

Lori Epler,
Chair
Cumberland County

Roy Turner,
Vice-Chair
Cumberland County

Garland C. Hostetter,
Town of Spring Lake
Harvey Cain, Jr.,
Town of Stedman
Patricia Hall,
Town of Hope Mills
Charles C. Morris,
Town of Linden



COUNTY of CUMBERLAND

Planning and Inspections Department

Thomas J. Lloyd,
Director

Cecil P. Combs,
Deputy Director

Walter Clark,
Sara E. Piland,
Cumberland County

Benny Pearce,
Town of Eastover

Donovan McLaurin,
Wade, Falcon, & Godwin

MINUTES

April 19, 2011

Members Present

Ms. Lori Epler, Chair
Mr. Roy Turner, Vice-Chair
Mr. Garland Hostetter
Mr. Benny Pearce
Mr. Donovan McLaurin
Mr. Harvey Cain, Jr.
Mrs. Sara Piland
Mr. Walter Clark
Mr. Charles Morris
Ms. Patricia Hall

Members Absent

Others Present

Mr. Tom Lloyd
Mrs. Laverne Howard
Ms. Patricia Speicher
Mr. Rick Moorefield,
County Attorney
Ms. Donna McFayden

I. INVOCATION AND PLEDGE OF ALLEGIANCE

Mr. Pearce delivered the invocation and led those present in the Pledge of Allegiance.

II. APPROVAL OF / ADJUSTMENTS TO AGENDA

Mr. Lloyd advised the Board that Case P11-19 would be pulled from Consent Items and moved to Contested Items.

III. PUBLIC HEARING DEFERRAL / WITHDRAWAL

There were none.

IV. ABSTENTIONS BY BOARD MEMBERS

Chair Epler stated that she would abstain from Case P11-17 due to the fact that at the next Planning Board meeting the company that she works for will bring a case on a piece of property adjacent to this, asking for a similar zoning, and doesn't want anything that happens at this meeting to influence that meeting.

V. APPROVAL OF THE MINUTES OF FEBRUARY 15, 2011

Mr. McLaurin made a motion to accept the minutes as submitted, seconded by Mr. Hostetter. Unanimous approval.

VI. POLICY STATEMENT REGARDING PUBLIC HEARING TIME LIMITS

Mr. Lloyd read the policy statement.

VII. PUBLIC HEARING CONSENT ITEMS

CONDITIONAL USE DISTRICT AND PERMIT

P11-16: REZONING OF 10.08+/- ACRES FROM R10 RESIDENTIAL TO R7.5 RESIDENTIAL/CUD CONDITIONAL USE DISTRICT FOR A "NON-PROFIT" RECREATION/AMUSEMENT FACILITY, INDOOR AND OUTDOOR AND THE PERMIT OR TO A MORE RESTRICTIVE ZONING DISTRICT; LOCATED ON THE SOUTHEAST SIDE OF SR 1115 (BLACK BRIDGE ROAD), WEST OF SHADY PINE COURT; SUBMITTED BY THURSTON AND CHARLOTTE ROBINSON (OWNERS) AND WILLIAM A. BIDDIX. (HOPE MILLS & COUNTY)

The Planning & Inspections Staff recommends approval of the requested rezoning to R7.5 Residential/ CUD Conditional Use District [R7.5/CUD] for a non-profit indoor and outdoor recreation/amusement facility, based on the following:

1. The request is consistent with the 2030 Growth Vision Plan which calls for "urban" development in this area and is consistent with the location criteria of the Land Use Polices Plan;
2. The request is reasonable in that, if approved, the use will provide a valuable alternative source of organized recreation for the citizens in the community; and
3. The requested district and use is compatible with the immediate adjacent use.

