

1 **Minutes of the New Bern Planning & Zoning Board**
2 **February 4, 2014**

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4 The regularly scheduled meeting of the New Bern Planning & Zoning Board was held in the City
5 Hall Courtroom, 300 Pollock Street, on Tuesday, February 4, 2014 at 6:30 PM.

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7 **Members present:** Mr. Tim Tabak, Chair
8 Mr. Kenneth Peregoy, Vice-Chair
9 Ms. Stevie Bennett
10 Mr. Jimmy Dillahunt
11 Ms. Tiffany Dove
12 Mr. Patrick McCullough
13 Mr. Bill Stamm
14 Mr. Byron Walston
15 Ms. Velda Whitfield

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17 **Members absent:** None

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19 **Members Excused:** Ms. Dorothea White

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21 **Staff present:** Mr. Kevin Robinson, AICP
22 City Planner

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25 Chairman Tabak called the meeting to order. Roll call was taken and a quorum declared.

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27 Due to an overlap in meeting schedules in the City Hall Courtroom, it was recommended to
28 recess and relocate to the 3rd floor of the Dunn Building.

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30 **Motion** made by Vice-Chair Peregoy to relocate to the Dunn Building. Motion
31 was seconded by Ms. Stevie Bennett. Motion was unanimously approved.

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34 **Prayer:** A prayer for guidance was given by Mr. Byron Walston.

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37 **Minutes:** Minutes from the January 2014 meeting were presented. Reading of the minutes
38 was waived.

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40 **Motion** made by Ms. Stevie Bennet for approval as presented. Motion was
41 seconded by Ms. Tiffany Dove. Minutes were unanimously approved.

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43 **New Business**

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45 **A. Consideration of a request by Richard John to rezone 1702 Trent Boulevard from**
46 **R-15 Residential District to C-5 Neighborhood Business District.**

Staff Comments: Mr. Robinson presented the item to the Board, noting the applicant is Ms. Ruth John, who is the owner of the property. Mr. Robinson noted the property is located on approximately a half acre at the corner of Trent Boulevard and Chatawka Lane. Many may know this property as the old bakery.

Proving property history, Mr. Robinson advised the residence on the property was built in 1950. The commercial buildings on the property are early 20th century, and were initially built as part of a truck stop.

The buildings on this property are currently vacant. Surrounding land use is predominately residential. There are some C-4 districts relatively close but not immediately adjacent. Utilities are available to the site.

Board Discussion: Chair Tabak noted this is similar to a request that was brought before the board on October 2, 2012, at which the owners were requesting a re-zoning to C-4. Chair Tabak requested the applicant provide additional information to the Board.

Applicant Comments: Ms. Ruth John spoke, advising she and husband Richard purchased the property in 2002 with the intent to develop patio or townhouses on the property. Due to health issues, they have decided to sell the property as they won't be able to develop themselves. The property has been on the market for over 3 years, with a number of prospective purchasers who were deterred by the current zoning.

When they came before the board in 2012, they considered C-4 zoning as that would allow some businesses an opportunity to develop on this property. The C-5 zoning is a bit more open, allowing the opportunity for businesses and/or residences, noting that historically, the property has been more commercial than residential.

Ms. John advised the NC Department of Natural Resources Division of Waste Management did an environmental study on the land in 2006, and noted there is no soil or underground water contamination that exceeds state regulations.

Ms. John stated the property is in serious disrepair and is an eyesore, but noted they cannot repair a building that they are not able to use due to the current zoning. The property has been vandalized, and she has concerns that any temporary improvements that may be made would be hampered by vandals. Re-zoning the property to C-5 would provide them the correct zoning to make improvements to the buildings, rehabbing them into a state of use.

