

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

**August 25, 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, Present

**EXTRATERRITORIAL MEMBERS:**

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

**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:** Chairman Byrd called the meeting to order at 7:03 p.m.

Planning Director Harkrader introduced Ms. Rebecca Lashley as a new member of the Commission appointed by the Alamance County Commissioners.

Mr. Harkrader announced that Bishop Hargrave would be moving outside the City and would no longer serve on the Commission. He thanked Bishop Hargrave for his service to the City.

Commission Chairman Byrd also welcomed Ms. Lashley and thanked Bishop Hargrave for serving on the Commission.

Bishop Hargrave stated that serving on the Commission had been a wonderful experience and explained that he would still be serving as pastor of his church, a position he has held for 23 years.

**ITEM NO. 2:** Minutes of the meeting held July 28, 2008, were unanimously approved. This was a City and extraterritorial item.

**ITEM NO. 3:** Consent agenda: (City)

- (A) Mr. Steve Puckett presented an application for final plat approval of the Lands of Land O Sun II LLC Subdivision. The property is located on the north side of Plantation Drive between Koury Drive and Corporation Parkway as shown on plans by S. D. Puckett and Associates Inc. dated May 20, 2008, and containing two lots.
- (B) Mr. Brent Cockrum presented an application for final plat approval of the Burlington Commerce LLC Subdivision. This property is located on the north side of Hanford Road off Maple Avenue and Anthony Road as shown on plans by Fleming Engineering dated August 8, 2008, and containing one new lot.
- (C) Mr. Bob Dischinger, representing D. R. Horton Inc., presented an application for final plat approval of the Ingle Park Gardens Subdivision, Phase 3. The property is located on the east side of Springwood Church Road south of the Carson Farms East Subdivision as shown on a plat by Evans Engineering dated May 27, 2008, and containing 16 lots.

Staff recommended approval of (A) and (B) and recommended approval of (C) contingent upon completion of street construction or the applicant posting proper surety with the City Engineering Department prior to recording the plat and contingent upon street plans and profiles, water and sewer plans and storm drainage plans being submitted to the City Engineering Department and approval of same by the City Engineering Department.

Commission Secretary Cobb made a motion to recommend approval of (A) and (B) and recommended approval of (C) with the contingencies presented by staff. Gordon Millspaugh seconded the motion. The Commission voted unanimously to recommend approval of (A) and (B) and recommended approval of (C) contingent upon completion of street construction or the applicant posting proper surety with the City Engineering Department prior to recording the plat and contingent upon street plans and profiles, water and sewer plans and storm drainage plans being submitted to the City Engineering Department and approval of same by the City Engineering Department.

**ITEM NO. 4:** Mr. David Janicello presented an application to rezone from I-3, Heavy Industrial District, to CI, Conditional Industrial District, to allow a church and all uses permitted in I-3 zoning. The property is located at 736 East Fifth Street approximately 100 feet from South Main Street as shown on Alamance County Tax Map 006-17-21.

This was a City item.

Staff recommended approval of the request for rezoning with the Use Conditions submitted by the petitioner. Planning Director Harkrader stated that the proposed church could accommodate 120 parishioners, and the submitted site plan provides for 20 parking spaces as well as offering street parking.

Commission Secretary Cobb made a motion to recommend approval of the request for rezoning with the Use Conditions submitted by the petitioner. Greg Hargrave seconded the motion. The Commission voted unanimously to recommend approval of the request for rezoning and 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**

The property shall be used as a church in addition to all uses permitted in I-3, Heavy Industrial, zoning districts.

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. 5:** Mr. Lawson Brown, representing the Faye S. Moore Revocable Trust, presented an application to rezone from R-15, Residential District, to O&I, Office-Institutional District, the properties located at the southeast corner of South Church Street and Collinwood Drive as shown on Alamance Count Tax Map 3-18A, Lots 116 and 117.

This was a City item.

Mr. Brown introduced Ms. Cindy Curtis, one of the daughters of the Moores that owned the properties. He stated that both parents are now deceased, and the heirs wish to market the properties.

Mr. Brown stated that the rezoning would be an appropriate extension of existing O&I zoning and would be the highest and best use of the property.

Chairman Byrd asked if Planning had received any calls regarding the request for rezoning. Zoning/Subdivision Administrator Lea stated that he had received two calls inquiring about the rezoning signs, and neither caller expressed concerns about the request.

Staff recommended approval of the request for rezoning.

Commission Secretary Cobb made a motion to recommend approval of the request for rezoning. Greg Hargrave seconded the motion. The Commission voted unanimously to recommend approval of the request for rezoning.

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 recommended that the official zoning map and the Comprehensive Land Use Plan be amended to reflect the change.

**ITEM NO. 6:** Mr. Alton Apple presented an application to rezone from R-9, Residential District, to B-2, General Business District, the properties located at 618 West Elm St., Graham, as shown on Alamance County Tax Map 124-506, the rear portions of Lots 47A and 25, which are in the City of Burlington's zoning jurisdiction. The front portions of the lots, located in the City of Graham's jurisdiction, are zoned B-2, General Business District (Lot 47A), and I-1, Light Industrial District (Lot 25).