The Planning & Inspections Staff also recommends approval of the Conditional Use Permit, based on the following:

1. The use will not materially endanger the public health or safety if located according to the plan as submitted, the proposal, subject to the attached "Ordinance Related Conditions," meets or exceeds the minimum standards of the development ordinances;
2. The use will meet all required conditions and specifications if developed according to the site plan, application and the attached "Ordinance Related Conditions";
3. The use will maintain or enhance the value of adjoining or abutting properties in that the property is currently vacant and if constructed as proposed and conditioned, will provide a valuable resource for the community; and
4. The location and character of the use, if developed according to the plan as submitted and recommended, will be in harmony with the area in which it is to be located and in general will be developed in conformance with the development ordinances and adopted planning policies.

There are no other suitable zoning districts to be considered for this request.

The property owner has voluntarily agreed to this staff recommendation and all attached "Ordinance Related Conditions."

Mrs. Piland made a motion, seconded by Mr. Turner to follow the staff recommendation and approve case P11-16 for Conditional Zoning (CZ) district. Unanimous approval.

Note: On April 18, 2011 the County Board of Commissioners adopted Conditional Zoning in place of the Conditional Use District and Permit.

REZONING CASES

- A. **P11-11:** REZONING OF 1.94 +/- ACRES FROM A1 AGRICULTURAL TO R40 RESIDENTIAL OR TO A MORE RESTRICTIVE ZONING DISTRICT, LOCATED AT 3530 MURPHY ROAD, SUBMITTED BY EDNA H. AND DONALD L. MURPHY (OWNERS). (EASTOVER)

The Planning & Inspections Staff recommends approval of the R40 Residential district for this request based on the following:

1. The district requested is consistent with the 2030 Comprehensive Plan, which calls for “rural” and “community growth areas” at this location, as well as meeting the location criteria for rural density residential development as listed in the Land Use Policies Plan; and
2. The request will ensure comparable lot sizes with the one acre lots currently recommended for this area in the Eastover Land Use Policies Plan and the pending Northeastern Cumberland Study.

There are no other districts considered suitable for this request.

Mrs. Piland made a motion, seconded by Mr. Turner to follow the staff recommendation and approve case P11-11 for R40 Residential district. Unanimous approval.

- B. **P11-12:** REZONING OF .34+/- ACRES FROM R10 RESIDENTIAL TO C1(P) PLANNED LOCAL BUSINESS OR TO A MORE RESTRICTIVE ZONING DISTRICT, LOCATED AT 3701 BOONE TRAIL, SUBMITTED BY DEBRA J. UNDERWOOD (BY POA) FOR BETTY J. UNDERWOOD ON BEHALF OF RUBY L. COTTLE HEIRS (OWNERS).

The Planning and Inspections Staff recommends approval of the request for the C1(P) Planned Local Business district based on the following:

1. The district requested is consistent with the 2030 Growth Vision Plan, which calls for “urban” at this location, as well as meeting the location criteria for “light commercial” development as listed in the Land Use Policies Plan;
2. Boone Trail is designated as a “limited business street” in the Land Use Policies Plan, which recognizes that the uses along this street are in transition from residential to non-residential and that light commercial is appropriate along this segment of the road; and
3. The C1(P) Planned Local Business district is in character with current zoning of adjacent properties.

The O&I(P) zoning district could be considered suitable at this location.

Note: Recently, it was noted at a Fayetteville City Council meeting that development being annexed by the City is not constructed according to the newly adopted Unified Development Ordinance (UDO) standards. The concern was specifically addressing a two year old apartment complex off Black and Decker Road that was being annexed.

When the Municipal Influence Area (MIA) boundary was drawn, the City agreed that areas developed to urban densities or for commercial land usage and those demanding urban services should be annexed. In light of these issues coupled with 19 rezoning requests along Boone Trail in the last ten years, the Planning Staff believes the time is right for the City of Fayetteville to

annex the properties along Boone Trail, north of Cumberland Road. This entire area clearly meets the City's arguments for annexation.

Mrs. Piland made a motion, seconded by Mr. Hostetter to follow the staff recommendation and approve case P11-12 for C1(P) Planned Local Business district. Unanimous approval.

