

**Minutes of the
New Hanover County Planning Board
June 5, 2008**

The New Hanover County Planning Board met Thursday, June 5, 2008 at 5:30 p.m. in the Assembly Room of the Old County Courthouse, Wilmington, NC to hold a public meeting.

Planning Board Present:

Sandra Spiers, Vice Chair
David Adams
Sue Hayes
Ken Wrangell

Staff Present:

Chris O'Keefe, Planning Director
Sam Burgess, Principal Development Planner
Karyn Crichton, Administrative Specialist
Jane Daughtride, Senior Planner
Sharon Huffman, Assistant County Attorney

Absent:

Richard Collier
Melissa Gott
Jay Williams

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

Sue Hayes made a motion to approve the May minutes. David Adams seconded the motion. The Planning Board voted 4-0 to approve the minutes.

Item 1: Rezoning Request (Z-883, 5/08) – Continued from May 1 meeting. Request by Don Joseph for multiple property owners to rezone approximately 2.75 acres located at 7031-7047 Market Street in the Transition Land Classification from R-15 Residential to B-2 Highway Commercial District. The action would open the range of uses to a broad array of intensive commercial activities.

Donald Joseph requested a continuance until the July 3, 2008 Planning Board meeting. Mr. Joseph stated that he is working with the NC Department of Transportation to address traffic issues.

Dave Adams made a motion to grant a continuance until the July 3, 2008 Planning Board meeting. Sue Hayes seconded the motion. The Planning Board voted 4-0 to continue the item.

Item 2: Rezoning Request (Z-884, 6/08) – Request by LS3P Associates for New Hanover County Schools to rezone approximately 1.07 acres at 4404 (partial) and 4348 Holly Shelter Rd. from I-2 to R-15 in the Community land classification. The change would consolidate the zoning pattern by cleaning up remnant parcels left by a prior rezoning.

Jane Daughtride showed maps and photographs of the property and of the surrounding area. Ms. Daughtride provided information pertaining to land classification, access, levels of service, and zoning. Ms. Daughtride provided the following staff summary:

STAFF SUMMARY

The subject property is located in the northern portion of the county in an area classified as Community on the 2006 CAMA Land Classification map. The subject properties are west of I-40 on Holly Shelter Road, which is a rural roadway with level of service rated in 2005 as D along this segment, meaning traffic is at high density but has a stable flow. Average daily traffic counts were about 29% less in fall of 2006 than in spring of 2005.

In April of 2006, a major rezoning occurred in this area (Z-857). A portion of that property has been purchased by the New Hanover County School system for new elementary and middle schools, soon to be under construction. Prior to that rezoning, the entire area south of the first tier of lots along Holly Shelter Road was zoned I-2. In the process of rezoning, four separate parcels and portion of Shoulder Branch Baptist Church property were left as remnant I-2 zoning while the area around those parcels transitioned fully to R-15. The school system is now purchasing some of that remnant property for the school project.

The subject property is located within the Prince Georges Creek watershed drainage area, which is classified as C; Sw. The property is not influenced by flood hazard. The site is a primary or secondary recharge area for the principal aquifers. The school project will be served by public water and sewer.

Chris O'Keefe recommended approval of the rezoning stating that industrial zoning is no longer suitable with the surrounding area given the future school site and suggested that three additional remnant I-2 parcels also be rezoned at this time. Mr. O'Keefe stated that the property owners of the three parcels have been notified of this recommendation and that no objections have been received to date.

Mr. O'Keefe provided the following land use plan considerations:

Land Use Plan Considerations:

This rezoning petition proposes to unify the school site under one single R-15 zoning district in order to maximize the site potential for school uses. This action would also be consistent with the existing zoning adjacent to Holly Shelter Road.

The property is classified as Community by the 2006 CAMA Plan. The purpose of the Community class is to provide for a village type of development to help meet housing, shopping, employment and public service needs within the more rural areas of the County. Services may be provided to these areas. These formerly rural areas of the planning jurisdiction are typically characterized by a small grouping of mixed land uses, such as community shopping, strip commercial, church, school and residences, which provide low intensity retail service and housing opportunities.

The subject properties are small, isolated remnants of the prior I-2 zoning and are no longer suitable for industrial development.

Based on the foregoing analysis, staff recommends approval and further suggests that all of the remnant I-2 properties be rezoned from I-2 to R-15 at this time. Owners of the additional three parcels have been notified that the staff will make this recommendation. No objections have been received to date. Addition of the remaining 3 parcels would bring the total rezoning to approximately 4.4 acres.

ACTION NEEDED:

In accordance with NCGS 153A-341, paragraph 2, “The planning board shall provide a written recommendation to the board of county commissioners that addresses plan consistency and other matters as deemed appropriate by the planning board . . .”

- 1. Motion to Recommend Approval based on consistency with the plan and other appropriate matters.**
- 2. Offer Applicant option to Withdraw the Petition (If denied, there is a one year waiting period to reapply.)**
- 3. Motion to table or continue the item in order to receive additional information or documentation (Specify).**
- 4. Motion to Recommend Denial based on lack of consistency with adopted plans or determination that the change would not be reasonable or is not in the public interest.**

David Adams asked if there was acknowledgement of receipt from the additional three property owners that were sent notification of the rezoning.

