

**MINUTES OF THE BURLINGTON PLANNING
AND ZONING COMMISSION MEETING**

July 28, 2008

Council Chamber, Burlington Municipal Building

CITY MEMBERS:

George Byrd, Chairman, Present
Paul Cobb, Secretary, Present
John Black, Present
Lynn Cowan, Present
Bishop Greg Hargrave, Present
Gordon Millspaugh, Absent

EXTRATERRITORIAL MEMBERS:

Bud Apple, Present
Richard Franks, Present
Earl Jagers, Present
Jim Johnson, Present
Ellis Piper, Present

STAFF PRESENT:

Robert R. Harkrader, Planning Director
David Beal, Assistant Director of Planning Services
Joey Lea, Zoning/Subdivision Administrator
Dianne Fogleman, Office Assistant

ITEM NO. 1: Acting Chairman Byrd called the meeting to order at 7:00 p.m.

ITEM NO. 2: Minutes of the meeting held June 23, 2008, were unanimously approved. This was a City and extraterritorial item.

ITEM NO. 3: Mr. Byrd called for the nomination of Commission Chairman and Secretary for 2008-2009. Commission Member Hargrave made a motion to nominate George Byrd as Chairman. Paul Cobb seconded the motion. John Black made a motion to close the nomination for Commission Chairman. Richard Franks seconded the motion. The Commission voted unanimously to re-elect Mr. Byrd as Chairman.

Commission Member Hargrave made a motion to re-elect Paul Cobb as Secretary. Bud Apple seconded the motion. Richard Franks made a motion to close the nomination for Commission Secretary. Earl Jagers seconded the motion. The Commission voted unanimously to re-elect Paul Cobb as Secretary for 2008-2009.

This was a City and extraterritorial item.

ITEM NO. 4: Consent agenda: (City)

- (A) Mr. Scott Wallace, representing Keystone Group Inc., presented an application for final plat approval of Phase Five, Woods at Grove Park Subdivision. The property is located on the north side of South Mebane Street between Alamance Road and Columbine Lane as shown on plans by Simmons Engineering and Surveying Inc. dated June 18, 2008, and containing two lots.

Staff recommended approval of the final plat.

Commission Secretary Cobb made a motion to recommend approval of the final plat. Bishop Hargrave seconded the motion. The Commission voted unanimously to recommend approval of the final plat.

The Commission found that the plat as presented met all requirements of the Subdivision Regulations.

(Extraterritorial)

(B) Mr. Charles Bateman, representing Cox Associates LLC, presented an application for final plat approval of the Cox Toyota Subdivision. The property is located on the south side of Danbrook Road east of Mackintosh Road as shown on plans by CPT Engineering and Surveying dated July 1, 2008, and containing three lots.

Staff recommended approval of the final plat.

Commission Member Apple made a motion to recommend approval of the final plat. Richard Franks seconded the motion. The Commission voted unanimously to recommend approval of the final plat.

The Commission found that the plat as presented met all requirements of the Subdivision Regulations.

Planning Director Harkrader explained that new technology was being introduced in the Council Chamber. Enhanced pictures and maps could now be downloaded into a computer and in turn be displayed on individual screens located on the dais as well as on three screens mounted on the walls of the Council Chamber and in the lobby.

Mr. Harkrader introduced Mr. Joey Lea of the Planning Department, who has been promoted from Zoning Enforcement Officer in the Inspections Department to Zoning/Subdivision Administrator. He stated that Mr. Lea is immediate past president of the North Carolina Association of Zoning Officials.

ITEM NO. 5: Mr. Charles Bateman, representing Cox Associates LLC, presented an application to rezone from I-1A, Planned Industrial-Residential District, to O-I, Office-Institutional, and CB, Conditional Business, as follows: (1) rezone Tract A (4.16 acres) and Tract C (3.86 acres) to O-I to allow all uses permitted in O-I zoning; and (2) rezone Tract B (17.17 acres) to CB to allow construction of a new automobile dealership. The property is located on the south side of Danbrook Road, southwest of University Drive and south of Interstate 85/40 as shown on Alamance County Tax Map 3-26-1A.

This was an extraterritorial item.

Mr. Bateman recalled that a similar application had been presented to the Commission several years ago (February 2006) at which time the Commission recommended approval by a vote of nine to one. However, City Council voted three to zero to deny the application (April 4, 2006).

Mr. Bateman pointed out that in 2006 Danbrook Road served as the main entrance into the Mackintosh on the Lake residential subdivision whereas Bonnar Bridge Parkway off University Drive has now been completed to serve that purpose.

