

Minutes of the New Bern Planning & Zoning Board October 1, 2013

The regularly scheduled meeting of the New Bern Planning & Zoning Board was held in the City Hall Courtroom, 300 Pollock Street, on Tuesday, October 1, 2013 at 6:30 PM. The meeting was preceded by a 5:30 pm work session.

Members present: Mr. Tim Tabak, Chair
Mr. Kenneth Peregoy, Vice-Chair
Ms. Stevie Bennett
Mr. Jimmy Dillahunt
Mr. Patrick McCullough
Mr. Bill Stamm
Mr. Byron Walston
Ms. Dorothea White
Ms. Velda Whitfield

Members absent: None

Members Excused: Ms. Tiffany Dove

Staff present: Mr. Bernard George, AICP
Planning Division Manager

Mr. Kevin Robinson, AICP
City Planner

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

Prayer: A prayer for guidance was given by Mr. George.

Chair Tabak provided an introduction to the purpose and responsibilities of the Planning & Zoning Board.

Minutes: Minutes from the September 3, 2013 meeting were presented. Reading of the minutes was waived. Mr. Kip Peregoy noted on page 8, line 338, there is incorrect verbiage using the word “parfait” instead of “parapet”. Mr. George advised the change was noted and would be corrected.

Motion made by Mr. Kip Peregoy for approval with noted change. Motion was seconded by Ms. Stevie Bennett. Minutes were unanimously approved.

New Business

A. Consideration of a request to rezone a 6.23 acre tract of a 68.997 acre lot, from R-10 Residential District to C-5 Office and Institutional District, located between Amhurst Boulevard, Elizabeth Avenue, Pinetree Drive & Karen Drive

Staff Comments: Mr. George provided a video of the site as well as a summary of the rezoning request. He noted each member has a map of the subject tract and other relevant material in each packet. Mr. George stated the R-10 district is a district composed of single and duplex housing, with a minimum lot size of 10,000 square feet. He described the subject property and stated the tract was originally part of the 156-acre Parrott Farm. According to Mr. George, a majority of the original farm has been developed and this is the remaining undeveloped acreage. There are some wetlands on this tract of land; however, the majority of the tract is heavily wooded. The property owner has approximately 82 acres of the original farm remaining for development.

Mr. George stated approximately 22 acres of the 69 acre tract are zoned C-5 Office & Institutional. The property owner would like to rezone an additional 6.23 acres to include in the C-5 district. The uses allowed within C-5 are limited offices, medical facilities, professional offices, residential and multi-family development.

Mr. George noted that the City developed Sheryl Drive as part of an agreement with the property owner to provide an alternate outlet to Glenburnie Road at a signalized intersection. However, the City has not accepted Sheryl Drive as a dedicated public street and therefore it remains privately owned and maintained. He stated that a significant amount of Glenburnie Road traffic has been relieved with the construction of the Highway 17 Bypass and the Highway 43 connector. He further stated that Highway 43 eventually will connect to Highway 17 and will alleviate even more traffic on the Glenburnie Road corridor.

Mr. George advised that the property owner is in attendance along with other associates and is available to answer questions the board may have.

Vice-chair Kip Peregoy asked for clarification on a specific location of Tyler Rynne Trail, noting the street is located in Evans Mill. Mr. George noted there have been multiple proposed street name changes within this development site. At this time, Sheryl Drive is the official name for the street and has been officially accepted by 911 services as well.

Mr. Jimmy Dillahunt voiced concern with a couple of items presented. He wanted to ensure Mr. George had reviewed the information and made a recommendation for the rezoning. His concern pertains to the bird sanctuary located within this development as well as other wildlife. Mr. George noted he was unaware of a bird sanctuary within this area. Mr. Dillahunt questioned if a study had been done on the wildlife and any steps taken to protect it. Mr. George advised the change in zoning shouldn't affect the wildlife. The development of the property potentially will, but the zoning change will not. Mr. George noted he is not aware of a conservation easement on the property, but will discuss the implications with the property owner. He noted as with any new development, there will be some displacement of wildlife.

