

Clifton McNeill, Jr.
Chair
Cumberland County

Charles C. Morris, Vice-Chair
Town of Linden
Lori Epler,
Dr. Marion Gillis-Olion
Roy Turner,
Cumberland County



COUNTY of CUMBERLAND

Planning and Inspections Department

Nancy Roy, AICP
Director
Thomas J. Lloyd,
Deputy Director

Joe W. Mullinax,
Town of Spring Lake
Donovan McLaurin,
Wade, Falcon & Godwin
Harvey Cain, Jr.
Town of Stedman

MINUTES June 21, 2005

Members Present

Mr. Clifton McNeill, Chair
Mr. Charles Morris, Vice-Chair
Mr. Harvey Cain, Jr.
Mr. Donovan McLaurin
Mr. Joe W. Mullinax
Mr. Roy Turner
Ms. Lori Epler

Members Absent

Dr. Marion Gillis-Olion

Others Present

Ms. Nancy Roy, Director
Mr. Tom Lloyd, Dep. Dir.
Ms. Donna McFayden
Ms. BJ Cashwell
Mr. Grainger Barrett,
County Attorney
Ms. Diane Wheatley,
County Commissioner

I. INVOCATION AND PLEDGE OF ALLEGIANCE

Vice-Chair Morris delivered the invocation, and Chair McNeill led those present in the Pledge of Allegiance.

II. APPROVAL OF/ADJUSTMENTS TO AGENDA

A motion was made by Vice-Chair Morris and seconded by Mr. Mullinax to approve the Agenda as presented. The motion passed unanimously. Chair McNeill said the petitioner had asked that Case P05-42 and Case P05-43 be heard together but a separate motion would be voted on for each case.

III. PUBLIC HEARING DEFERRALS

There were no public hearing deferrals.

IV. ABSTENTIONS BY BOARD MEMBERS

Ms. Epler asked if she could abstain from discussion and voting on Case P05-26 and Case P05-40. A motion was made by Mr. Mullinax and seconded by Mr. Turner to allow Ms. Epler to abstain on the requested cases. The motion passed unanimously.

V. POLICY STATEMENT REGARDING PUBLIC HEARING TIME LIMITS

Mr. Lloyd read the Board's policy regarding public hearing time limits.

VI. CONSENT ITEMS

A. APPROVAL OF THE MINUTES OF JUNE 7, 2005

A motion was made by Mr. McLaurin and seconded by Mr. Cain to approve the Minutes of June 7, 2005 as written. The motion passed unanimously.

REZONING CASES

- A. P05-26: REZONING OF AN 8.04-ACRE PORTION OF A 46.82-ACRE TRACT FROM A1 TO R10 OR A MORE RESTRICTIVE ZONING DISTRICT, ON THE SOUTH SIDE OF BRAXTON ROAD, WEST OF CHICKEN FOOT ROAD, OWNED BY BRAXTON DEVELOPERS, LLC.

The Planning staff recommended approval of the R10 Residential District based on the following:

1. The 2010 Land Use Plan recommends low-density residential development at this location; and
2. The uses allowed in the R10 District are consistent with those in the surrounding neighborhood.

The Planning staff found that the subject property is also suitable for the R40, R30, R20 and R15 Residential Districts.

No one appeared in favor of or in opposition to the request.

A motion was made by Mr. McLaurin and seconded by Mr. Mullinax to follow the staff recommendation and approve the R10 Residential District. The motion passed unanimously with Ms. Epler abstaining from the vote.

- B. P05-35: REZONING OF .86 +/- ACRES FROM C1 TO C3, OR A MORE RESTRICTIVE ZONING DISTRICT, AT 1291 ANDREWS ROAD, OWNED BY JACQUELINE C. ANDREWS.

The Planning staff recommended approval of the C3 Heavy Commercial District based on the following:

1. The zoning request is compatible with the surrounding uses in the area.
2. Water and sewer is available to the site.

No one appeared in favor of or in opposition to the request.

A motion was made by Mr. Mullinax and seconded by Mr. McLaurin to follow the staff recommendation and approve the C3 Heavy Commercial District. The motion passed unanimously.