Mr. Bateman maintained that the proposed rezoning would be less intrusive to the area than uses allowed in the current zoning, I-1A, which permits trucking and transportation terminals among other uses. He stated that newer, more modern car dealerships tend to blend into the neighborhood, and gone are the old stadium lighting, blaring loud speakers and garish facades, banners and streamers. Features for the proposed dealership include state-of-the-art downward-projected box lighting, attractive landscaping on all four sides and modern signage compatible with the neighborhood. Mr. Bateman displayed a picture of a typical Toyota dealership and called the Commission's attention to the recently completed Crenshaw Nissan dealership on Huffman Mill Road and noted how it blends into the area.

Mr. Bateman announced that the proposed Toyota dealership would not include a body shop thus eliminating junked cars in a fenced lot.

Mr. Bateman stated that the proposed O-I rezoning on both sides of the dealership serves as the Cox family's commitment to the City to blend with surrounding property. The approximate five million dollar dealership would be a major undertaking for the Cox family and would satisfy Toyota's request for a more visible and modern facility. He stated that due to a current marketing depression, there have been no office use commitments; however, the two properties would remain O-I and would not become part of the Toyota or any other dealership thus eliminating the fear of Danbrook becoming "dealership row." Mr. Bateman stated that the Coxes are in active negotiations with another new car dealership to move into the current Toyota facility on North Church Street.

Commission Chairman Byrd asked for questions from anyone in the audience, and no one was present to comment or ask questions.

Planning Director Harkrader distributed copies of the Western Loop Planning Area Future Land Use maps. He stated that staff recommended denial of the rezoning request on the basis that it was not consistent with the land use plan previously approved by the Commission and City Council.

Commission Member Johnson pointed out that the property is currently zoned I-1A and that the Cox's request for CB rezoning would be more restrictive as far as uses than the current zoning, and in addition, the requested O-I rezonings on both sides would be even less intrusive to the area.

Mr. Harkrader explained that setback requirements are higher in I-1A zoning districts, and the Future Land Use Map indicates an employment center or corporate park uses for this property.

Commission Member Jagers noted that the City recently approved a hotel on property that was inconsistent with the Land Use Plan.

Commission Member Franks asked what distinguishes the three different parcels of the property. Mr. Harkrader stated that the Commission previously recommended for approval a subdivision of the property in Consent Agenda Item No. 4 (B). Mr. Franks asked what if City Council approves this rezoning request and doesn't approve the final plat. Mr. Harkrader explained that as long as the plat meets all requirements and was in order, state statutes require that the plat be approved. He further explained that in some municipalities, staff can approve certain plats – including final plats; however, the City's Subdivision Regulations require preliminary and final plats be considered by the Planning and Zoning Commission, and City Council makes the final approval. In this particular case, City Council could approve

the final plat and not the rezoning application. If that happens, the petitioner may choose to not have the final plat recorded.

Commission Secretary Cobb asked if staff had many calls regarding the request for rezoning and was told that a few calls were inquiring if this request was the same as the previous request in 2006.

Commission Member Johnson pointed out that in fact, this request was not the same as the application in 2006 because the current request was applying for O-I rezoning on both sides of the dealership.

Commission Member Franks asked about the process for approving signs for the proposed development.

Zoning/Subdivision Administrator Lea stated that the applicant had not yet submitted a sign package; however, signage for the CB portion would adhere to B-2, General Business, signage requirements. He explained that what the applicant has proposed would actually be less intense than B-2 requirements.

Commission Member Franks asked what type of lighting is planned.

Mr. Bateman stated that there would not be stadium-type lighting but downward-projected box lighting, which would be less intrusive to the surrounding area.

Mr. Franks inquired about the proposed buffer.

Mr. Bateman asked Mr. Mike Marshall to describe the proposed landscaping. Mr. Marshall stated that most of the buffer is already in place. Trees will screen a retention pond and additional plantings will be added along the sides and frontage. He stated that the back slope would be reduced to some degree; however, grading would be minimal.

Commission Member Black asked if used cars would be sold and the answer was yes. He also asked if there would be any underground storage and was told that there would not be. He asked how many years would go by before the dealership would be refurbished. Mr. Rusty Cox estimated every 10 to 15 years.

Commission Member Jagers made a motion to recommend approval of the request for rezoning with the Use and Development Conditions submitted by the petitioner. John Black seconded the motion. The Commission voted nine to one to recommend approval of the request for rezoning. Voting to recommend approval were Jagers, Black, Byrd, Cobb, Cowan, Hargrave, Apple, Johnson and Piper. Voting against the motion to recommend approval was Franks.

