

**Minutes of the
New Bern Planning & Zoning Board
March 5, 2019 – 5:30 P.M.
New Bern City Hall - 303 Pollock Street**

The regular meeting of the New Bern Planning and Zoning Board was held in the City Hall Courtroom, 300 Pollock Street, on March 5, 2019 at 5:30 pm

Members Present: Raymond Layton, Chair
Sonny Aluzzo, Vice- Chair
Pat Dougherty
Jerry Walker
Haron Beatty
Jeffrey Midgett
Carol Williams
Don Black
Marshall Ballard (arrived at approximately . 5:40)

Members Excused (E)/ Absent (A): Willie Newkirk Sr.

Staff Present: Morgan Potts, AICP, City Planner

Others Present: Jennifer Campbell, Recording Secretary

Roll Call

Staff Member Morgan Potts delivered the roll call of all members and quorum declared

Approval of Minutes

The minutes of the February 5, 2019 regular meeting were presented for approval. **Having no corrections or amendments Board Member Don Black made a motion to approve the minutes and Board Member Heron Beatty seconded the motion. The motion passed unanimously.**

New Business:

- A. Consideration of Major Subdivision Final Plan Approval, submitted by Robert Chiles Engineering, is a proposed 12.44 +/- acre, 3-lot major subdivision located to the west and east of Newman Road and to the south of Wellons Boulevard. The property is further identified as Craven County Parcel ID's 8-212-8010, 8-212-076, and 8-212-8009. (Ward 6)**

41 **Staff Comments:**

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43 Staff Member Potts stated that staff recommends approval as presented. She went on to say that
44 this is a very simple major subdivision and Mr. Chiles is present to answer any questions.
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46 **Board Discussion:**

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48 Board Member Jerry Walker asked if this would be the first plan approval. Chair Layton
49 responded by stating that this would be the final plan approval and once this is approved it does
50 not have to go back before this Board. He also said that final decision lies with this Board and
51 will not go before the Board of Alderman. There was no further discussion, so Chair Layton
52 opened the floor for public comment.
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54 **Public Comment:**

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56 There was no public comment, so Chair Layton closed the floor for public comment.
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58 **Board Discussion:**

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60 There was no further Board discussion, so Chair Layton entertained a motion. **Board Member**
61 **Don Black made a motion to approve the consideration of the major subdivision for planning**
62 **approval submitted by Robert Chiles of the 12.44 +/- acre 3-lot major subdivision in Ward 6.**
63 **Vice- Chair Sonny Aluzzo seconded the motion and the motion passed unanimously. (8-0)**
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65 **B. Consideration of a request from Cole Jenest & Stone on behalf of the City of New**
66 **Bern to rezone an approximate 9.5 +/- acre portion of 30.81 +/- acres from R-8/R-**
67 **10 Residential District to C-3 Commercial District, located at 703 Carolina Avenue.**
68 **The property is further identified as Craven County Parcel Identification Number 8-**
69 **044-011. (Ward 2)**
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71 **Staff Comments:**

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73 Staff Potts stated that all public requirements have been fulfilled and City staff advises the Planning
74 and Zoning Board to recommend approval of the rezoning request to the Board of Alderman.
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76 **Board Discussion:**

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78 There was no discussion, so Chair Layton opened the floor for public comment.
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80 **Public Comment:**

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82 Mr. Michael Cole with Cole Jenest & Stone stepped forward and stated that he was representing
83 Mosaic Development Company from Charlotte. He went on to explain that the project will be an
84 eighty-four unit, three story apartment project with seven buildings just off Tryon Road. He

stated that the company will be preserving all the wetlands, as well as, 100 feet and 50 feet buffers. The architect was identified as Tise-Kiester of Chapel Hill. Mr. Cole advised that he would be happy to answer any questions.

Opposition Comments:

Mr. Tommy Hughes of 1004 Park Drive in Trent Woods stepped forward and stated that based on GIS analysis his property was within 100 feet of the parcel in question. He explained that his concerns stem from questions that he had regarding this project. His first question was what specifically is proposed by the developer and the following concern is how it would affect his property with the amount of traffic and activity added to the area. He also desired to know if Carolina Avenue would be terminated before crossing into Trent Woods as it currently is.

