

1 **Minutes of the New Bern Planning & Zoning Board**
2 **May 6, 2014**
3

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, May 6, 2014 at 6:30 PM.
6

7 **Members present:** Mr. Tim Tabak, Chair
8 Mr. Kenneth Peregoy, Vice-Chair
9 Ms. Stevie Bennett
10 Mr. Jimmy Dillahunt
11 Mr. Byron Walston
12 Ms. Velda Whitfield
13

14 **Members absent:** Ms. Tiffany Dove
15 Mr. Patrick McCullough
16 Mr. Bill Stamm
17 Ms. Dorothea White
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20 **Members Excused:** Ms. Tiffany Dove
21 Mr. Patrick McCullough
22 Mr. Bill Stamm
23 Ms. Dorothea White
24

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26 **Staff present:** Mr. Kevin Robinson, AICP
27 City Planner
28 Mr. Gregory McCoy, CZO
29 Land & Community Development Administrator
30

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32 Chairman Tabak called the meeting to order. Roll call was taken and a quorum declared.
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34 **Prayer:** A prayer for guidance was given by Chairman Tabak.
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37 **Minutes:** Minutes from the April 2014 meeting were presented. Reading of the minutes
38 was waived.
39

40 **Motion** made by Vice-Chair Peregoy for approval as amended. Motion was
41 seconded by Mr. Walston. Motion carried by unanimous vote.
42

43 **New Business**
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45 **A. Consideration of a request by Scholl LLC to rezone 4414 US Hwy 17 S from R-10**
46 **Residential District to C-3 Commercial District.**

Staff Comments: Mr. Robinson presented the item to the Board, stating the property is approximately .43 acres and has previously been cleared, but not developed. It is largely surrounded by forest with adjacent property uses being single family residential. It is located on the heavily travelled US HWY 17 S, with access to city services making commercial zoning a suitable use for this property.

Mr. Robinson stated that Staff does recommend approval to rezone 4414 US HWY 17 S from R-10 Residential District to C-3 Commercial District.

Public Comment:

Muriel Simmons, 4420 HWY 17 S, stated her opposition. She would like her community to remain quiet without commercial businesses and the noise that comes along with it.

Thomas Scholl, Karen Street, stated he is the owner of 4414 US HWY 17 S and when he purchased the property it was listed on the tax maps as suitable commercial. At the time the tax value was listed as \$86,000, but if it was listed as residential the tax value would have been approx. \$14,000.

Board Discussion: Mr. Robinson showed a zoning map on the overhead projector for the Board showing adjacent properties R-10, R-20 and C-3 zones. Ms. Bennett explained some of the permissible uses for C-3 Commercial uses that could be construed as negative.

Motion: Mr. Vice-Chair Peregoy made a motion to rezone 4414 US HWY 17 S from R-10 Residential District to C-3 Commercial District. Mr. Dillahunt seconded. Motion carried by unanimous vote.

B. Consideration of a request by Mark Hardeman & Greg Rhodes of Pendergraph Companies to rezone 3715 Trent Rd from R-15 to C-3 Commercial District.

Staff Comments:

At Chair Tabak's request, Mr. Robinson presented the rezoning request to the board. He stated the property proposed for rezoning is largely surrounded by commercially zoned properties along Trent Rd. Many of these properties along Trent Rd. are currently used as single family residences, but it is expected that this area will see more commercial development in the future, making continued single family use less compatible. C-3 Commercial District is consistent with the majority of properties along this portion of Trent Rd. this parcel is also easily accessible from access to Highway 17 which is predominantly commercial. As this property is located in the Trent Rd Commercial Corridor Overlay additional landscaping, parking, setback and design requirements will ensure that any future development on this site adjacent to Trent Rd, apart from single family residential, blends with the surrounding area. Mr. Robinson clarified that this is a State Highway.

Applicant Comments:

Mr. Mike Weaver, Executive Vice President of Pendergraph Companies stated his appreciation for considering the request and that it does comply and is consistent with the other areas surrounding the property.