In addition, the Commission recommended that the official zoning map and the Comprehensive Land Use Plan be amended to reflect the change. The petitioner has submitted the following Use and Development Conditions:

Use Conditions

- 1) Tracts A and C shall be developed according to all uses permitted in O-I zoning.
- 2) Tract B shall be developed for a new car dealership with ancillary uses, including used car sales, parts, service and repair.

- 3) No body repair shop shall be located on the premises.

Development Conditions

- 1) Tracts A, B and C shall be annexed into the City prior to obtaining Certificates of Occupancy.
- 2) Landscaping shall conform to the City Landscaping Ordinance and Western Loop Corridor Overlay standards.
- 3) Walking trail and park area shall be developed according to a submitted site plan.
- 4) There shall be a natural forestation buffer to the rear of Tracts A, B and C and natural and planted buffers on the sides as shown on a submitted site plan.
- 5) On Tract B, there shall be shoebox lighting and no exterior loudspeakers.

The Commission found that the zoning change as requested would not adversely affect the adjoining property and would be in keeping with land use planning in the area. The Commission further found that the request was consistent with the Comprehensive Land Use Plan for Burlington and its environs.

ITEM NO. 6: Mr. Charles Bateman, representing University Boulevard Plaza, presented an application to rezone from R-15, Residential District, to CB, Conditional Business District, to allow a Unified Business Development with a drug store, tire store, general retail sales and all uses permitted in B-2 zoning excluding the following: adult establishments; sales and repair of heavy machinery; general, fender and body automobile repair; automobile service stations; drive-in restaurants excluding sit-down restaurants with incidental drive-through or pick-up service; bulk flammable liquid or gas sales; motor vehicle towing and storage; freight or passenger transportation terminals; and travel trailer parks. The property is located at the southeast quadrant of University Drive and Rural Retreat Road as shown on Alamance County Tax Map 3-26-89.

This was an extraterritorial item.

Mr. Bateman reminded Commission members that a similar request was presented to them approximately 16 months ago, and the applicant was Mr. Chad Sharpe. The Commission at that time voted eight to one to recommend denial. He stated that the current rezoning application for a Unified Business Development is far superior to the request presented a little over a year ago.

He stated that when one looks around the neighborhood, you could see that this property would not be suitable for single-family or even multifamily uses and that multifamily uses would add more traffic to the area than the proposed Unified Business Development. To make his point, he noted that from the stoplight at Rural Retreat Road to the Interstate, there is nothing but commercial development thus making this an ideal site for the Unified Business Development. Mr. Bateman maintained that the only thing that what would make this better would be to expand the commercial development by purchasing the adjoining land to the east owned by Mrs. Cleo Smith; however, she states that her property is not for sale and will never be for sale.

Mr. Bateman stated that the proposed development and traffic generated by the development would have very little impact on the park (Joe C. Davidson Park on Rural Retreat Road) -- less impact than multifamily development.

He stated that with development and business slowing down, it was refreshing to have someone willing to invest in the City. He introduced Mr. Shawn McCleskey, owner of the property, and Mr. Mark Reich, engineer, who would answer any questions asked by Commission members.

Planning Director Harkrader stated that in March 2007, a similar application was presented to the Commission, and members voted eight to one to recommend denial. The applicant appealed to City Council, and the Council voted three to zero to deny the request. He explained that technically everything was in order on the site plan – the entrances and DOT approval; however, the rezoning request was not consistent with the Western Loop Planning Area Future Land Use Map, which specifies higher density residential uses. Mr. Harkrader explained that staff had met with the petitioner early in the planning stages of the Unified Business Development and relayed the fact that the proposal would impact the overall integrity of the neighborhood and be inconsistent with the land use plan previously approved by the Commission and the City Council.

Commission Member Johnson noted that the larger entrance/exit to the proposed development would be on Rural Retreat Road – not University Drive – and that Mr. Bateman indicated that there was no other undeveloped residential area on University Drive. Mr. Johnson pointed out that there were indeed several residentially-zoned lots on University Drive.

Commission Member Jagers stated that he was not opposed to growth, but questioned a proposed new tire store and a new drug store in the development. He pointed out that a new tire store had recently opened on University Drive and a drug store was almost completed on University Drive. He questioned if a tire store and drug store would have to go in the proposed Unified Business Development.

