

## **MINUTES**

March 20, 2001

7:00 p.m.

### **Members Present**

Clifton McNeill, Chair Pro Tem  
Dallas Byrd  
John M. Gillis  
Jerry Olsen  
Jeff Reitzel

### **Members Absent**

John Tyson, Chair  
Joe Mullinax, Vice-Chair  
C.S. "Pete" Connell

### **Others Present**

Barry A. Warren,  
Planning Director  
Thomas Lloyd  
Donna McFayden  
Barbara Swilley  
Grainger Barrett,  
County Attorney

The Chair and Vice-Chair were unable to attend the meeting. A motion was made by Mr. Reitzel and seconded by Mr. Olsen for Clifton McNeill to serve as Chair Pro Tem for the meeting. The motion passed unanimously.

#### **I. INVOCATION AND PLEDGE OF ALLEGIANCE**

Mr. Byrd delivered the invocation, and Chair Pro Tem McNeill led those present in the Pledge of Allegiance.

#### **II. APPROVAL OF AGENDA/ADDITIONAL ITEMS**

Persons in opposition signed up to speak on Case No. P01-15. The case was moved from Consent to Public Hearing items. A motion was made by Mr. Olsen and seconded by Mr. Byrd to approve the Agenda as modified. The motion passed unanimously.

#### **III. PUBLIC HEARING DEFERRALS**

There were no public hearing deferrals.

#### **IV. ABSTENTIONS BY BOARD MEMBERS**

Mr. Gillis said that he would abstain from discussion and voting on Case No. P01-15.

#### **V. POLICY STATEMENT REGARDING PUBLIC HEARING TIME LIMITS**

Mr. Lloyd read the Board's policy statement regarding public hearing time limits.

#### **VI. CONSENT ITEMS**

##### **A. APPROVAL OF THE MINUTES OF MARCH 6, 2001**

A motion was made by Mr. Olsen and seconded by Mr. Gillis to approve the Minutes as written. The motion passed unanimously.

## REZONING CASES

A. P01-12. REZONING FROM A1/CU TO C1 ON DUNN ROAD EAST OF SHERILL BAGGETT ROAD, THE PROPERTY OF WILLIAM STEWART.

The Planning staff recommended approval of the C1 Local Business District based on the following:

1. The area meets the purpose and intent statement of the C1 Local Business District.

The Planning staff found that the subject property is not suitable for any of the intervening zoning districts.

**A motion was made by Mr. Olsen and seconded by Mr. Gillis to follow the staff recommendations and approve the C1 Local Business District. The motion passed unanimously.**

B. P01-13. REZONING FROM R10 TO R6A ON ASHBORO STREET, EAST OF CAMDEN ROAD, THE PROPERTY OF BOBBY AND MARY LOU BUNNELLS

The Planning staff recommended approval of the R6A Residential District based on the following:

1. The request is consistent with existing land use in the area and the character of the neighborhood.

Note: The Health Department will dictate density on lot size at this location.

The Planning staff found that the subject property is also suitable for the R6 Residential District.

**A motion was made by Mr. Olsen and seconded by Mr. Gillis to follow the staff recommendations and approve the R6A Residential District. The motion passed unanimously.**

C. P01-16. REZONING FROM C(P) TO A1 AT 4036 GOLDSBORO ROAD, THE PROPERTY OF STEPHEN PARKER.

The Planning staff recommended approval of the A1 Agricultural District based on the following:

1. The 2010 Land Use Plan calls for farmland use at this location; and
2. The request is consistent with the existing land use and character of the neighborhood.

The Planning staff found that the subject property is also suitable for the R40 and R40A Residential Districts.

**A motion was made by Mr. Olsen and seconded by Mr. Gillis to follow the staff recommendations and approve the A1 Agricultural District. The motion passed unanimously.**

- D. P01-22. REVISIONS AND AMENDMENTS TO THE SPRING LAKE CODE OF ORDINANCES, SECTION 156.020 BY CREATING "STATEMENT OF DISTRICT INTENT RVP(O);" AND AMENDING SECTIONS 156.065, "OVERLAY DISTRICTS GENERALLY," 156.066(C), "SITE PLAN REQUIRED," TO ESTABLISH A DEFINITION AND STANDARDS FOR THE DEVELOPMENT OF A RECREATION VEHICLE PARK; AND 156.035, "DISTRICT USE REGULATIONS," BY DELETING RECREATION VEHICLE PARKS AS A CONDITIONAL USE IN THE HS(P) DISTRICT.

The amendment was recommended by the Land Use Codes Committee.

**A motion was made by Mr. Olsen and seconded by Mr. Gillis to follow the staff recommendations and approve the revisions and amendments to the Spring Lake Code of Ordinances. The motion passed unanimously.**

#### PLATS AND PLANS

- A. 01-053. CONSIDERATION OF THE CHARLES AND VENA BOLES PROPERTY (M(P) SITE PLAN REVIEW) FOR A VARIANCE FROM SECTIONS 7.3, "DISTRICT DIMENSIONAL PROVISIONS," AND 7.22, "DETERMINATION OF FRONT YARD SETBACK," CUMBERLAND COUNTY SUBDIVISION ORDINANCE, ON THE EAST SIDE OF NATAL STREET, SOUTH OF BURBANK STREET.