Jane Daughtridge stated that two of the three property owners responded to the letters regarding the proposed rezoning. Ms. Daughtridge stated that property owner # 5 on the map, Nick Simpson heirs, asked for clarification but did not object to the rezoning and property owner #3 on the map, David Greer, expressed concern and was encouraged to attend the meeting or submit his concerns in writing.

Ken Wrangell asked what were David Greer’s concerns regarding the rezoning.

Jane Daughtridge explained that David Greer has tentative plans to locate a construction office on the property and would not be permitted to do so if the property were rezoned to R-15.

Sue Hayes stated that the properties should not be rezoned if the opinions of the property owners are unknown.

Chris O’Keefe stated that the rezoning is appropriate for several reasons including: industrial zoning is no longer appropriate in the area given the proximity to a residential community and future school site; the remnant parcels are smaller than the minimum lot size required for new I-2 districts and would be illogical for industrial use; and adequate notification was given to the property owners and Mr. Greer has not pursued his objection any further. Mr. O’Keefe added that if Mr. Greer wanted to operate a construction office that Planning staff would recommend rezoning the property to an office and institutional (O&I) zoning district.

Ken Wrangell asked if it would be appropriate to rezone the remnant parcels to O&I.

Chris O’Keefe stated that an O&I district would have been a possibility if the property owners had expressed interest in doing so but in the absence of a formal proposal, the properties should be rezoned to R-15 given that they are surrounded by R-15 zoning.

Chris Boney with LS3P Associates representing New Hanover County Schools stated that Planning staff provided a thorough summary and was available to answer any questions.

Sue Hayes asked Mr. Boney if he spoke to the adjacent property owners regarding the rezoning.

Chris Boney stated that he had not spoken to the adjacent property owners.

Sandra Spiers expressed concern about rezoning the three remnant three parcels given Mr. Greer's tentative plans for a construction office. Ms. Spiers acknowledged Mr. Boney's concern that the rezoning petition not be tied to the staff's recommendation so not to jeopardize his petition.

Jane Daughtridge stated that she encouraged Mr. Greer to submit a letter if he objected the rezoning and added that the Planning Board is not compelled to accept staff's recommendations.

Ken Wrangell stated there would be another opportunity for those affected by the rezoning to express their concerns, at the County Commissioners meeting.

Chris O'Keefe stated that staff would not have recommended that the three properties be included in the rezoning if it appeared that there were definitive plans for the properties.

Chris Boney stated that he did not want industrial zoning near the school but would like his petition to be considered separately from the staff's recommendation.

The Planning Board agreed to separate the petitioner's application from the staff's recommendation.

David Adams recommended that the Planning Board take no action on the staff's recommendation because due process was not completely served in the notification process and because there is uncertainty regarding Mr. Greer's plans.

Ken Wrangell stated that he felt that the Planning Board should make two separate motions; one motion for the petitioner's application and a separate motion for the staff's recommendation.

Chris O'Keefe stated that while he appreciated the Board's discussion on the matter, an I-2 district is inappropriate given the current character of the area and read from the zoning ordinance the definition for I-2 districts. Mr. O'Keefe restated that due process was followed through staff's notification efforts.

Sandra Spiers agreed with Mr. O'Keefe that the remaining I-2 parcels are inappropriate given their proximity to the school site and felt that the Planning Board should support the staff's recommendation adding that there would be another opportunity for the property owners to raise any objections.

Ken Wrangell made a motion to recommend approval of the rezoning request by the LS3P Associates to rezone 2 parcels of land from I-2 to R-15 zoning without the staff's recommendation of inclusion of three additional remnant parcels. Sue Hayes seconded the motion. The Planning Board voted 4-0 to recommend approval.

Ken Wrangell made a motion to recommend that parcels # 5 (Nick Simpson Heirs), #8 (Lorraine Johnson), and #3 (David Greer Construction Inc) be rezoned from I-2 to R-15 zoning. Sue Hayes added to the motion that staff make an additional attempt to contact the three property owners

(perhaps by certified mail). David Adams seconded the motion. The Planning Board voted 4-0 to recommend approval.

Item 3: Special Use Permit (S-581, 6/08) – Request by Elliott Place HOA for a 10 slip community boating facility located off River Road at 6510 River Vista Drive on common area in the R-15 Residential zoning district and the Conservation Land Classification.

Jane Daughtridge provided background on the item stating that the community boating facility has already been built with a dock and boat slips without acquiring the requisite special use permit. Ms. Daughtridge explained that the original developer received a CAMA permit for 2 slips (which does not requiring a special use permit) but later the development added 8 slips, thus requiring a special use permit. She further explained that this violation as well as several code violations relating to additions of improvements without permits, have recently been discovered and that the HOA is working with the County to remedy the situation. Ms. Daughtridge showed an as-built of the boating facility and maps and photographs of the property and the surrounding area.

Chris O’Keefe provided the following staff findings of fact and comments:

Preliminary Staff Findings

1. The board must find that the modified 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 accessed via River Vista Drive off River Road, which is identified as an urban arterial road on the 2030 Long Range Transportation Plan with Level of Service C.
- B. The landward portion of the project is a small island of common area, accessed by a pedestrian easement into the subdivision.
- C. The docks are not served by water or sewer at this time.
- D. Fire service will be provided by the Myrtle Grove Fire Department
- E. Stormwater is not applicable to the docks.
- F. Water depths have not been verified by survey at the time of application.
- G. The CAMA permit indicates that the project is located in a primary nursery area.