The other part of his concerns was based on analysis and whether it had been done for the proposed project. He stated that in the New Bern GIS Strategic Plan he found two points that he believed were important to this Project. He asked if a GIS analysis had been approached on how the proposed project will affect the surrounding property values. He also questioned if a study had been done on affordable, multi-family unit housing, which analyzes crime rates and other problems that arise when there are a large group of people in a small area. He also mentioned his interest in reviewing the developer package, and more specifically the plans for the wetlands and buffering objectives. As a biologist he stated that he would find it very interesting and finished by reiterating his concerns and stated that he does not want to this project devalue his property, in which he has lived in for the last 30 years.

Trent Woods Mayor, Chuck Tyson stepped forward and stated that he was not here to speak for or against the proposed project but that he would like to share his concerns with the Board. His first question was in regard to the zoning change and why the City had decided to re-zone to a commercial property instead of a multi-family property. He followed this by saying that development regulations in Trent Woods specify that multi-family properties abutting residential areas must include a berm, fencing, and other items of that nature to separate the spaces. Mayor Tyson acknowledged Mr. Cole's earlier statement regarding buffers and requested some type of assurance that something more than a green space would be installed to delineate the space.

Mr. Stanton Fitzgerald stepped forward to speak on behalf of the company S.O.S Global Express and its owner. He stated that the property, 2803 Trent Road, is adjacent to the proposed project. He stated that his concern is in regard to zoning requirements and explained that the majority of apartment complexes around New Bern were zoned as R-8 and wanted to know why the Board felt it necessary for increased density so it will bring this property to a commercial zone. He also asked why there was a proposed commercial property planned in the middle of residential zones.

Mrs. Myra Garner of 2302 Chestnut Avenue stepped forward and stated that she lives in the Pembroke community and had a question regarding the traffic pattern. She explained that she received a letter and wanted to know if the goal of the development was to make a traffic outlet

on the Pembroke side and what is the plan as they are looking to acquire property in the Pembroke area.

Chair Layton asked if she received a notification due to her proximity. He continued by stating that the request before the Planning and Zoning Board has to do specifically with re-zoning. He explained the process being, if the re-zoning is approved, it will then go before the Board of Alderman. If the Board of Alderman approve it, the developers will send a site plan for department review, which will go through a detailed checklist to make sure the plan is full and complete. He stated that although it was a really long answer to Ms. Garner's question, the application before the Board was strictly a re-zoning approval and her notification had to do specifically with proximity to the parcel.

Ms. Garner followed this by asking if the parcel was rezoned as commercial would they then be able to make new roadways. Chair Layton explained that the zoning was specifically for the parcel/parcels themselves and doesn't affect anything to do with roads. He stated that rezoning does not give the developer the right to extend any roads, but that they would need to go through the process with the City. There were no further public comments, so Chair Layton closed the floor for public comment.

Board Discussion:

Mr. Beatty asked if it were possible to keep the residential zone and still accomplish all the desires that a commercial zone would do. Mr. Cole stepped forward and stated that there was no issue with a multi-family zoning. He continued by stating that they were advised by staff that a C-3 zoning would be most appropriate and if there were an issue with the developer doing something that was not on the plan, then they could do a multi-family zone.

Mr. Beatty responded by saying that he was specifically asking Staff if there was a way to use a residential zoning and still accomplish all that was intended with a C-3 zoning. Staff Potts stated that there was a way, and the reason why staff counseled Mr. Cole to go with C-3 zoning, was because it was the path of least resistance. She stated that when looking at the table of permissible uses, there is not a specific category for multi-family zoning and would require the developer to take extra measures, such as another review period, going before the Board of Alderman, and then going before the Board of Adjustment, as well as, requiring a special use permit. She explained that doing so would generate extra time and steps for the developer.

