

**Minutes of the
New Hanover County Planning Board
May 1, 2008**

The New Hanover County Planning Board met Thursday, May 1, 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:

Melissa Gott, Chair
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 Daughtridge, Senior Planner
Sharon Huffman, Assistant County Attorney

Absent:

Richard Collier
Jay Williams

Melissa Gott 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 April minutes. Ken Wrangell seconded the motion. The Planning Board voted 4-0 to approve the minutes.

Item 1: Rezoning Request (Z-883, 5/08) – Request by Don Joseph for multiple property owners to rezone approximately 2.75 acres located at 7031-7047 Market Street in the Transition Land Classifications 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.

Jane Daughtridge showed maps and photographs of the property and of the surrounding area. Ms. Daughtridge also 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 Transition on the 2006 CAMA Land Classification map. The property is north of the intersection of Market and Military Cut-off. Market Street is a major arterial roadway with level of service rated at F along this segment, meaning traffic flow exceeds capacity. Average daily traffic counts were about 20% less in fall of 2006 than in spring of 2005.

There are 5 platted lots involved in this request. The subject properties are currently developed with residential dwellings. Adjacent property to the south is zoned B-2 Highway Business, as well as much of the area to the east. Properties to the west and north remain R-15 residential. Mt. Ararat AME Church is adjacent to the north. A small neighborhood is located west of the subject property along Ruth Avenue between this property and Ogden Park.

The subject property is located within the Howe Creek watershed drainage area. The property is not influenced by flood hazard. The site is a primary recharge area for the principal aquifers. The properties are served by public water and sewer.

Chris O'Keefe recommended denial of the rezoning request stating that the lots are unsuitable for commercial development given their size. Mr. O'Keefe provided the following land use plan considerations:

Land Use Plan Considerations:

This rezoning petition proposes a change from moderate density R-15 Residential with a maximum of 2.5units/acre to B-2 Highway Business District. The B-2 district allows for a wide range of intensive commercial uses. Maximum height also increases from 35 feet in R-15 to 40 feet in the B-2 district.

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

The property is classified as Transition by the 2006 CAMA Plan. The purpose of the Transition class is to provide for future intensive urban development on lands that have been or will be provided with necessary urban services. The location of these areas is based upon land use planning policies requiring optimum efficiency in land utilization and public service delivery.

These lots are only about 200 feet deep and each is currently individually owned. None would be well suited for general B-2 zoning on their own because of the awkward traffic circulation limitations and the frontage along Market Street on a very busy segment. Continued residential use is also awkward in this location for the same reasons. A conditional rezoning with a specific site plan to show how the limitations of the site can be appropriately mitigated would be preferred and could be considered after 12 months.

Based on the foregoing analysis, staff recommends denial.

Donald Joseph, the petitioner, representing five property owners along Market Street stated that his clients are requesting the rezoning in efforts to make better use of their property given the change in the area's character. Mr. Joseph explained that the area is surrounded by business zoning and no longer suitable for residential uses given the noise and traffic.

Dave Adams asked the petitioner what is the proposed use of the property.

Donald Joseph stated that no specific use had been identified yet.

Donald Joseph stated that the properties are sandwiched between large segments of B-2 zoning from the south and north.

Dave Adams asked the petitioner to confirm that all five property owners consent to the rezoning.

Donald Joseph stated that he has signed documentation from the property owners authorizing the rezoning petition.

No one from the public spoke.

Donald Joseph stated in the rebuttal period that the five properties should be rezoned B-2 given that they front Market Street and are located within a well defined business neighborhood.

Melissa Gott asked Mr. Joseph if he had spoken to any of the Ruth Avenue residents about the rezoning.

Donald Joseph stated that he has spoken to the Nixon heirs about the rezoning and has not heard objection from any Ruth Avenue residents.

Sue Hayes asked Mr. Joseph if he had spoken to Planning staff regarding their recommendation for denial and if he might consider a conditional rezoning which would show a site plan as well as plan to mitigate traffic.

Donald Joseph stated that he was aware of the staff's recommendations but explained that it was very difficult to get the five property owners to agree to one plan. Mr. Joseph stated that it would be easier if he had one single buyer for all five properties.

Dave Adams asked Mr. Joseph if he was marketing the properties as residential or commercial.