Staff Comments: At Chair Tabak's request, Mr. Robinson provided a list of businesses that would be suitable under the requested zoning. Mr. Robinson reiterated current zoning, R-15, is predominantly residential. As it stands, this zoning and the lot size may be able to accommodate 2 homes on the property. The C-5 zoning would allow for residences, physician offices, attorneys and realtors. Duplex's would also be allowed under this zoning. With the Trent River overlay, the maximum number of multi-family units on this site would be 4. C-5 zoning would not allow for mobile home parks, pool halls, drive-thru's, restaurants, nightclubs, automobile

services, gas stations and dry cleaners, all of which are allowable under C-4 zoning, as previously requested. C-5 zoning is designed as a transition zone between residential and commercial.

Ms. Stevie Bennett added that the C-5 zoning also would allow boarding houses and halfway houses. Mr. Robinson noted these properties would require special use permits prior to be constructed.

Mr. Jimmy Dillahunt asked Mr. Robinson for staff recommendations at this time. Chair Tabak agreed.

Staff Recommendations: Mr. Robinson advised staff has reviewed the application noting it sits in a transition zone between residential properties and businesses along Trent Road. Due to the size of the property and landscaping requirements, commercial uses will be somewhat limited under the requested zoning. Staff is not opposed to a low-impact commercial use such as an office use.

As you drive the corridor, it is relatively easy to see the different zones, noting residential, office, gas station locations along this corridor.

Mr. Robinson advised staff recommends the re-zoning request to C-5 as appropriate to this area.

Vice-chair Peregoy questioned why City Staff re-zoned the property to R-15 at all. Mr. Robinson, who was not a member of staff at the time of the residential re-zoning, surmised that there were some broad decisions taken with the initial zoning.

Mr. Patrick McCullough requested additional background on the historical use of the property when it was a truck stop to verify that was back in the 1920's. Mr. Robinson advised he believed that to be the first use of the property. Mr. McCullough pointed out if that is the case, historically the property was used for commercial purposes from the onset.

Chair Tabak questioned if the time had expired to be a non-conforming use. Mr. Robinson advised it had. Chair Tabak confirmed due to this, regardless of what was put on the property, an approval and permit would be required before any construction could be done. Mr. Robinson confirmed this.

Ms. Bennett noted the original structures on the property were built prior to any zoning regulations being implemented in the City. Zoning was not in effect until June 1953 in the City.

Mr. Robinson added that at the time zoning was implemented in the City, the uses were separated, keeping commercial and residential very much apart. At this time, zoning does try to integrate uses as much as possible.

Vice-chair Peregoy questioned the City's position on the condition of the existing structures on the property. He noted when vandalism takes place in the Historic District, the City typically takes action and demolishes the building. Mr. Robinson noted the City typically takes action with owners in the Historic District to prevent demolishing structures. As this property is not located in the Historic District, demolition is a possibility, eventually.

Chair Tabak asked for reiteration from a previous discussion on the location of this property, and its proximity to the historic Ghent/DeGraffenried districts. Mr. Robinson advised this property is directly across the street, noting Chatawka currently is the dividing line between the two areas. Chair Tabak pointed out this could be the next area to be annexed into the Historic neighborhood. Mr. Robinson confirmed.

Public Comment: Chair Tabak requested those in favor of the rezoning speak first, followed by those opposed to the rezoning.

Dr. Kathy Adolph, 210 Metcalf is a realtor and has looked at this property from a personal perspective as well as a realtor perspective. She noted historically the property has been mixed-use and makes sense from a planning perspective that this property continues being a mixed-use property and feels the C-5 zoning is appropriate.

She noted her residence is surrounded by mixed-use; Tryon Palace, offices and restaurants. She feels this improves property, as it promotes integration of neighbors and businesses. She feels this property being zoned strictly residential is not economically feasible.

In driving down Trent Boulevard it is easy to see this is a very mixed area, and the C-5 zoning would not invade into what is currently there.