- C. P05-39: REZONING OF 1.0+/- ACRES FROM A1 TO RR, OR A MORE RESTRICTIVE ZONING DISTRICT, AT 10361 TURNBULL ROAD, OWNED BY TAFT AND ELNORA C. HOGAN.

The Planning staff recommended approval of the RR Rural Residential District based on the following:

1. The uses allowed in the RR District are consistent with the character of the neighborhood.
2. There is other RR zoning in the area.

The Planning staff found that the subject property is also suitable for the R40 and R40A Residential Districts.

No one appeared in favor of or in opposition to the request.

A motion was made by Mr. Mullinax and seconded by Mr. McLaurin to follow the staff recommendation and approve the RR Rural Residential District. The motion passed unanimously.

AMENDMENT

- A. P05-37: REVISION AND AMENDMENTS TO THE SPRING LAKE ZONING CODE BY AMENDING CHAPTER 156, SECTION 156.086, "YARD REGULATIONS," AND SECTION 156.087, "DISTRICT DIMENSIONAL PROVISIONS." (SPRING LAKE)

The Planning staff recommended approval of the amendments to the Spring Lake Zoning Code as submitted by the Town of Spring Lake staff.

No one appeared in favor of or in opposition to the request.

A motion was made by Mr. Mullinax and seconded by Mr. McLaurin to follow the staff recommendation and approve the amendment as written. The motion passed unanimously.

CONDITIONAL USE PERMIT REVISION

- A. P05-38: REVISION OF A CONDITIONAL USE PERMIT TO ALLOW A SECOND HOME IN AN A1 DISTRICT ON 1.67 ACRES AT 4450 GRAYE FRYERS LANE, OWNED BY EDDIE R. STARLING.

The Planning staff recommended approval of the revision to the Conditional Use Permit based on the findings that the proposal:

1. Will not materially endanger the public health and safety;
2. Will not substantially injure the value of adjoining or abutting property;
3. Will be in harmony with the area in which it is to be located; and
4. Will be in conformity with the 2010 Land Use and Thoroughfare Plans.

No one appeared in favor of or in opposition to the request.

A motion was made by Mr. McLaurin and seconded by Mr. Turner to approve the revision to the Conditional use Permit if developed as proposed based on the findings that the proposal:

1. Will not materially endanger the public health and safety;
2. Will not substantially injure the value of adjoining or abutting property;
3. Will be in harmony with the area in which it is to be located; and

4. Will be in conformity with the 2010 Land Use and Thoroughfare Plans.

The motion passed unanimously.

VII. PUBLIC HEARING ITEMS

- A. P05-32: REZONING OF 76.0 +/- ACRES FROM A1 TO R40 ON THE EAST AND WEST SIDES OF THROWER ROAD, SOUTH OF JOHN MCMILLAN ROAD, SUBMITTED BY JAMES C. HASTY, OWNED BY R.L. CASHWELL, JR. AND REBECCA C. JOHNSON.

Maps and slides were displayed illustrating the zoning and land use in the area. Mr. Lloyd said this case was deferred from last month. Mr. Lloyd explained that staff met with Mr. Yarborough to review the case. Mr. Lloyd informed the Board that Mr. Yarborough proposed the area delineated on the map in red would be rezoned to R40 which consisted of 31.88 acres instead of the 76 acres. He said the area between the red line and the blue line would be remaining A1 to allow the appropriate acreage for the smaller lots. Mr. Lloyd said in light of the revised request, the Planning staff recommended approval of R40 for the 31.88 acres and the remaining acreage to remain A1.

The public hearing was opened.

Mr. Neil Yarborough said he hoped this revised request would satisfy the property owners in the area. He explained that his client only needed 10 more lots and the revised plan meets his needs. He said by reducing their request by one half that there is enough density reserved to meet all the requirements. He told the Board that they had created a complete buffer all the way around the R40 to protect the neighbors. He said the property across the street will be developed with the same dimensions as the previous sold lots and the lots are more than one acre. He informed the Board that Ms. Johnson owns the property across the street and it was developed to R40 standards.

Mr. James Mason appeared before the Board in behalf of the request and said this development would benefit the Grays Creek community. He told the Board that people should be allowed to buy either one or two acres lots depending on their needs. He said he has known Ms. Johnson all his life and was pleased the development was being done.

No one appeared in opposition to the request.