Donald Joseph stated that the property is being marketed as R-15 zoning that is undergoing a rezoning to B-2.

Sandra Spiers agreed that the property is suitable for commercial zoning but explained that a site plan with a traffic mitigation plan is encouraged given the rapid growth in New Hanover County.

Ken Wrangell stated that he would like to see the five properties conform with the predominant zoning of the area but expressed concern regarding the uncertainty of a straight B-2 rezoning. Mr. Wrangell supported the suggestion that the petitioner consider a conditional use rezoning as an alternative to denial and to avoid the one-year waiting period for resubmission.

Sue Hayes asked staff if the petitioner withdrew his application, whether he would be subject to the one-year waiting period for re-submittal.

Jane Daughtridge explained that the ordinance states that if an item is withdrawn after it has been advertised, it is subject to a 12 month waiting period. Ms. Daughtridge stated that the Planning Board may choose to table the item for a period of time so that the petitioner may bring forward a conditional rezoning application and avoid the 12 month waiting period.

Sandra Spiers asked staff to elaborate on the difficulty of commercially developing the five properties given their small lot size.

Chris O'Keefe explained that it would be extremely difficult for any of the five properties to get a driveway permit for commercial use given their configuration. Mr. O'Keefe stated that rezoning proposal would create a dangerous traffic situation along Market Street and negatively impact and restrict future development for the residents along Ruth Avenue.

There was discussion regarding continuing the item to allow the petitioner time to speak to the owners of the Ruth Avenue properties to determine if they would acquiesce to include their property in the rezoning and provide time for the petitioner to develop a concrete development proposal.

Ken Wrangell suggested a 60 day continuance.

Jane Daughtridge suggested a 30 day continuance if the petitioner was going to inquire if the residents along Ruth Avenue wanted to be included in the rezoning petition and 60-90 day continuance if the petitioner planned to develop a site plan for a conditional rezoning.

Ken Wrangell asked the petitioner which direction he would like to proceed.

Donald Joseph stated that he would only need a short extension to talk to the two owners to determine if they were interested in participating in the rezoning.

Sue Hayes stated that she would not support the rezoning based solely on the Ruth Avenue owners participating in the rezoning but would need to see a development plan to mitigate the traffic.

Donald Joseph stated that it is difficult to come up with a site plan without knowing what the zoning.

Sandra Spiers pointed out to the petitioner that the Planning Board would be more receptive to the rezoning if they knew specifically the plan for the properties.

David Adams stated that he could not recommend that the property be rezoned if the possibility existed that the properties be divided up into five pieces but felt that the properties combined as a single developable unit should be rezoned commercial.

David Adams made a motion to continue the item for 30 days until the June 5th Planning Board meeting with hopes that petitioner can come forward with a concrete proposal. Sue Hayes seconded the motion. The Planning Board voted 5-0 to continue the item.

Item 2: Text Amendment (A-371, 5/08) – Request by staff to amend Article II. Definitions and Article VI. Supplementary District Regulations to define and specify standards for senior housing options. The change would define and differentiate between active adult retirement communities, continuing care communities, assisted living/personal care facilities, and nursing homes.

Jane Daughtride explained that the reason for the text amendment is that there has been a growing interest in senior housing options and that the current zoning ordinance does not address the wide range of senior housing options currently available. Ms. Daughtride stated that the amendment attempts to incorporate incentives outlined in the Coastal Area Management Act (CAMA) plan for senior and special population housing into the zoning ordinance. Ms. Daughtride further explained that the text amendment would provide definitions for a wide range of senior living scenarios.

Sue Hayes asked if the senior living options would be restricted to particular zoning districts.

Jane Daughtride recommended that the senior living options be permitted in all residential zoning districts, office and institutional, and perhaps B-1 but requested Planning Board input. Ms Daughtride outlined the following proposed requirements for senior living options:

SECTION 69.4-1: SENIOR LIVING OPTIONS

Certain senior living options will be permitted by right when the prescribed standards outlined below are followed. Proposals which do not care to follow these prescriptions or which desire to maximize possible density allowances within specific zoning districts may alternatively be considered under normal special use permit requirements for high density development. Any “bonus” features outlined in this section may not cross over into a regular special use permit request for high density development.

