

**Minutes of the
New Bern Planning & Zoning Board
August 7, 2007**

The New Bern Planning & Zoning Board held a regular meeting in the 2nd floor Courtroom of City Hall, 300 Pollock Street, on Tuesday, August 7, 2007 at 6:30 p.m.

Members present: Mr. John McClellan, Vice Chairman
Mr. Harry Cotton
Mr. Mark Best
Mrs. Janet Lamb
Mrs. Claire P. Martin-Combs

Members excused: Mrs. Susan Moffat-Thomas
Mr. Tripp Eure
Mr. Peter Moffett

Members absent: none

Staff present: Mr. Bernard George, Land & CD Administrator
Mrs. Annette Stone, City Planner
Mrs. Lorraine DiBella, Administrative Assistant
Lt. Commander Ryland Matthews, Jr., NBPD

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

Minutes: Minutes of the June 5, 2007 meeting were approved with motion by Mr. Cotton, second by Mrs. Martin-Combs and unanimous vote by the Board.

Vice Chairman McClellan stated the night's agenda is lengthy. He requested that comments be limited to three minutes without expansive repetition of comments previously made.

Old Business:

- A. Continuation of consideration of general plan approval for Pinecrest Estates, Sections I & II, a proposed 61-lot residential planned unit development (PUD) located on a 28.19 acre tract between Midyette and Pinecrest Avenues.**

Staff Mr. George stated the request for general plan approval was tabled at the last (July) meeting to give time for a neighborhood meeting with developers. This meeting, held July 23 at City Hall, was attended by approximately 35 concerned citizens along with Alderman Jay Mattingly, 4th Ward, Danny Meadows, Public Works Director and Mike Avery, Planning and Inspections Director. Mr. George re-capped the meeting:

Traffic on Neuse Boulevard was a major concern and was described as too fast and hazardous at the intersection of both Neuse Boulevard and Pinecrest and Midyette Avenues. Residents asked for a traffic signal at that site and it was explained that the City

had requested a traffic signal at Neuse and Racetrack Road but the cost of removing utilities on that site, approximately \$90,000, was considered too expensive.

Future traffic generated by the proposed development was also considered a negative impact by many residents. However, city officials assured the public that the street system (Midyette, Karen and Pinecrest Avenues) were adequate to accommodate the projected traffic from the proposed subdivision. Many residents were concerned that the smaller lot sizes in the planned unit development and subsequently smaller home sizes would affect their property values. Mr. Scherper, the developer stated that the new homes would sell for between \$150,000 to \$190,000. He said according to the most recent Multiple Listing Service, the most expensive home sale in the surrounding neighborhood was \$161,000. Consequently he felt that the subdivision that he had proposed would increase property values substantially in the surrounding neighborhoods. City staff assured the residents that the overall density of the proposed PUD subdivision was comparable to the overall density of the surrounding neighborhood which requires 15,000 square feet per residential lot.

The final major area of discussion was drainage which affected many of the neighborhood residents, especially along Powell Branch and adjacent to Pinecrest Avenue and the new Builders Discount development. Residents complained that their homes and yards were getting more and more standing water in recent years. John Thomas, engineer for the project, stated that the storm water retention system was designed to capture the first inch of rain and he would design the system to capture at least twice the quantity of rain required by the State. Danny Meadows, Public Works Director, assured residents that the city's Nitrogen Rule and State Storm Water regulations address drainage on the site and he further stated the site will comply with those requirements prior to any approvals by his Department. Mr Meadows also pointed out that Powell Branch behind Midyette Avenue was a major drainage way and recent Federal Regulations do not allow the cleaning of the drainage way. However, Mr. Meadows and the engineer for the site will be discussing ways in which to address the overall neighborhood drainage problem while the subdivision site is developed. Mike Avery, Planning Director, stated that citizens might need to ask the Board of Alderman to determine that the minimum storm water retention requirement of one inch is insufficient to address the needs of new developments. Alderman Jay Mattingly addressed the group and stated his willingness to work with residents to address their problems. He described the city's subdivision regulatory process and efforts to address traffic and drainage in the general area. Following approximately 2 1/2 hours of discussion, residents were invited to attend the next Planning Board meeting and the meeting was adjourned.