2. The Board must find that the modified use meets all required conditions and specifications of the zoning ordinance.

- A. The project is located within the Cape Fear River.
- B. The community has a deeded access easement through the county’s marshland property to the River (DB 2686, P 746)
- C. Community boating facilities are allowed in R-15 zoning districts with a special use permit under certain conditions.
- D. The facility will serve a 10-lot subdivision called Elliott Place, with one slip deeded to each lot, consistent with Sec. 72-37 of the zoning ordinance.
- E. A total of 10 boat slips will serve the exclusive use and enjoyment of property owners in Elliott Place subdivision, in accordance with the definition of community boating facility included in the 2006 CAMA Land Use Plan.

- F. A CAMA permit#170-04 for a total of 10 slips was issued from the Division of Coastal Management on April 29, 2005.
 - G. Off-street parking will be accommodated at home sites in the subdivision. Access to the dock is not vehicular.
 - H. A 10-foot pedestrian easement is provided and conferred to each owner for access to the community boating facility.
 - I. No commercial activities are proposed or allowed for the facility.
- 3. The Board must find that the modified use will not substantially injure the value of adjoining or abutting property or that the use is a public necessity.**
- A. No evidence has been presented at this time that the proposed use will injure the value of adjoining or abutting property values.
 - B. Other private docks and community boating facilities are located along the Cape Fear River.
 - C. The community's deed restrictions disallow individual docks and piers.
- 4. The Board must find that the location and character of the modified 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 New Hanover County Comprehensive Plan classifies this location Conservation
 - B. The 2006 Joint Land Use Plan encourages recreational access to estuarine and public trust waters.
 - C. Surrounding land uses include a public park, single-family housing and multi-family housing.

Staff Comments:

- 1. A certified "as-built" survey has been requested to verify the dimensions and other particulars of the existing facility prior to final approval of this permit.
- 2. Suggest a condition that all outstanding violations associated with this project must be remedied within 3 months of permit approval or the permit will be revoked.

ACTION NEEDED:

(Choose one)

- 1. **Motion to Recommend Approval (with or without conditions)**
- 2. **Motion to table the item in order to receive additional information or documentation (Specify).**
- 3. **Motion to Recommend Denial based on specific findings in any of the 4 categories above, such as lack of consistency with adopted plans or determination that the project will pose public hazards or will not adequately meet requirements of the ordinance.**

Sandra Spiers asked staff to provide details of the violations.

Jane Daughtridge explained that Elliott Place did not acquire the necessary permits to construct the dock or to drill a well and this was discovered when an electrician attempted to obtain a permit to establish power to the dock.

Ken Wrangell clarified that staff comment #1 had already been satisfied by the petitioner.

David Adams inquired what would be the consequences if the petitioner failed to remedy the outstanding violations.

Chris O'Keefe stated that zoning enforcement would require Elliott Place to remove the dock.

Scott Hansbury member of the Elliott Home Owners Association stated that the dock contains 10 slips to serve 10 lots and is intended for the Elliott Place home owners and is not a commercial facility. Mr. Hansbury stated that they were lead to believe by the developer that the dock and slips were fully permitted until the application for an electrical permit uncovered the violations. Mr. Hansbury stated that the dock will not substantially injure the value of adjoining and abutting properties and has been approved and permitted for health and safety by the North Carolina Department of Environmental and Natural Resources, Division of Coastal Management, and the United States Army Corp of Engineers. Mr. Hansbury added that no signs will be erected and that parking is provided at a ratio of one space per slip at each residential lot.

No one spoke in opposition

Sue Hayes inquired if additional conditions such as regulating lighting and the sale or lease of slips should be assigned.

Chris O'Keefe stated that he did not specify any lighting conditions because the dock is not in close proximity to any residences to have a negative impact but agreed that restricting overhead lighting is generally a good condition to assign.

There was board discussion regarding the standard conditions placed on community boating facilities; it was stated that the following conditions are generally applied: no overhead lighting; parking; hours of operation; and the prohibition of sale or lease of slips. It was agreed that all of the aforementioned conditions were satisfied.

Sandra Spiers disagreed with staff comment #3 which threatens to revoke the special use permit if violations are not remedied within three months because it is contrary to the goal of water access.

Chris O'Keefe stated that although he agrees with the goal of water access, the existing dock may have some structural issues that could compromise safety thus is important that a building permit is acquired. Mr. O'Keefe suggested extending the time frame to obtain the necessary permits might be an appropriate course of action.

Sue Hayes suggested extending the time frame to 6 months.

David Adams suggested conditioning the validity of the special use permit on the acquisition of a building permit.

Jane Daughtridge explained that a building permit cannot be obtained without a special use permit but that Elliott Place HOA is actively pursuing the necessary items.

Ken Wrangell recommended granting the petitioner a few additional months over the recommended 3 months in case there are any additional stumbling blocks encountered during the process.

Chris O'Keefe stated that he was comfortable with granting the petitioner 6 months.

Sue Hayes inquired the name of the developer.