VII. PUBLIC HEARING CONTESTED ITEMS

- A. **P11-19:** AMENDMENT TO THE CUMBERLAND COUNTY SUBDIVISION ORDINANCE, MODIFYING PORTIONS OF THE TOWN OF HOPE MILLS AND THE CITY OF FAYETTEVILLE'S MUNICIPAL INFLUENCE AREA (MIA) BOUNDARIES AS ADOPTED ON MAY 19, 2008 AND INCLUDED AS A MAP REFERENCED AS EXHIBIT 4 TO SECTION 2302.A OF THE ORDINANCE.

Mr. Lloyd stated the Planning & Inspections Staff recommends approval of the MIA map amendment based on the following:

1. If approved, the MIA map amendment will ensure consistency of development standards applied to properties for the adjacent jurisdictions; and
2. The amendment was requested by the Town of Hope Mills and City of Fayetteville.

Mr. Lloyd stated that in the packets there were two letters, one from the Town Manager of Hope Mills and the other from the City Manager of Fayetteville, both requesting that the MIA lines be adjusted per an agreement those two towns reached through the public hearing process at both the Town of Hope Mills and the City of Fayetteville. This was a mutual agreement and it would be a mess to try and enforce Hope Mill's development standards in the old MIA, which would then be Fayetteville and then enforce Fayetteville's MIA standard in the Hope Mills area. Both of these towns requested this change and for that reason the Planning & Inspections staff recommends approval.

There were three people present to speak in opposition.

Mr. James McLaughlin stated that he didn't fully understand what was going on and asked if he was in the Hope Mills MIA.

Chair Epler stated that until this is adopted he is located in the Hope Mills MIA.

Mr. McLaughlin asked if there was an annexation if his subdivision would fall under the City of Fayetteville.

Chair Epler responded yes.

Mr. McLaughlin asked about why Gates Four was not incorporated in this.

Chair Epler explained that Gates Four exercised their option to fight annexation.

Mr. Lloyd explained that the MIA agreement applies to development standards when land is being developed, there is nothing in the agreement that addresses the forced annexation. Arden Forest is already developed, this only applies to land that is being developed. It would be developed to either Fayetteville's or Hope Mills' development standards.

Chair Epler stated that the map meant if Mr. McLaughlin was annexed by any municipality it would be Fayetteville, Hope Mills could have just as easily exercised their MIA in that area and should he have been annexed, he would have been annexed into Hope Mills under that guideline.

Mr. C. David Averette spoke in opposition. Mr. Averette said that he was speaking in opposition to MIA's in general. Mr. Averette read a quote from a paper that Will Denning from the Planning Staff wrote in 2005, "It grants municipalities, members of the Joint Planning Board, MIA status for any area that they submit a plan for the extension of water and sewer services to include a capital investment plan within a timeline not to exceed five years". Mr. Averette recommended that all MIA's for the City of Fayetteville be done away with since they are not members of the Joint Planning Board. Mr. Averette restated that he was against MIA's and the City of Fayetteville in particular and asked that the Planning Board recommend to the County Commissioner's to do away with the MIA's in Hope Mills.

Ms. Ernestine McMillan spoke in opposition and asked if the meeting was basically for where annexation would take place and where lines would be run.

Chair Epler said that that had already been decided; there were two public hearings prior to this meeting, one by Hope Mills and one by the City of Fayetteville. Those two municipalities decided between the two of them and have decided on the lines, it is the Planning Board's job to forward what they have already decided on in their public hearings and voted on, to the County Commissioner's for their approval.

Mr. Morris made a motion, seconded by Ms. Hall to follow the staff recommendation and approve case P11-19. Unanimous approval.

- B. **P11-17: REZONING OF .74+/- ACRES FROM R20 RESIDENTIAL TO C1(P) PLANNED LOCAL BUSINESS OR TO A MORE RESTRICTIVE ZONING DISTRICT, LOCATED AT 7162 ROCKFISH ROAD, SUBMITTED BY ANDREW F. AND RANDAYLE C. MCMILLAN (OWNERS).**

Chair Epler left the room.