Ms. Stevie Bennett asked how it is proposed to get to this property. Mr. George advised the property will be accessed from Sheryl Drive. Ms. Bennett stated the access isn't shown on the plan they have been presented. The location of Sheryl Drive was discussed and identified. Mr. George further identified the future street access as depicted on the map and advised that every development is required to have direct access to a public street. He further stated that at the time the property is developed, direct access is required.

Mr. Patrick McCullough questioned what type of buffer requirements are needed between the C-5 use and the R-10 use. Mr. George advised a type "A" opaque screen, up to 6 feet high, with trees placed every 30 feet is required. The required screen and natural buffer area will separate both uses. Mr. George noted the video shown earlier provided a view of the existing thickly wooded area.

Applicant Comments: Mr. Parrott, the owner, and Attorney John Friesen, a representative of for East Carolina Community Development, Inc., the proposed developer of the property spoke. ECCD has a contract or option to purchase a portion of the property Mr. Parrott is selling. The attorney redirected the question Mr. Dillahunt posed regarding wildlife/conservation easements and requested Mr. Parrott provide a history of the property.

Mr. Parrott noted there are no wildlife easements on the property. Originally this was a 156-acre farm purchased by his father in mid-1940. They developed 21 lots in the 60's and donated 21 acres to the City for the West New Bern Recreation Center. The present Holiday City mobile home park was part of a 17-acre tract that was sold and has since been developed into an apartment development. There was a 5-acre tract developed on Amhurst. Mr. Parrott advised he was unaware of a bird sanctuary on any of his property. His understanding is that the entire city is a type of bird sanctuary.

Mr. Dillahunt asked how much wetlands are in that area. Mr. Parrot advised from the aerial photographs of the 69-acre tract, he believes 30%-60% of that land are wetlands. He noted on the preliminary maps it shows the majority of the 69-acres as wetlands, but it has not been officially delineated by the Corp of Engineers.

Chair Tabak asked if the 10-acres wouldn't be affected by the wetlands. Mr. Parrott advised some of it is, probably less than one acre is wetlands.

Mr. Dillahunt questioned the elevation of the land in the flood zone. Mr. Parrott advised it runs 22-26 feet.

Vice-chair Peregoy asked if there would be a development plan presented later, as now the questions are more pertinent to the development process rather than the rezoning process. Mr. George advised if the development is a subdivision, it would come before the Planning & Zoning Board. However, at this time it will not be a subdivision. The site is proposed for multi-family housing development and therefore would go before the Board of Adjustment for a Special Use Permit. Vice-chair Peregoy advised at that time the issue of wetlands would be addressed. Mr. George confirmed it would be.

Public Comments: *Jan Grady, corner of Pinetree & Amhurst* stated she heard this was going to be senior housing, rather than apartment complexes. She asked why the land wouldn't be rezoned to C-3 in light of the possible proposed senior development. Vice-Chair Tabak reminded her that there are multiple allowed uses within a zoning classification and the board generally doesn't consider a specific use, just the range of uses each classification permits.

Mr. George advised the C-3 district is a more general, highly commercial zoning district. There are a wide variety of commercial uses as well as other uses. The C-5 district is limited to professional offices, some institutional uses including hospitals and clinics, as well as residences that include multi-family. However, the C-3 district would not limit the amount of commercial uses that could be developed and would be more intrusive to the surrounding residential areas. The C-5 district is considered more of a transitional district between the existing commercial corridors and the adjacent residential areas.

Ms. Goody noted the video Mr. George showed earlier didn't properly convey the density in population in that area, noting there is a tremendous amount of traffic that comes through there. She noted there recently were two additional parcels that were asked to be rezoning for senior housing and now this particular property is also being rezoned for senior housing. She expressed her concern with the additional traffic these developments would potentially create.

Ms. Jan Williams 209 Monterey Circle advised she saw the posted sign on Sheryl Drive. She uses the stop light due to the difficulty of accessing Glenburnie Road. She was concerned that several streets in the area are cut-through streets for traffic and at certain times of the day the traffic is very heavy.