Scott Hansbury replied that Ron Jessup bought 6 lots and built the dock to help sell the lots.

David Adams agreed with Sandra Spiers that it was illogical to tear down the dock.

Ken Wrangell made a motion to recommend approval for a 10 slip community boating facility based on positive findings of fact with the condition no overhead lighting be installed and all outstanding violations associated with this project must be remedied within 6 months of permit approval or the permit will be revoked. Sue Hayes seconded the motion.

Scott Hansbury agreed with the additional conditions imposed in the Planning Board recommendation for approval.

The Planning Board voted 4-0 to recommend approval of the item with conditions.

Item 4: Rezoning Request (Z-886, 6/08)- Request by Withers & Ravenel for Crowatan Partners, LLC to rezone 84.89 acres (landlocked) off Crowatan Road between Castle Hayne Rd. and Blue Clay Road north of I-140 from R-20 to I-1 in the Aquifer Resource Protection land classification. The change would transition the land's development potential from low density residential uses of 1.9 units per acre to a variety of light industrial or heavy commercial uses.

Jane Daughtridge showed maps and photographs of the property and of the surrounding area. Ms. Daughtridge provided information pertaining to land classification, access, levels of service, and zoning. Ms. Daughtridge provided the following staff summary:

STAFF SUMMARY

The subject property is located in the northern portion of the county in an area classified as Aquifer Resource Protection on the 2006 CAMA Land Classification map. The property is north of I-140 and is a landlocked parcel with no road frontage.

The property currently has split zoning with the northern portion of the parcel already zoned I-1 Industrial and the southern portion zoned R-20 low density residential. The subject portion of the property is bounded to the south by I-140. To the west, property is zoned R-20 and to the east, across the rail line, is zoned I-2 heavy industrial. All surrounding land is currently vacant.

The subject property is located within the Prince Georges Creek watershed drainage area, which is classified as C; Sw. The property is not influenced by flood hazard. The site is a primary or secondary recharge area for the principal aquifers. The parcel is almost entirely classified as

pocosin and an area in the center of the parcel has Class IV, Pamlico muck, placing the property in the Conservation Overlay District (COD). The area is not served by public water or sewer.

Chris O’Keefe recommended approval of the rezoning petition stating that the property is suitable for industrial uses and is consistent with the county’s plans for development. Mr. O’Keefe provided the following land use plan considerations:

Land Use Plan Considerations:

This rezoning petition proposes to transition low density residential property to a light industrial zoning classification. I-1 also allows for many of the commercial uses allowed in B-2 Highway Business, but the remote location of the property makes it less attractive for commercial purposes. The parcel is landlocked, having no right-of-way dedications connecting it to either Crowatan Road nor Chesterfield Road. However, there is evidence of accesses from both of those streets into the subject property, and the parcel just north of the subject parcel is owned by the same owner. Both Crowatan Road and Chesterfield Road connect to Hermitage Road, a local road which connects to Castle Hayne Road in front of General Electric.

The full parcel size is approximately 118 acres but the portion to be rezoned is about 85 acres. The resultant development potential of the requested change compares as follows:

	Use or Density	A.M. Peak Traffic	P.M. Peak Traffic	Avg. Daily Traffic
R-20	1.9 X 85 ac = 162 units	115/hr.	165/hr.	1,550 trips
I-1 (85 ac.)	Manufacturing	791/hr	783/hr	3,305 trips
	Gen. Light Indust.	677/hr	745/hr.	4,404 trips
	Warehousing	709/hr.	745/hr.	4,865 trips

Note: traffic numbers based on ITRE Trip Generation Manual, Vol. 1 of 3, 6th Edition

The property is classified as Aquifer Resource Protection by the 2006 CAMA Plan. This classification provides for the preservation and protection of important natural, historic, scenic, wildlife and recreational resources. The Resource Protection class was developed in recognition of the fact that New Hanover County, one of the most urbanized counties in the State, still contains numerous areas of environmental or cultural sensitivity which merit protection from urban land uses.

The Aquifer Resource Protection subclass occurs in the Northwest part of the County North of Smith Creek, and is the area where the Castle Hayne and Pee Dee Aquifers secondary recharge occurs. The impacts that the resource is being protected from is diminished recharge of the aquifer and contamination of the aquifer by inappropriate land uses. The focus of strategies to protect this Resource Protection subclass is encouraging larger lot development if septic systems are used to prevent cross contamination of wells, extension of water and sewer service to curtail septic system use, prevention of uses that pose risk of spill of hazardous materials, and encouraging development practices that promote sustained recharge.

The existing local street network is poorly suited to support the “worst case scenario” traffic volumes noted above, but those estimates are based on acreage tables in the trip generation manual. It is probable that the actual estimates could be substantially reduced based on other tables for more specific uses and sizes of buildings. Considerable undeveloped acreage is already

zoned for light industrial uses in the vicinity; however, expansion of the General Electric operations nearby may generate additional need. About half of this parcel is already zoned I-1, making residential development on the remaining half less compatible. Also, the Wilmington By-Pass Committee noted that the area around the Castle Hayne Road interchange would be suited for an industrial or manufacturing center. Though this property is not situated at the interchange, its proximity is pertinent. The existence of the rail line also suggests suitability for industrial types of uses. Staff feels that, overall, the proposed change is reasonable and consistent with county plans for development. Based on the foregoing, staff recommends approval.

