

**MINUTES OF THE
NEW HANOVER COUNTY PLANNING BOARD MEETING
May 5, 2005**

The New Hanover County Planning Board met Thursday, May 5, 2005 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
David Adams
Sue Hayes
Robin Robinson
Sandra Spiers

Staff Present:

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

Absent:

Frank Smith

Chairman Conlogue opened the meeting by welcoming those present to the public hearing and leading the reciting of the *Pledge of Allegiance to the Flag*.

Chairman Conlogue proceeded with the approval of the minutes. Robin Robinson made a motion to approve the April minutes. Sue Hayes seconded the motion. The Board approved April 7, 2005 minutes by a vote of 6-0.

Item 1: Rezoning (Continued) – Request by Andrew Hall for Yvonne Johnson to rezone approximately 2.80 acres of property located at 649 Piner Road from R-15 Residential to O&I Office and Institutional (Z-788, 01/05).

Sam Burgess gave a brief review of the request, agency comments and related information.

Andrew Hall stated that he met with the neighbors in the Wood Duck subdivision and came up with a proposed document offering a 50' buffer along the backside of the property along the perimeter.

Phillip Burris, 641 Piner Road, stated that he was not aware of the proposed buffer on the property. The buffers and setbacks will be dictated by the height of the structure. Dexter Hayes stated that the buffer would be ½ of the setback requirement, i.e. 40' setback would require 20' opaque buffer.

David Adams stated that the 50' buffer exceeds our buffer requirement. Sue Hayes asked Mr. Hall if they would be willing to give Mr. Burris a 50' buffer. Mr. Hall stated that it would leave very little property to build on.

Sandra Spiers asked Mr. Burris if he would be satisfied with the setback requirement. Mr. Burris replied that he would be satisfied with that.

STAFF SUMMARY:

The petitioner is requesting a rezoning of 2.8 acres from R-15 Residential to O&I Office and Institutional. The subject property is located on the north side of Piner Road across from the service entrance for the old Wal-Mart shopping center. In February 1999, the adjacent 10-acre tract to the east was rezoned to O&I Office and Institutional. The back or north end of the property abuts three homes in the Woodduck Subdivision. The five lots between the subject property and the Commercial Node at Monkey Junction are zoned R-15 Residential and one of those lots is occupied by a church.

Over the years, staff has received multiple inquires to develop property along Piner Road and given the increasing traffic counts and the limited R-15 density, the questions typically revolve around methods to increase density or non-residential development scenarios. Holding fast to policies established for lower density development in the resource protection land classification and policies established to develop commercial nodes at major intersections staff generally advises that these pursuits would be contrary to the comprehensive plan. Office and Institutional Zoning, however, has typically been utilized as a transition between commercial development and residential development and logically there would be some amount of O&I zoning between the Commercial node at Monkey Junction and the residential districts to the east. Although one would expect the transitional zoning to start at the edge of the commercial node, the existing 10-acre O&I District east of the subject property established the boundary, leaving an opportunity for additional expansion between the districts. A similar scenario has been established on the South side of Piner Road with the Myrtle Grove Presbyterian Church establishing the Eastern boundary of the transition from Commercial to Residential.

Given the established land use and zoning pattern in the area, consistencies with certain Comprehensive Plan goals, and traffic counts in excess of 14,000 average trips per day on Piner Road, Staff Recommends Approval.

Sandra Spiers made a motion to approve the rezoning request. David Girardot seconded the motion. The Board approved the motion with a 6-0 vote.

Item 2: Special Use Permit – Request by Stocks Land Surveying for Doug Muhle for a Special Use Permit to locate a 10 slip Community Boating Facility in an R-20 Residential District located at 7431 Dunbar Road (S-529, 05/05).

Sam Burgess gave a brief review of the request, agency comments and related information.

Doug Muhle, applicant, explained that the request is for ten (10) boat slips for a ten lot residential community. Mr. Muhle explained that the request is for one slip per lot with covenants and restrictions to boat size and HOA fees for the maintenance of the docks. He stated that the other option for the community would be to allow each waterfront homeowner to apply for an individual dock permit which would allow each dock to have up to four boat slips.

Joyce Keller, 822 Bayshore Drive, representative for the Bayshore subdivision, explained the community concerns regarding the proposed boat facility. She stated the following concerns:

- Additional boat traffic in the channel will add pollutants and stir up the creek bed which is a sanctuary for native wildlife
- Disruption of the marine environment that supports shrimp, flounder, crabs, etc.
- Increase in the amount of sand flowing into existing channel access
- Facility would not be consistent with existing marine construction on Pages Creek

Ms. Keller presented photos displaying the depth of the water at various tide levels.

David Girardot asked Ms. Keller why the Bayshore community felt that placing a ten slip arrangement would be more injurious than individual docks. Scott Rader replied that the ten boats would use the same route entering and leaving the area, which would displace the sand. Mr. Rader added that the individual slip impact would be less injurious.

Walter Conlogue asked how many boat slips there were along Pages Creek. Joyce Keller replied that there are about 50 docks in Bayshore and approximately 100 docks total.

