the commercial zoning along this new road. Ultimately when the I-140 project is completed and new traffic patterns are well established it may be appropriate for additional commercial or office uses to located in the area, however, staff believes that further commercial zoning should be discouraged at this time. Staff recommends denial.

David Adams asked about the road going through the front property and the back property.

Frank Smith stated that he felt that more of these rezoning requests are likely to come before the Board since they border Market Street. He added that this is an opportunity to make development better and supports allowing the applicant to come back to the Board with plans for a conditional use proposal. Robin Robinson stated that she was in agreement and in favor of looking at particular uses rather than straight rezoning. Sue Hayes also agreed.

There was further discussion regarding SHOD, setbacks, and nearby properties. Frank Smith stated that this location has been designated as a Resource Protection area for a reason.

Mary Nixon expressed her concerns regarding the effect that the rezoning of this property would have on her property and other residents that she is representing who are living on

a fixed income. Her concern was that their property taxes would increase with the rezoning.

Baird Stewart stated that the applicant had mentioned the possibility of placing a hotel on the property in his earlier discussion. He added that a hotel would require B-2 zoning and at least 5 acres of property.

Frank Smith made a motion to continue the item and allow the applicant to come back before the Planning Board with a modification to the application. Robin Robinson seconded the motion. The Board approved the motion with a vote of 5-0.

Item 3: Rezoning – Request by Withers & Ravenel representing Seahawk Properties LLC to modify the site plan for an existing CD(I-1) Conditional Use Light Industrial District located at 2016 Farley Drive (Z-510, 03/05).

Baird Stewart gave a brief review of the request, agency comments and related information.

Cindee Wolf, Withers & Ravenel representing the owner, stated that this request is a modification of a previous application. The new owner is planning to improve the property by adding new buildings, move the existing house to be used as a residence, eliminate the residential and service driveways in exchange for a new driveway to be used for entrance into the storage area, and bring the landscaping up to date. She stated that the proposed plan meets all of the requirements of the ordinance with an explanation of the 50’ side setback requirement from Capital Drive Right of Way.

There was further discussion regarding the 50’ side setback. Sue Hayes asked if the Board could impose additional restrictions. Dexter Hayes replied that the Board can impose additional restrictions but they have to meet the minimum code requirements.

Dexter Hayes provided the staff summary.

STAFF SUMMARY:

In 1995, the subject property was rezoned from Airport Residential to conditional use light industrial. The rezoning occurred shortly after the Murrayville Station project was rezoned.

According to the zoning files the subject property was a total of 1.9 acres and included some property to the north that is now part of Murrayville Station and serves as the main access to that classification of Farley Road, the Planning Board recommended and the Board of Commissioners adopted the reclassification of Farley Road and eliminated a driveway connection from the subject property to Capital Drive and Murrayville Station.

Ultimately the conditional use I-1 site plan was approved 4,000 s.f. of storage space with an on-site managers residence. Three additional conditions were imposed on the project that included limiting the size of the sign to 32 s.f., the fence along Farley Drive to be located 10 feet from the right of way to preserve the existing vegetation, and the setback between buildings shall be 20 feet.

In the original review the front yard setback that was applied to the project was 35 feet along Farley Drive which is actually the setback from minor streets in B-2 Highway Business Districts. While front yard setbacks in the I-1 District have always been 50 feet, there may have been some confusion about this project since the original zoning request was modified from B-2 to CD(I-1) and the classification of Farley Road was changed during the review of the project. New development on the site should meet the appropriate front yard setbacks, which in accordance with Section 56-4 and 23-19 require 50 feet from Farley Drive and Capital Drive.

Staff supports the expansion of the mini-warehouse operation on the site. However, the proposed site plan does not comply with the required 50-foot setback from the Capital Drive right of way. Staff recommends reconfiguring the project to accommodate the appropriate setbacks.

Holt Moore, Assistant County Attorney stated that the intent of the ordinance for this type of setback issue is to determine if the property abuts the road. He added that this particular property does not abut Capital Drive.

There was further discussion regarding changing the setback to 35' which would have to be heard by the Board of Adjustment for variance approval.

Frank Smith made a motion to recommend approval of the rezoning request with the condition that a 35' setback from the Capital Drive ROW is approved by the Board of Adjustment. Robin Robinson seconded the motion. The Board approved the motion with a vote of 5-0.

Item 4: Rezoning – Request by Landdesign Inc. for SENCA Properties LLC to rezone approximately 71 acres of property located in the 9000 Block of Market Street on the east side between Creekwood Road and Scott’s Hill, from R-15 and CD(O&I) to Conditional Use Neighborhood Business CD(B-1) and Conditional Use Office and Institutional CD(O&I) for an ambulatory surgery center, medical offices, professional offices & retail complex (Z-795, 03/05).

Baird Stewart gave a brief review of the request, agency comments and related information.