ACTION NEEDED:

In accordance with NCGS 153A-341, paragraph 2, “The planning board shall provide a written recommendation to the board of county commissioners that addresses plan consistency and other matters as deemed appropriate by the planning board . . .”

- 1. Motion to Recommend Approval based on consistency with the plan and other appropriate matters.**
- 2. Offer Applicant option to Withdraw the Petition (If denied or withdrawn, there is a one year waiting period to reapply.)**
- 3. Motion to table or continue the item in order to receive additional information or documentation (Specify).**
- 4. Motion to Recommend Denial based on lack of consistency with adopted plans or determination that the change would not be reasonable or is not in the public interest.**

Cindee Wolf with Withers and Ravenel, representing the property owners, stated that the property is not landlocked and there are several points of access into the property. Ms. Wolf explained that the property is more suitable for industrial than residential because access would have to be through an industrial district.

No one spoke in opposition

David Adams stated that it was logical to rezone the property to I-1 but forecasted problems when the site plan is submitted for approval. Dr. Adams made a motion to recommend approval of the item. Ken Wrangell seconded the motion. The Planning Board voted 4-0 to recommend approval.

Item 5: Special Use Permit (S-582, 6/08)- Request by Shanklin and Nichols for Carolina Marina and Yacht Club to locate a commercial marina with dry stack storage for 200 boats at 1512 Burnett Road on 3.1 acres in the R-15 Residential Zoning District and the Conservation Land Classification.

Jane Daughtridge showed maps and photographs of the property and of the surrounding area. Ms. Daughtridge provided information pertaining to land classification, flood zones, access, levels of service, and zoning.

Chris O'Keefe provided the following history of the project as well as the staff's findings of fact and comments:

History: This permit application relates to property which has an existing special use permit (S-13) for commercial marina originally approved in 1971. Over time, the details of the proposal have been modified by a series of administrative approvals under the provisions of Section 71-1(9) of the zoning ordinance. The current valid permit includes two piers, a boat ramp, a 3-story clubhouse, surface parking for 41 boats and associated parking for the combined uses. The proposed change was deemed to be a major change from the approved plan. As such, it is a new permit application. As you are well aware, there has been a series of requested changes to this marina project. Since 2002 there have been at least 3 requests for dry stack storage, all of which have been withdrawn from consideration prior to final resolution by the county commissioners. Although staff has recently been reviewing proposed changes in relation to the existing S-13 permit, we are reminded that there is no provision for "major modification" of a special use permit, therefore, these preliminary findings do not, for the most part, speak to changes between S-13 and proposed S-582, but simply enumerate the characteristics of S-582 as a new application in relation to the current ordinance and land use plan.

Preliminary Staff Findings

- 1. The board must find that the proposed development 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. Applicant has consulted with County Fire Services to assure adequacy of the proposed site design for fire protection.
- B. Private water and septic currently serve the site, but applicant has a contract for water and sewer capacity from Aqua, NC, a private utility provider.
- C. Aqua, NC cannot provide adequate water pressure for fire suppression. Alternate methods will be required.
- D. All utilities will be underground.
- E. A county stormwater plan is required.
- F. The subject property is located in a 100-year floodplain VE zone.
- G. The site is located in a Primary Nursery Area.
- H. The site is located in SA shellfishing waters.
- I. No new dredging is allowed in primary nursery areas.
- J. The site is located in an R-15 Residential Zoning District in the Tucker-Burnett Subdivision, which was platted in 1947.
- K. The site is approximately 2.9 acres in size with 240 feet of waterway frontage just south of Carolina Beach Inlet.
- L. Access to the site is from Burnett Road, a local street that delivers traffic to Carolina Beach Road, a major arterial thoroughfare.
- M. A Special Use Permit (S-13) was issued in 1971 for expansion of an existing marina. The original site plan has been altered by administrative approvals over a long period of time. The current valid site plan was administratively approved in September of 2005. The overall scope of the approved marina operation includes 41 boat parking spaces, a clubhouse, a boat ramp and two piers. The marina operation covers approximately half of the dry land area of the site, in accordance with the original site plan where a fence separated the residential use from the marina use.
- N. A CAMA permit has been issued for the existing valid S-13 permit.

2. The Board must find that the proposed development meets all required conditions and specifications of the zoning ordinance.