Planning Director Harkrader stated that while the use conditions on the application requests all uses permitted in B-2 zoning, the submitted site plan also specifies a drug store and tire store along with other retail uses.

Commission Secretary Cobb questioned the lot lines shown on the site plan. Mr. Harkrader stated that the lot lines within the Unified Business Development indicate that each lot could be sold separately.

Commission Member Franks made a motion to recommend denial of the request. Jim Johnson seconded the motion. The Commission voted unanimously to recommend denial of the rezoning.

ITEM NO. 7: Ms. Debbie Bivins presented an application to rezone from R-9, Residential District, to COI, Conditional Office-Institutional District, for a beauty salon with four chairs and one nail technician and massage therapist. The property is located on the west side of Trail One (508 Trail One) approximately 80 feet from South Mebane Street as shown on Alamance County Tax Map 185-747-13.

This was a City item.

Ms. Bivins stated that she has no plans to change the front of the home; it will remain residential-looking in appearance. Parking will be provided in back of the home, and the driveway entrance will remain on Trail One. She stated that a privacy fence would be erected along the back and partially down the sides of the property.

She stated that she has a petition signed by 14 neighbors in favor of the rezoning, and she had spoken to several others by phone but did not have their signatures.

Ms. Bivins told Commission members that in the beginning there would be only one other operator and a nail technician. In the future, she may employ a massage therapist; however, plans are for either a nail technician or a massage therapist – one or the other, but not both at the same time.

She stated that she and the other operator work four days a week and she would be the only one working on Saturdays.

Ms. Sharon King, 506 Trail One, stated that she lives adjacent to the property and that she supports the rezoning request. She pointed out that the use as a beauty salon would be a quiet one.

Ms. Paige Pritchard, 409 Trail One, stated that the area was family-oriented; however, she was seeing more and more properties becoming rental. She stated that she knew of eight families that do not support the rezoning request. They were concerned that allowing the business could set a precedent. She admitted that she had rather see a beauty salon at the location than a tattoo parlor.

Mr. Joe Stewart, 710 Huntington Court, stated that while the area is family-oriented it was not family-friendly and walking-friendly as there are no sidewalks. He noted that with the fuel economy the way it is, more people are walking to their destinations whenever possible. He noted that the beauty salon in the neighborhood would be a positive use because clients could walk to the business. He stated that he had known the applicant for 12 years and that she had a large, successful client base and in his opinion the beauty salon would fit nicely into the neighborhood.

Chairman Byrd asked if the home were to be sold, would it remain COI and was told that it would.

Commission Member Black inquired about the owners of the adjacent multifamily property, and Ms. Bivins stated that the owners had signed the petition approving the rezoning request.

Ms. Patricia McIntyre, 401 Trail One, stated that the area was a close-knit community and there were several older residents that enjoy walking. She stated that she was opposed to the rezoning and any commercial development. She noted that neighbors already had to contend with school traffic, and with the widening of South Mebane Street, the beauty salon would be fronting on the street. Ms. McIntyre stated that when South Mebane Street is widened, the lanes would be separated by a median. She maintained that traffic would be required to go up and make a U-turn to enter a street on the other side.

Mr. Stewart stated that Ms. Bivins' property is approximately 80 feet off South Mebane Street and would not be on South Mebane Street when it is widened.

Commission Secretary Cobb asked if a beauty salon was allowed in a residential district.

Zoning/Subdivision Administrator Lea stated that it was allowed as a home occupation having up to two chairs in a residential area.

Planning Director Harkrader stated that while the area is a solid residential neighborhood, the COI rezoning request would essentially be an extension of O-I zoning. He stated that it was staff's opinion that the COI rezoning would have minimal impact on the neighborhood and adjoining property, and the rezoning would not be considered a commercial encroachment into the residential area. He confirmed that there would be a median and sidewalks along South Mebane Street after it had been widened. He concluded that staff recommended approval of the request for rezoning with the Use and Development Conditions submitted by the petitioner.

Commission Chairman Byrd asked if staff had received any calls regarding the rezoning request. Mr. Lea stated that he had received four calls inquiring about the rezoning and all were opposed.

Commission Member Cowan stated that she had concerns about there being only six parking spaces and possibly five employees.

Ms. Bivins stated that there would be only she and another operator in the beginning.

Ms. Cowan asked if there was additional space in the rear for more parking if needed and told that there was.

Mr. Lea stated that the Zoning Ordinance regulations stipulate one space for every 200 square feet of building area and that she meets the minimum required number of spaces.