James Blake, 7413 Dunbar Rd., stated that he is opposed to the requested special use application. Mr. Blake provided photos of the area at low tide expressing his concerns.

Edmund McCuffney stated that he is opposed to the special use request. He referred to the Comprehensive Plan Natural Resources Section 3.1: Preserve and restore shell fishing to all SA waters and bring all coastal waters designated or formerly designated SA up to their use designation and the Land Classifications and Policies Summary. He urged the Planning Board members to give these policies consideration in making their decision.

Doug Muhle replied stating that he has met with the required agencies to discuss this project and they have no objections to the special use permit. He added that there are 278 boat docks on Pages Creek and that he is proposing a ten-slip boat dock not a marina. He stated that he has proposed a restriction on the size of the boats and feels that it is up to the agencies to determine the impact. He added that this project is not a shellfish hazard and explained that the boats will be restricted to a size of less than 25' and are limited to inboard motors.

Sue Hayes stated that she would like to learn more about the water quality issues. Dexter Hayes explained that the water body with the best water quality in New Hanover County is Futches Creek and the next best is Pages Creek.

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 currently known as Pages Landing subdivision will be served by County sewer and private wells.
 - B. The site is located within the Ogden VFD.
 - C. Access to the boating facility will be conferred to the residents of the subdivision.
2. The Board must find that the use meets all required conditions and specifications of the Zoning Ordinance.
 - A. The subject property is located in an R-20 Residential Zoning District.
 - B. The land is classified as Resource Protection
 - C. Community boating facilities are permitted by Special Use Permit in the R-20 Zoning District.
 - D. The Zoning ordinance requires that the petitioner demonstrate that the project has minimum impacts on water quality and conservation resources. A major CAMA Permit will be required for the 10-slip community.
 - E. The number of boat slips must not exceed the number of residential lots as presented.
 - F. Commercial activities shall be strictly prohibited.
3. The Board must find that the use will not substantially injure the value of adjoining property or threat the use is a public necessity.
 - A. The surrounding land use is residential consisting of single-family stick built homes and a mobile home park.
 - B. Other private residential piers exist nearby.
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. New Hanover County land use policies encourage the consolidation of riparian access.
 - B. Boatlifts are proposed for each slip. Many nearby private boating facilities utilize boatlifts.

Staff Comments:

Pages Landing was preliminarily approved for 9 lots by the County's TRC in April, 2005. The additional lot shall be incorporated into the plan prior to final plat approval.

Sue Hayes asked how the minimum effects on the water quality is judged and what effect it would have in a low water area. Dexter Hayes replied that it is a call that is usually left up to CAMA who issue the permits. He added that if there is an associated request for dredging it is also given consideration.

Robin Robinson asked what additional agencies would have to review this request. Dexter Hayes replied that it would require a major CAMA permit with approximately ten or more agencies reviewing.

Sandra Spiers asked what was approved by the TRC. Dexter Hayes replied that nine subdivision lots were approved by the TRC.

David Adams asked what entitles the remaining lot owners access to the water. Dexter Hayes replied that there are land use polices that encourage public access to the water.

James Taylor, Southern Environmental consultant, stated that the proposed plan is a single dock structure with 10 slips. He stated the residents using this dock would be limited to the tides just as the residents of Bayshore are. He added that there would be boatlifts added to the slips. He stated that his client's proposed plan has one egress point and his client has tried to minimize the impact. He added that he understands that low tide is an issue and that these residents will share that concern.

Alton Lennon, 466 Biscayne Drive stated that the residents of Bayshore know what they are talking about. He provided a photo of a dock on the applicant's property. He added that the location and character of the use is not in harmony with the area.

Walter Conlogue stated that the applicant could put in additional boat slips for the waterfront 13 lots without the special use permit.

Bill Thibodeau stated that he would prefer four docks because there would be no boats there since there is no water adding that he feels that it is inconsistent with the County's Plan.

There was further discussion regarding the low tide and displacement of sand.

Sue Hayes asked if the concern is that there is not enough water even with a longer pier. Mr. Rader stated that longer piers would gain nothing. Sue Hayes asked Dexter Hayes if building longer piers is permitted if they are community piers. Mr. Hayes replied not necessarily but the Board could also limit the pier length. James Taylor stated that they would be allowed to go out 25% of the width of the creek for the pier. Mr. Taylor added that approval of the special use permit simply gives the applicant the right to go through the CAMA review process for approval.

Dexter Hayes stated that the primary concern is dredging and the county's policy prohibits dredging. Walter Conlogue added that dredging would be addressed in the CAMA review. Sue Hayes asked if a 10-slip community dock is considered a marina. Dexter Hayes replied that it is considered a community boating facility or a non-commercial marina.

Patty Radar stated that the difference between the proposed pier and all others is that all others have water. She also stated that it is likely that four individual piers would not be constructed due to the cost.

Sean Ricketts, marine contractor, stated that placing one pier would be less harmful to the environment than placing four.

David Adams stated that he is concerned about furnishing dockage for non-riparian residents. He added that everyone in New Hanover County is not entitled to a pier. He also stated that he did not see the validity of any dockage on the south side of Pages Creek and that he does agree with encouraging the use of our natural resources but not the misuse.