Chair Layton stated that in accordance with the Land Use Plan, C-3 zones adjacent to residential zoning is acceptable and Staff Potts added that when the parcel is re-zoned it is re-zoned to all the options that are available in the table of permissible uses. Board Member Jerry Walker asked what other options are included in the C-3 zoning. Staff Potts identified hotels, nursing homes, childcare facilities, and group homes as some of the options for a C-3 zone. Mr. Walker followed this line of questioning by asking if, in the event the situation arises that the Board approves the rezoning to commercial zoning, and the development does not follow through for unforeseen reasons, is it open for any type of occupancy since it is now a C-3 zone, or is it contingent on the

development. Staff Potts and Chair Layton stated that it was not contingent, and the City does not have contingency zoning. Staff Potts continued that if the Board agrees to rezone the parcel, it would go before the Board of Alderman and if they choose to approve the rezoning, the rezoning will stay. Chair Layton included that even if this specific development doesn't happen, this parcel would not revert and would need to come before the Planning and Zoning Board again to rezone it.

Mr. Black suggested introducing a new class of zoning to include multi-family units without any possibility of commercial businesses being inserted after approval. Chair Layton stated that it was a discussion to have with Staff. Mr. Black also acknowledged the problem for the developer to facilitate the construction and it is a loop hole that some development can be done differently and needs to be addressed. Chair Layton acknowledged Mr. Black's suggestion and stated that in his profession, he often choose zoning based on the ease of the process and the reason it makes sense that C-3 was suggested by staff was because it doesn't require any special use permits, where a R-type zoning would for this purpose. He also stipulated that as Mr. Walker stated earlier, if the Planning and Zoning Board approved the rezoning to C-3 and the Board of Alderman approved the C-3 rezoning, then it stands, whether the development happens or not, until it is rezoned again.

Vice-Chair Aluzzo also mentioned that even if these buildings were developed, one of the buildings could be taken over and renovated to whatever. Chair Layton acknowledge the possibility and requested the Board to remember that the decision before them tonight was the rezoning. He stated that it was nice to have the packet submitted by the developer, but once the parcel was rezoned, assuming it is approved, or the developer decides to go for a special use permit, the site plan will still need to go through department review. At that time, he stated, City staff will go through all the details to approve the site plan. He stated that what is before the Board is the application, the recommendation of City staff, and public comment to use in deliberation.

Board Member Jeffrey Midgett asked if there were other properties the Board could take into account when deliberating on this matter within the surrounding area. Chair Layton stated that when staff makes recommendations of zonings to the applicant, they use the Land Use Plan and C-3 abutting residential zoning is acceptable in the Land Use Plan.

Staff Potts, wanting to touch on previous commentary, stated that lighting and traffic concerns, buffers, and street widening would be addressed and resolved during the department review, if the project were approved. Mr. Midgett asked if the Board should also consider continuity of the area when deliberating and Chair Layton agreed with the consideration. Staff Potts stated that there was also a condominium complex in front of the parcel and it is zoned as R-8. Mr. Midgett asked the specific location and Staff Potts stated it was down Carolina Avenue approximately 300 to 400 feet.

Mr. Black included that a large amount of this land is not developable because it is wetlands. Staff Potts agreed with his assessment and referenced a land use map identifying the sections of

wetlands around the parcel area. Vice-Chair Aluzzo asked staff if the developer could accomplish what they have proposed with the current zoning of the parcel. Staff Potts stated that the parcel was currently split zoned as R-8/R-10 and after looking at the table of permissible uses she stated that it would not be possible to do so at R-10. Vice-Chair Aluzzo asked what the parcel would need to be rezoned to. Staff Potts stated that it would need to go R-8 or R-6, which require special use permits by the Board of Adjustments. She also included that C-5, C-5A, C-1, C-2, C-3 are permitted by right, so after the Board of Alderman, the developer would apply for a zoning permit. C-4, I-1, A-5F are other options and Staff Potts stated that all rezoning requires a special use permit.

Mr. Beatty asked the Board if they as a Board are on a mission to make ease for a developer or better satisfy the people in a regional area. Vice-Chair Aluzzo responded by saying neither, but they needed to look at the whole picture. Mr. Beatty stated he was in agreement, but it feels the Board is bending toward making it easier for the builder versus the peace of the people that live in this area. Chair Layton inserted that he thinks this is not the case, since the applicant could easily ask for the parcel to be rezoned to R-8 and file for a special use permit.