Public Comments: No public comments

Board Comments:

Vice-Chair Peregoy commented that Mr. Robinson's letter to Mayor Outlaw and the Board of Alderman said the specific intent of the C-3 commercial district classification is to provide for offices, personal services and retail, and from what is known in this request that is not what is happening on this property. Mr. Robinson stated that paraphrasing what is in the actual ordinance, yes, but other uses are allowed.

There was discussion regarding setbacks in the future if/when the road will need to be widened. Mr. Robinson stated that when the time comes for widening the road he will look into this ahead of time. Applicant Mr. Weaver explained that they intend to work with the DOT as well as the Board of Adjustments when the time comes and that they are very familiar with the process. Mr. Robinson explained that the Corridor plan specifically anticipates a shift from Residential to Commercial and put in some design controls to ensure that Commercial maintains a residential feel overall to blend in with the surrounding area.

Staff Recommendations:

Mr. Robinson stated that staff recommends for approval of the requested rezoning of 3715 Trent Rd from R-15 Residential District to C-3 Commercial District.

Motion: Mr. Dillahunty motioned to approve rezoning 3715 Trent Road from current R-15 to C-3 Commercial District with the following conditions:

Conditions: (1) To monitor plans to make sure setbacks conform to both the Corridor requirements and DOT plans. (2) Recommend this be taken before the Alderman. (3) Recommend this go before Board of Adjustment.

Motion seconded by Vice-Chair Peregoy. Motion carried by unanimous vote.

C. Consideration of a request by Ruth John to rezone 1702 Trent Boulevard from R-15 Residential District to C-5 Office and Institutional District or R-8 Residential District.

Chair Tabak read the request and asked for Staff comments.

Staff Comments:

Mr. Robinson presented the rezoning request to the board. The property proposed for rezoning is on Trent Boulevard at the fringes of an area of mixed commercial and residential uses. This site is located near heavy traffic on Trent Road. Due to the size of the property and landscape requirements, non-residential use would be limited and small scale if approved. Staff is not opposed to sensitive low impact non-residential uses, such as office use. Otherwise, the property potentially will continue to deteriorate and negatively impact the area.

At its March 25th public hearing the Board of Aldermen sent this item back for additional Planning and Zoning Board review for rezoning to R-8 Residential. While uses permitted in R-8 are consistent with City plans and compatible with adjacent uses, it is Staff's opinion that office use, as permitted in C-5 would be the highest and best use of this property.

Staff Recommendations:

Staff recommends for approval of the requested rezoning of 1702 Trent Blvd. from R-15 to C-5 Office and Institutional District.

Board Comments:

Chair Tabak asked if the property were rezoned R-8 if it would be a conforming lot as it is now with the 4 current buildings on it. Mr. Robinson explained that it would not be a conforming lot; there would need to be some reconfiguration, At least one of the buildings would need to be removed and he would not want to speculate which one that would be.

Ms. Bennett stated that she does not have an application in her packet for the R-8. Mr. Robinson stated that the R-8 request was a recommendation from the Board. The applicant is still requesting C-5.

Ms. Whitfield requested Mr. Robinson explain the difference between R-8 and C-5. Mr. Robinson explained that the R-8 district would allow single family residential lots of 8,000 or more each or multi-family residential lots of 8,000 for the first unit and 4,000 for each additional connected unit. Some special uses are allowed. C-5 will allow for Bed and Breakfasts, home occupations, and home day care centers by right. It is a fairly restrictive district that allows for other business types by special or conditional use only.

Chair Tabak asked that anyone who would like to comment during public comments to please think about what they will say and try not to repeat what has already been stated and discussed at previous meetings.

At Chair Tabak's request, Mr. Robinson explained the progression of this rezoning request. The Planning and Zoning Board originally heard this request in February and recommended approval for C-5. It went before the Board of Alderman a month later and was tabled after public comments for 2 weeks. On March 25th it was sent back to Planning and Zoning for review for R-8. The applicant never withdrew the request for C-5 and no ruling has been made. There is now a request for C-5 by the applicant and a request from the Board of Alderman for R-8 additional. There was an original request between 18 months and 2 years ago to rezone to C-4, which was denied.