Mr. George stated that in response to concerns, the site plans have been revised to over-design the drainage systems. He opened to floor to the project engineer John Thomas.

Applicant Comments: John Thomas, Thomas Engineering, described the changes his firm has made at the request of the owner and in response to the community's concerns. Using the overhead projector, he showed the plat and said "just as a matter of information," because this is a low density project with

less than 30% impervious surface, the state does not require any stormwater treatment. It is a curb and gutter project and tests have shown nitrogen reduction levels at 25-30%. Even without retention ponds, stormwater mitigation is under the allowable limits. The developer does not want to create any additional problems and has opted to install a retention pond to control quality and quantity. Had it been a high density project, Mr. Thomas said, they would have had to retain the first 2" of rainfall. He discussed the logistics of stormwater treatment. He showed how the layout of the project had changed to accommodate the pond.

Mr. George asked how the stormwater will affect Pinecrest Avenue and the neighborhood. Mr. Thomas said the pond will retain a normal rainfall. They have no control over a heavy 2-3 day saturation of rain. "Everyone is wet then," he said.

Public Comments: Ralph Howell, 202 Pinecrest Avenue, thanked several Board members for their comments made in the previous meeting disparaging the minimum requirement standards for subdivisions. He questioned how adding 100 cars/day can (possibly) not affect a 3 block area. He asked how many of the proposed homes will have two car garages and said they will have no side yards. He said with all the rules and regulations that builders and developers have to follow, the PUD (planned unit development) looks like a blank check to allow some to do as they please. Approval of this plan jeopardizes the peace and quiet and standard of living in their nice neighborhood.

Linda Simons, 305 Midyette Avenue, said when they first moved to their property in 1978, there was little flooding. She circulated photos taken of her yard after a heavy rain. She stated the developments in Derby Park have retention ponds also. The ponds hold the water for a few days and then release it. She asked, how, if Powell Branch is protected, can it be used for the release of stormwater.

Riley Hughes, 3510 Karen Drive, said it is nearly impossible to make a left onto Hwy 43 leaving Midyette or Pinecrest Avenues. These homes have no yards. Where will the children play, he asked.

Board Discussion: Mr. Cotton said it is unfortunate, but the proposed subdivision plan meets the minimum standards. The Aldermen need to be petitioned to change the standards, he said. Mr. Best urged the community members to contact their Aldermen. He said concessions need to be made in the subdivision policies for impacts on adjoining neighborhoods. He said he shares their pain as "100 duplexes (which will likely accommodate renters) are going in behind me."

Asked for staff recommendations, Mr. George replied that following technical review, the plans were revised. They have been further revised to address drainage concerns and improvements made which have been approved by the City's Public Works Director (Danny Meadows). It has been determined that the street system is under-utilized and will easily accommodate additional traffic.

Motion was made by Mrs. Martin-Combs, with second by Mr. Cotton, to recommend general plan approval for Pinecrest Estates, Sections I & II. The motion carried unanimously.

New Business

A. **Consideration of a proposed amendment to Section 15-432 of Article XXI “Delay in demolition of landmarks and buildings within historic district” of the City’s Land Use Ordinance in order to require an approved permit for demolition of a contributing structure within a locally designated historic district.**

Staff Mrs. Stone detailed the process by which this proposed amendment to the Land Use Ordinance came about. It was developed in partnership with an organization known as Preservation Legal Action Team, a volunteer citizens group. The City was granted the authority to amend the ordinance under a newly adopted local act which allows the City to require a permit for demolitions. The application process would be require a two step review. Firstly, the historic resource would be evaluated to determine the historic significance and whether to deny the demolition or allow the applicant to move forward with a reconstruction plan. In the second step, the reconstruction plan is evaluated using existing historic district guidelines, and some newly developed guidelines scored on a scale from 0 to 2. The applicant must "score" at least 2/3 of the available points in order to move forward with the project including the demolition. The HPC has reviewed the proposed ordinance and is recommending adoption by the Board of Aldermen.

Mrs. Stone described how the crafters of the amendment ran hypothetical tests on real and imagined properties to evaluate the process. She walked the Board through the finer points of the proposed amendment.