Mr. John Friesen, Attorney, stated the developer has the option to purchase this property and wants to put multi-family senior housing on the property. Mr. Friesen provided a zoning map showing the two areas under discussion. He noted the road that is in question has a 60-foot right of way that equals the width of existing Elizabeth Avenue which has a substantial amount of development along it. Due to the multi-family senior housing development being proposed, there will be less traffic created than with most other types of developments.

Mr. Friesen noted another thing difficult to see from the maps is the wetlands. He pointed out the delineation of where the 20-30 acres of wetlands exist. In relation to those acres, Mr. Friesen pointed out where the development is being proposed. He further noted the C-5 commercial use is a transitional use from R-10 as is currently zoned and is a perfect use for the proposed property. It is consistent and compatible with what is already there. Concerns about the potential of additional housing being developed in that area are extremely unrealistic due to large wetlands in the area.

Mr. Friesen spoke on the notice of re-zoning and posting of property. The notice was done properly according to the ordinance, but due to the location there weren't many homeowners to notify.

The Public Comment segment closed.

Board Discussion: Chair Tabak asked each of the three public speakers if they were for or against the re-zoning. Attorney John Friesen was for the re-zoning. The two ladies were against it.

Ms. Jan Williams advised several years ago another section in their area was re-zoned for senior housing, but nothing ever happened. This past year, another section of Amhurst was re-zoned for senior housing, and again, nothing has ever happened. She is against re-zoning seemingly without a purpose. She is against the re-zoning.

Mr. George clarified there was not a re-zoning recently on Amhurst. There was a special use permit hearing for the Amhurst tracts that came before the Board, but no rezonings.

Chair Tabak noted sometimes the economy isn't the only determining factor as was discussed with this parcel. When the Corp of Engineers completed delineation, even if this particular parcel is re-zoned, it could end up with major wetlands and the developer would choose a different tract of land to develop.

Ms. Velda Whitfield noted each public speaker voiced concern about the traffic. She questioned if at some point would a traffic study be done. Chair Tabak noted this would be a three part process; zoning request, Board of Aldermen then to Board of Adjustment. He noted somewhere on that process he assumed a traffic study would be done or requested.

Chair Tabak asked what the total number of unit difference between R-10 and C-5 is. Mr. George noted in R-10 a duplex would require 15,000 square feet, so there could be approximately 3 duplexes an acre or approximately 8-units maximum per acre. In C-5 that number goes up to a maximum of 19 units per acre for apartments. Mr. Kevin Robinson advised the 10-acre development would allow 60 single family units, or 190 multi-family units. The 6-acre portion could contain 115 multi-family units or 36 single family units.

Chair Tabak asked when a traffic study is done, how many vehicle passes a day per each single family unit. Chair Peregoy advised there are a number of variables in determining this. Mr. George advised generally the calculation is 10 trips per day per unit for single family and 8 trips per day per multi-family unit over a 24 hour period.

Mr. Patrick McCullough requested clarification regarding development of the unnamed street collaboration between Mr. Parrott and the City. Mr. Bernard confirmed this by stating the City and property owner Mr. Parrott agreed to provide a safe additional street access via the signalized intersection to South Glenburnie Road.

Mr. George noted in speaking about apartments and density, very rarely will one get 19 units per acres on property anywhere in the city. There must be ample parking for each unit which takes up a lot of land. The only way to achieve those types of numbers is to build up and that is not the typical development in the city. Mr. George also pointed out there have been several applications for senior housing in that area, noting the majority of seniors don't drive. The local CARTS transit system is available around the city. In the Departmental Site Plan Review meeting, the City considered the impact of the area's density and traffic on the proposed

development. NCDOT representatives also attended and provided additional input and information.

Ms. Dorothea White noted according to the CAMA 2010, Regional Land Use Plan, up to 1-5 dwellings per acre, as well as higher density are allowed up to 19 units. These are maximum allowed numbers.