- A. A marina requires a special use permit and approved site-specific site plan to operate in a residential district.
- B. This proposal requests a permit for commercial marina and clubhouse with dry stack storage of up to 200 boats and a forklift pier 24' wide with 55' wide flare; one 8' wide parallel pedestrian walkway; and 2 10' wide floating "T" fuel docks designed for delivery of boats to the water.
- C. No boat ramp is included in this proposal.
- D. If this proposed request is approved, S-13 will be permanently vacated.
- E. The County's Conservation Overlay District zoning provisions have been observed in the site plan.
- F. The proposed location of the storage facility and clubhouse is in a Special Flood Hazard Velocity zone, and must meet the elevation requirements set out in the flood code for such structures. No enclosures are allowed below flood elevation except under standards specified in the flood ordinance.
- G. To help mitigate stormwater impacts, the project proposes pervious paving material for a portion of the parking and drivable areas and also includes rain gardens and other Low Impact Development (LID) practices outlined in the county's draft guidelines, allowing the project to be viewed as "exceptionally designed" and therefore eligible to exceed 25% impervious coverage in accordance with Policy 3.12.b of the 2006 CAMA Land Use Plan. Proposed total impervious is 39%. The existing stormwater permit for subsurface infiltration system must be reviewed and approved for this proposed plan.
- H. Maximum height in a VE flood hazard area is 44 feet. Proposed height of the boat storage and clubhouse facility is 40 feet.
- I. The Tucker-Burnett Subdivision common lot for neighborhood water access is adjacent to the north of the subject property (Lot 8 Blk 2 Tucker-Burnett S/D dedicated and set aside as a "park, playground or beach for use by the owners of property in said subdivision" DB409, P273 in January of 1948). Streets otherwise border the property on the north and west. One abutting residential property is located on the south property boundary.
- J. The proposed location of the storage facility is set back 2.75 times the height from the abutting residential property along the south side property line.
- K. The proposal provides a minimum setback of 15 feet from the Tucker-Burnett Subdivision homeowners' common lot in accordance with setback requirements for residential zoning districts.
- L. A CAMA major permit will be required from the Division of Coastal Management for this proposal.
- M. Automobile parking must meet the requirements of the current zoning ordinance for the combined range of uses of the property. A total of 66 spaces are shown on the proposed site plan, which exceeds the minimum requirements for the proposed range of uses at proposed intensity.
- N. Buffering and landscaping must meet the requirements of the current ordinance. A 30 ft. opaque vegetated buffer is proposed on the south side of the project, exceeding the requirements of the ordinance.
- O. Night lighting must be contained on site per the ordinance. No lighting plan has been included at this time.

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

- A. Marinas in Residential zoning districts require special use permits in order to evaluate and mitigate negative impacts on surrounding residential quality of life.
 - B. The proposed dry stack storage facility is shown on the plan at 115' in width by 290' in length with attached 40' X 50' 2-story clubhouse with covered deck.
 - C. The applicant intends to deliver boats to the water via a forklift. Alternative warning devices are available on the market to dampen engine and back-up noise impacts, if utilized.
 - D. Applicant states that no major repair will be performed at this facility.
 - E. Applicant states that operating hours for the marina will be 7:00 a.m. to 7 p.m.
 - F. Applicant states that the ship's store and office hours will be 8:00 a.m. to 6:00 p.m.
 - G. Applicant states that clubhouse closing time will be no later than 9 p.m.
 - H. Boating is not a public necessity, but increased public access to the water is an important goal in coastal counties.
 - I. Although dry storage facilities cater to private consumers, commercial marinas provide services to the general boating public that are viewed as having public benefits and are encouraged in Policy 3.18 of the 2006 CAMA Land Use Plan when resources are not adversely affected.
- 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 New Hanover County Comprehensive Plan classifies the site as Conservation. The purpose of the class is to provide for effective long-term management and protection of significant, limited, or irreplaceable natural resources while also protecting the rights of the property owner. Water-dependent uses are appropriate.
 - B. With limited exceptions, the 2006 CAMA Land Use Plan prohibits dredging in a primary nursery areas and open shellfishing waters; therefore, elimination of the currently approved boat ramp would be in harmony with the area and consistent with the land use plan.
 - C. With limited exceptions, the 2006 CAMA Land Use Plan disallows new marinas in primary nursery areas; however, this proposal would replace an existing permit.
 - D. The property is zoned R-15 moderate density residential. The immediate surrounding area is populated with residential uses.
 - E. Only one other commercial marina with dry stack storage (Inlet Watch just north of this proposal) has been approved in a residential zoning district.

Staff Comments:

1. If approved, the order should clearly specify all conditions and should state that this permit supersedes and vacates all prior plans and conditions. The new order and site plan for S-582 would then become the only valid county authorization associated with this address. Since the history of the marina project at this location has been contentious and speculatively debated through the years, staff feels that clearly establishing the details of approval would be an important step to resolve matters and create predictability for all parties.
2. Staff suggests adding a specific condition to require noise dampening devices for forklifts utilized for this project in order to help mitigate conflicts of neighborhood harmony.
3. Staff suggests, in order to help mitigate character conflicts with commercial use in close proximity to an existing residential neighborhood, adding a specific condition that no full service restaurant operation may be included in the project, but a snackbar operation

could be allowed as a membership amenity for the yacht club members and transient boaters.

4. In order to clarify for posterity the intended limitations on ancillary uses, staff suggests adding a specific condition stating that the clubhouse is restricted to activities and events directly associated with the normal functioning of the yacht club and marina.