SECTION 1. That Section 15-429. "Review criteria." of Article XXI "New Bern Historic District" of Appendix A "Land Use" of the Code of Ordinance of the City of New Bern be and the same is hereby amended by deleting Section 15-429(a) in its entirety and inserting in its stead the following:

"Section 15-429. Review criteria.

(a) *Intent.* It is the intention of these regulations to insure, insofar as possible, that buildings or structures in the historic district shall be in harmony with other buildings or structures located therein. However, it is not the intention of these regulations to require the reconstruction or restoration of individual or original buildings, or prohibit the demolition of the same other than as provided in Section 15-432, or to impose architectural styles from particular historic periods. In considering new construction, the commission shall encourage architectural design that is harmonious with the character of the district or individually designated landmark.

In considering whether to grant a certificate of appropriateness, the commission shall take into account the historic and architectural significance of the structure under consideration and the exterior form and appearance of any proposed additions or modifications to that structure, as well as the effect of such change or additions upon other structures in the vicinity."

SECTION 2. That Section 15-432. "Delay in demolition of landmarks and buildings within historic district." of Article XXI "New Bern Historic District" of Appendix A "Land Use" of the Code of Ordinance of the City of New Bern be and the same is hereby amended by deleting Section 15-432 in its entirety and inserting in its stead the following:

"Section 15-432. Demolition of landmarks and buildings within historic district.

(a) An application for a certificate of appropriateness authorizing the demolition or destruction of a non-contributing structure may not be denied.

(b) An application for a certificate of appropriateness authorizing the demolition or destruction of a contributing structure may be denied provided that the application satisfies the "Preservation Standards for Evaluating the Demolition of Contributing Structures," contained in the historic district design guidelines manual, as recommended by the commission and adopted by the board of aldermen pursuant to section 15-429(c).

(c) A certificate of appropriateness issued pursuant to this Section 15-432 may contain reasonable conditions related to the demolition or destruction of the building or structure.

(d) If the commission has voted to recommend designation of a property as a landmark or designation of an area as an historic district, and final designation has not been made by the board of aldermen, the demolition or destruction of any building, site, or structure located on the property of the proposed landmark or in the proposed district may be delayed by the commission for a period of up to 365 days, or until the board of aldermen takes final action on the designation, whichever occurs first."

SECTION 3. This ordinance shall be effective from and after the date of its adoption.

Public Comments: None

Board Discussion: In response to question by Mr. McClellan, Mr. Stone said 50 years (age) is a basic standard as set forth by the National Park Service for the evaluation of historic structures. Architectural integrity and style are also key factors. He commended Mrs. Stone, staff and all others involved.

Motion was made by Mr. Best, with second by Mrs. Lamb, to recommend approval of the proposed amendment to Section 15-432 of Article XXI "Delay in demolition of landmarks and buildings within historic district" of the City's Land Use Ordinance. The motion carried unanimously.

B. Consideration of a request to initially zone to R - 10A Residential District, a 4.2 & a 9.42 acre tract located near the intersection of Gracie Farm and Washington Post Roads.

Staff Mr. George stated this is a request by Mr. Gene Dunn to initially zone two tracts on Washington Post Road between Gracie Farm Road and Briarwood Lane to R-10A Residential District. The subject tracts were recently annexed and are located behind the Lake Tyler Subdivision which is in the R - 10A Residential District.

The proposed R - 10A Residential District classification is consistent with the adjacent Lake Tyler Subdivision's classification. In addition, the proposed initial zoning classification is consistent with the City of New Bern Land Use and Thoroughfare Plan. The property is currently undeveloped forest and farmland. Staff recommends approval of the request.

Applicant Comments: John Thomas, Thomas Engineering, stated they have made the application in order to bring the zoning classification into consistency with Lake Tyler. The property will serve as an expansion of the Lake Tyler project. Subject property was purchased after Lake Tyler was approved.

Public Comments: None

Board Discussion: In response to question by Mr. McClellan, Mr. Thomas stated the general plan for Lake Tyler will have to be amended.

Motion by Mrs. Lamb with second by Mrs. Martin-Combs to recommend approval of the requested initial zoning. The motion carried unanimously.

C. Consideration of a request to rezone, from A5 Agricultural District to C - 3 Commercial District, a 1.28 acre tract located at 4629 US Hwy 17S.