The public hearing was closed.

Vice-Chair Morris asked how many lots were allowed under the original zero lot line A1 development. Mr. Lloyd said it was 64 lots and they are asking for ten additional lots. He explained that the original request was to rezone the entire tract even though they only needed 10 lots. He said the Planning Board asked the applicant to meet with staff to redo the design for the ten lots.

Mr. Barrett explained that they want the undeveloped land inside the red line to be zoned from A1 to R40 and leave the rest of the acreage as a buffer to contribute the density to the lots that were developed under zero lot line development.

Chair McNeill said he felt this would set a precedent. He said that if this request was submitted without the zero lot line development and only as a 32 acre tract rezoning to R40 would the Board even consider the rezoning.

A motion was made by Vice-Chair Morris and seconded by Mr. Mullinax to approve the rezoning to R40 Residential District for 31.98 acres that is delineated by the red line. The motion passed 7 to 1 with Chair McNeill voting in opposition to the request.

B. P05-36: REZONING OF 13.55 +/- ACRES FROM A1 TO R40 AT 6440 NC HIGHWAY 87 SOUTH, SUBMITTED BY ELISE MARSH DEW, OWNED BY FAYE FAIRCLOTH JACKSON.

Maps and slides were displayed illustrating the zoning and land use in the area. Mr. Lloyd reported that the Planning staff recommended denial of the R40 Residential District based on the following:

1. The character of the area is generally development of two acres lots;
2. No public utilities available to the site; and
3. The 2010 Land use Plan calls for farmland at this location.

The public hearing was opened.

Mr. Mark Seffels explained that he had surveyed the property. He said they would like to double the lots from 6 to 12 lots. He told the Board that there was RR zoning across the street and there had not been any farming for over 20 years. He informed the Board that they are asking for 40,000 square feet lots and the Soil Scientist had told them the land would perk.

Ms. Elise Dew, representing Faye Jackson, appeared before the Board in favor of the request and told the Board she had lived in Grays Creek all her life. She said they were asking for an additional six lots and with the R40 zoning that it would not allow mobile homes. She told the Board that she felt the community would not be in favor with what the A1 zoning uses would allow. She said she was in real estate and that most people do not want 2 acres but something they can maintain easily.

Mr. James MacRae appeared before the Board in opposition to the request. He said he lived on Marsh Road and was opposed to the density development. He told the Board that Grays Creek was zoned A1 when the zoning was done for the area. He said the residents were happy with the A1 zoning and did not want to change the density. He asked the Board to follow the staff's recommendation.

Mr. McLaurin asked Mr. MacRae what size lot he lived on. Mr. MacRae said he owned 100 acres down by the river.

Mr. Joel Rowley appeared before the Board in opposition to the request and told the Board that he lived adjacent to the property. He said he moved to Grays Creek for the country living and he could only afford two acres. He said if they were

concerned about the A1 zoning that they could stipulate that only a 1,800 square foot house could be built.

Mr. Seffels appeared before the Board in rebuttal and told the Board that the development would not be out of character with the neighborhood. He said there was RR zoning across the street and R40A in the area. He said that they planned to set restrictions on the development so that they are similar to what is already in the area. He told the Board that with the A1 zoning it allows some commercial, trailers and chicken farms.

Ms. Epler asked Mr. Seffels if he knew how much wetlands were on the property. Mr. Seffels explained that he already had the lots laid out and the property had already been perked.

The public hearing was closed.

Chair McNeill said he lived in Grays Creek and the Hwy. 87 four lane corridor has increased development and that development follows transportation.

Mr. Turner said he has seen a lot of growth in the area. He said there has not been any farming for over 20 years and the A1 allows such uses as chicken farms.

A motion was made by Mr. Turner and seconded by Mr. Cain to approve the rezoning to R40 Residential District.

Mr. McLaurin said he felt that R40 zoning would provide a good quality of living for the people on the lot and would allow space for the children to play. He said he owned land in Grays Creek and had a vested interest in the area.

Chair McNeill said the R40 zoning would provide protection that A1 does not and the neighbors would benefit from this.

Upon a vote on the motion, it passed unanimously.