**A motion was made by Mr. Olsen and seconded by Mr. Gillis to follow the staff recommendations and approve the variance. The motion passed unanimously.**

#### VII. PUBLIC HEARING ITEMS

- A. P00-67. CONDITIONAL USE OVERLAY DISTRICT AND PERMIT TO ALLOW MULTI-FAMILY RESIDENTIAL IN A PND DISTRICT ON THE CORNER OF BINGHAM DRIVE AND BIBAR ROAD, SOUTH OF BAILEY LAKE ROAD, THE PROPERTY OF CHARLES GORE.

Mr. Lloyd requested that the packet materials be admitted into the record as evidence.

Maps were displayed outlining the zoning and land use in the area. A video of the site was shown. Mr. Lloyd said that the Planning staff recommended approval of the Conditional Use Overlay District based on the finding that the request is reasonable, neither arbitrary nor unduly discriminatory, and in the public interest.

The Planning staff recommended approval of the Conditional Use Overlay Permit after finding that the proposal meets the following conditions:

1. It will not materially endanger the public health and safety;
2. It will not substantially injure the value of adjoining or abutting property;
3. It will be in harmony with the area in which it is to be located; and
4. It will be in conformity with the 2010 Land Use, Thoroughfare and other plans officially adopted by the Board of Commissioners.

The Planning staff further recommended that the following conditions be added to the Conditional Use Overlay Permit:

1. The access off of Bingham Drive be coordinated with NCDOT;
2. A gated access off of Bibar Drive be created for emergency vehicles; and
3. A **landscaped** berm topped with Leland Cypress be created along the length of Bibar Drive and along the eastern and southern property lines that abut residential development.

In addition, the Planning staff recommended that the following conditions from Section 3.34 of the Zoning Ordinance be placed on the swimming pool area:

1. A fence be erected to a minimum height of three feet to completely enclose the portion of yard containing the pool with a gate that can be securely fastened for belowground pools;
2. All mechanical equipment is to be located a minimum of five feet from any property line;
3. All floodlights must be shielded from adjacent properties to reduce offensive glare;
4. All electrical wiring shall be in conformance with the National Electrical Code;
5. A water discharge plan for the proposed use shall be submitted showing the location of buildings, yard dimensions and other pertinent data. The plan shall stipulate the type of system used for disposal of waste from the site. No permit shall be issued until the zoning enforcement officer determines that the water discharge plan is adequate by meeting one or more of the following criteria:
  - a. The discharge system shall drain directly into the street storm drainage system, other public storm drainage system or natural stream; or

- b. Enough hose is made available to discharge such water into the above public ways; or
- c. Water discharge can be accomplished on the lot without threat of discharge onto adjacent lots.

Mr. Charles Gore appeared before the Board and said that the only thing that he could add to the staff presentation was that on the east side of the property, there are 29 Leland Cypress trees and red tips already established. He said that he'd prefer that additional screen be added instead of removing the existing trees and putting in a berm.

Mr. Lloyd said that the Ordinance has guidelines about the height at initial planting of screening materials. Mr. Warren explained that the trees are to serve as a natural barrier for sight and sound.

Mr. Lloyd added that the distance from the setbacks is also addressed in the Ordinance, and the distance in the proposed plan is more than adequate. He said that the applicant has met the requirements from the October meeting and has no problem with any requirements except the berm.

Mr. A.J. Chase, homeowner in the area, appeared before the Board in opposition. He stated that there have been several accidents already along Bibar Road, and the traffic backs up from the residents exiting onto Bingham Drive. He also said that additional housing units will create additional crime.

Mr. Byrd asked about the distance between access and the nearest corner. Mr. Gore said that the access was planned to be as far from Bibar Road as possible. Mr. Byrd asked if there was enough room for vision, and Mr. Gore responded that there is, and the plan to widen Bingham Drive to five lanes will begin in 2002 when DOT begins to buy the right-of-way.

Mr. McNeill asked if a traffic signal is proposed for the Bibar/Bingham intersection. Mr. Gore said that there is where Bailey Lake Road is proposed to connect with Bibar Road on Bingham Drive. He added that the proposal does not include an entry off of Bibar Road because of the concern expressed by the residents at the October meeting.

Mr. Gillis asked if staff received comments from DOT on the proposal. Mr. Lloyd said that no comments were received. Mr. Gillis asked if the silence indicates a general satisfaction with the plan. Mr. Lloyd said that DOT will get the needed dedication for Bingham Drive, and the plan considered right-of-way.

Mr. Olsen asked Mr. Gore if there was any problem with legally following the staff's recommendation regarding required fencing. Mr. Barrett said that the Board could vote on the district and then state specific recommendations on the permit process.

**A motion was made by Mr. Olsen and seconded by Mr. Byrd to follow the staff recommendations and approve the Conditional Use Overlay District based on the Board finding that the proposal will not materially endanger the public health and safety; will not substantially injure the value of adjoining or abutting property; is in harmony with the area in which it is to be located; and is in conformity with the 2010 Land Use, Thoroughfare and other plans officially adopted by the Board of Commissioners. The motion passed unanimously.**

Mr. Reitzel said that the staff's item 5 regarding the swimming pool was not necessary because the Health Department regulates swimming pools. He suggested that the wording state, "The discharge plan must be adequate and meet the Cumberland County Health Department regulations."

