

Walter Clark,
Chair
Cumberland County

Patricia Hall,
Vice-Chair
Town of Hope Mills

Garland C. Hostetter,
Town of Spring Lake
Harvey Cain, Jr.,
Town of Stedman
Charles C. Morris,
Town of Linden



COUNTY of CUMBERLAND

Planning and Inspections Department

Thomas J. Lloyd,
Director

Cecil P. Combs,
Deputy Director

Lori Epler,
Sara E. Piland,
Vikki Andrews,
Cumberland County

Benny Pearce,
Town of Eastover

Donovan McLaurin,
Wade, Falcon, & Godwin

MINUTES September 18, 2012

Members Present

Mr. Walter Clark, Chair
Mr. Patricia Hall, Vice-Chair
Mr. Harvey Cain, Jr.
Ms. Vikki Andrews
Mrs. Sara Piland
Mrs. Lori Epler

Members Absent

Mr. Benny Pearce
Mr. Donovan McLaurin
Mr. Charles Morris
Mr. Garland Hostetter

Others Present

Mr. Thomas Lloyd
Ms. Patricia Speicher
Ms. Donna McFayden
Mrs. Laverne Howard
Mr. Rick Moorefield,
County Attorney

I. INVOCATION AND PLEDGE OF ALLEGIANCE

Ms. Hall delivered the invocation and led those present in the Pledge of Allegiance.

II. APPROVAL OF / ADJUSTMENTS TO AGENDA

There were none.

Mrs. Piland made a motion, seconded by Mr. Morris to approve the agenda as submitted. Unanimous approval.

III. PUBLIC HEARING DEFERRAL / WITHDRAWAL

There were none.

IV. ABSTENTIONS BY BOARD MEMBERS

There were none.

V. APPROVAL OF THE MINUTES OF AUGUST 21, 2012

Mrs. Epler made a motion to accept the minutes as submitted, seconded by Mrs. Piland. Unanimous approval.

VI. PUBLIC HEARING CONSENT ITEMS

TEXT AMENDMENTS

- A. **P12-33:** REVISION AND AMENDMENT TO THE CUMBERLAND COUNTY ZONING ORDINANCE AMENDING ARTICLE II, INTERPRETATIONS, CALCULATIONS, AND DEFINITIONS, SECTION 203 DEFINITIONS OF SPECIFIC TERMS AND WORDS; AMENDING ARTICLE IV, PERMITTED, CONDITIONAL AND SPECIAL USES, SECTION 403, USE MATRIX BY INSERTING *INTERNET CAFÉ/VIDEO GAMING* AS A PERMITTED USE IN THE C(P) PLANNED COMMERCIAL DISTRICT COLUMN; AMENDING ARTICLE

IX, INDIVIDUAL USES, BY CREATING SECTION 911.1, ENTITLED: INTERNET CAFÉ/VIDEO GAMING AND LISTING SPECIFIC DEVELOPMENT STANDARDS; AND UPDATING THE TABLE OF CONTENTS AS APPROPRIATE.

On August 20, 2012 the County Board of Commissioners sent the above referenced Zoning Ordinance text amendment back to the Joint Planning Board, requesting the board propose hours of operation for internet café/video gaming facilities. The Land Use Codes Committee has re-considered the proposed amendment and inserted a provision addressing operating hours to be prohibited between 2:00 am and 7:00 am. The committee also proposed a change to the off-street parking provisions recommending that one space for each machine be required. The committee recommends approval of the proposed amendment as attached with the changes noted.

In addition to the re-consideration of the amendment, the commissioners also requested information concerning police involved activity related to internet café/video gaming. Attached is a compilation of documented incidents in the unincorporated area of the county.

Mrs. Piland made a motion to recommend the adoption and approval of the Text Amendment as submitted and recommended by the Land Use Codes Committee, seconded by Ms. Hall. The motion passed with a unanimous vote.

- B. **P12-60:** REVISION AND AMENDMENT TO THE CUMBERLAND COUNTY SUBDIVISION ORDINANCE AMENDING ARTICLE XXIII, IMPROVEMENT AND DESIGN STANDARDS; SECTION 2304, STREETS; SUB-SECTION C, PRIVATE STREETS; ALLOWING FOR THE LAND AREA WITHIN A CLASS "C" PRIVATE STREET TO BE COUNTED FOR DENSITY PURPOSES; AND UPDATING THE TABLE OF CONTENTS IF APPROPRIATE.