C. P05-40: REZONING OF A 29.93-ACRE PORTION OF A 104.64-ACRE TRACT FROM A1 TO R40, SOUTH OF HEARTPINE DRIVE, EAST OF NC HIGHWAY 87 SOUTH, SUBMITTED BY TREY MCLEAN, OWNED BY JOHNSON HUTAFF INVESTMENTS, LLC.

Ms. Epler left the room.

Maps and slides were displayed illustrating the zoning and land use in the area. Mr. Lloyd explained that this was residual property that was used toward a zero lot line subdivision as shown within the red line. He said out of the 29.93 acres to be rezoned that 7 acres is allocated to the zero lot line subdivision toward the north. He said the remaining useable acreage of 22.56 could be developed as A1. Mr. Lloyd reported that the Planning staff recommended denial of the R40 Residential District based on the following:

1. The 2010 Land Use Plan calls for farmland in this area; and
2. This land is part of a Zero Lot Line Subdivision that has allowed the creation of less than two-acre lots.

The public hearing was opened

Mr. Trey McLean appeared before the Board in favor of the request. He said the area is rural residential and R40 would fit in with the area. He said he felt the R40 protects the development from undesirable uses such as chicken farms, hog farms and concrete businesses. He said there are no wetlands and the land had been perked. He said it would be in character with the area. He said there may be some technical issues regarding the acreage being zoned R40 and if there is a concern then they be given a chance to amend their request.

Mr. Turner asked if any of the land is being farmed. Mr. McLean said there was not.

Mr. Lloyd informed the Board that a year ago the entire tract was submitted for rezoning to R40 and was denied by the Planning Board and County Commissioners. He said a block length variance was also approved by the Board.

Mr. James MacRae appeared before the Board in opposition to the request. He said he walks in the morning with his wife and the land is farmland. He said where they walk there are cattle and horses in the pastures. He said a request for R40 zoning was denied by the County Commissioners. He said there would be additional noise and more traffic that would be caused by this development.

Mr. McLean appeared before the Board in rebuttal and informed the Board that a couple of farm animals do not make a agricultural use. He said that agricultural farming on a large scale is gone. He said he felt that the 40,000 square feet lots would enhance the area and there is R40 all around. He said there was R40 recently approved in that area.

The public hearing was closed.

Chair McNeill asked how many additional lots this would allow. Mr. Lloyd explained that the applicant needs to show what is being allocated for the zero lot line development just as Mr. Yarborough's client had done.

A motion was made by Mr. McLaurin and seconded by Vice-Chair Morris to defer the case to the July 19, 2005 meeting to allow the applicant time to develop a map showing what property is being allocated for the zero lot subdivision and the rezoning request. The motion passed unanimously.

- D. P05-42: REZONING OF 186.0+/- ACRES FROM RR TO R10, OR A MORE RESTRICTIVE ZONING DISTRICT, ON THE NORTH AND SOUTH SIDES OF SUNNYSIDE SCHOOL ROAD, WEST OF I-95, SUBMITTED BY CHRIS PUSEY, OWNED BY C. E. JONES, JR.
- E. P05-43: REZONING OF TWO PARCELS TOTALING 83.03+/- ACRES FROM A1 AND RR TO R10 OR A MORE RESTRICTIVE ZONING DISTRICT, EAST OF L.A. DUNHAM ROAD, SOUTH OF SUNNYSIDE SCHOOL ROAD, SUBMITTED BY JIMMY HOLLAND, OWNED BY MARCUS EDWARDS DEVELOPMENT, LLC.

Ms. Epler returned to the room.

Chair McNeill informed the audience that P05-042 and P05-43 would be heard at the same time but the vote would be separate.

Maps and slides were displayed illustrating the zoning and land use in the area. Mr. Lloyd reported that the Planning staff recommended denial of the R10 Residential District based on the following:

1. The additional development that this request would allow if approved, cannot be supported by the existing public infrastructure due to the prevalence of hydric soils coupled with a lack of adequate storm water drainage.

The Planning staff found that the subject property could be suitable for the R20 Residential District.

The public hearing was opened.