This was a City item.

Mr. Apple stated that his father purchased the properties in 1953 and that he was executor of his father's estate.

Commission Member Millspaugh asked that since part of the property was located in the City of Graham's jurisdiction had staff contacted Graham regarding the rezoning request. Zoning/Subdivision Administrator Lea stated that he had spoken with the City of Graham's staff, and that staff had no problems with the rezoning based on the Graham Land Use Plan.

Staff recommended approval of the request for rezoning. Planning Director Harkrader stated that Planning staff had recommended to Mr. Apple that a 50-foot buffer at the rear of the property remain zoned R-9, and Mr. Apple agreed to the recommendation.

Commission Secretary Cobb made a motion to recommend approval of the request for rezoning. Lynn Cowan seconded the motion. The Commission voted unanimously to recommend approval of the request for rezoning.

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 recommended that the official zoning map and the Comprehensive Land Use Plan be amended to reflect the change.

**ITEM NO. 7:** Mr. Frank Longest, representing Dr. Thomas E. Powell III, presented an application to rezone from R-9, Residential District, to B-2, General Business District, the property located on South Church Street near the Alamance Road intersection and also adjoining Laurel Hill Drive as shown on Alamance County Tax Map 188-754, Lots 51, 52 and 7.

This was a City item.

Chairman Byrd asked that he be allowed to abstain from voting. Commission Secretary Cobb made a motion to allow Mr. Byrd to abstain from voting. Greg Hargrave seconded the motion. The Commission voted unanimously to allow Mr. Byrd to abstain from voting. Commission Secretary Cobb then conducted the meeting.

Since he is employed by Dr. Powell, Commission Member Franks excused himself from the discussion even though it was an ETJ item.

Mr. Longest told Commission members that the property on South Church Street was once zoned B-2; then rezoned back to R-9 for tax purposes. Houses on the two properties have been demolished. He pointed out that property on both sides of Lots 51 and 52 are currently zoned B-2, and this request would be an appropriate extension of existing B-2 zoning.

Mr. Longest pointed out that property on Alamance Road where Laurel Hill Drive ends was also zoned B-2 as is the property adjacent to Lot 7. He also noted that a sewer easement as well as a creek runs through Lot 7 thus preventing it from being developed as residential.

Mr. Longest stated that the lot on Laurel Hill Drive was crucial to development because it would provide economical and practical access to South Church Street in addition to being a safer access.

He stated that he first presented the rezoning application to the City for B-2 rezoning with nine specific permitted uses in B-2 Districts being excluded: adult establishments; sale or repair of heavy machinery; auto body and fender repair; auto service stations excluding and permitting sales of parts, installation and service; drive-in restaurants excluding and permitting sit-down restaurants with incidental drive-through or pick-up service; bulk sales

of flammable liquid or gas; towing and storage of motor vehicles; freight or passenger transportation terminals; and travel trailer parks. Mr. Longest told Commission members that staff would not accept the application with the nine exclusions. He stated that staff wanted Conditional rezoning which would require submitting a site plan and explained that his client could not do that because at this point in time he had no plans for the development of the property other than to know what would not be developed and that Lot 7 would be needed to access the property.

Mr. Longest stated that his client had agreed to place screening in the way of a ten-foot shrubbery buffer along both sides of Lot 7 and that the lot would not be used for anything else except as an access or water retention area for the property on South Church Street.

He displayed photographs of various views from South Church Street, which has a road frontage of 478 feet and from Laurel Hill Drive with a 200-foot road frontage.

Mr. Longest maintained that more traffic would be generated if the properties were developed for residential uses rather than the proposed mixed commercial and offices.

Commission Member Johnson inquired about the letter he submitted amending the rezoning application and eliminating the nine exclusions he had previously proposed.

Mr. Longest explained that staff told him that the application could not be considered by the Commission if he requested the nine exclusions.

Planning Director Harkrader stated that he discussed the rezoning application listing the nine exclusions with the City Attorney and was told that the application could not be considered as presented on the basis that it could be deemed as contract zoning. He explained that for several years the City has in place conditional zoning whereas an applicant can request rezoning for a particular use rather than all uses permitted in a certain zoning district.

Ms. Cathy Morris, 108 Laurel Hill Drive, told Commission members that she was approached four hours before the meeting regarding this request for rezoning as well as an offer to purchase her property. She stated that Laurel Hill Drive is a narrow street and could not accommodate a lot of traffic. She explained that her parents purchased the property in 1936 and she wanted to know what type of business would be developed behind and beside her. She pointed out that other nearby businesses don't use Laurel Hill Drive as an access and she didn't understand why this development would.

Mr. Mark May, who owns residential rental property at 202 Laurel Hill Drive, stated he was present to see how this development would affect homeowners on Laurel Hill Drive. He pointed out that there would only be a 30-foot opening from South Church Street through Lot 7 and questioned if that would be wide enough for a road and buffers along both sides. He stated that he was concerned about additional traffic on the narrow street, and explained that he was given a short notice regarding this rezoning request and at this point was undecided about how he felt about it.