Staff Mr. George stated this is request for rezoning of an undeveloped piece of property in the city's ETJ. Petitioners John Gilbert and Paul Williams desire to develop it commercially. The requested C - 3 Commercial District classification is compatible with the commercial zoning classifications of the adjacent properties. In addition, the proposed rezoning classification is consistent with the City of New Bern Thoroughfare Plan and plan of development. Therefore, staff recommends the requested rezoning.

Referring to the area map, Mr. Cotton asked if lots 1, 2 and 5 are residences. Mr. George replied yes and the lots are zoned residential. He added development of the subject property will require site plan review by the city's technical review committee and will require extensive buffering along the property lines which separate it from the residences.

Applicant Comments: John Gilbert, co-owner and applicant, stated he wishes to expand his Royal Coat business in Morehead City to have a "sister showroom" at this site. (The business is a decorative concrete finish that is added to existing concrete, driveways, etc). He said they are attempting to set a franchise standard with his particular site.

Mr. Cotton asked the width of the site frontage and was told 120 feet.

Public Comments: John Hayes O'Neill, 4627 Highway 17S, asked how the rezoning will affect their property, the woods that sit between his property and the subject property, and drainage. The property borders a swamp, he said. He has tried to borrow the wooded tract.

Mr. Gilbert answered that he too had tried to buy the wooded area, that it is narrow and thus mostly useless except for either adjoining property owner. He said the grade is sufficient that water will not drain onto adjoining properties but to the back of the lot (swamp). He said Mr. O'Neill would probably not be able to see the business through the trees.

Board Discussion: Above

Mr. George said a landscape buffer is required in case the wood lot ever sells and is developed. He said staff recommends approval of the rezoning request.

Motion by Mr. Best with second by Mrs. Martin-Combs to recommend approval of the requested rezoning. The motion carried unanimously.

D. Consideration of a request to rezone, from R - 20 Residential District to R - 10 Residential District, a 3.3 acre & a 18.6 tract located near the intersection of Rocky Run Road & US Hwy 17S.

Staff Mr. George stated the applicant Gene Dunn is requesting to rezone, from R - 20 Residential District to R - 10 Residential District, a 22.09 +/-acre tract on Rocky Run Road near the intersection of Highway 17 South. The property is located in the City's extraterritorial planning jurisdiction (ETJ).

In 1995 when the Rocky Run community was taken into the ETJ, residents were told that land use regulations will protect the character of the community and help retain its rural residential lifestyle. An earlier rezoning request to allow commercial development of the subject tract was denied by the Board of Aldermen. The requested R - 10 Residential District's maximum allowed density is approximately twice the maximum allowed density of the R - 20 Residential District (34 versus 73 lots). However several nearby newly annexed properties are zoned R-10 Residential.

Mr. George stated the developer met recently with approximately 35 members of the community. The result of the meeting was the community's continued opposition to the rezoning based on concerns with negative impacts such development would have on the neighborhood. General concerns focuses on traffic, crime, congestion, character alteration,

Construction of the proposed Highway 43 Bypass will undoubtedly contribute to additional development pressure in the immediate area. The proposed rezoning classification is generally consistent with the City of New Bern Land Use Plan and Thoroughfare Plan. Staff recommends approval of the request to rezone this property.

The current plan for the property, Mr. George said, is affordable housing for persons earning less than \$35,000 per year.

Mrs. Lamb asked for clarification on density bonuses. Mr. George replied that the City land use ordinance awards developers with density bonuses when they build "affordable housing" for people who make only 80% of the minimum average income of the area. With an allowable 30% density bonus, 96 units would be allowed on this property. In response to question, Mr. George explained very generally what is considered "affordable housing". Mr. Cotton asked about the price range for the homes and was told \$125-150K.

Applicant Comments: John Thomas, Thomas Engineering, used the overhead projector and described the adjacent properties (A-5 and R-10A), the vicinity of the subject property to the Highway 43 corridor, density bonus, conservation easements and PUD buffers. Current R-20 zoning would give them 36 lots without the density bonus. Applying the density bonus would add about 10 units. The requested R-10 zoning would result in 73 lots; with density bonus, upwards of 90 lots.

Mrs. Lamb asked about the size of the buffers and was told the sides will be 10' and the front no less than 20'.

