

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

**February 26, 2007**

**Council Chamber, Burlington Municipal Building**

**CITY MEMBERS:**

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

**EXTRATERRITORIAL MEMBERS:**

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

**STAFF PRESENT:**

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

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

**ITEM NO. 2:** Minutes of the meeting held January 22, 2007, were unanimously approved. This was a City and extraterritorial item.

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

- (A) Mr. Randall Page, representing Mr. John Shepherd, presented an application for final plat approval of the John R. Shepherd Subdivision. The property is located on the west side of Alamance Road approximately 200 feet north of North Aviation Drive as shown on plans by Boswell Surveyors, Inc., dated January 4, 2007, and containing two lots.
- (B) Mr. Mark Reich, representing SSJ of Alamance #2, LLC, presented an application for final plat approval of Phase Four, MacArthur Landing Townhomes. The property is located on the west side of MacArthur Lane approximately 750 feet southwest of Durham Street Extension as shown on plans by Alley, Williams, Carmen and King, Inc., dated January 19, 2007, and containing eight lots.

Staff recommended approval of (A) and (B).

Commission Member Cobb made a motion to recommend approval of (A) and (B). Greg Hargrave seconded the motion. The Commission voted unanimously to recommend approval of (A) and (B).

**ITEM NO. 4:** Mr. Boyd Chatman, representing Kirk's Motor Court, Inc., presented an application to rezone from R-9, Residential District, to B-2, General Business District, the property located on the north side of North Main Street approximately 600 feet west of the intersection of North Main Street and North Church Street and being as shown on Alamance County Tax Map 51, Block 210, a portion of Lot 137. The remainder of the property is already zoned B-2.

This was a City item.

Mr. Chatman stated that B-2 would be consistent with surrounding rezoning.

Commission Member Cobb inquired about a lot zoned R-9 that was not a part of the request.

Planning Director Harkrader stated that the lot was being utilized for parking for the adjacent property.

He stated that staff recommended approval of the request for rezoning on the basis that it would be an appropriate extension of existing zoning in the area.

Commission Member 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. 5:** Mr. Charles Bateman, representing Mr. Chad Sharpe, presented an application to rezone from R-15, Residential District, to CB, Conditional Business District, for a Unified Business Development allowing all uses permitted in a B-2, General Business District, excluding the following: auto repair and service, adult establishments, laundries, industrial laundries and plumbing, sheet metal and roofing shops. The property is located on the southeast corner of Rural Retreat Road and University Drive as shown on Alamance County Tax Map 3-26-89.

This was an extraterritorial item.

Mr. Bateman pointed out that this was a rapidly developing area and maintained that the proposed development would offer the best and highest use of the property.

He stated that the petitioners were aware that the development would be in direct conflict with the Comprehensive Land Use Plan adopted by the City a few months ago; however, plans for this project had been actively developing for over a year and had been reviewed by the City's Technical Review Committee in 2006. He pointed out other commercial developments in the area, including Burlington Station and University Commons as well as Alamance Crossing.

Mr. Bateman stated that the buildings would be stone and brick with copper awnings that would be complimentary to surrounding structures. The design calls for two entrances with right-in and right-out access and stated that a cross easement would be reserved at the rear of the property for future access.

Commission Member Johnson pointed out that the proposed development would be located across from Burlington Station; geographically, however, three-fourths of the surrounding area is residential property.

Mr. Chad Huffines, Engineer, The LEADS Group, distributed new site plans for the proposed development and pointed out the planned interior flow pattern. He stated that he had worked with NCDOT in the traffic designs.

Commission Member Ware asked how many parking spaces would be provided and was told 264.

Commission Chairman Byrd stated that his biggest concern was traffic especially for the Rural Retreat Road residents. He asked if a traffic impact study had been made in the area.