Mr. Lloyd stated the Planning and Inspections Staff recommends denial of the C1(P) Planned Local Business district for this request based on the following:

1. The request for C1(P) Planned Local Business is not consistent with the location criteria for "light commercial", as listed in the Land Use Policies Plan of the 2030 Growth Vision Plan specifically due to the immediate surrounding properties being predominately residential; and
2. The request is not reasonable because approval of the request will promote strip commercial development along Rockfish Road, encroaching into an area that is primarily residential.

There are no other zoning districts to be considered suitable for this request.

There were no speakers present.

Ms. Hall asked if there was any input from the Town of Hope Mills.

Mr. Lloyd stated that we sent it to them but they don't specifically have input on a rezoning. They do for MIA development standards. We don't ask for the town's recommendation on a rezoning case, we inform them of it.

Ms. Hall made a motion, seconded by Mr. Clark to follow the staff recommendation and deny case P11-17. Unanimous approval.

Chair Epler returned.

VIII. PUBLIC HEARING WAIVER REQUEST

CASE NO. 10-068. CONSIDERATION OF THE LOUIS A. & DEANNA H. FULCHER IV PROPERTY; REQUEST FOR A WAIVER FROM MANDATORY REQUIREMENT FOR CONNECTION TO PUBLIC WATER, COUNTY SUBDIVISION ORDINANCE, SECTION 2306 A.1.B UTILITIES; ZONED: A1; TOTAL ACREAGE: 2.28+/-; LOCATED AT 11319 DUNN ROAD; SUBMITTED BY LOUIS A & DEANNA H FULCHER IV (OWNERS). (COUNTY JURISDICTION)

Mr. Lloyd presented land use and photos of the site. Mr. Lloyd stated that the lot had been cut out in July of 2010 and the petitioner is requesting a waiver from tying into water. Mr. Lloyd pointed out where water was located.

Mr. Louis Fulcher spoke in favor. Mr. Fulcher stated that the public water service is on the opposite side of the road, actually on the east side of I-95. Where he is building the house, the water service to the actual house is right around 720'. He is asking for the waiver because they will have to bore under the highway and the cost that will be incurred to go that length of distance and is also concerned with the water pressure on City water now and the pressure goes down when two showers are on. Mr. Fulcher stated he is going to install a geothermal heat and air unit and it generates and uses one million gallons of water a year, and doesn't want to have to pay for one million gallons of water. He has installed a deep well for this system, has good water and has passed all tests and has no need for public water.

Mrs. Piland asked Mr. Fulcher what the difference in cost would be between well water and public water from a use basis.

Mr. Fulcher stated that it costs \$50 a month for 5,000 gallons so.....

Mrs. Piland stated that he would have two systems, a well system for the geothermal and the public water for daily use.

Mr. Clark asked if Mr. Fulcher was trying to avoid a duplicate system and paying the normal water fee to PWC [Falcon].

Mr. Fulcher responded yes.

Chair Epler asked Mr. Fulcher if he had started the house yet.

Mr. Fulcher said yes.

Chair Epler reminded Mr. Fulcher that he got a condition sheet in July when the property had been subdivided and he was told then that he would be required to tie into Falcon water. Chair Epler wondered why nine months later, the house had been started and the waiver request was just coming to the Board.

Mr. Fulcher admitted that he really didn't look into the conditions that well and wasn't aware that it was mandatory to hook onto public water if available.

Chair Epler said that once Mr. Fulcher pulled permits based on the subdivision, he agreed to all of the conditions and accepted them.

Mr. McLaurin stated that the subject property borders Rhodes Pond and didn't see that anymore development could be there, it's a low area, and doesn't see any advantage to the Dunn water system.