Mr. Thomas stated this will be a community to compare with Ghent with great variety in design and placement of garages, front porches. If approved, the owner will ask that the property be annexed into

the city limits. Traffic patterns and flow were discussed with Mr. Thomas saying little increase in traffic should occur.

Mr. Gene Dunn, property owner, offered assurances, saying New Bern has a deficiency of affordable housing and this project is needed. It will be a nice neighborhood with a homeowners association to pre-approve the house plans. Once the rezoning is approved and annexation achieved, the community will be serviced by City PD and thus crime will be abated.

Public Comments: Mary Fatherly, 140 Rocky Run Road, said 94 additional residences in that small space is too many, too congested. It is presently a family-owned community where many people are relatives. These homes will blight the neighborhood. Traffic will increase. The developer should build fewer and better homes, Mrs. Fatherly said.

Lois Morris 247 Rocky Run Road, added her similar concerns, saying the low price will induce renters who do not take good care of their properties. People coming in from “wherever” will negatively impact the schools.

Mattie Foy, 154 Rocky Run Road, agreed with the others, adding everyone knows each other and it’s the kind of neighborhood where folks don’t have to lock their doors. She asked if the land will perk. “Our’s won’t,” she said.

Mr. George responded that the city will supply water and sewer so it’s not necessary that the land perk.

Sybil Moore, 570 Rocky Run Road, asked how Mr. Dunn can say what happens in their neighborhood. We have to live there, he doesn’t, she said.

Chairman McClellan closed the public hearing.

Board Discussion: Mrs. Martin-Combs asked about the lots size if 73 total or 94 total lots. Mr. Thomas answered approximately 60' wide and 50' wide. He stated this project layout is similar to Sellhorn Heights and Creekside but probably has slightly larger lots. He discussed the option for a stub out for future development.

Chairman McClellan asked Mr. George to recap the city’s position. Mr. George restated the history of rezoning requests in the neighborhood. Still, he said, there is development in the area. The Highway 43 Connector will soon be installed and will contribute to additional development. The city is expanding and the dynamics of the communities will have to change. Staff recommends approval of the rezoning request.

Mr. Best said when the city brought this community into its ETJ, someone gave their word about the zoning and maintaining the rural character of the community. He said the Planning Board is bound to honor that commitment.

Mrs. Lamb said it’s easy to see both sides of the argument (owner rights versus community rights) but if the area is annexed into the city and more people join the neighborhood, it will become a safer place to live.

Motion by Mr. Cotton with second by Mrs. Martin-Combs to deny a recommendation of the requested rezoning. The motion carried unanimously.

E. Consideration of general plan approval for Craeberne Forest, a proposed 274 - lot residential planned unit development (PUD) subdivision on a 130.13 acre tract, located adjacent to Trent Creek Road.

Staff Mr. George introduced the application, stating Avolis Engineering is seeking general plan approval for the subdivision. He explained generally the concept of planned unit developments with its open space element. He said the plan has gone through revisions based on comments of the city's technical review group.

The average lot size is 6,030 square feet with 65.85 acres dedicated towards open area. Approximately 11,641 linear feet of new streets with sidewalks are planned. Utilities and services will be provided by the City of New Bern.

The Departmental Subdivision Plan Review Committee reviewed plans for the proposed development and has determined that the subdivision plans substantially meet the city's requirements for development. Staff recommends approval of the general plan.

Applicant Comments: Owner Patrick McCullough, vice president of Neuse Builders, 4315 Country Club Road, circulated and reviewed the most current drawings of the proposed subdivision. He said this is the fourth public hearings that city has held on the project (2 for rezoning and one annexation). He briefly discussed the permitting phase of the process. He said the average price will be \$130-180. Homes will be average 1500 square feet. His company has been 23 years in the business and conduct all facets of the product including design, building and sales.

Public Comments: none

Board Discussion: Brief discussion on density, traffic and lot size.

Motion by Mr. Cotton with second by Mr. Best to give recommendation for approval of the general plan for Craeberne Forest. The motion carried unanimously.

F. Consideration of general plan approval for Stillwater Harbour, a proposed 64 - lot residential planned unit development (PUD) subdivision on a 65.11 acre tract, located at the intersection of Marion and Yucca Drives.