The Land Use Codes Committee has considered the above referenced text amendment to the County Subdivision Ordinance and recommends approval of the proposed amendment as attached.

The proposed amendment will allow property owners the benefit of using land area within the right-of-way of a Class "C" private street for density calculations. The committee members agreed with the staff recommended amendment based on the following:

1. The NC Department of Transportation will not consider acceptance of a Class "C" private street, approved after September 30, 1975, for addition to the State system for maintenance purposes;
2. The land area within other easements, such as utility, drainage, buffers, and access, can be used for density calculations; and
3. Individual lot owners pay property taxes on the land area within a Class "C" private street right-of-way, unlike other private streets and public streets.

Mrs. Piland made a motion to recommend the adoption and approval of the Text Amendment as submitted and recommended by the Land Use Codes Committee, seconded by Ms. Hall. The motion passed with a unanimous vote.

- C. **P12-61:** REVISION AND AMENDMENT TO THE CUMBERLAND COUNTY ZONING ORDINANCE AMENDING ARTICLE II, INTERPRETATIONS, CALCULATIONS AND DEFINITIONS; SECTION 203, DEFINITION OF SPECIFIC TERMS AND WORDS, SPECIFICALLY: KENNEL; ARTICLE IV, PERMITTED, CONDITIONAL, AND SPECIAL

USES, SECTION 403, KENNEL OPERATIONS; AND ARTICLE IX, INDIVIDUAL USES; SECTION 912, KENNEL OPERATIONS; REPEALING PROVISIONS AUTHORIZING APPROVAL OF THE TEMPORARY HOUSING/BOARDING OF DOGS IN RESIDENTIAL DISTRICTS AND UPDATING THE TABLE OF CONTENTS AS APPROPRIATE.

The Land Use Codes Committee has considered the above referenced text amendment to the County Zoning Ordinance and recommends approval of the proposed amendment as attached. If approved, the amendment will ensure consistency between the County's Zoning Ordinance and the Animal Control Ordinance (Chapter 3, Animals, of the Cumberland County Code).

On May 21, 2012 the County Board of Commissioners adopted a comprehensive revision of the County's Animal Control Ordinance. Included in the revision are provisions prohibiting more than three dogs, five months of age or older to be kept, harbored or maintained at any premises located in any area with a zoning classification for single-family residential lots of 20,000 square feet or less. The attached amendment proposes to repeal conflicting provisions currently included in the County Zoning Ordinance.

Mrs. Piland made a motion to recommend the adoption and approval of the Text Amendment as submitted and recommended by the Land Use Codes Committee, seconded by Ms. Hall. The motion passed with a unanimous vote.

- D. **P12-63:** REVISION AND AMENDMENT TO THE TOWN OF STEDMAN ZONING ORDINANCE AMENDING ARTICLE III, PERMITTED PRINCIPAL USES AND STRUCTURES, SECTION 3.1. TABULATION OF PERMITTED USES, TABLES 1-A, 1-C AND 1-D; ARTICLE IV. CONDITIONAL USES, SECTION 4.3. CHILDREN'S DAY CARE FACILITIES; AND ARTICLE X. DEFINITION OF TERMS, SECTION 10.2. DEFINITIONS OF SPECIFIC TERMS AND WORDS, SPECIFICALLY: *DAY CARE FACILITY*; AND UPDATING THE TABLE OF CONTENTS IF APPROPRIATE. (STEDMAN)

The Planning and Inspections Staff recommends approval of the proposed day care facility text amendment to the Stedman Zoning Ordinance based on the following:

1. If approved, the amendment will allow for religious worship facilities to more easily offer day care services to the citizens of the town;
2. In removing the word "children," day care facility standards can also apply to adult day care services which would have similar land use impacts as a children's day care, such as traffic, outside use/recreation areas, and caregivers onsite; and
3. The provisions as proposed are relatively consistent with the county's provisions which will prevent nonconformities when properties are annexed.

The Town Administrator has reviewed and is in agreement with the proposed text amendment.

Mrs. Piland made a motion to recommend the adoption and approval of the Text Amendment as submitted and recommended by the Planning & Inspections staff, seconded by Ms. Hall. The motion passed with a unanimous vote.