Mr. McNeill asked if the staff added anything to the Health Department regulations. Mr. Barrett said that he didn't know, but that Mr. Reitzel was correct that the Health Department regulates swimming pools in regard to fencing, chemicals, etc.

Mr. Lloyd suggested that items 1 through 4 remain, and Mr. Reitzel's wording be used for item 5. Mr. Reitzel said if there is a conflict between Health Department regulations and Zoning Ordinance, the regulating agency's regulations should be followed, and there was no need to duplicate the rules.

After discussion, it was determined that items 1, 2, 4 and 5 are covered by Health Department regulations.

Mr. McNeill suggested leaving item 3 and adding Mr. Reitzel's wording. Mr. Barrett agreed and said he would clarify it and strip anything already covered by Health Department regulations before the matter goes before the Commissioners in order to avoid possible conflict from occurring in the future. Mr. Lloyd said that the staff recommendations would not take precedence over Health Department regulations.

Mr. Barrett suggested that the conditions read: 1) All applicable Health Department regulations be complied with; and 2) All floodlights be shielded from adjacent properties to reduce offensive glare.

Mr. Reitzel said if the access off of Bingham Drive was determined in order to appease the property owners on Bibar Road, it might be more reasonable to have the entry off of a signalized intersection. Mr. Gore said that the access was planned to put the development off by itself and satisfy the current residents.

Mr. Reitzel asked about item 4—electrical wiring. After input from Mr. Gore, Mr. Reitzel said that item 3 (to follow Mr. Barrett's items above) should state, "Underground electrical service be provided within the development.

Mr. Gillis noted that Mr. Gore would prefer not to place the berm where existing growth is in place along the eastern property line that backs up to the property. He

suggested that item 3 in the first set of conditions recommended by staff be reworded to delete "eastern boundary" in order not to disturb current growth.

Mr. Reitzel suggested that "or equal site-obscuring plant material" be added after Leland Cypress in the same condition. He said that there is question about the heartiness of Leland Cypress trees in the area. After discussion, the following wording was agreed upon: "or equivalent site-obscuring plant material."

Mr. Olsen said that the Board seemed to be getting into the contracting business and moving into contract zoning.

Mr. Reitzel said the process instructs the Board is to set conditions for the permit, but possibly they were getting too detailed.

Mr. Reitzel said that there is a berm shown along Bingham Drive on the site plan, and this is not included in the staff's recommendation. Mr. Lloyd explained that the site plan as submitted will be included as part of the approval process.

To clarify the contract zoning issue, Mr. Barrett explained that placing conditions is good in concept to assure that the development is in harmony with the lower-density residential development that is next to the site. He said that the concept on buffering includes a fast-growing plant as a buffer. Mr. Warren added that "site-obscuring" is a good description that allows the developer to select the plant type.

Mr. Barrett asked if the berm on Bingham Drive and Bibar Road would be out of the site triangle necessary for safe traffic. Mr. Warren said that it should be 70 feet.

Mr. McNeill asked if the berm stops short of DOT required distance. Mr. Gore said that it should follow DOT regulations and will be before them for approval.

**A motion was made by Mr. Gillis and seconded by Mr. Reitzel to recommend approval of the Conditional Use Overlay Permit application and site plan after finding that the proposal meets the following conditions:**

- 1. It will not materially endanger the public health and safety;**
- 2. It will not substantially injure the value of adjoining or abutting property;**
- 3. It will be in harmony with the area in which it is to be located; and**
- 4. It will be in conformity with the 2010 Land Use, Thoroughfare and other plans officially adopted by the Board of Commissioners.**

**The Planning Board further recommended that the following conditions be added to the Conditional Use Overlay Permit:**

- 1. The access off of Bingham Drive be coordinated with NCDOT;**
- 2. A gated access off of Bibar Drive be created for emergency vehicles; and**

3. **A landscaped berm topped with Leland Cypress or equivalent site-obscuring plant material be created along the length of Bibar Drive and along the southern property line that abuts residential development.**

**In addition, the Planning Board recommended that the following conditions from Section 3.34 of the Zoning Ordinance be placed on the swimming pool area:**

1. **All applicable Health Department regulations be complied with;**
2. **All floodlights be shielded from adjacent properties to reduce offensive glare.**
3. **Underground electrical service be provided within the development.**

**The motion passed unanimously.**

- B. P01-15. REZONING FROM RR TO R10 RESIDENTIAL ON THE NORTH AND SOUTH SIDES OF STRICKLAND BRIDGE ROAD, WEST OF THE INTERSECTION OF STRICKLAND BRIDGE ROAD AND CENTURY CIRCLE, THE PROPERTY OF JAMES D. GILLIS, ETAL.

Mr. John Gillis left the room.

Maps were displayed outlining the zoning and land use in the area. A video of the site was shown. Mr. Lloyd said that the Planning staff recommended approval of the R10 Residential District based on the following:

1. The 2010 Land Use Plan recommends low-density residential use at this location; and
2. PWC water and sewer are available.

Note: The subject property is located within the proposed Fayetteville Outer Loop Corridor.

The Planning staff found that the subject property is also suitable for the R15 Residential District.

Mr. Joe Gillis deferred speaking in favor of the request until the property owners in opposition spoke.