Public Comments: Staff called role;

Opposed to C-5:

Bill Allen, 1614 Trent Blvd., stated he believes rezoning C-5 would be a case of spot zoning and that R-8 is a good compromise.

John Khartz, 1608 Rhem Ave., supports approval for R-8 as a good compromise.

185 *Jessie Allen, 1614 Trent Blvd.*, stated that all surrounding properties are residential and
186 asked the Board not to carve out one property for a Commercial zone.

187 *Betty Foy, 407 Chattakwa Lane*, gave copies of a petition signed by property owners
188 within 100 feet of the 1702 Trent Blvd opposing the zone change to C-5 to the Board.
189 She supports approval of rezoning to R-8.

190 *Rosie Toures, 1616 Rhem Ave.*, stated it should remain residential.

191 *Duncan Harkin, 519 Johnson Street*, Supports approval to rezone to R-8 and stated
192 rezoning to C-5 sets a bad precedent.
193

194 **In the middle:**

195 *Nancy Hollows, 4438 Rivershore Drive*, Presented a map of historic districts showing
196 development and showing the districts were zoned with the intention of remaining
197 residential. She read a document written by Prof. David Owens from the School of
198 Government on the topic of spot zoning. Supports preserving the historical districts and
199 the original intention for those to remain residentially zoned districts.
200

201 **Supports approval for C-5:**

202 *Ruth John, 1802 Tryon Road, Applicant*, Stated the only thing that has changed is that the
203 Board of Alderman asked the Planning and Zoning Board review their original decision
204 to recommend the approval of rezoning C-5. R-8 will not allow for the ability to place
205 enough office space or multi-family units to attract investors to have the property become
206 useful and attractive. She stated that she is not aware of any R-8 properties nearby.

207 *Susie Marks, 218 Metcalf Street*, Supports a mixed use corridor and the rezoning request.

208 *Kathy Adolph, 210 Metcalf Street*, Asked the Board to uphold their previous
209 recommendation to approve rezoning to C-5. She stated her support for the request.

210 *Jerry Walker, 1509 Lucerne Way*, Supports the rezoning request and mixed use as other
211 speakers explained.

212 *Beth Walker, 1509 Lucerne Way*, Stated that historically this has been a commercial
213 corner and that she supports the Board upholding the recommendation to approve
214 rezoning to C-5.

215 *Firth Monte, 1510 Tryon Road*, Asked the Board to uphold their previous decision and
216 presented to the Board a petition signed by adjacent property owners who support the
217 rezoning request.

218 Two people in support of rezoning stated their comments were redundant.
219

220 **Staff Statements:**

221 Chair Tabak stated that he had 3 questions for Staff; (1) How past use could affect current use,
222 (2) The Staff's position on Spot zoning and (3) How demolition by neglect may or may not
223 affect any property within the City.
224

225 Chair Tabak also stated that he would like to work through where the Board stands with the
226 previous recommendation to rezone to C-5, what will need to be done if they choose to uphold or
227 change it, and how to respond to the Board of Alderman's request.
228

229 Mr. Robinson stated that Demolition by neglect does not apply for this property as it is not in a
230 local historic district; rather it is in a National historic district. In terms of past use and spot

zoning, he explained that Staff agrees that R-8 could be compatible, however when you look at the strict and limited definitions that have been presented for spot zoning so far; there are also no other R-8 districts in the vicinity making this district just as much spot zoning as C-5 by the definition the opposing public commenters are using. Mr. Robinson spoke with the City Attorney about this and there are 4 criteria for spot zoning and essentially there must be reason, it cannot be arbitrary and it cannot be just to benefit the property owner. Rezoning should benefit the entire area and not just adjacent property owners. Historically it has been used commercially and that should be taken into consideration. There are other Commercial districts in the Corridor and the C-5 is a very restrictive commercial district. Staff does believe the C-5 district is the most suited for this property and would benefit the entire area the most.

Mr. Robinson advised the Board that he recommends approving only 1 zoning district to the Board of Alderman.