Mr. James Smith appeared before the Board in favor of the request and said he was born and raised in the area. He said to prevent growth that you need to buy everything around you and not everyone can do that. The property in question is the Dunham property and when Mr. Dunham died, they leased the farmland out. He said Mrs. Dunham was not able to obtain enough money from it to pay the taxes on the land. He the property is within the I-95 corridor and will be high density in nature. He said the property is three miles from downtown. He said the Industrial Park is located on the outside of I-95 and when you are promoting industry, one thing they look for is the amenities around them. He said in developing industry that you need to bring in the amenities such as housing, office space, and commercial development. He explained that they did not want to do a "cookie cutter" type development. He said they wanted to development something that had some amenities and not a transient type community. He told the Board that they are requesting R10 because they want to provide amenities and need a higher density to make it financially feasible.

Mr. McLaurin asked for a clarification on what type of amenities would be provided. Mr. Smith said they were looking at providing swimming pools, picnic areas, walking trails and keeping natural areas.

Chair McNeill asked Mr. Smith if he was speaking for both cases. Mr. Smith said he was.

Mr. Chris Pusey appeared before the Board in favor of the request and told the Board that he would be one of the designers for the development. He explained with both cases combined that the regulations allow development of 940 lots but with the amenities they are providing that it would be closer to 500 lots. He told the Board that the wetlands on the southern 83 acres are being delineated by the biologists and they should know something next week. He said the soils map shows potentially wet soils and is a component of possibly having jurisdictional wet land but was not definitely wetlands. He said there is PWC water and sewer on the site. He informed the Board that there was a 100 acre tract to the east

that was rezoned R15 without water and sewer. He explained that once the tie into the water and sewer is done that they would have to petition for annexation into the city. He told the Board that drainage seemed to be the major concern of the residents. He said controlled engineering development controls water, which keeps you out of undevelopable areas and utilizes engineering and storm water system control measures.

Mr. Turner asked where the runoff would go. Mr. Pusey said the water runoff will go where it drains to now but the difference would be that it would actually runoff. He said the pictures showed flat lands and a truck rut but wherever you have a hole, the water has nowhere to go. He explained with topography, planning and grading the wet area would start to drain.

Mr. Turner explained there was a ditch across the road which is grown up and the water backs up into the residents' yard. He expressed concern as to where the water from the subdivision would drain. Mr. Winslow explained that there is some natural drainage along the creek and with a storm water system it would drain the water off the property. He informed the Board that they would be utilizing storm water retention ponds and that some developers don't like them because it takes up additional land.

Ms. Epler asked if there was going to be a homeowners' association and who would be responsible for maintaining the retention ponds. Mr. Smith said the homeowners' association would be responsible for maintenance.

Mr. Lloyd explained the amenities cannot be a consideration of the rezoning. He said if a CUD was implemented that a homeowners' association would be required and the maintenance requirements would be reviewed by the County Attorney. Chair McNeill said with just a rezoning request that a homeowners' association would not be required. Mr. Lloyd said that was correct.

Chair McNeill said there was a question of water and sewer connection to the property to the east recently rezoned to R15, and because they are within 2,000 feet of water and sewer services that they would have to tap onto the system.

Ms. Wheatley said people say that if you build the houses the schools would follow but she said the schools in the area are at or over capacity. Mr. Winslow said there is no way that they would build 500 houses in one year. Mr. Smith said they had talked with Mr. Kinlaw, School Superintendent, and he had not expressed any concern with the development. He said the development has to be done first because there has to be a certain capacity before school additions are done.

Mr. McLaurin asked if they would like a deferral to allow them time to put the design on paper to allow the opposition to see the proposal. Mr. Winslow said he felt it was not financially feasible to create the design without knowing what is going to happen. He said once the rezoning is finalized that they would know how to proceed from there. He told the Board that there were development standards already in place and their development would exceed those standards.

Mr. McLaurin asked what a density development would require. Mr. Lloyd explained that they would have to provide a layout of the lots and how the

drainage would be controlled. Mr. Barrett told the Board that the plan would not only be available for the Board but also the residents in the area. He said one of the features of a density development is to provide a buffer around the property.

Mr. Winslow said they would not start development until the property is annexed into the city. He told the Board that they would be developing under the city regulations and the city does require buffers.

Mr. Anthony McMillan appeared before the Board in opposition to the request and told the Board that his family owned 100 acres in the area. He said part of their land was near I-95 and there was wetland near there. He told the Board that he wanted the zoning to remain what it was. He said if this development was annexed that he had a sister that lived on a limited income and he wanted to keep the land just like it was.