Mr. David McFadyen, Jr. appeared before the Board in opposition. He submitted a petition to the Board with signatures of 99 percent of the residents in the area who oppose the rezoning. Mr. McFadyen said that the residents don't want the area to become transient, and they would like the case to be deferred until the road is set.



Mr. Keith McFadyen appeared before the Board in opposition and said that the Board has an opportunity to avoid a situation where someone purchases property and then later finds out that a road will be going through the area.

Ms. Otha McFadyen appeared before the Board and said that the video did not show all of the homes in the area. She said that there are nice homes on the property that adjoins the subject property. She acknowledged about 10 people in the audience who are homeowners from the area with large lots and homes. She said that approval of the rezoning would not be fair to future homeowners. She asked the Board to defer the case until the Loop is set. She said if R10 is approved at this location, all homeowners in the area should be able to have R10. She said more definite information should be available regarding the corridor within the year.

Mr. Olsen said that he lives on the other side of the river, and he has known about the bridge that is proposed for the area for 20 years, and there's still no bridge. He said until the money is allocated, there is still only a plan, and it may be a long time before the Loop is a reality. Ms. McFadyen said they wanted the Board to wait until the corridor has been set—not built. She asked the Board if they wanted future homeowners to purchase without knowing that they're backing up to a corridor.

Mr. McNeill explained that the developers would have to get approval before they could build in the area. Ms. McFadyen said that some of the land has been released, so they may not have to get approval.

Mr. Joe Gillis appeared before the Board and said that the corridor encompasses most of the property. He said that most of the people in opposition live on the opposite side of the corridor. He said that if there has been a release of corridor rights, he had not heard about it. He said that he is still under the restrictions of the corridor. Mr. McNeill asked if there was any chance that the development would cause the corridor to be moved to property owned by the current residents. Mr. Gillis said that he didn't have that kind of power.

Mr. Reitzel asked Mr. Barrett if it was possible to build within a corridor area once it is defined. Mr. Barrett said once it is defined, a plat is required. He added that he didn't know the current development stage of the corridor.

Mr. McNeill told Mr. Gillis that there may be definition to the centerline by the end of the summer, and he asked if a six-month delay would be an option for him. Mr. Gillis said that he'd prefer moving on the request at this time.

Mr. Reitzel asked Mr. Gillis if the Board could just consider the area outside of the corridor. Mr. Gillis said that would not be viable because the corridor is 1,000 feet with an interchange, and wouldn't allow enough area for commercial development.

There was a discussion regarding roads in the area.

A motion was made by Mr. Olsen and seconded by Mr. Byrd to follow the staff recommendations and approve the request.

Mr. Reitzel expressed concern that this is a designated corridor, and he couldn't support rezoning the entire property.

Mr. Olsen said that Mr. Gillis knows the problems and restrictions, and the land value has always increased in the area. He said that the developers could resolve the problems with the NCDOT engineers.

Mr. Byrd said that highways bring people, and people need land, which raises the value of the land. He said that it would not be right to allow the owner not to use his property at its highest and best use. He asked if the Board had the right to deny the request if it follows the Land Use Plan.

Mr. Reitzel said that the Board has the right. He said that Mr. Gillis can handle the process, but NCDOT will restrict the development, and Mr. Gillis has the option of appearing before the Board at a later date. He said that he didn't recall anyone appearing before the Board in the past asking for rezoning in a protected corridor, and the Board may be setting a dangerous precedent by approving the request. He said that the Board has an obligation to help DOT protect the corridor.

A substitute motion was offered by Mr. Reitzel and seconded by Mr. Byrd to approve all of the area outside of the DOT protected corridor and follow the staff recommendations on that area only.

It was pointed out that this was not the property owner's desire.

Commissioner Henley asked if the action would carry forward if the centerline is set within the next few months or now. Mr. Reitzel said that it would apply now. Mr. Barrett said that there could be a problem unless the centerline is specifically set. He said that DOT may have further defined the corridor down to 300 feet.

Mr. Warren said if the case was deferred until the April 3, 2001 meeting, the staff could have maps prepared and receive input from DOT to assist the Board in their decision.

Mr. Byrd said that the reason he seconded the substitute motion was because it offered a compromise.

Mr. Reitzel withdrew the substitute motion.

Mr. Olsen withdrew the original motion.

Mr. Byrd agreed to withdraw the second to both motions.

**A motion was made by Mr. Reitzel and seconded by Mr. Olsen to defer action on Case No. P01-15 until April 3, 2001 and have it placed as the first item on the Agenda. The motion passed unanimously.**

C. P01-17. REZONING FROM R10 TO C(P) ON SYCAMORE DRIVE, EAST OF THE SEABOARD COAST LINE RAILROAD, THE PROPERTY OF LAND ASSOCIATES, INC.

Maps were displayed outlining the zoning and land use in the area. A video of the site was shown. Mr. Lloyd said that the Planning staff recommended denial of the C(P) Planned Commercial District based on the following:

1. The 2010 Land Use Plan recommends low-density residential use at this location;\*
2. The request is not consistent with the existing land use and character of the neighborhood.
3. There is an existing concentration of commercial use and vacant commercial property less than one mile from the subject property.
4. The request constitutes an encroachment of commercial use into a residential area;
5. The subject property does not meet the purpose and intent statement of the C(P) Planned Commercial District; and
6. The subject property is located on a portion of a major corridor that will connect Cliffdale Road to I-95 Business.\*\*

\*The 2010 Land Use Plan took the Hope Mills Bypass corridor and availability of water and sewer into consideration when the recommendation was made.