Ms. Bennett reminded the Board that they originally denied the C-4 request and all but 3 members approved the C-5. The cost to clean up the property will remain the same no matter which zoning district is approved. The property was used commercially long before zoning existed in New Bern and therefore the property was allowed to continue Commercial use as long as it was not left vacant for more than 180 consecutive days, in which case it would lose their commercial standing. Grandfathering in the property is no longer on the table.

Mr. Dillahunt clarified that if left R-15 the buildings could be rehabbed but 2 of the buildings could not be used for anything. Only 1 building can be used for a single family residence.

Motion: Vice-Chair Peregoy made a motion to deny the applicants request to rezone the property to C-5. Ms. Whitfield seconded. There was discussion about rescinding of previous motion to approve. Ms. Bennett asked that the motion be repeated. Vice-Chair Peregoy stated the motion is to rescind the C-5 zoning classification from a previous vote.

Roll Call Vote: Ms. Bennett, Vice-Chair Peregoy and Ms. Whitfield voted yes. Chair Tabak, Mr. Dillahunt and Mr. Walston voted no. 3-3 tie vote.

There was discussion about making a motion to recommend R-8, however the motion to rescind the previous recommendation to rezone to C-5 was a tie. Chair Tabak stated that it could be contradictory to make a recommendation to rezone R-8 when the previous recommendation is still on the table. There was discussion about the proper procedure to let the Board of Alderman know that consideration has been given to their request to review R-8 as a possible alternative classification.

Chair Tabak called for a 10 minute recess and requested the public talk among their groups, for and against the rezoning to R-8 and select 1 speaker for each group to speak to the board briefly when he opens the public hearing.

277 **Public Comments to recommend R-8 as an acceptable alternative classification:**

278 *Bill Allen, 1614 Trent Blvd.*, stated that 90% of the surrounding neighbors support the R-8
279 classification as a thoughtful compromise. He read a letter sent by Mr. Robinson and stated that
280 he believes the Board is obligated to make a decision to recommend C-5 or R-8.
281

282 *Ruth John, 1802 Tryon Road, Applicant*, Stated that she and her husband have spent thousands of
283 dollars in maintaining the property, but vandals are a big problem and the current zoning district
284 does not allow for the possibility of making the property beautiful. She reminded the Board that
285 she has never submitted an application requesting the R-8 district and her opposition to this
286 classification is that it will not allow enough units to be placed on the property to absorb the cost
287 of what it will take to clean up the property, do the site preparations and build the buildings. R-8
288 will also limit the possibility of an office on site.
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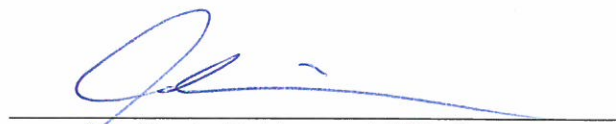
290 Chair Tabak closed the public hearing and asked Mr. Robinson to clarify where the Board stands
291 as far as the application process. Mr. Robinson explained that currently there is a tie vote to
292 rescind the recommendation for C-5. It did not pass or fail, therefore that recommendation still
293 stands. At this time the Board is addressing the Board of Alderman's request to consider R-8 as
294 an acceptable classification.
295

296 **Motion:** Vice-Chair Peregoy made a motion to recommend to the Board of Alderman
297 that an R-8 classification has been discussed by the Planning Board and found to be an
298 acceptable alternative zoning classification for the subject property. Ms. Whitfield
299 seconded. There was discussion about rescinding of previous motion to approve. Ms.
300 Bennett asked that the motion be repeated. Vice-Chair Peregoy stated the motion is to
301 recommend approval of R-8 zoning classification a suitable alternative to C-5.
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303 **Roll Call Vote:** Ms. Bennett, Ms. Whitfield, Mr. Walston, and Vice-Chair Peregoy voted
304 yes. Mr. Dillahunty and Chair Tabak voted no. Motion passed by 4-2 vote.
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307 There being no further business, the meeting was adjourned.
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310 
311 _____
312 Tim Tabak, Chairman


_____ Kevin Robinson, AICP, Secretary