ACTION NEEDED:

(Choose one)

1. **Motion to Recommend Approval (with or without conditions)**
4. **Motion to table the item in order to receive additional information or documentation (Specify).**
5. **Motion to Recommend Denial based on specific findings in any of the 4 categories above, such as lack of consistency with adopted plans or determination that the project will pose public hazards or will not adequately meet requirements of the ordinance.**

Matt Nichols an attorney representing the applicant Carolina Yacht Club and Marina gave a PowerPoint presentation which featured photos of the area from various vantage points and showed the proposed site plans. Mr. Nichols highlighted the proposed changes made in response to the Planning Board and staff's comments including: elimination of dredging; compliance with the 75 foot conservation overlay district (COD) setback; reduction of clubhouse size; combination of clubhouse and dry stack facility into one building; and a restaurant downsized to a snack bar that closes by 9:00 p.m. Mr. Nichols explained that the total project has been reduced in scope, thus reducing the amount of parking required and less traffic on Burnett Road. Mr. Nichols stated that the current proposal would generate jobs and increase the county's tax base; provide water access for the boating public; enhance the landscaping; and utilize low impact development principles.

Tim Ward, owner of Carolina Marina and Yacht Club, stated that he recently received reactivation of his CAMA permit and can begin construction on the approved 2005 site plan but urged the Planning Board to consider his current proposal instead given its environmental and safety improvements. Mr. Ward added that all of the specifics of the plan such as removal of the boat ramp and hours of operation have been denoted in the notes section on the site plan.

At the request of Mr. Wrangell, staff distributed a copy of the current approved site plan to the Board.

Dr. Adams asked what vertical data was used.

Jimmy Fentress stated that local mean low water was used.

Bill Raney, an attorney representing Violet and David Ward spoke in opposition to the petition and distributed a summary of argument and exhibits to the Planning Board. The summary states that the petitioner does not meet the standards for approval; still encroaches into COD area; does not have adequate sewer capacity; will have to use a horn with the forklift; only provides water access to members not the general public; and the validity of the 2005 approved plan is currently being challenged in Superior Court. Mr. Raney added that the Planning Board had repeatedly recommended denial of all the versions of the proposal.

David Ward neighborhood resident stated that the property was left by Homer Ward for all of the grandchildren's enjoyment, not only Tim Ward's. Mr. Ward explained that his mother, who lives adjacent to the proposed project, had planned on retiring peacefully and that this proposal will negatively impact her quality of life. Mr. Ward stated that the proposal is not in harmony with the neighborhood and would have negative consequences for the neighbors including compromised safety and quality of life.

John Tinney, Wilmington resident, spoke in opposition to the item stating that a dry stack marina facility was built next to his house and it ruined his quality of life and forced him to move. He complained that the marina brought noise and clutter and the hours of operation were not enforceable. Mr. Tinney stated that he sold his house for much less than it was worth.

Pat Wall, Burnett Road resident, spoke in opposition to the item stating that the project would destroy the neighborhood and their quality of life.

Matt Nichols stated in his rebuttal that his client's proposal is a less intense use than what is currently approved for the site and that development, of some caliber, will ultimately occur on the property. Mr. Nichols stated that the project will be a high quality development with extensive buffering and landscaping and represents a good compromise.

Tim Ward emphasized during the rebuttal period that he has been given permission to redevelop a marina and improve upon a 1971 plan. He asked the board to consider that those in opposition to the project already have waterfront access and do not need this proposal but to look at the needs of the county as a whole, and not just a few individuals. Mr. Ward concluded by saying that the new proposed plan may be better than the approved plan that he can build in the near future.

During the rebuttal period, Bill Raney directed the Planning Board to read the materials that he distributed, emphasizing the non-harmonious nature of the project. Mr. Raney argued that segments of the staff's findings of fact are inaccurate and list the positive aspects of the project and only note the negatives at the end of the report in the comments section.

David Ward stated that none of the neighbors he spoke to knew that a marina or special use permit existed on Burnett Road. Mr. Ward also stated that Carolina Marina and Yacht Club has not established a water connection through Aqua and only has a sewer permit for 780 gallons per day, which would serve approximately a three bedroom house.

Tony McLamb a real estate appraiser stated that property located next to a commercial dry stack facility is less desirable.

Dave Adams stated that the applicant has done a wonderful job to accommodate Boards' comments but he is still concerned with safety but to a lesser degree than neighbors characterize it to be. Dr. Adams stated that despite the proposed modifications to the plan, the building is still very large and cannot rationalize that it keeps with the character of the neighborhood.

Sue Hayes stated that the applicant did try to accommodate the Boards' request but that building is still huge and in harmony with the neighborhood. Ms. Hayes felt that it inappropriate to put a huge bldg in the middle of an established neighborhood.

Ken Wrangell agreed with Ms. Hayes and Dr. Adams and stated that there are dangerous elements to the plan given that the proposal is located in a non-no wake zone and that you could

not count on the general boating public to drive slowly. Mr. Wrangell felt that the location would be dangerous to load and off load boats.

Sandra Spiers acknowledged the petitioner’s efforts but felt that the building was still too large and could not support it.

Sue Hayes made a motion to recommend denial of the petition based on it not being in harmony with the neighborhood and would present a danger to the public. David Adams seconded the motion. The Planning Board voted 4-0 to recommend denial of the petition.

Item 6: Text Amendment (A-372, 6/08)- Request by David Ward to amend section 72-31(6) of the zoning ordinance to allow dry stack storage in residential districts only as part of a new development and to remove the term “abutting” from the setback requirements.

Jane Daughtridge outlined the text amendment and explained that new language is indicated by underline, deleted text is struck through, and notes in italics will be removed. Ms. Daughtridge stated that the staff’s position on the proposed amendment is that the recently adopted dry stack storage amendment might be confusing and this amendment could clarify the intent.