Commission Member Hargrave asked Ms. Bivins if she had contacted Crumley and Associates located next door. She stated that Dr. Little (Dr. Robert W. Little) owns the property, and he supported the COI rezoning.

Bishop Hargrave asked Ms. Bivins if she accepted walk-in clients and was told that she did not. She explained that beauty salon operators work independently, and future co-workers may accept walk-ins.

Commission Member Jagers asked about signage.

Mr. Lea stated that signage in OI is very limited. Ms. Bivins would be allowed one quarter of her street frontage for total signage and nothing larger than 32 square feet.

Ms. Rachel Hunter, 411 Trail One, stated that she was opposed to the rezoning because of the narrow streets in the area. She maintained that while there were parking spaces in the rear, customers could possibly park on the street.

Ms. Bivins told Commission members that she had talked to Ms. Hunter last Wednesday, and Ms. Hunter informed her that she supported the rezoning request. Ms. Hunter stated that she had misunderstood the proposal.

Commission Secretary Cobb made a motion to recommend approval of the request for rezoning with the Use Conditions submitted by the petitioner. Bishop Hargrave seconded the motion. The Commission voted three to two to recommend approval of the request for rezoning. Voting to recommend approval were Cobb, Hargrave and Byrd. Voting against the motion to recommend approval were Black and Cowan.

The Commission recommended that the official zoning map and the Comprehensive Land Use Plan be amended to reflect the change. The petitioner has submitted the following Use Conditions:

Use Conditions

1. Beauty salon with four chairs and one nail technician.
2. Future addition of massage therapist.

The Commission found that the zoning change as requested would not adversely affect the adjoining property and would be in keeping with land use planning in the area. The Commission further found that the request was consistent with the Comprehensive Land Use Plan for Burlington and its environs.

ITEM NO. 8: Mr. Lee Wilson, representing Savannah West LLC, presented an application to amend a Conditional Business rezoning approved by City Council Nov. 2, 2004. The request is to allow a child care facility with no outside play area for a maximum of 45 children within Unit 1147A St. Mark's Church Road as shown on Alamance County Tax Map 3-26A-3.

This was a City item.

Mr. Wilson stated that the state-regulated facility would offer drop-off care for a maximum of 45 children for a maximum of four hours, which would cater to parents that desire to go shopping, to the movies or dine out.

Commission Member Hargrave asked if this facility falls under the NCGS 110 requirements such as those for a religious organization applying for a child care facility.

Zoning/Subdivision Administrator Lea stated that the state does not recognize a four-hour program where no child stays longer than four hours as child care that has to be licensed. The City Ordinance does not address this type facility, and by City standards, it is considered a child care facility.

Bishop Hargrave stated that in other words one could have 100 children as long as they do not stay more than four hours.

Mr. Lea stated that the NC Building Code determines the number of children allowed per facility square footage, and in this case, only 45 children would be permitted.

Commission Member Franks inquired about the hours. Mr. Charles Morgan, petitioner, stated hours would be from 9:00 a.m. until 9:00 p.m. Mondays through Thursdays and until 11:00 p.m. on Fridays. He added that the child care facility would be similar to one established in a health care facility.

Commission Member Hargrave voiced anxieties about safety and health concerns.

Commission Member Black asked if the facility would be open on Sundays and was told that it would not.

Staff recommended approval of the request for rezoning with the Use Conditions submitted by the petitioner.

Commission Secretary Cobb made a motion to recommend approval of the request for rezoning with the Use Conditions submitted by the petitioner. John Black seconded the motion. The Commission voted four to one to recommend approval of the request for rezoning.

Voting to recommend approval were Cobb, Black, Byrd and Cowan. Voting against the motion to recommend approval was Hargrave.

The Commission recommended that the official zoning map and the Comprehensive Land Use Plan be amended to reflect the change. The petitioner has submitted the following Use Conditions:

Use Conditions

1. Drop-off child care facility at 1147A Savannah West, St. Mark's Church Road.
2. The maximum stay for any one child shall be four hours or less.
3. Upfit to the unit shall consist of 210 square feet of drop-off area and 910 square feet of play area inside the unit.

The Commission found that the zoning change as requested would not adversely affect the adjoining property and would be in keeping with land use planning in the area. The Commission further found that the request was consistent with the Comprehensive Land Use Plan for Burlington and its environs.

There being no further business to discuss, the meeting was adjourned at 8:38 p.m.

George A. Byrd, Jr., Chairman

Paul E. Cobb, Jr., Secretary