\*\*The corridor was created to alleviate traffic congestion from Hope Mills Road, and commercial use at this location will create additional traffic congestion and traffic lights on Sycamore Drive, thus impeding vehicular flow.

The Planning staff finds that the subject property is suitable for the R6 and R5A Residential Districts.

Mr. David Averette appeared before the Board and gave a history of the area. He said that he purchased the subject property in 1986, and there were only two roads off of Legion Road. Those roads remain—Black and Decker Road and Ireland Drive, and he's been unable to acquire a 50-foot right-of-way to the subject property to develop it. He said that the route for the bypass has now been settled, and it eliminated his planned access to the property. He said that he would like to rezone this property, and the development will encourage building additional roads in the area. He said that this is good commercial property, and he plans to develop an adjoining tract for residential use. He said he wants to work with the Town of Hope Mills to use his land for access to the lake and plan some recreational area.

Mr. Averette said that the Planning staff suggested PND for the property, and that allows only a small amount of commercial development. He said that he would like to have a well-planned commercial development on the property, and he will need to coordinate to get the streets in place. He said that the property does not touch any houses on Pinewood Lake.

Ms. Pam Rieley appeared before the Board in opposition. She said that she owns a home on Pinewood Drive, the fourth house from the proposed bypass, and she is opposed to commercial development so close to the quiet residential area. She added that there is a lot of commercial property available in Hope Mills. Ms. Rieley said that there are many grocery stores nearby—Bi Lo, Food Lion, Winn Dixie and a large vacant building that used to be a grocery store on Legion Road. She expressed concern about Pinewood Drive becoming too congested because people use it to bypass Hope Mills Road.

Mr. George Marchman appeared before the Board in opposition. He said that he didn't realize that the bypass had been determined. He said that he bought his home before there were any plans for a bypass, and it has already caused a problem. He said that people are beginning to put their homes up for sale. He added that there are wetlands through the proposed area. He said that adding more commercial property to the area will make the problems worse.

Mr. Averette appeared before the Board in rebuttal. He said that he didn't create the bypass and wants to gain additional roads. He said that the map didn't accurately reflect the lot that he wants to rezone, and he showed the Board where the line should have been drawn to eliminate a small area from the request. He said that some buffering may be needed, and the commercial use will be 500 feet from the existing homes.

Mr. Reitzel asked DOT's schedule for construction of the Hope Mills Bypass. Mr. Averette said that they are scheduled to purchase right-of-way in September of 2001, and plan to take bids in September of 2003 with a completion date of about five years.

Mr. Reitzel asked why Mr. Averette wants to rezone five or six years before there will be a road in place. Mr. Averette said that he needs the help of the Planning Board and DOT to get the proper roads in place to serve the properties in the area and relieve congestion for the subdivision. He said that DOT won't help him until he has a plan in place, and he can provide one after he gets the property rezoned.

Mr. Reitzel asked Mr. Averette if it was so important to get this rezoning that he was willing to pay taxes on commercial property that he can't develop for five or six years. Mr. Averette said that it was.

Mr. Olsen asked where PWC water and sewer are available. Mr. Lloyd pointed it out on the map.

Mr. Gillis asked about the existing commercial property in the area. Mr. Lloyd said that there is a restaurant and stores along Legion Road and a vacant Food Lion building. Mr. Gillis asked about the size of the tracts. Mr. Lloyd said that most of them are small, except for the vacant Food Lion parcel. Mr. Gillis noted that the area is already congested and will grow more when the bypass is complete. He said that more growth will call for more commercial use. He said that this tract affords the property owner an opportunity for a large, well-planned commercial development without adding to congestion because it will access off of the bypass. He said that it is good to plan with DOT's help. Mr. Gillis asked if the upcoming 2030 Plan would include increasing available commercial with population growth.

Mr. Olsen said that the bypass is being built to alleviate traffic, and then traffic lights will be needed to accommodate this type of development, which is again creating a slow down. He expressed concern about spot zoning.

Mr. Reitzel said that he appreciated Mr. Averette's plan as there are many land-locked tracts to the north and east. He said that a road system is needed in order for the land to be well used. He said that his concern was that there is no road, and no guarantee that there will be one within the next five years. He added that he has concerns about a large commercial tract sitting in the middle of residential.

To address Mr. Olsen's concern, Mr. Gillis asked if DOT is planning to signalize the area? Mr. Averette said that they were not, and what they have him were two 20-foot driveways. He said if the land is not zoned commercial, a street to connect the properties is still needed.

Mr. McNeill asked for clarification. He asked if Mr. Averette thought that DOT would give him more than two 20-foot driveways if he gets the rezoning. Mr. Averette said that they would with the Planning Board's help. He said that he was not opposed to two roads, and he can negotiate with DOT now.

There was a lengthy discussion regarding what DOT can do now and how much more costly the project would be if Mr. Averette has to wait for the bypass before he gets the rezoning. He said that he is in a position to negotiate with DOT now, and he won't be once the bypass is in. After questioning, Mr. Averette said that DOT has not purchased a right-of-way, nor have they approached him with an offer, but they have said they want to discuss it later.