Planning Director Harkrader stated that a study had been made; however the biggest, single issue is that the development would be in direct conflict with the Comprehensive Land Use Plan. He maintained that this was a land use issue and that this proposal would test the Commission and City Council's commitment to the Comprehensive Land Use Plan. He stated that staff received a revised set of site plans Friday which was past the submission deadline, and that there had been little time to review them. He pointed out that one of the City's concerns is the sanitary sewer. If the property were to be subdivided, the sanitary sewer provisions would not meet the City's regulations. Another issue would be the access easement as well as the installation of a retaining wall. Mr. Harkrader stated that at this point the elevations are unknown, and therefore, staff was not in a position to address these issues.

Commission Member Ware asked if there were any provisions regarding storm water and asked if a retention pond was included in the design plans.

Mr. Huffines stated that the plans had been presented to the Engineering Department and that many of these concerns are technical issues that can easily be remedied. He pointed out that setbacks would differ if the property were to be subdivided.

Commission Secretary Cobb asked why would the property be subdivided.

Mr. Huffines stated that a tenant may wish to lease the land and not purchase it much like subdividing property for an out-parcel.

Planning Director Harkrader stated that the City would not have sanitary sewer concerns if the property were not going to be subdivided. Subdividing would affect all utilities. He stated that the City would have no problem with subdividing the property as long as it met all subdivision requirements but that the possibility of subdividing the property needs to be a part of the development plan.

Mr. Cobb commented that maybe the Commission should table the application instead of spending a lot of time discussing it when staff needed more time to study the site plan. He made a motion to table the application until the March meeting. Bob Ware seconded the motion.

Commission Member Franks asked if a request for subdivision should be included in the application.

Mr. Bateman stated that most shopping centers do the same thing – subdivide out-parcels at the request of a tenant. He explained that many tenants want to own their own building but preferred to lease the land. When developing a site plan, including this possibility facilitates such a request.

Planning Director Harkrader stated that even if the petitioner revised the plan so that it was technically correct, staff could not recommend approval of the proposed development as it would be contrary to the Comprehensive Land Use Plan and what the Commission and City Council had approved. He pointed out that the Land Use Plan along with its accompanying elements was the primary guide for making rezoning decisions.

Commission Member Johnson stated that he felt like the Commission owes it to the petitioner to consider the proposed development.

Commission Member Hargrave asked if others that were in the process of developing property prior to approval of the Land Use Plan would also be denied the opportunity of presenting their proposals.

Mr. Harkrader stated that if the proposals were contrary to the Land Use Plan, the petitioners would be submitting proposals at their own risk.

Commission Member Franks pointed out that no one came forward at the Planning and Zoning Commission or City Council meetings when the Land Use Plan was being developed to voice their concerns or make their opinions known.

Commission Member Jagers stated that the Commission and City Council could still approve a development even though it was contrary to the Land Use Plan.

Mr. Harkrader stated that each request would be considered on its own merits.

The Commission voted nine to two to table the application until the following month. Voting to table the request were Cobb, Ware, Byrd, Black, Hargrave, Apple, Jagers, Johnson and Piper. Voting against the motion to table the item were Cowan and Franks.

**ITEM NO. 6:** Mr. Charles Bateman, representing Wakefield Development Company, presented an application to rezone from CMX-R, Conditional Mixed Use Residential District, to O-I, Office-Institutional District, the property located on the south side of Danbrook Road and Interstate 85/40 approximately 500 feet north of Bonnar Bridge Parkway as shown on Alamance County Tax Map 3-23-71.

This was a City item.

Mr. Bateman stated that the property fronts on Danbrook Road and is approximately 475 feet deep.

Mr. Robert Marsh, 1860 Glenkirk Drive, stated that he was not opposed to the rezoning but that he had concerns about traffic -- no traffic lights and traffic from the school and new construction – as well as the width of the road being able to handle additional traffic. He stated that he heard that a Holiday Inn was also being planned for the area in addition to 1500 to 1800 new homes. In conclusion, he stated that he was concerned about how nearby business growth would affect his home which he had purchased only five months ago and in hind-site asked himself why he had not questioned the marketing staff more regarding future business growth.