Chris Boney, LS3P, Architect, stated that Scott’s Hill Village will be a model development unique to the area. He added that the character of the construction would be that of a small village providing quality medical care.

Larry Best, Landesign, stated that this project could serve as the gateway into New Hanover County. Mr. Best provided slides showing concepted designs for the project and explained the topography and distance from Market Street and Futch Creek.

Dr. Hormoze Goudarzi, representing SENCA Properties, stated that he is working with approximately 100 physicians to create an example of a medical community. The medical community would be a partnership with the hospital, physicians and community working together to supply the county residents with an excellent facility for their health needs.

James Mullin, Salem Woods Subdivision, stated that his subdivision is small and his house sits in the back of the O&I area. He feels that the project is too big for the area, adding that he bought his property because it was not near businesses and feels this is a conflict to the residential area. He stated that there is a hospital in Pender County. He added that he feels that the buffer area is not sufficient which makes him concerned about the noise from A/C units and garbage trucks. He expressed concerns regarding lighting in the parking lots.

Ed Verge, Salem Woods, stated that his property is the lowest lot in the subdivision, and is concerned about the runoff onto his property. He also expressed concerns regarding truck traffic and the absence of any traffic light placed at the site.

Mary Nixon, stated that she is concerned about the water on her property and the effects this development would have on her property.

Ted Wilgis, NC Coastal Federation, stated that the county has been receiving funding to protect the watershed. The county's density limits apply to this area. The approval of this project could affect future requests for additional funding. He requested that the Board postpone approval until other parties have had time to review the project.

Katherine Nixon, asked what does Creekwood Road have to do with this approval? Baird Stewart stated that the roads connect to this project but there are no plans to improve Creekwood Road with this project. She stated that residents on Creekwood Road were not notified. Baird Stewart explained that the purpose of the notification is to spread the word that there is going to be a meeting and that all of the adjacent property owners were sent notification.

Timothy Keegan, Lot #20 Salem Court, stated that he is concerned about the affects of this project on his property and asked that the Board give consideration to what affect it will have on the residential areas.

Christine Keegan, asked if anyone that is working on this project will be living there. Dr. Goudarzi replied that he plans to be living there when the project is complete. Ms. Keegan stated her concerns for truck traffic and placement of the air conditioning units.

Hans Mulberg, Lot 31, stated that he received his notice on Saturday explaining that there was a lag in receiving the notices.

Chris Boney, stated that this project is required to meet all of the state and local requirements. He stated that all the issues will be discussed and they do understand the neighborhood concerns. However, the applicant does feel that this is an opportunity to provide the county with a medical facility that will become a gateway to the county. Dr. Goudarzi explained that the Department of Facilities has done their research and they did find the need for the facility in this area adding that the hospital that he is currently working in is short of space.

Christine Keegan, asked about turning the shopping portion of the project away from the residential area.

Dexter Hayes provided the staff summary.

STAFF SUMMARY:

The subject property is a 70.84 acre portion of a larger 150 ± acre tract. The entirety of the parcel is one of the largest undeveloped properties in northeastern New Hanover County. While areas south of the I-140 interchange have been actively developing for the past couple of years, no significant commercial or professional office uses have been established on either side of Market Street north of the interchange. Recognizing the problems with establishing another commercial strip, which is prevalent along many of our major corridors, staff has historically been reluctant to support any commercial or office zoning districts in this area. However, there are several factors about this proposal that mitigate some obvious concerns.

Previously the Board approved a Conditional Use Office and Institutional Rezoning for a 3.36 acre portion of the subject property, which was proposed for an Ambulatory Surgery Clinic. The Board approval and the Staff support of that zoning was based on the expectation that a larger 20± acre medical office campus would be forthcoming. Recognizing that there is an existing commercial zoning district in Pender County at the corner of Scott's Hill Loop Road and Market Street, staff noted that a logical land use pattern for this area would be an expansion of commercial from the Scott's Hill Loop intersection, where commercial development is already permitted. This development pattern could transition south along the thoroughfare into Office and Institutional uses and ultimately back into the residential area. The previous rezoning established a master planning process with phased conditional use zonings that would allow planning staff, the Planning Board and the Board of Commissioners to review each site plan to ensure that the subsequent phases accomplished the transition from a planned commercial intersection into residential.

In order to accommodate the most recent plans and objectives of the project and recognizing some of the natural characteristics of the site including the rolling topography, wetlands and conservation resources the proposed zoning does not transition as anticipated. Additionally, the proposed project is significantly larger than originally anticipated with a 45 ± acre Conditional Use Office and Institutional District and a 25 ± acre Conditional Use Neighborhood Business District. The CD(O&I) portion of the project includes the Ambulatory Surgery Clinic, 4 two story office structures and a large medical complex totaling approximately 450,000 s.f. of medical office space. The CD(B-1) Neighborhood Business District includes multiple mixed-use office and retail buildings totaling approximately 175,000 s.f. of retail space and another 110,800 s.f. of office space. The applicant has indicated a desire to include residential uses in the Neighborhood Business District, however, residential uses are not permitted in the B-1 district outside the Urban Growth Boundary.