Planning Director Harkrader stated that the property on South Church Street was once zoned B-2, then rezoned R-9 around 1977, and now the request was back to B-2 and that staff had no problem with rezoning it back to B-2; however, if it were conditional zoning, staff and NCDOT could better determine if street changes such as turn lanes would be needed. He stated that during the process of developing a property, the applicant often conducts a Traffic Impact Analysis (TIA), which aids the City and DOT in determining what street improvements

may be required. Mr. Harkrader explained that in this case, the applicant has no idea if and/or how Lot 7 on Laurel Hill Drive fits into the development picture and that there are just too many unknowns.

Commission Member Hargrave stated that he had concerns about South Church Street as well as Laurel Hill Drive since it is such a narrow street. In addition, he was apprehensive about traffic from Laurel Hill Drive onto Alamance Road. He questioned how vehicles would be able to get onto Alamance Road and whether or not signalization would be needed. He maintained that conditional rezoning offers more protection for surrounding neighbors.

Mr. Longest questioned why have zoning if everything was conditional. He alleged that conditional zoning was contract zoning in disguise. He explained that only a certain number of buildings would be allowed on the South Church Street property because of setbacks, and the only thing conditional zoning would offer was where those buildings would be located. Mr. Longest also stated that DOT would determine if any road improvements would be necessary because of the development. Regarding conditional zoning, he declared that it was a phony argument.

Commission Member Hargrave asked, hypothetically, what if his client doesn't need Lot 7 on Laurel Hill Drive.

Mr. Longest stated that business uses were planned for the property on South Church Street, and an alternate access would be economical and safer.

Bishop Hargrave commented that it was up to the Commission to determine if Laurel Hill Drive would be the best alternate access, and stated that it was a difficult decision without having conditional zoning in place.

Planning Director Harkrader stated that it was outside the City's purview to base a rezoning decision on an applicant talking to neighbors and making promises. He stated that Mr. Longest has shown that his client would benefit from the rezoning, but what about the neighbors. He stated that hypothetically, if the property was developed for retail, would a median need to be installed on South Church Street or a turn lane. He maintained that there was some certainty with conditional rezoning; that it benefits and protects neighbors and gives an insight on what to expect with the traffic situation on South Church Street.

Mr. May stated that he had a hypothetical question: If apartments were to be built on the South Church Street property, would City Council have to approve an access on Laurel Hill Drive.

Mr. Harkrader stated that apartments would be permitted as a matter of right, and an access on Laurel Hill Drive would not need approval if Lot 7 were to remain zoned R-9.

Commission Member Hargrave stated that contrary to Mr. Longest's negative remarks about conditional zoning, he found that conditional zoning had been helpful to him in making development decisions.

Commission Member Millspaugh commented that in his opinion B-2 was a natural rezoning for South Church Street, but he had concerns about B-2 creeping into the residential neighborhood on Laurel Hill Drive. He envisioned the possibility of commercial uses extending all the way up to Bell Street and suggested that the exit from the South Church Street property onto Laurel Hill Drive be a left turn only.

Mr. Longest stated that he could appreciate concerns about rezoning Lot 7 on Laurel Hill Drive and therefore would be favorable to tabling the rezoning request so that he could come back with a site plan for Lot 7.

Planning Director Harkrader confirmed that Mr. Longest could return next month for a B-2 rezoning request for the property on South Church Street and a separate conditional rezoning request for Lot 7 on Laurel Hill Drive. He stated that Mr. Longest had not provided enough information about the rezoning on Laurel Hill Drive including how many trips could be generated because of the B-2 rezoning.

Mr. Longest explained that he foresees the lot being utilized for storm drainage and retention, and that he proposes to show buffers and screening. He explained that he still would not be able to address the unknowns.

Commission Member Johnson asked if the promises Mr. Longest made to neighbors regarding the nine exclusions and addition of screening would be included in the deed as private covenants, and Mr. Longest's answer was yes.

Ms. Morris reiterated that she had concerns that Mr. Longest waited until this afternoon to get support from the neighbors and pointed out that there were a lot of businesses along South Church Street that don't have other accesses except South Church.

Mr. May admitted that he, too, did not have much time to consider Mr. Longest's request, but he did have concerns about traffic on Laurel Hill up to Bell Street. He noted that a lot customers use Bell Street as a rear access from the bank, and suggested that the City install a turn lane on Laurel Hill Drive to accommodate the traffic and to widen Laurel Hill.

Commission Member Millsbaugh asked if the rezoning request was tabled until the next meeting, could the application be amended or would it be required to remain the same.

Planning Director Harkrader stated that it would need to remain the same.

Commission Member Black made a motion to table the item until the next meeting to allow neighbors time to respond to the applicant. He stated that much of the request was speculative, and Commission members needed more answers.

Lynn Cowan seconded the motion to table the item until the next meeting. The Commission voted unanimously to table the item until the September 22, 2008, Planning and Zoning Commission meeting.

There being no further business to discuss, the meeting was adjourned at 8:36 p.m.

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**George A. Byrd, Jr., Chairman**

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**Paul E. Cobb, Jr., Secretary**