Mr. Don Cox, 614 Morningside Court, stated that he felt this was Wakefield's attempt to set the tone for how the rest of the property along Danbrook Road would be zoned. He questioned why Wakefield would rezone the property when the company could do what they wanted to do with the current zoning. He stated that the word on the street is that there is a Holiday Inn, a 10-acre shopping center across from the new school and a Sheetz Service Station coming to the area and asked why would Wakefield rezone to O-I for something that wouldn't benefit from interstate exposure. He maintained that there is plenty of property in the area and along Kirkpatrick ideal for O-I. He said that this rezoning by Wakefield was an attempt to limit him to what he wants to do with his property on Danbrook. Mr. Cox stated that he agrees to mixed use for the property but objects to anything Wakefield was trying to impose on him for his property.

Commission Member Johnson asked if the adjacent property was zoned I-1A and was told that it was. He asked the depth of the Cox property and was told 600 feet.

Planning Director Harkrader stated that Wakefield had previously made a public commitment to rezone the property along Danbrook to O-I.

Commission Member Franks stated that he attended the City Council meeting when Wakefield committed to rezoning the property from commercial to O-I and that Wakefield has stepped up to carry out that commitment.

In response to Mr. Marsh's concerns about increased traffic, Planning Director Harkrader stated that eventually Bonnar Bridge Parkway would intersect with University Drive and thus become the main entrance into Mackintosh on the Lake Subdivision. He also explained that Danbrook Road would tee into Bonnar Bridge Parkway creating major intersections at Bonnar Bridge Parkway and University Drive and Bonnar Bridge Parkway and Danbrook Road, which will change the current traffic patterns in the vicinity. He stated that staff recommended approval of the request for rezoning on the basis of Wakefield's earlier commitment.

Commission Member Hargrave 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. Charles Bateman, representing Mr. Wallace L. Gilliam, presented an application to rezone from R-9, Residential District, to B-2, General Business District, and MF-A, Multifamily District, the property located on the north side of North Church Street approximately 360 feet southeast of McKinney Street and being as shown on Alamance County Tax Map 13-17, Lots 4C (MF-A) and 4D (B-2) and Alamance County Tax Map 13-10, Lot 21 (MF-A).

This was a City item.

Mr. Bateman stated that while the properties are unique they also present land use problems. He told Commission members that a 20-foot buffer would separate the school and businesses and that a five-foot tall wooden security fence would be installed as a safety measure between the development and school property. Currently Lot 4C is land-locked but that access could be gained through Lot 4D on North Church Street.

Mr. Richard Stout, 2612 North Church Street, stated that he had no objection to the rezoning. He stated that his driveway circles around the back of his house and therefore has two access points on the street. He pointed out that he wishes to keep both entrances.

Commission Chairman Byrd noted that there is a lot of traffic from Andrews Elementary School and questioned if the buffer would be adequate between the property and the school.

Mr. Bateman noted that not only would there be a 20-foot buffer but also a five-foot tall fence would be installed.

Mr. Byrd asked how many units would there be in the multifamily development and was told 72. Each unit would have two or three bedrooms each in the two-story structures.

Commission Member Johnson asked the size of the development and was told six and a half acres.

Mr. Gilliam stated that the acreage would allow for 84 units but there would be only 72.

Commission Member Black asked how would the property be accessed and was told that Mr. Gilliam owns two of the lots and has an option to purchase the other lot.

Commission Member Johnson asked if the development would be accessible from McKinney Street and was told that it would not.

Mr. Black asked if there was any way it could be accessed from the former Winn-Dixie parking lot and was told that it could not.

Commission Secretary Cobb asked if Mr. Gilliam purchased property on McKinney Street and demolished the house, could he put in access.

Mr. Bateman stated that there were probably covenants on the McKinney Street properties that would prohibit access.

Commission Chairman Byrd asked if Mr. Bateman or the applicant had any contact with neighbors regarding the rezoning. Mr. Bateman stated that they had not but plan to meet with them before the request is presented to City Council.