Ms. Annette Walker, lives in DeGraffenried is not in favor of having anything that isn't desirable on that property, and the information provided regarding the possibility of a half-way house being allowed is bothersome to her. There is a home a few houses down from her residence that was, at one time, a halfway house, and it now stands vacant while the home and lot continue to deteriorate. Just because a property is zoned residential, as this was as well, doesn't mean it solves the problem.

She agrees with Ms. Adolph that in her 20 years here, the property has remained as it is today, and will not change until a decision to move forward is made. She does support the rezoning of this property to C-5.

Mr. Bill Allen, lives directly across from the property being discussed He provided a packet for each Board member. He was in attendance at the previous meetings and is able to answer earlier questions. He noted the property was zoned R-15 in the 1950's, as were all the surrounding properties. The working bakery was already in place at the time of the R-15 zoning. The Zoning Commission at the time stated if the bakery goes 150 days without being used, then the property would revert back to R-15 zoning, as was the rest of the neighborhood.

He provided a photograph of the property as it looks today, which was also included in the member packets. A series of photographs of the property were shown on the overhead.

Mr. Allen did not dispute that everyone would like to see the property improved from what it currently is. There are four structures on the property, two of which have renters living in them.

Mr. Allen provided historical significance of the property as well as discussed the surrounding areas, their zoning and uses.

He discussed a previous Planning & Zoning Board meeting held in October 2012, in which the owners were seeking rezoning to C-4, which was denied. He feels any change from the present R-15 zoning would negatively impact the surrounding neighborhoods. He feels if the application is approved, it would be a perfect example of 'Spot Zoning', which he feels is inconsistent and is in opposition of New Bern's current zoning initiatives.

Ms. Betty Foy, 407 Chatawka Lane advised she and her husband are adjacent to the property on the North side. They have lived there since 2008. They also own and operate a business in downtown New Bern. She pointed out Ward 1 has four different Historic Areas located within its boundaries, which includes the Ghent and DeGraffenried districts. These areas are predominantly residential, as denoted by a map she provided for viewing. The property in question is the only proposed C-5 in a three-block area, save one small location.

Ms. Foy feels this is a stable residential neighborhood in which all residents work together and look out for each other. She opposes the request for the rezoning as it may alter the residents family-type feel.

Board Discussion: Vice-chair Peregoy noted many times re-zoning is a contingency when selling property. His concern is that potential buyers may say they are building one thing, but then actually build something else after purchasing the property. He provided two examples of other properties along Trent Road where this happened in the past.

Mr. Dillahunt asked of Mr. Bill Allen if he was speaking on behalf of the neighborhood as he mentioned previously, if he had a petition from other residents agreeing to his opinion. Mr. Allen advised he did not have a petition.

Mr. Dillahunt questioned if the property owner and the neighboring residents had had any discussion on the plans for sale, who may purchase and what their plans may be for the property. Ms. John advised she has not had a meeting with the residents regarding plans moving forward if the C-5 rezoning is approved. Mr. Dillahunt questioned what she may feel would be comfortable for the neighbors and herself in a sale/re-zoning. Ms. John stated as the property is currently zoned it's not feasible for her to make improvements to the buildings or the property. She advised builders have been interested in the property for small apartment complexes. She stated due to the pure nature of the lot size, regardless what is developed on the property will be minimal. She has never received suggestions from those in opposition on what they would prefer to see happen to the property. She is a property owner on Tryon Road, so she also has a vested interest in what is developed there.

Vice-Chair Peregoy questioned Ms. John if she was unaware of the R-15 zoning when she purchased the property in 2005. She stated she had been told by her realtor that the property had been Grandfathered in for business development.

Ms. John advised they have approached the city on numerous occasions with requests for businesses to go into the vacant buildings, but have been denied every time. She noted one man

who wanted to have a small shop selling lamps, chairs, trinkets, etc., and was interested in the old vacuum cleaner store on the property, but the City denied that request.

Mr. Robinson advised that would be considered a change in use, and would not be permitted. Because the property is zoned Residential, no commercial business would be allowed on the property at this time.