The property is located in the Futch Creek watershed and is classified resource protection in the Comprehensive Plan. The purpose of the Resource Protection class is to provide for the preservation and protection of important natural, historic, scenic, wildlife and recreational resources. Compatible commercial and industrial development may be located within the resource protection class as long as important resources are not adversely impacted. Planning staff will have to verify the extents of the Swamp Forest

boundary, however, it appears that it coincides with the regulated wetlands that are being protected. Several conservation projects have been undertaken on nearby properties to protect the Futch Creek watershed including the purchase of a 21 acre parcel fronting on Foy Creek, which is located on the south end of the larger 150 acres. The existing County stormwater management regulations combined with the state water quality requirements for commercial development should help mitigate some water quality impacts. Other policies in the Comprehensive Plan support mixed use development in undeveloped areas in order to maximize benefits from available infrastructure, preserve valuable natural resources including open space and reduce dependency on the automobile.

Given the constraints of the project and the unique features of the site, the applicant has developed a viable plan that provides interconnectivity through public roads, limited access to Market Street, and some protection for the existing wetland areas. The applicant is also proposing additional stormwater quality best management practices to mitigate some of the negative impacts of runoff from the impervious surfaces. The proposed project and the anticipated future development on the balance of the property, generally meet the objectives of mixed-use development as stated in the comprehensive plan. Some of the draft policies and comprehensive plan changes that are being reviewed as well as a proposed zoning text amendment that is in process may allow some changes to the site plan that would allow for a more effective transition between the commercial and residential uses and also better accommodate the objectives of mixed use development.

The initial premise behind establishing this master plan is the time schedule for developing the Ambulatory Surgery Clinic. Staff believes that the basic layout of streets and the location of the Ambulatory Surgery Clinic are satisfactory to move that phase of the project forward. However, given the unique topographic features of the site, the wetland features, the proximity to SA waters, the make up of the forest and land cover and the general impact and scale of the project; staff recommends that the Board only approve the general circulation system and a first phase of the project that includes the area encompassing the Ambulatory Surgery Clinic, while the details of the remainder of the master plan and transportation improvements are finalized.

Robin Robinson confirmed that staff recommends approving the Ambulatory Surgery Clinic on the northern (O&I) portion of the plan. Ms. Robinson stated that with consideration to the citizens and the size of the plan she feels that the project should only be approved in portions. Sue Hayes stated that she had some concerns and does not feel comfortable approving any of the project at this time. Robin Robinson stated that she would like to recommend approval of the ambulatory portion only so that portion of the project can move forward. Frank Smith asked for an explanation of the traffic counts and DOT overview.

David Adams stated that he is not ready to take any action and made a motion to meet with staff, local people, the petitioner, and DOT for an information session. Sue Hayes seconded the motion. The motion failed with a 3 to 2 vote (Smith, Robinson, Girardot opposed).

Dr. Goudarzi stated that it took eighteen (18) months and a great deal of legal expenses to work with the Department of Facilities in order to receive the Certificate of Need. He noted that they have a tight schedule of eighteen months to complete the project in the Department of Facilities timeframe. Dr. Goudarzi stated that he felt the urgency in moving forward with the Ambulatory Surgery Center but is very willing to have the discussion session with the staff and residents to address their overall concerns.

Holt Moore stated that if the Board does not take action the applicant could still move forward to the County Commission.

Robin Robinson made a motion to recommend approval of the Ambulatory Surgery Center portion to include the entrance road back to street "AA" and north to include the pond. Included in the motion was that the remainder of the request be withdrawn until an information session was held with the public agencies, neighbors and other interested parties. Frank Smith seconded the motion. The Board approved the motion with a vote of 3-2 (Sue Hayes and David Adams opposed).

Frank Smith suggested the work session be held at the church in Scott's Hill. David Adams recommended that the work session be purely informational.

Sam Burgess provided the TRC report:

Becker Woods

- Limited transitional
- 29 Lots
- Private water & sewer
- Private roads

Marsh Landing Place

- Resource Protection
- Public water & sewer
- 45 Lots
- Public roads

Forest Grove

- Developed Residential
- 30 Lots
- Public water & sewer
- Public roads

Johns Creek South

- Resource Protection
- 13 Lots
- Private roads
- Private water & sewer

Country Haven Section 3

- Urban transition

- 33 Lots
- Public water & sewer
- Master water plan to be created and approved
- Private roads

Sam Burgess reminded the Planning Board of the TRC meeting scheduled for March 9th at 2:00 p.m.

Being no further business, David Adams made a motion to adjourn the meeting. Sue Hayes seconded the motion, which the Board unanimously approved. The meeting adjourned at 10:25 p.m.

Dexter Hayes, Planning Director