Staff Mr. George reviewed the application, stating the proposed planned unit development subdivision is located in the R-10A Residential District at the intersection of Yucca Lane and Marion Drive. It is designed around a series of cul-de-sacs that meander along the eastern banks of a large manmade lake with access to Brices Creek. The average lot size is 10,867 square feet with 5.04 acres (excluding the harbour) dedicated to recreational open area. Approximately 3,656 linear feet of new streets and sidewalks are planned with sidewalks. Utilities and services will be provided by the City of New Bern.

The Departmental Subdivision Plan Review Committee reviewed plans for the proposed development and determined that the subdivision plans substantially meet the city's requirements for development. In

discussions with the developer, staff has requested that there be a dedicated easement for emergency exit (upper right side of the cul de sac at Yucca Drive) in the event that some catastrophe prevented residents from egress through the one throughway. Developers have agreed. Staff recommends approval of the general plan for this subdivision.

Applicant Comments: Kevin Avolis, Avolis Engineering, engineer for the project, added that the 64-lot subdivision will feature a 100 slip marina. The lots will cost in range from \$150 to \$250K. He briefly discussed the emergency easement. On question from Mr. McClellan, he said the subject property is adjacent to the airport landing field. Before the property was even purchased and annexed, the buyers met with county and airport officials to in effect get their blessing on the project. This groundwork will assure a quality project. Plans have been revised several times in response to city, state and county directives, Mr. Avolis said. Andy Bayliss is the owner of the property and Avolis expects that Bayliss will be actively involved in the building of the homes as well.

Public Comments: Mr. W. C. Rouse, 409 Lilliput Drive, said he has already seen a 3-page advertisement in *Coastal Magazine* for this development and questioned why this is possible prior to the issuance of all permits. He is not a resident within 100' of the project but received a riparian rights notice. He stated his concerns with the safety and congestion in the harbor. At this price, he said, every homeowner will want their own dock. There is one narrow cut (access) in and out with limited visibility which makes traffic by boaters and jet skiers hazardous. Mr. Rouse has environmental concerns as well and said wake will be damaging to the shoreline; yard chemicals, boat soap, chemicals and fuel will pollute the harbor and poison it for human and wildlife use.

Mrs. Lamb stated that Mr. Rouse's concerns are really outside the purview of the Planning Board and are best addressed by the engineer. In response, Mr. Avolis discussed in detail the processes developers will be taking to minimize the impact on the land and harbor. He discussed the elaborate application process for CAMA permits which requires a formal presentation to several NCDENR entities, a flushing model for the basin and an expansive bulkhead. No other docks will be allowed by CAMA.

Board Discussion: Brief discussion on density, lot size and home types. Mrs. Lamb asked if the emergency easement will be a permanent or just available. It will be simply available.

Motion by Mrs. Lamb with second by Mr. Best to give recommendation for approval of the general plan for Stillwater Harbour with condition that an emergency exit be established onto Yucca Drive. The motion carried unanimously.

G. Consideration of general plan approval for Whitfield Landing, a proposed 39 - lot residential planned unit development (PUD) subdivision on a 4.96 acre tract, located on Neuse Boulevard between Stoney Hill Trail and Carraway Lane.

Staff Mr. George introduced the subdivision plan stating it is planned on a 4.96 acre tract between Stoney Hill Trail & Carraway Lane on Neuse Boulevard. It is in a C-4 Neighborhood Business District with a total lot area of 66,873 square feet. Approximately 540 linear feet of new public streets with sidewalks will be developed and 2.24 acres of open space will be created for the recreation and enjoyment of residents. Utilities and services will be provided by the City of New Bern.

Staff has reviewed the proposed general plan and finds that all technical and legal requirements for

general plan approval generally have been satisfied. Staff recommends a tree buffer at the rear of the site, a tree planting area in the cul-de-sac round about, and a sidewalk extension to the recreational open space. Developers has agreed to these conditions.

Applicant Comments: Kevin Avolis, Avolis Engineering, engineer for the project, stated the developers agree to the landscaping and sidewalk conditions.

Public Comments: None

Board Discussion:

Motion was made by Mr. Cotton, with second by Mrs. Lamb to recommend approval of the plan for Whitfield Landing. The motion carried unanimously.

The meeting adjourned.

John McClellan, Vice Chairman

Bernard George, Secretary