Robin Robinson asked if the limitation of the boat footage is part of the plan for special use. Dexter Hayes stated that it is part of the CAMA restrictions.

David Girardot stated that he felt that the Board is making the request more difficult than it has to be adding that each of the four potential lot owners can construct a pier out to the limit line. Therefore he feels that one is better than four. He added that if it is a danger to the environment CAMA would not issue a permit. He stated that he feels that it is the Planning Board's responsibility to allow the applicant the right to pursue his request to go forward with the review process with CAMA.

After further discussion, David Girardot made a motion to recommend approval of the special use request. Sandra Spiers seconded the motion. The Board approved the motion with a vote of 4-2 (Hayes & Adams against).

Item 3: Special User Permit – Request by Blanchard et al lawyers for Cingular Wireless for a Special Use Permit to locate a 180 foot Monopole Antenna in an R-15 Residential District located at 4610 Carolina Beach Road behind The Moose Lodge (S-530, 05/05).

Sam Burgess gave a brief review of the request, agency comments and related information.

Karen Prather, attorney for Cingular Wireless, explained the proposed request and location. She stated that their application has met all of the requirements of the ordinance.

Dexter Hayes presented the 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. No water and sewer service will be needed by this communications facility.
 - B. The site will have access from Carolina Beach Road (US Highway 421 South) via a 12' wide gravel drive within a 20' access & utility easement.
 - C. The site is served by the Myrtle Grove VFD.
 - D. The tower compound area (10,000 sq. ft.) will be secured by an 8' high chain linked fence.
 - E. The fenced in compound will be set back on three sides by a wooded area.
 - F. The tower will be set back approximately 790' from Carolina Beach Road.
 - G. Additional trees (Burford Holly) will be planted in front of the compound in the buffer area.

- H. The tower compound will not be located closer than 50' from any residential property line.
2. The Board must find that the use meets all required conditions and specifications of the Zoning Ordinance.
- A. The tower site is zoned R-15 Residential. Telecommunication towers are permitted by Special use Permit in residential zoning districts.
 - B. The proposed tower will be in compliance with all FCC requirements.
 - C. The proposed tower will also comply with all FAA regulations.
 - D. The tower will be constructed to accommodate co-location.
 - E. A site plan in accordance with the requirements of the New Hanover County Zoning Ordinance has been submitted.
 - F. Documentation that there is no suitable existing facility within the coverage area for co-location has been submitted.

Sam Burgess stated that he did receive a written statement from the petitioner stating that they were not able to co-locate on another tower. David Girardot asked how that was verified. Sam Burgess replied that it was verified by written statement from the engineer. Dexter Hayes stated that they also had maps of other facilities and towers that can be referenced.

Sue Hayes asked if this tower would be visible from the residences. Karen Prather replied that it will be set back from the residences and there is a heavily wooded area. She added that it will be visible but it will be well screened. She further stated that they have received no comments from the adjacent or nearby property owners.

David Girardot asked about the height of the tower and its view. Karen Prather replied that it would be 180' in height, which is less than most towers that are being constructed at approximately 300'. Ms. Prather stated that in addition to the wooded area they would be planting holly trees, which grow to a minimum height of 36'.

Robin Robinson made a motion to recommend approval of the special use permit. Sandra Spiers seconded the motion. The Board approved the motion with a vote of 5-1 (Girardot against).

Other Business:

Sue Hayes referred back to the pier issue and asked if something can be done regarding water quality and environmental issues to enable the Planning Board the option of restricting placement of piers in areas with these concerns. She stated that her concern is further degradation of the area.

Holt Moore stated that generally when you buy property on the water you have certain rights to use it for that purpose but obviously there are limitations based upon environmental issues. He stated that with this particular case it is going before the Commission of Coastal Management to be scrutinized. Mr. Moore stated that he would review other counties' policies to see if they have implemented more stringent policies.

Dexter Hayes stated that staff would review the County policies if that is the Board's request.

Sam Burgess presented the TRC report consisting of two conventional and two performance residential subdivisions.

1. Pages Landing (Approved 4-1)
 - Resource Protection
 - 9 Lots
 - County sewer
 - Individual water wells
 - Public roads
2. Roland Place (Revisit) (Approved 5-0)
 - 45' access easement converted to 50' ROW
 - Back to a 45' easement
3. Waterstone & Porters Neck (Approved 5-0)
 - Resource Protection
 - 185 Lots
 - Public streets
 - Public water & sewer
4. Fairway Commons 4 @ Porters Neck Plantation (Approved 3-0)
 - Resource Protection
 - 19 Lots
 - Public sewer
 - Community water system
 - Private roads

Sue Hayes asked staff for the status of the proposed medical complex on the northern part of the county. Dexter Hayes replied that the applicant has not submitted any revised plans or any additional information and that staff would keep the Board informed.

David Girardot made a motion to adjourn the meeting, which the Board unanimously approved. The meeting adjourned at 10:00 p.m.

Dexter Hayes, Planning Director