MAP & TEXT AMENDMENT

- E. **P12-62:** ADOPTION AND ESTABLISHMENT OF THE EASTOVER COMMERCIAL CORE OVERLAY DISTRICT (CCO) CONSISTING OF 382.68+/- ACRES WITHIN THE CORPORATE LIMITS OF THE TOWN OF EASTOVER BY AMENDING THE EASTOVER ZONING MAP CREATING THE ZONING OVERLAY LAYER; AND CREATING ZONING ORDINANCE STANDARDS TO BE IMPLEMENTED WITHIN THE EASTOVER COMMERCIAL CORE OVERLAY DISTRICT AREA AS A SUPPLEMENT TO THE COUNTY ZONING ORDINANCE PROVISIONS UNTIL SUCH TIME THAT THE TOWN ADOPTS A COMPLETE EASTOVER ZONING ORDINANCE. (EASTOVER)

A committee, composed of three Eastover Town Council Members and the Town Manager, has worked for several months with the Cumberland County Planning Staff to develop the Commercial Core Overlay area and the proposed zoning amendment. This proposed amendment has been reviewed by the entire Eastover Town Council, and we feel this amendment will help us manage growth and protect the interest of the Town.

A favorable recommendation from the Joint Planning Board would be greatly appreciated.

Mrs. Piland made a motion to recommend the adoption and approval of the Text Amendment as submitted and recommended by the Town Committee, seconded by Ms. Hall. The motion passed with a unanimous vote.

REZONING CASE

- F. **P12-51:** REZONING OF 20.38+/- ACRES FROM CD CONSERVANCY AND A1 AGRICULTURAL TO A1 AGRICULTURAL OR TO A MORE RESTRICTIVE ZONING DISTRICT; LOCATED AT 1554 AND 1622 YARBOROUGH ROAD; SUBMITTED BY JAMES S. STEWART SR., LENISE E. STEWART, JAMES S. STEWART JR. AND WILLIAM T. STEWART (OWNERS).

The Planning & Inspections Staff recommends approval of the A1 Agricultural district for that portion of the subject property located outside the *Special Flood Hazard Area* (SFHA) & CD Conservancy for all area within the SFHA, based on the following:

1. The district requested is consistent with the 2030 Growth Vision Plan, which calls for "rural and conservation area" at this location, as well as meeting the location criteria for "rural density development," with the exception of the land area within the SFHA;
2. The recommendation for the CD Conservancy for the portion of the subject property within the SFHA ensures that this environmentally sensitive area will be protected and preserved; and
3. The request is reasonable as the location and character of use will be in harmony with the surrounding area.

There are no other districts suitable regarding this request.

The property owner/applicant has verbally agreed with this staff recommendation.

Mrs. Piland made a motion, to recommend the adoption and approval of the consistency and reasonableness statements and to approve A1 Agricultural district for that portion of the subject property located outside the *Special Flood Hazard Area* (SFHA) & CD Conservancy for all area within the SFHA, seconded by Mr. Hall. The motion passed with a unanimous vote.

VII. PUBLIC HEARING WAIVER REQUEST

- G. **CASE NO. 12-071.** CONSIDERATION OF THE ANDREWS SEALS PROPERTY; SUBDIVISION AND GROUP DEVELOPMENT REVIEW; REQUEST FOR A WAIVER FROM THE REQUIREMENT TO HAVE A MINIMUM OF 20 FEET OF STREET FRONTAGE ABUTTING EITHER A PUBLIC OR PRIVATE STREET; COUNTY SUBDIVISION ORDINANCE, SECTION 2303.C STREET FRONTAGE AND 2401.D STREET ACCESS; ZONED: A1; TOTAL ACREAGE: 6.22+/-; LOCATED AT 6476 & 6480 ALAMANCE ROAD; SUBMITTED BY ANDREWS SEALS (OWNER). (COUNTY JURISDICTION)

After being sworn, in Ms. Speicher presented the case information and stated that the applicant was requesting a waiver from the requirements to have a minimum of 20 feet of street frontage to either an approved private street or a public street.

There were people signed up to speak in favor and in opposition of the request.

Mrs. Epler asked if Thunder Road was a private road.

Ms. Speicher stated that it was not a private street and there is a recorded access easement there were seventeen lots created in the subdivision between the early 80's to mid 80's the majority of which are illegally deeded lots for subdivision purposes, but each lot was granted easement access out to Roslin Farm Road.

Mrs. Epler stated that they have an easement down Alamance but use Thunder Road for access.

Ms. Speicher stated that all the deeds that she pulled on the entire subdivision, each deed included an access easement along Alamance if necessary and also Thunder Road.

Ms. Hall asked if Thunder Road was a County road.

Ms. Speicher stated that it wasn't, it was privately owned property.

Mrs. Epler asked if they could add plat conditions to the motion.

Ms. Speicher said they could.