Mr. Reitzel said that he would prefer that staff help Mr. Averette with a plan rather than approving a rezoning for commercial with no real access.

Mr. Gillis said that this is a classic case of disconnect between transportation planning and local road planning. He said that the property owner has to be given access according to statute, so Sycamore Drive would serve the southern portion, and a substantial number of homes could be located there, with a similar situation on the northern side. He said a public access road could be placed into the same

subdivision or brought in from Camden Road. He said there is a need to work with DOT, whether the rezoning is approved or not. He added if there is commercial zoning to the north, then DOT will listen to the plan, and if not, they may not.

Mr. Warren explained that the staff could probably work with the developer and DOT to assist with the right-of-way. Mr. McNeill asked Mr. Averette if that would help. Mr. Averette explained that there are 140 existing lots to the south and 100 to the north. He said that Pinewood has 89, 139 and 20 in another section, so there is a need for a collector street, and all DOT will approve is a 20-foot driveway. Mr. McNeill again asked if staff assistance would help. Mr. Averette said that he had already requested staff assistance in writing. Mr. McNeill said that working with staff and DOT might be more reasonable than rezoning the property because there is no guarantee that the road will be built. Mr. Averette said that he didn't understand why there was concern about the rezoning.

Mr. Gillis explained that it would make better planning sense to approve the rezoning after the bypass is more a sure thing, rather than approve it at the present time without good access. He said if the bypass doesn't go through, then commercial property could be developed requiring access through residential neighborhoods, and this would be poor planning.

Mr. Reitzel asked how much land Mr. Averette owns to the south of the subject property. Mr. Averette said that he owns over 51 acres. Mr. Reitzel said under R10 and R6A, about 260 lots could be developed to the south. He said if DOT is told that 260 lots will be developed on the property, they will figure 10 trips per day per unit and realize that a 20-foot driveway cannot serve the area. Mr. Averette said that DOT doesn't look at it that way, they just consider it undeveloped land. He said that he had shown them a plan.

Mr. Byrd asked about options if the rezoning is denied. Mr. Averette said that he hopes the County will still work with him to get good access to the north and south. He said that everything in the area is R6A. Mr. Byrd noted that the R6A would allow a mobile home park, so there are options for the property. He asked if Mr. Averette had considered what kind of traffic would be generated on his 30 acres. Mr. Averette acknowledged that he could have 120 mobile homes on the land, but he doesn't do that type development. He said that he would like to develop small cluster lots on the southern lot for about \$125,000 or less.

Mr. Gillis proposed deferring the case to allow staff and DOT to work Mr. Averette with the Planning Board supporting DOT's providing access under the current zoning. Mr. Reitzel added if staff is involved, an attempt should be made to alleviate the land-locked property. Mr. Gillis asked Mr. Averette if he would agree to the deferral. Mr. Averette said that he would have no problem except that DOT is moving now, and if staff takes three or four months, it would be too late.

Mr. Reitzel said that the process could be quicker if Mr. Averette is willing to draw up the plan, and then staff can work with DOT. He noted that Mr. Averette's property is the largest in the area.

Mr. Lloyd said that the staff's biggest problem is that the location is not appropriate for commercial development.

**A motion was made by Mr. Gillis and seconded by Mr. Byrd to defer action on Case No. P01-17 until May 21 to allow time for staff and Mr. Averette to negotiate with NCDOT.**

There was discussion regarding whether more time was needed. Mr. Barrett suggested that a tolerable compromise might be 60 days, at which time another deferral may be needed, or Mr. Averette can ask for a vote at that time.

**Upon a vote on the motion, it passed unanimously.**

7. P01-18. CONDITIONAL USE OVERLAY DISTRICT AND PERMIT TO ALLOW AN AUTOMOBILE REPAIR SHOP IN A C1 DISTRICT AT 4591 CAMERON ROAD, THE PROPERTY OF ROBERT LEE JOHNSON.

Mr. Lloyd requested that the packet materials be admitted into the record as evidence.

Maps were displayed outlining the zoning and land use in the area. A video of the site was shown. Mr. Lloyd said that the Planning staff recommended approval of the Conditional Use Overlay District based on the finding that the request is reasonable, neither arbitrary nor unduly discriminatory, and in the public interest.

The Planning staff recommends denial of the Conditional Use Overlay Permit after finding that the proposal does not meet the following conditions:

1. It will not materially endanger the public health and safety – The size of the lot, insufficient parking space availability, runoff, hazardous waste, and the use of wells and septic tanks in the neighborhood make this proposal an endangerment to the public health and safety of the surrounding residents.
2. It will not substantially injure the value of adjoining or abutting property – The staff believes that the nature of the proposed business will negatively and adversely impact the value of the adjoining properties.
3. It will be in harmony with the area in which it is to be located – There is no other commercial use in the immediate area, and other than a church, the only other commercially zoned property is vacant.
4. It will be in conformity with the 2010 Land Use, Thoroughfare and other plans officially adopted by the Board of Commissioners – The request does not follow

the recommendations of the 2010 Land Use Plan, and Cameron Road is not designated as a limited or primary business street, and it is designated as a major thoroughfare in the Thoroughfare Plan.