Mr. McLaurin made a motion to approve the request, seconded by Mrs. Piland that the Joint Planning Board for the County of Cumberland having held a public hearing to consider the waiver request for Case No. 10-068 requesting a waiver from the mandatory requirement to connect to Town of Falcon public water system and develop said property in a manner not permissible under the literal terms of the County Subdivision Ordinance and having heard all of the evidence and arguments presented, the board makes the following findings of fact and draws the following conclusions (1) it is the Planning Board's conclusion that because of other unusual physical conditions strict compliance with the provisions of the Cumberland County Subdivision Ordinance would cause a special and unnecessary hardship to the property owner. This finding is based on the following conditions: (h) as in listed in the application for waiver, (2) it is the board's conclusion that the purpose of the County's Subdivision and Zoning Ordinances are being served to an equal or greater degree, this finding is based on the conditions as listed in section 8 of the application for waiver, (3) The property owner is not being afforded a special privilege denied to others this finding is based on the following conditions as listed in (h) of the application for waiver and that this waiver be granted for the rest of this property in its entirety. Because of the foregoing I move that the request for the waiver be approved. Unanimous approval.

Chair Epler said that we were talking about 2.28 acres, one home and agrees with the reasons in number H regarding this one lot. But, for the entire tract of land, that's not being developed at this time and nothing will stop him from coming back at a later time and asking for another waiver. But we don't know what's going to happen in that area and doesn't feel comfortable approving this waiver for the whole tract.

Mr. Morris made an amendment to the motion that the waiver only apply to the 2.28 acres and not apply to the remainder of the property, seconded Mrs. Piland. Unanimous approval.

VIII. DISCUSSION

Mr. Lloyd suggested to the Board to consider developing Municipal Protection Zones and drawing back the MIA lines where the standards would be applied more realistically to what's going to be annexed in the next 5 – 10 years.

After discussion it was decided that Mr. Lloyd would write a memo detailing a plan to develop a Municipal Protection Zone.

IX. FOR YOUR INFORMATION

DIRECTORS UPDATE

- ORDINANCE AMENDMENTS

Mr. Lloyd advised the Board the Commissioner's approved all of the Ordinance Amendments that were recommended to them with the exception of schools. It was the general consensus that it come back and be considered alongside firing ranges. They feel that, especially in the agricultural district, certain schools are being punished. What

ended up being discussed was TigerSwan, so in essence they were saying why punish the schools, wait until the firearms regulations are discussed by this board and then consider schools. Mr. Lloyd said what he thought was they realized that what they probably would get back is what was originally discussed and that's to put it with an "X" and designate it as a conditional use so that it has to go to this board and to them rather than not allow any school in A1 that's not an elementary or secondary school. That's what they directed and that means that it will be a public hearing again when the firearms regulations are presented.

Mr. Moorefield, County Attorney, stated that this was becoming a burdensome effort to try and comply with the public records request that the plaintiffs in the TigerSwan case are doing, and he would not address shooting ranges until the TigerSwan case was over.

Mrs. Piland stated that in the Commissioner's discussion, Commissioner Keefe was specifically saying that he wanted clarification of the definition of schools.

Mr. Moorefield stated that the issue Commissioner Keefe had was why would, for example a riding academy, be excluded from an agricultural district, that would be a school. That is a legitimate concern.

Mr. Lloyd said that Commissioner Keefe also made the statement that there shouldn't be just elementary and secondary schools allowed in agricultural.

Mrs. Piland stated that it was obvious that he had a script, he was prepared when he made the motion, which wasn't off the top of his head, she doesn't think. So she felt that Commissioner Keefe had some information, perhaps about that, but felt that what he was saying was he wanted to send it back to the Planning Board, and it was approved with the exception of Charles Evans, opposing, that the Planning Board go back and define what schools mean.

Mr. Lloyd said that Commissioner Keefe didn't have a script in front of him, he had a memo that Rick wrote, which is public record.

Mr. Moorefield said that the problem is going to be that TigerSwan may be determined not to be any kind of school; right now it's not regulated. The Commissioner's requested that the Planning Board consider the school concept in conjunction with the discussion of firing ranges.

Chair Epler said that she felt that the Commissioner's instructions were that they wanted to see the schools clarification and zoning classification's when they saw the firing ranges, and asked if those were their instructions?

Mrs. Piland said that she didn't hear that, but could see how that would be helpful in certain circumstances.

Mr. Moorefield said that the schools issue needed to be addressed, regardless if there had never had been a TigerSwan.

X. ADJOURNMENT

There being no further business, the meeting adjourned at 8:05 p.m.