Ms. Stevie Bennett questioned if the requirement is 2 parking spaces per unit. Mr. George noted that is correct, but in senior housing due to their limited transportation, the requirement is 1 parking space per unit.

Motion: Vice-Chair Peregoy motioned to recommend approval of the re-zoning of the 6.23 acre parcel from R-10 to C-5. The motion was seconded by Mr. Patrick McCullough. Motion was approved by unanimous vote.

Chair Tabak advised those in attendance who had concern, the Planning & Zoning Board's recommendation will be presented to the Board of Aldermen for consideration and they may attend that meeting as well as the Board of Adjustment meeting for consideration of the special use permit application.

Mr. George advised the re-zoning application will go before the Board of Aldermen on October 15, 2013. The Special Use Permit is scheduled to go before the Board of Adjustment on October 16, 2013. Notices to all property owners within 100 feet will be sent. The rezoning notice will be published in the newspaper and additional property owner notices of the Board of Adjustment meeting will be mailed as well.

Ms. Stevie Bennett questioned why the Board of Adjustment is meeting on the 16th. Mr. George advised it is a special call meeting.

B. Continuation of Consideration of a request by the City of New Bern to amend Land Use Ordinance Section 15-63. Amendments to and modifications of permits so as to further define revisions that require a new application.

Staff Discussion: Mr. Kevin Robinson noted several ordinance changes were discussed at previous meetings. This particular item was not approved in past meetings and, therefore, with suggested changes is being presented for consideration again. The area of concern proposed for amendment deals with requests and changes to approve plans. Mr. Robinson advised changes have been made in an attempt to define major changes to those plans increasing density or intensity of use would require a new application. Previous discussion on definitions of intensity resulted in staff creating a new section in definitions. Mr. Robinson read the new proposed verbiage. Mr. Robinson advised staff recommends approval.

Board Discussion: None

Public Comment: None

Motion: Vice-Chair Peregoy motioned to approve the definition and the language in Section 15-63 as submitted. Mr. Jimmy Dillahunt seconded the motion. Motion was approved by unanimous vote.

C. Consideration of a request by the City of New Bern to amend the Code of Ordinances of the City of New Bern by adding Chapter 39 “Nonresidential Building or Structure Code” to the Code of Ordinances of the City of New Bern.

Staff Comments: Mr. George advised Chapter 39 is a proposed chapter to be added to the City Code. In the past there were no maintenance enforcement provisions for non-residential structures. The proposed Chapter 39 addresses non-residential buildings.

Mr. George advised the purpose of this amendment is to provide minimum maintenance, sanitation and safety standards for non-residential structures within the City limits. In the past when a building reached a state of deterioration, the structure was boarded up and left to the elements until it reached a point of dilapidation and a threat to public safety. Only at that point could the City take action. This new chapter provides the City an additional tool to regulate these deteriorating structures before they are beyond saving, allowing the inspectors additional time and resources to work with the property owners to address the need of repair.

Ms. Stevie Bennett asked if there was a big problem in New Bern with non-residential buildings. Mr. George advised there is, noting the vacant Days Inn as a prime example. It has been empty for years, decaying and de-valuing the neighboring areas.

Public Comments: N/A

Board Discussion: Ms. Stevie Bennett asked if within this ordinance for commercial buildings if there was anything that differs from the minimum housing code.

Mr. George advised the minimum housing code addresses livability. This code, non-residential building or structure code, addresses structural maintenance and other aspects of non-residential structures that may need maintenance in order to keep them from becoming dilapidated and requiring demolition. Previously it was difficult to get property owners to repair their buildings unless they had deteriorated to a point they were dilapidated and a public safety hazard. The proposed ordinance provides staff the opportunity to enforce building maintenance before it deteriorates beyond the point of repair.

Regarding page 5 pertaining to windows that reference broken or loose mullions, Vice-chair Peregoy suggested the section defines a window issue that is significant. Ms. Stevie Bennett stated that one problem can cause water to enter into the building. Vice-chair Peregoy noted that many commercial windows now come with insertable mullions that don't have anything to do with the structure of the window, that might fall out or get broken, noting it's not that big of a deal.