Mr. Robinson also noted the larger area surrounding the property, pointing out the amount of traffic that currently uses Trent Road has diminished after the MLK Blvd./Hwy 17 corridor was created, but that outlooks for Trent Road do anticipate a rise in traffic. The City is actively considering adding bike lanes to this road and other improvements. As more of these transition uses become acceptable along this road, it is anticipated that residential use will be less desirable.

Ms. Bennett noted she feels strongly that while City Staff may support offices being developed on this property, there is no guarantee that a prospective owner would not develop something else on the property that may be less than desirable for the area.

Ms. Bennett advised the current property owner, Ms. John, that it was her responsibility as well as her realtor's responsibility prior to the purchase of the property, to have knowledge of the zoning and allowables for the property. The table of permissible uses is available to the public via the City website, as well as in the office.

Chair Tabak stated he felt the Board needed to determine what was best for the City as well as all the types of practices that could be place on a property.

Mr. Robinson explained what 'Spot Zoning' is; a zoning that would be inconsistent that would be out of pattern for an area, seemingly without rhyme or reason.

Mr. Dillahunty requested Mr. Robinson explain the different setbacks for the zoning to ensure both proponents and opponents are aware. Mr. Robinson advised within the requirements of C-4 and C-5 zoning, it must have a 35'-50' setback from the property line. Under the R-15 zoning it's a 35' setback.

Mr. Patrick McCullough questioned if there were also rear setbacks that would have to be adhered to. Mr. Robinson advised there were, 25' setbacks for the rear for either type of zoning. Chair Tabak questioned, given these setback requirements, what the actual buildable square footage would be. Mr. Robinson advised he estimated 12-13,000 square feet. Mr. Robinson advised given that, under the R-15 zoning one residential structure could be built. Under C-5 zoning one could develop 3 or 4 multi-family units.

Demolition by Neglect for properties within Historic Districts was discussed, with Mr. Robinson providing details on differences between Nationally designated areas versus locally designated areas. Regardless he advised the Demo by Neglect was implemented to save properties, not demolish them.

Mr. Dillahunt questioned specific landscaping that may be required due to the area that may create a smoother buffer zone for the residents. Mr. Robinson advised a landscape plan would be required, that has a list of acceptable foliage that can be used.

Vice-chair Peregoy agreed that everyone wants something better for this property than what is currently there, but he has concerns that the proper decision is made in the re-zoning. His concerns are about what may be built there in the future, as they have no control over what may be approved for the location; this includes commercial and residential properties.

Motion: Mr. Jimmy Dillahunt motioned to approve rezoning 1702 Trent Boulevard from current R-15 zoning to C-5 zoning. Motion seconded by Ms. Tiffany Dove.

Chair Tabak requested Mr. Robinson take an individual roll call.

Mr. Robinson took a roll call.

Mr. Dillahunt, Ms. Dove, Mr. McCullough, Chair Tabak and Mr. Walston voted in favor of the motion to approve.

Ms. Bennett, Vice Chair Peregoy, Mr. Stamm and Ms. Whitfield voted against the motion to approve.

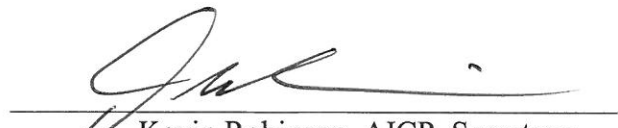
Motion passed with a vote of five (5) Yes's, and four (4) No's.

Chair Tabak advised the next step in the procedural process is for the recommendation to be brought before the Board of Aldermen, who will have the ability for final approval or denial. The request will be brought before the Aldermen on the February 25th meeting date.*

(* The rezoning request was not heard by the Board of Aldermen until March 11th 2014)

There being no further business, the meeting was adjourned.


Tim Tabak, Chairman


Kevin Robinson, AICP, Secretary