Vice-Chair Aluzzo stated that he is leaning in the direction of rezoning from R-10 to R-8 zoning and apply for special use permit and explained his reason being that if something were to change in the future, he wouldn't want to see something such as a nightclub open on this parcel. Mr. Walker stated his understanding in setting a precedent and having been on the other side he also sees that having requirements set for the developer and they connect the dots and meet the requirements and the overlook of all of this, is that the complex that is proposed to be placed in there is not a bad thing, but that the Board would reject it when it would fall within the R-8 or the C-3 and we would place more hurdles before the developer. Vice-Chair Aluzzo understood his concern and stated that his problem was not with the development, but with something changing and one of the buildings not becoming a residential unit. Mr. Walker responded that a precedent he doesn't want to set is to leap to C-3. Mr. Beatty agreed with his statement and included that he too was questioning the choice to rezoning to C-3 just to make it comfortable for the developer to develop the property and asked if the Board was looking out for greater interest for the city and families in this area. He also asked who the Board was looking out for; the individuals, the property development, or the developer.

Vice-Chair Aluzzo reminded Mr. Beatty that this would still need to go to the Board of Alderman and he would still not like to keep the path open for one of the buildings being used for something other than what is intended. Mr. Walker stated that he doesn't foresee this happening nor does he see C-3 begetting C-3, since it is attached to the corridor. Chair Layton agreed with Mr. Walker and that it is something the Board routinely approves, which is rezoning to be congruent with something that is in a corridor.

Mr. Black asked if Mr. Walker would support the amendment to the ordinance to address this issue, such as a different R-classification for this kind of development where it would preclude any type of commercial development within it. Mr. Walker responded saying in essence it was not a bad idea, but also in essence it would be the same thing to direct them to go back to an R-

8 and it was about the same difference. Mr. Black stated that this would be for the future. He said he was not unhappy with this design but dislikes the open-endedness that they could possibly have some type of mini hotel established as an example. Vice- Chair Aluzzo agreed that this may need to be done and Chair Layton said this would be a discussion for a separate meeting or forum. Staff Potts stated that to do an ordinance change would take upwards of six months to a year, is cumbersome, and wouldn't be something that can be done quickly. Mr. Beatty asked if the Board desired to do something quickly or properly.

Chair Layton asked the Board to come back to the application at hand, and though the ordinance discussion is a good conversation to have at another time, it is probably not pertinent to what is before the Board at this meeting. He went on to state that what is before them tonight is the rezoning and said that the Board could choose to recommend disapproval for the reasons they have discussed and the opinion that R-8 would be more appropriate and a special use permit if that is how the Board feels. He encouraged the Board to deal with this application and not have broader discussions about the ordinance.

Staff Potts stated the options going forward and what to think about when deciding. She stated that the options were to recommend denial or approval or continue. If the Board chooses to have the parcel go to R-8, Staff Potts stipulated that she would have to go through the entire process and renotification if that is the case. She also asked the Board to think about the purpose for throwing the additional hurdle before the developer and delaying them by a month and is it have an extra set of eyes. If this is the case, she mentioned that City staff at a staff level review analyzes site plans and application.

Mr. Black responded saying that Vice-Chair Aluzzo made it clear that the concern is the rezoning would be open ended and some parts could be made commercial and Mr. Black also has the same concern. Chair Layton stated that the way he understood the argument was C-3 and the uses by right within the zoning is the concern, and if the R-10 portion is rezoned to R-8 special use permit, it would be a very specific use that is being requested. He went on to say that they are not trying to introduce an additional hurdle or delay the process but trying to make the use that is requested specific.