Ms. Daughtridge outlined the following:

The applicant proposes the following: (*New text is underlined. Deleted language is struck through.*)

- (6) Dry stack storage as an accessory to a marina may be allowed only as part of new residential developments (DATE) or in a B-1 zoning district. ~~in a residential or B-1 zoning district~~ Dry stack storage must be clearly identified on the approved site plan and described in the findings of fact. ~~Additional buffers or screenings will be required to mitigate noise, light and dust impacts on surrounding properties. (1/7/08)~~
- a. Setbacks for dry stack storage from any abutting residential property line shall be not less than 2.75 times the height of the structure if enclosed or the highest point of a stored vessel if unenclosed. (1/7/08)
 - b. Appearance of stacked storage should retain the character of the surrounding residential areas and provide opaque vegetative buffers to reduce visual impacts. (1/7/08)
 - c. Projects shall be designed so that the use of noise-generating activities, such as large marine forklifts, boat haul out or boat repair approved as part of the special use permit will be located as far away from residential structures as feasible to lessen impacts on the residential quality of life. (1/7/08)

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STAFF COMMENTS: The language proposed by the applicant could surely be a clarification of intent on the recently adopted standards for dry stack storage. Staff would, however, suggest slight rewording of the applicant’s proposed language to read:

(6) Dry stack storage as an accessory to a marina may be allowed as part of a special use permit in B-1 districts as well as eligible residential districts. When located in an eligible residential

district, dry stack storage may be allowed only as part of new proposals for unified residential developments. *(the rest as written).*

Commentary -

- 1- *By their nature, ordinance amendments apply to proposals approved after adoption of the rule, so there is no need for a date reference.*
- 2- *The listing order of B-1 in the context of the applicant's proposed new language implies that the criterion for "new residential developments" applies uniformly in residential or B-1. This is not staff's understanding of the intent.*
- 3- *Staff has no objection to removing the language relating to "abutting" residential. The standard will read with more clarity. You should note, however, that the change will make the setback apply even if the project were separated from residential property by a road or other non-residential situation. If that is the intent, the removal of the word "abutting" will be a very useful change. If that is not the intent, some other language may be needed.*

ACTION NEEDED:

- (1) Recommendation to approve the change as presented by the applicant on the basis that it is reasonable, in the public interest and consistent with the land use plan.
- (2) Recommend a different version of the amendment.
- (3) Recommendation to deny.
- (4) Table or continue for more information.

Bill Raney an attorney representing David Ward stated that the proposed text amendment is to clarify the intent of the recent dry stack storage amendment with regards to setbacks and locating dry stack facilities in existing versus new developments. Mr. Raney requested that the text amendment (A-372) be heard before the special use permit (S-582_ at the July County Commissioners' meeting.

David Ward stated that the text amendment would not preclude dry stack in existing residential developments because they would be continue to be permissible by conditional use permit. Mr. Ward stated that he performed research and found that dry stack storage is not permitted in any residential districts along the entire North Carolina coast.

Bill Raney stated that he approves of the staff's recommended language for the text amendment and suggested one minor change to the wording in (6) to read, "as part of a proposal for a new unified residential development."

Matt Nichols an attorney representing Carolina Marina and Yacht Club spoke in opposition to the text amendment stating that the text amendment is directed at a specific project and attempts to change the ordinance based on an individual scenario. Mr. Nichols added that that hearing the proposed text amendment without first having a Planning Board work session violates II H. of the Planning Board's rules for procedure which state that, "text amendments shall be reviewed at a special work session . . ." Mr. Nichols requested the item be remanded to a work session.

Chris O'Keefe acknowledged the procedure however added that the process has not been formally followed

Sandra Spiers stated that the rules should be followed especially given this contentious issue.

Sue Hayes made a motion to table the item and discuss it at a work session. David Adams seconded the motion. The Planning Board voted 4-0 to table the item to a work session.

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

1. **40 East Business Park** – The TRC voted 3-0 to continue the request and asked the developer to redesign the plan
2. **Tarin Woods** - The TRC voted 3-0 to continue the request based on concerns by County Fire and County Engineering.
3. **Bailev Division** - The TRC voted 4-0 to deny the project based on the design, significant tree issues, and lack of water and sewer capacity letters.
4. **Riverside** – The TRC voted 4-0 to approve the project with conditions.
5. **Palm Grove** - The TRC voted 4-0 to continue the project until the developer or representative was present at the meeting.
6. **The Registry** – The TRC voted 4-0 to reapprove the preliminary site plan for two years given the sewer moratorium and soft market.
7. **Middle Sound Marina** – The TRC voted 4-0 to continue the project.
8. **Harbor Landing** – After review, the TRC chose to support the plan and the project is scheduled to be heard by the Planning Board on July 3, 2008.

Mr. Burgess stated that the TRC will meet next on June 11, 2008

Chris O'Keefe announced that a meeting to discuss planning efforts for the Castle Hayne area will be held on Thursday June 12, 2008 at Cape Fear Community College. Mr. O'Keefe reminded the Planning Board that the work session is scheduled for Wednesday June 18, 2008 at the New Hanover County Government Center.

The meeting adjourned at 8:20 p.m.