Mr. Ricky Lewis appeared before the Board and said that he would like to operate an automotive shop at this location. He said that there would be no body work, would operate from 8 a.m. until 6 p.m., and no junk cars would be on the site. He said that most of the work would be done by appointment. He said that he lives on one side of the structure and would like to work out of the other. He added that the C1 District allows comparable uses. He said that he has already made some improvements to the building.

Mr. Robert Johnson appeared before the Board and said that he has owned the property for five years and lives across the street. He said that he bought the property in order to keep it clean for the neighborhood. He said that previous uses have included a service station, recreational area with poolroom and woodworking shop. He said since 1995, he has tried to maintain it, and none of the adjoining neighbors oppose the proposed use. He said that servicing automobiles of the neighbors will be an asset to the community.

Mr. Byrd asked about well and septic tank. Mr. Lewis said that two septic tanks and one well have been in place for many years and are approved by the Health Department.

Mr. Thomas Palmisano appeared before the Board in opposition and said that he owns a few lots to the rear of the subject property. He said that his wife's family owned the subject property in the 1950s and operated a gas station on it. He said it has also been a limb tree service, cabinet shop, etc. He said that there are still underground fuel tanks in place on the property, and no one can tell him if they've been purged or filled. He said that he wanted assurance from an agency that the fuel tanks are no longer dangerous or could contaminate the well water. He said at one time the kerosene tank leaked and contaminated the area.

Mr. Palmisano asked if anyone had addressed the problem. Mr. Warren said that it is the responsibility of the property owner and State to make sure that the tanks are safe. Mr. McNeill suggested that Mr. Palmisano contact the Department of Environmental Health and Natural Resources office in Fayetteville and report the matter to them. He said if the tanks have been in the ground since the 50s or 60s, and they aren't empty, they could be leaking now or soon.

Mr. Byrd asked if the use was grandfathered. Mr. Lloyd said that even if the use is legally nonconforming, it has not been used for an auto repair for over a year, so it would not be legal any more. Mr. Warren said that DEHNR probably wouldn't approve a service station at this location.



Mr. Johnson appeared before the Board in rebuttal and said that the property housed a service station over 30 years ago, and he hasn't heard about any contamination problems in over 30 years.

Mr. Lewis said that he had no intention of selling gasoline and will recycle the oil.

The public hearing was closed.

Mr. Reitzel asked about the reason for the request when the area is presently zoned C1/CU. Mr. Barrett explained that any use can be considered as a conditional use in an underlying area, and sometimes they are in harmony with the area, and sometimes not. He said that the Board isn't obligated to approve the Conditional Use Overlay Permit even though it is currently zoned C1/CU. He said that he perceived that the staff said that the district may be appropriate for some uses, but may or may not be for the requested use.

**A motion was made by Mr. Reitzel and seconded by Mr. Olsen to follow the staff recommendations and approve the Conditional Use Overlay District based on the Board finding that the proposal will not materially endangering the public health and safety; will not substantially injuring the value of adjoining or abutting property; is in harmony with the area in which it is to be located; and is in conformity with the 2010 Land Use, Thoroughfare and other plans officially adopted by the Board of Commissioners. The motion passed unanimously.**

Mr. Reitzel asked if Mr. Lewis was currently operating the business. Mr. Lewis said that he was not, and the area was presently being used for storage.

Mr. Reitzel asked if the staff had prepared a list of conditions if the Board recommends approval of the Conditional Use Overlay Permit. Mr. Lloyd said that the staff's recommendation was to deny, and a list was not prepared. Mr. Warren said that the subject property is located on a major thoroughfare, and when right-of-way is considered, there is not much room left for parking. He added that if the operation included changing oil on a lot that size, the staff had more concern. Mr. Lloyd added that the staff was also concerned about junk cars, and unrepaired vehicles being parked and left on the site.

Mr. Olsen said that cars are a problem because customers don't always have money when the cars are repaired, and they are left for longer periods of time than would be desirable. He noted that the property only contains one-third acre.

Mr. Reitzel said that he would prefer not to defer the case, but he would have liked to have conditions from the staff if the Permit was approved. He added that the C1 District allows similar uses as that requested.

**A motion was made by Mr. Reitzel and seconded by Mr. Gillis to defer action on Case No. P01-18 until April 13, 2001 to allow staff to submit recommended conditions to place on the Permit if it is approved.**

Mr. Olsen said that he would prefer not to defer the case and would rather that the Board make the decision. He said that he would like to help the applicant, but the size, potential for contamination and other issues would not allow him to support the request.

Mr. Byrd said that there are some obvious problems, but there has been a business at this location for many years, and he questioned what value the property would be if the request were denied.

Mr. Reitzel pointed out that gas stations are allowed in the C1 District, and they usually allow minor auto repair. He said that the request is for similar functions as a gas station, and there is still a potential for leakage.

Mr. Barrett said that the Board should consider whether the use is in harmony with uses of right in the area. He said that from a legal standpoint, there is still work needed on the Conditional Use Overlay Permits because they are too unlimited. He added when operating a gas station, there are stringent requirements that the owners must meet. He said those type requirements should be considered before granting a Conditional Use Overlay Permit for a similar operation.