Mr. Tom Gooden spoke in favor after being sworn in by Chair Clark. Mr. Gooden stated that he was hired to do a boundary survey to show boundaries of a lot for a recorded plat. One of the reasons he was hired was to have a plat on record depicting the easements that are subordinate to the subject property. Mr. Gooden stated that they were trying to clean up a mess, the pictures of the road were shown and they are a travesty and they are trying to find a way to resolve the issue. The community has tried to get this put in an area where it would have public access, he was told that they petitioned Department of Transportation (DOT) to take over the streets but because some of the people in the subdivision didn't want that to happen DOT stopped the process. Mr. Gooden feels it would be beneficial for everyone in the community for DOT to take over the roads and improve them.

Patsy Lowery spoke in opposition after being sworn in by Chair Clark. Mrs. Lowery stated that she was in opposition of the request; this has been an ongoing battle, the applicants want the plat to be recorded showing a sixty foot right-of-way. Mrs. Lowery wants to keep the road private and doesn't think it needs to go public or be labeled as a road on the plat.

Public hearing closed.

Mrs. Epler stated that there was some confusion because the map shows existing sixty foot right-of way on Thunder and Alamance Roads, and that looks like a street. These were old driveways that served several different properties. When 911 came in they had to have an address to get to people. Those roads being used by more than one family were given street names and addresses and that's how they show on County tax maps, but they are not recorded right-of-ways, both roads are cross access easements that Mrs. Lowery and her family own that other people have the right to use for ingress and egress. Mrs. Epler stated that she didn't want to see either one of those streets or driveways labeled with a right-of-way width appearing as a road.

Mr. Lloyd said that all that was in front of the board was a waiver to make this a legal lot.

Mrs. Epler stated that the board was being asked to approve the waiver from the twenty foot requirement, but as a board member if she made the motion her directive to staff would be when the plat came in to be signed off on she would want there to be a note on there that there be no further development, no additional structures, and that the two ingress egress easements are not labeled as roads. Legally, if the applicants have a sixty foot wide ingress egress easement across the land, are they limited to what part of that easement they choose to drive on?

Mr. Moorefield stated no.

Mrs. Epler made a motion that The Joint Planning Board for the County of Cumberland, having held a public hearing to consider the waiver request for Case No. 12-071 requesting to not be required to have the mandatory minimum 20 feet of road frontage and develop the subject property in a manner not permissible under the literal terms of the County Subdivision Ordinance, and having heard all of the evidence and arguments presented, I move that the board makes the following FINDINGS OF FACT and draws the following CONCLUSIONS:

- 1. It is the Planning Board's CONCLUSION that, Because of other unusual physical conditions; strict compliance with the provisions of the County Subdivision Ordinance would (or would not) cause a special hardship to the property owner and be inequitable; this finding is based on the following CONDITIONS: The lot was originally created by deed on June 14, 1985, which was at time when enforcement of the County Subdivision Ordinance was just beginning and it would be inequitable to not allow the property owner to record a surveyed plat at this time;**
- 2. It is the Board's CONCLUSION that the public purposes of the County Subdivision and County Zoning Ordinances would be served to an equal or greater degree; this finding is based on the following CONDITIONS: The public purposes of the ordinances are met because of the deed to the current owner contains a 60 foot ingress/egress easement along the existing E911 named trails [Alamance Rd and Thunder Rd] securing access to the public street [SR 2243 (Roslin Farm Road)]; and**

3. It is the Board's CONCLUSION that the property owner would not be afforded a special privilege denied to others; this finding is based on the following CONDITIONS: The property owner would not be afforded a special privilege because when given a similar set of facts and circumstances the board's ruling to grant the access waiver has been and would be the same. This motion allows staff to stamp the surveyed plat for recordation, provided all other conditions are met, and is not intended to apply toward any future or additional development of the subject property. Additional conditions are that it be clearly indicated on the plat that Alamance Road and Thunder Road are not right-of-ways, they are not public streets, they are ingress/egress easements and the width of them be on there. The two easements should be described in full with bearings and distances. It should also be stated on the plat that there be no further subdivisions, no additional building permits granted for additional principal structures granted on this property until it has achieved that twenty foot right-of-way or comes back for another waiver. Because of the foregoing, I move that the request for waiver be approved, seconded by Mrs. Piland. Unanimous approval.

VIII. DISCUSSION

DIRECTOR'S UPDATE

IX. ADJOURNMENT

There being no further business, the meeting adjourned at 8:15 p.m.