Ms. Barbara Shumway appeared before the Board in opposition to the request and informed them that she owned the pond plus the land near there. She said she did agree that you can build a house in the swamp. She informed the Board that the property currently zoned to R15 was dotted with swamp and wetlands. She said the proposed property is wetlands and the pictures portray only a portion of the wet areas. She told the Board that the schools were inadequate and with the new R15 zoning, it would allow an additional 300 homes. She said with the addition of more homes that School Road is not adequate to handle the additional traffic.

Mr. William Dunham said the property zoned R15 has a creek that runs through the site. He said a majority of the land is wet. He told the Board that their road had been paved seven years ago and with all the traffic in the area that they have to redo the road. He said with this subdivision that there will be just that much more traffic.

Mr. Edward Wallace appeared before the Board in opposition to the request and said that there were five creeks that run into the property. He said Mr. Williams, a resident in the area, could not get out of his driveway because the water backed up when there was a heavy rain. He said water backs up in everyone's yard and a neighbor has to use a sump pump to keep the water out. He said the property zoned R15 has more than 8 acres of wetlands and was misrepresented to the Board. He said there are all types of wildlife in the area and would hate that their habitat would be destroyed.

Mr. Franklin Wyable appeared before the Board in opposition to the request. He told the Board that he was retired military and new to the area. He said it was true that the area was wet and that he still had water standing in his yard. He informed the Board that he would be opposed to annexation because of what he had on his land. He said they were proposing 500 houses but there will be no change in the military as they are taking out troops as many as they are bringing in. Chair McNeill clarified that the issue here is rezoning, not annexation.

Mr. Smith appeared before the Board in rebuttal and told the Board that he has been in the area for 44 years. He informed the Board that the city has 64 acres on Cedar Creek Road proposed for a park and a fire station. He explained to the Board that the creek that crosses L. A. Dunham Road is a ditch dug by his grandfather and Mr. Huggins to alleviate water problems for Mr. Downing. He

told the Board that they were concerned about the wet areas and that was why they had hired an engineer to design the retention ponds.

Mr. McLaurin asked if they wanted to request a deferral and provide a layout of the development to the Board. Mr. Winslow explained that to provide a conceptual plan without the physical surveys could change the plan later.

The public hearing was closed.

Chair McNeill said with the proposed development that they would not be using the R10 density as they would be only developing 500 or 600 lots. Mr. Winslow said he would be allowed 900 lots with the R10 density but with all the amenities and wetlands that they felt they would only end up with 500 or 600 lots. Chair McNeill said with R15 zoning that you would be allowed 620 lots. Mr. Winslow said they wanted to maintain the 10,000 square foot lots. Chair McNeill said they did not have to develop 15,000 square foot lots under the R15. Mr. Lloyd said if it was done as a zero lot line that it was done by density.

Ms. Epler said R15 would allow 626 lots and since they were not developing to the maximum that they could include all the acreage for the density development of a zero lot line subdivision. Mr. Winslow said they were not aware of zero lot line regulations and they were used to developing by lot sizes.

Chair McNeill said they may want to defer this request to allow them time to review the zero lot line regulations and the new CUD development.

Mr. Turner said he was concerned with how the drainage of the water would be accomplished and the road infrastructure was not there. He said also the property is going to be annexed into the city. Mr. Smith said that the drainage design would be handled by the engineer.

A motion was made by Vice-Chair Morris and seconded by Mr. Cain to defer both cases to the July 19, 2005 meeting to allow the applicant time to review the regulations with the staff. The motion passed unanimously.

VIII. DISCUSSION

A. NOMINATIONS FOR CHAIR AND VICE-CHAIR FROM NOMINATIONS COMMITTEE

Mr. Mullinax, Moderator of the Nominations Committee, informed the Board that the committee had nominated Mr. Charles Morris as Chair and Mr. Donovan McLaurin as Vice-Chair.

Upon a vote on the nomination, Mr. Morris was elected as Chair and Mr. McLaurin was elected as Vice-Chair by acclamation.

X. ADJOURNMENT

There being no further business, the meeting adjourned as 10:15 p.m.