Mr. Olsen said that the cost to operate a gas station now is approximately a quarter of a million dollars, and that would not be feasible for this site.

Mr. Warren said that he couldn't fathom DENR not checking the subject property for tanks. He said that DENR and the Health Department will have to be involved because there are two septic tanks and someone presently living on the property. He added that traffic is also a danger.

**Upon a vote on the motion, it passed 4 to 1 with Mr. Olsen voting in opposition.**

**E. P01-20. CONDITIONAL USE OVERLAY DISTRICT AND PERMIT TO ALLOW OUTSIDE STORAGE IN A C(P) DISTRICT AT 2767 GRAHAM ROAD, THE PROPERTY OF GARY AND GABRIELE MCCARROLL.**

Mr. Lloyd requested that the packet materials be admitted into the record as evidence.

Maps were displayed outlining the zoning and land use in the area. A video of the site was shown. Mr. Lloyd said that the Planning staff recommended approval of the Conditional Use Overlay District for only the portion of the subject property that is located within the fenced area indicated on the site plan based on the finding

that the request is reasonable, neither arbitrary nor unduly discriminatory, and in the public interest.

The Planning staff recommended approval of the Conditional Use Overlay Permit after finding that the proposal meets the following conditions:

1. It will not materially endanger the public health and safety;
2. It will not substantially injure the value of adjoining or abutting property;
3. It will be in harmony with the area in which it is to be located; and
4. It will be in conformity with the 2010 Land Use, Thoroughfare and other plans officially adopted by the Board of Commissioners.

The Planning staff further recommended that the following conditions be added to the Conditional Use Overlay Permit:

1. A solid wood fence is to be constructed to buffer the entire approved outside storage area to begin at the side of the building, extending to the existing fence, 60 feet to the east of the structure and continuing completely around the western, northern and eastern sides of the subject property to obscure the area from view;
2. Outside storage is allowed only on the eastern portion of the subject property within the current fenced area; and
3. All lighting is to be directed inward so as not to shine on surrounding properties.

Mr. Stacy Weaver appeared before the Board representing the applicant. He said that the owners have operated a heating and air conditioning business on the site since June of 1992. The operation requires some assembly on site, and old units are stored on the property to dismantling and disposal. He said that the vehicles are parked inside in the evenings, and only the worthless parts of the units are left outside. He asked that the Board allow some leeway on the buffer recommended by staff. He described the current buffering—red tips and some wooden fences put up by neighborhood property owners. He said that the owners would prefer site obscuring plant materials instead of a wooden fence to assist one of the property owners who keeps an eye on the property to avoid vandalism and theft.

Ms. Patricia Cuza appeared before the Board and said that she watches the property, and the buffering is fine as it is. She said when the security alarm goes off, she can see the property, and she would prefer to be able to do that.

Mr. Reitzel noted that the area recommended by staff is only the fenced area. Mr. Lloyd pointed out the area that the staff recommended for buffering.

There was discussion regarding fencing and buffering of the open storage.

Mr. Gillis noted that storage is indicated in two different areas on the site plan. Mr. Lloyd explained that the staff recommended confining storage to one area.

**A motion was made by Mr. Gillis and seconded by Mr. Olsen to follow the staff recommendations and approve the Conditional Use Overlay District for the area from the southeast corner of the shop, easterly 60 feet to an existing fence and northerly with the existing fence to the rear property line and with the northern property line to a point that is the intersection of the projection of the existing western wall of the structure. Approval is based on the Board finding that the proposal will not materially endanger the public health and safety; will not substantially injure the value of adjoining or abutting property; is in harmony with the area in which it is to be located; and is in conformity with the 2010 Land Use, Thoroughfare and other plans officially adopted by the Board of Commissioners. The motion passed unanimously.**

Mr. Barrett pointed out that the Ordinance definition of buffer includes the words "site obscuring."

**A motion was made by Mr. Gillis and seconded by Mr. Olsen to recommend approval of the Conditional Use Overlay Permit application and site plan after finding that the proposal meets the following conditions:**

- 1. It will not materially endanger the public health and safety;**
- 2. It will not substantially injure the value of adjoining or abutting property;**
- 3. It will be in harmony with the area in which it is to be located; and**
- 4. It will be in conformity with the 2010 Land Use, Thoroughfare and other plans officially adopted by the Board of Commissioners.**

**The Planning Board further recommended that the following conditions be added to the Conditional Use Overlay Permit:**

- 1. Outside storage is allowed only on the eastern side of shop structure to the existing fence and behind the structure; and**
- 2. The outside storage area must be screened by a buffer from any adjacent property or public right-of-way with the planting to be outside of the chain-linked fence.**

**The motion passed unanimously.**

## VIII. DISCUSSION

**A motion was made by Mr. Olsen and seconded by Mr. Reitzel to defer the remainder of the items until the next meeting due to the lateness of the hour. The motion passed unanimously.**

- A. LAND USE CODES COMMITTEE REPORT – JOHN GILLIS**
- B. COUNTY COMMISSIONERS' MEETING REPORT – JOHN GILLIS**
- C. NATIONAL AMERICAN PLANNING ASSOCIATION CONFERENCE**

IX. FOR YOUR INFORMATION

A. DIRECTOR'S UPDATE

X. ADJOURNMENT

The meeting adjourned at 11:55 p.m.