Mr. Midgett added that they wanted to make sure it was appropriate within the zoning of R-10 to C-3. Chair Layton stated that if wasn't appropriate it would not be allowed. Mr. Midgett asked if it was up to the Board to make these distinguishing decisions about where to put a C-3 or R-10 and the city is looking to this Board for guidance. Chair Layton stated that he would reference them back to the Land Use Plan. Mr. Walker stated that the area to be rezoned is partially in the C-3 zone right now and with all the wetlands behind it. He restated his earlier concern about C-3 using it as a precedent and now with the wetlands in the area he no longer sees it as he earlier did. He also mentioned it was funny that it is zoned both ways and he doesn't see a problem with expediting the process, since he has seen that most developers connect the dots and reach this anyway. He also desired to keep this process in mind when looking at the way the property sits within close proximity to another C-3 zone and residential.

Chair Layton asked Staff Potts to state the options once again. Staff Potts stated that the Board could choose to continue, to recommend denial and recommend approval for the request of rezoning. Chair Layton asked if the Board recommends continuing, does the applicant have the option to withdraw the application and resubmit the application to rezone to R-8. Mr. Cole stepped forward and stated that the developer is comfortable with withdrawing and resubmitting and desired to make two things clear. One, he stated, that the City is asking for rezoning and the second the developer has to have zoning in place by May 10, 2019. He continued by saying that if they withdraw, would it be possible to get it rezoned by May 10. He then asked Staff Potts to quickly look over the calendar to see, if the developer went through the correct channels, is it possible to realistically get rezoned by the 10th of May. Staff Potts looked at appropriate schedules, and said it would be possible if they did not miss a window. Morgan also suggested calling a special meeting in March so the application could be placed on the April 9, 2019 Alderman meeting while simultaneously applying for the special use permit in late April. With this information, Mr. Cole stated that they were comfortable with withdrawing.

Staff Potts asked to clarify if the application was being withdrawn at this time. Chair Layton stated that at this time if the applicant is withdrawing, discussion would end, and the Board would wait for Staff to let them know about the special meeting. Staff Potts stated that the Board will possibly look at March 19, 2019 for the special meeting, but first wanted to clarify the notification requirements.

Mr. Fitzgerald stepped forward and offered a suggestion to reference The Reserve at Glenburnie that holds a zoning of R-6 and may offer a frame of reference. Chair Layton stated that since the application has been withdrawn there would be no further public comment, but this application would come before this Board again and the public would have a chance to comment at that time. This concluded the discussion regarding this application.

C. Consideration of request from Tarheel Building Systems to rezone 0.22 +/- acres from R-10 Residential District to C-5 Office and Institutional District, located at 1203 Simmons Street, New Bern, NC 28560. The property is further identified as Craven County Parcel Identification Number 8-034-059. (Ward 2)

Staff Comments:

Staff Potts stated that all public notice requirements have been fulfilled and City Staff advises the Planning and Zoning Board to recommend approval of the rezoning request to the Board of Alderman. Staff Potts added that it makes sense since the area where is located is surrounded by a barber shop and a flower shop and are not anticipating any kind of traffic impacts. The zoning around the parcel are C-3 and C-5.

Board Discussion:

Board Member Jerry Walker asked if the parcel was being rezoned for office and institutional. Staff Potts confirmed that it was C-5, Office and Institutional. With there not being any further discussion, Chair Layton opened the floor for public comment.

Public Comment:

There was no public comment and Chair Lee closed the floor for public comment.

Board Discussion:

Mr. Walker asked if this was a recommendation that would go to the Board of Alderman. Chair Layton confirmed that this was the case and that rezonings will always go to the Board of Alderman as recommendations.

There was no further discussion, so Chair Layton entertained a motion. **Board Member Don Black moved to recommend to the Board of Alderman to approve the rezoning request of the Simmons Street address. Board Members Pat Daugherty and Heron Beatty seconded the motion and it passed unanimously. (9-0)**

Adjourn

There was no further discussion amongst the Board, so Chair Layton entertained a motion to adjourn. **Board Member Don Black moved to adjourn and Vice-Chair Sonny Aluzzo seconded the motion. The motion passed unanimously.**

The meeting was adjourned at 6:24 p.m.

Date Approved: 01-07-2020



Don Black, Chair

Attest: 

Jeff Ruggieri, Director of Development Services