Active Adult Retirement Community or Independent Living – Since this type of development is most commonly a simple matter of segregating residents based on age and not physical limitations, development proposals in this category shall not be differentiated from other residential subdivisions or special use high density residential proposals.

Continuing Care Retirement or Life Care Community – Since this type of development provides a variety of residential units that accommodate older adults through the continuum of changing needs, development proposals in this category shall be permitted with standards as described below:

1. Minimum lot size: 20 acres
2. Parking requirements: 1.5 spaces per independent or assisted living unit plus 1 per employee on the largest shift at all facilities.
3. Density: Maximum density shall not exceed 8 living units per acre, not including nursing home beds.
4. Maximum impervious area for the total development may not exceed 40% of the net acreage.
5. Commercial uses in the nature of small, neighborhood shops may occupy up to 2% of the net acreage.
6. Maximum height may not exceed 35 feet for single family structures or when buildings are placed within 50 feet of single family residential lots or parcels.
7. Except as noted in item 6, above, maximum height may exceed 35 feet when setbacks are increased to equal the proposed height of the building.
8. Public water and sewer must serve the site.
9. Open Space and improved recreational area shall be provided at a rate of 35%. Improved recreation space shall be appropriate for seniors at all stages of lifestyle transition, such as ADA accessible walkways, gardens, and parks.
10. Vegetative buffers of not less than 20 feet are required for all proposals.
11. Traffic impacts and required road improvements must be reviewed and approved by the MPO and NCDOT. Frontage on an arterial or collector street is required unless located in a Planned Development as described in Section 53.5-2 (7) (O) b..
12. All other local state or federal permits or authorizations.

(Commentary: This category includes built-in “bonus” features such as reduced parking standards; high density without the time and expense of a special use

permit review as long as prescribed conditions are part of the proposal; option for increased height; and option for minor commercial uses to be included. Projects which do not conform to the prescribed standards may still apply for a special use permit for high density development under the other existing provisions of Sec. 69.4 The impervious limits and open space requirements are the same as high density standards in R-15 districts when special use permits are required. Permitted density bonus is 75% of the maximum high density with SUP in R-15. Twenty acres is roughly the size of the Brightmore complex in the city.)

Assisted Living or Personal Care Facility - Since this type of development provides residential units to accommodate seniors in need of assistance with the activities of daily living, development proposals in this category shall be permitted by right under the following conditions:

1. Minimum lot size: 5 acres
2. Parking requirements: 1.25 spaces per living unit plus 1 per employee on the largest shift.
3. Density: Maximum density shall not exceed 13 living units per acre.
4. Maximum Height shall be limited to 35 feet when buildings are placed within 50 feet of single family residential lots or parcels.
5. Except as noted in item 4 above, height may exceed 35 feet when rear and side yard setbacks are increased to equal the proposed height of the building.
6. Public water and sewer must serve the site.
7. Maximum impervious area shall not exceed 50% of the net acreage.
8. Open Space and improved recreation space shall be provided at a rate of 20% of net acreage.
9. Vegetative buffers of not less than 20 feet are required for all proposals.
10. Traffic impacts and required road improvements must be reviewed and approved by the MPO and NCDOT. Frontage on an arterial or collector roadway is required.
11. All other local state or federal permits or authorizations.

(Commentary: This category includes greater built-in “bonus” features such as greater reduction of parking standards; higher density without the time and expense of a special use permit review as long as prescribed conditions are part of the proposal; option for increased height; and option for minor commercial uses to be included. Projects which do not conform to the prescribed standards may still apply for a special use permit for high density development under the other existing provisions of Sec. 69.4 The impervious limits and open space requirements are the same as high density standards in R-10 districts when special use permits are required. Permitted density bonus is 75% of maximum under high density SUP in R-10 districts.)

Nursing home/rehabilitation center - Since this type of development provides residential care in a licensed institutional setting, the provisions of the ordinance outlined in Sec. 72-

9 of the ordinance. The number of beds approved should correspond to the number of beds allocated to the applicant by an approved certificate of need.

(Commentary: The name of this use changes slightly from “nursing home and personal care facility” to Nursing home/rehabilitation center. There has been considerable debate about the scope of “personal care” in the current definition, and several parties have suggested projects that bear no similarity to a licensed facility providing personalized assistance to residents with limitations, but they wish to be approved as personal care facilities under the highly institutionalized standards for this use category. Therefore, we have shifted personal care into a new category which more appropriately aligns that term with assisted living. The ordinance adequately deals with this type of development. Except for the change in name and tying the approval to the number of beds in the CON, this use and its standards would remain the same as now.)