Mr. George advised that staff is further defining some of those borderline conditions. If there are a number of these conditions that a building fails to meet, then it provides the opportunity for the inspectors to address the situation with the property owner. He noted if mullions are loose, water could get into the building. Staff's goal is to keep buildings weather-tight and well maintained.

Vice-chair Peregoy questioned page 10, the cost of the liens. Verifying that Attorney Scott Davis wrote this section, Vice-chair Peregoy questioned the validity of the verbiage stating the amount of the cost to the property owner could also be a lien on any other real estate the property owner owns within the City. Ms. Bennett stated she didn't think that was allowed, citing a discussion she had with an attorney regarding the same subject.

Mr. George noted a lien is against any asset one has. He noted Attorney Davis researched this provision thoroughly.

Mr. Dillahunt stated he felt too much pressure is put on homeowners, not knowing their financial status. He wondered what the City's main objective is and to what extent. Mr. George advised that according to his discussion with the Chief Building Inspector and the Director of Development Services, the ordinance purpose is simply to improve the appearance of the city and eliminate blight and dilapidated buildings in the city. Mr. Dillahunt questioned if this was targeted to one or two wards or in general. Mr. George advised this is in general.

Mr. Robinson cited verbiage in State Statute 168-439 I, Lien, Section 2, Subsection 2 that defines this even more, and collaborates what Attorney Davis concluded.

Mr. Byron Walston questioned, using the Days Inn example, if the City doesn't have any type of enforcement without this proposed Chapter. Mr. George advised that the City does have enforcement authority if the building has deteriorated to a point it has become a danger to the public. The goal of this ordinance is address deteriorating properties before they get to a dilapidated condition and encourage property owners to repair their property.

Mr. George advised he has been provided a list by the Chief Building Inspector of the buildings that have reached a hazardous state. Mr. Dillahunt requested access to view the list. Mr. George advised he would be happy to share it with him, but is hesitant to make it public without first notifying the property owners.

Ms. Dorothea White voiced concern with buildings such as the Days Inn and its dilapidated state. She requested additional clarification pertaining to the verbiage of liens previously discussed. She advised from the way it is written, it could appear that the city is trying to acquire property, rather than preserve property.

Mr. George advised there is a due process that is spelled out within the document that shows prior to the lien being levied, there would be a hearing for the building inspector to investigate the conditions, meet with the property owner to determine what the condition of the building actually is, and then inform the property owner of staff's findings and subsequent required remedial action to bring the building back into good standing. This is the same process with minimum housing requirements as well. These steps are in place to determine the property

owners' intent and assist them with a timeline for repairs. Mr. George advised that written correspondence with a deadline for repairs would be created and submitted to the property owner.

Chair Tabak noted something that may be a safety hazard to the public and the property owner isn't handling, it shouldn't be the responsibility of the tax payers to fix. Mr. George noted these violations are addressed with a very heavy fine that will accumulate if not addressed.

Mr. Dillahunt questioned if there has been anything implemented on collecting those fines. Ms. Steve Bennett stated very few and continued saying there is no way of tracking down the properties in the City of New Bern that have penalties but no liens have been filed. Mr. George stated the City is in the process of implementing a new program to track violators

Mr. Dillahunt asked how long a building permit is active. Mr. George advised a permit is active as long as work continues on a property. If work stops for up to 6 months, the property owner will need to obtain another permit. The inspectors will provide ample time for the property owner to make improvements, but also will be watchful of slow or no progress.

Mr. Walston asked in the formation of this chapter, what research from other cities was done to ensure the proposed ordinance's comparability with other municipalities. Mr. George advised staff did survey other cities before finalizing this proposed chapter.

Motion: Vice-chair Peregoy motioned to recommend adoption of Chapter 39 into the City of New Bern Code of Ordinances. Motion was seconded by Ms. Stevie Bennett and approved by unanimous vote.

There being no further business, the meeting was adjourned.

Tim Tabak, Chairman

Bernard George, AICP, Secretary