Sue Hayes expressed concern regarding the lack of building height restrictions and feared that the area could end up very tall buildings.

Jane Daughtridge explained that the proposed amendment incorporates a type of fail-safe mechanism by requiring that the setback be equal to the building height. Ms. Daughtridge further explained that the height of a very tall building would be mitigated by the sheer distance it would have to be setback from the property lines. Ms. Daughtridge stated that the Planning Board could impose some sort of building height limit.

Sue Hayes stated that she would like to see some sort of building height limit but could not determine the appropriate height at the moment.

Ken Wrangell stated that he supports the proposal and felt that setbacks equivalent to a building’s height on a 20 acre parcel would mitigate any height issues. Mr. Wrangell explained that many factors would need to be considered before he could provide a building height cap recommendation.

Sue Hayes questioned whether 40% impervious surface was too high for certain environmental sensitive areas of the county.

Staff explained that projects would be subject to county and state stormwater regulations and exceptional design criteria if they wanted to exceed the 25% impervious surface ratio in the conservation land classification districts.

Ken Wrangell provided a scenario applying the proposed setback=building height rule to a 20 acre parcel which yielded a building approximately 465 feet tall. In light of this, Mr. Wrangell suggested setting a maximum building height that would not exceed the current county maximum of 225 feet.

Chris O’Keefe confirmed that the maximum building height is 225 feet tall and is permitted within the RFMU district.

Sue Hayes stated that 225 feet does not seem reasonable and recommended a 60 foot height limit.

Ken Wrangell stated that limiting the building height to 60 feet diminishes the amount of buffer because developments will be forced to utilize a larger footprint which also increases the amount of impervious surface.

There was Board discussion regarding establishing maximum building heights based on zoning districts.

Ken Wrangell made a motion to recommend approval of the text amendment with the addition of a 225 foot building height restriction.

Chris O’Keefe added that he would like to incorporate parking requirements (similar to those established in the RFMU district) such as in-structure parking to minimize impervious surface into the proposed text amendment.

Ken Wrangell agreed with Mr. O’Keefe but was unsure to what extent should elements such as in-structure parking be required given the different context. Mr. Wrangell felt that some parking and stormwater retention could be located underground and suggested that staff craft recommendations.

Jane Daughtridge suggested that this item be discussed further at a workshop.

A majority of the Planning Board agreed that a workshop was a good idea.

Ken Wrangell retracted his motion.

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

1. **Sycamore Grove** – The TRC voted 4-0 to deny the developer’s request to redesignate the roads from public to private.
2. **Waterstone** - The TRC voted 4-0 to approve a second one-year extension of the project with all original terms and conditions.
3. **Sunset Reach** - The TRC voted 4-0 to approve a one-year extension of the project with all preliminary terms and conditions remaining in place.
4. **Fowler Division** – The TRC voted 3-1 to approve a one-year extension of the project with all original terms and conditions plus an additional recommendation that lots 15-18 be situated so that access is provided internally rather than from Grathwol Drive.

5. **Deer Crossing** - The TRC voted 4-0 to reapprove the preliminary site plan with original terms and conditions.
6. **Winds Harbor** – The TRC voted 4-1 to redesignate the roads from public to private.
7. **Inlet Crossing** – The TRC voted 5-0 to approve the project for 7 lots with several conditions.
8. **Market Commerce Center** – The TRC voted 5-0 to preliminarily approve the project for 17 lots with conditions.

Mr. Burgess stated that the TRC discussed the conceptual plan for Harbor Landing which is located on the west side of the Cape Fear River. The petitioner is applying for a rezoning to a RFMU district. Mr. Burgess stated that the project is likely to appear before the Planning Board at the July meeting.

Mr. Burgess stated that the TRC will meet next on May 7, 2008

Chris O’Keefe scheduled a work session for Wednesday June, 18th 2008 from 11:00 a.m. to 3:00 p.m.

Dave Adams made a motion to adjourn the meeting. Sue Hayes seconded the motion. The meeting adjourned at 7:15 p.m.