Mr. Bateman then noted that evidently his office had made a typographical error on the application form. He stated that one of the lots on North Church Street (ACTM 13-10-21) being requested for rezoning should have been presented as rezoning from R-9 to B-2 and not to MF-A. He stated that he could orally amend the application or that the request for rezoning Lot 21 could be withdrawn.

Commission Member Hargrave commented that it looked like the petitioner would need both lots in order to access the proposed business as well as multifamily development in the rear.

Commission Member Johnson inquired about the road frontage and was told 349 feet. He also asked about obtaining access to the multifamily development and was told that both lots are under common ownership.

Planning Director Harkrader stated that an easement for a drive or street could provide necessary access to the rear property.

Mr. Stout pointed out that there are businesses across the street and all the way up North Church Street to McKinney Street and that he would like to have his property rezoned to business also.

Planning Director Harkrader noted that he believed that this property was not within the City limits and therefore this would be an extraterritorial item. He asked Mr. Stout if he were located in the City limits and was told that he was not.

Mr. Harkrader stated that staff recommended approval of the request for rezoning on the basis that it would be consistent with surrounding zoning and would provide a residential buffer between existing commercial property to the east and residential properties on McKinney Street. He pointed out that North Church Street was a major commercial thoroughfare adjacent to the Haw River town limits.

Commission Member Franks made a motion to recommend approval of the request to rezone Lot 4C (ACTM 13-17) from R-9 to MF-A and to rezone Lot 4D (ACTM 13-17) from R-9 to B-2 and remove Lot 21 (ACTM 13-10) from the request. Bud Apple seconded the motion. The Commission voted ten to one to recommend approval of the request for rezoning. Voting to recommend approval were Franks, Apple, Byrd, Cobb, Cowan, Hargrave, Jagers, Johnson, Piper and Ware. Voting against the motion to recommend approval was Black.

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. 8:** Staff presented proposed amendments to the Zoning Ordinance text pertaining to building heights in Office-Institutional Districts; building heights, lot setback requirements and landscaping and design plans in Planned Employment Center (PEC) zoning districts; off-street parking requirements for child care facilities; maximum lot coverage in residential districts; Section 32.9, Table of Permitted Uses, change PEC – Planned Employment Center – districts to Conditional Planned Employment Center; and a technical correction in Section 32.22, Definitions.

This was a City and extraterritorial item.

Planning Director Harkrader stated that staff recommended approval of the amendments and outlined the proposed changes to the Zoning Ordinance. In the change for Section 32.11:C pertaining to off-street parking spaces for child care facilities, several Commission members questioned the proposed changes.

Commission Member Johnson stated that he could not see relaxing City standards for required parking spaces for child care facilities. He felt that lowering the number of required spaces could present a safety situation.

Mr. Harkrader stated that staff had gathered parking space requirements from other cities and found that the City's requirements were higher.

Commission Member Hargrave noted that his church recently became licensed for a child care facility and any facility has to meet both local and state requirements. However, parking is not regulated except through the City Zoning Ordinance. He maintained that there are busier times at child care facilities when parents are dropping children off and then 5 o'clock being another critical time. He also pointed out that the age of children also affects the

amount of parking needed for a facility because a parent with an infant must park, remove the child from a car seat and take the infant into the facility and sign in as well as repeating the sign-out phase in the afternoon. A designated area is often in place for the dispersion of older children.

Mr. Scott Niebauer, Samet Corporation, stated that the company had represented clients and child care facilities from Wake to Mecklenburg counties and he was currently representing a client interested in opening a facility in Burlington. He told the Commission that the facility would serve 250 to 300 children. He noted that the busiest time for a child care facility was between 7:30 and 8:00 a.m. and that most centers work four-hour shifts – changing around 11 a.m. or 12 noon and again for after-school care. He stated that Burlington’s parking space requirements for staff and the ratio of one space for each 10 children was one of the highest he had encountered.

Elder Hargrave pointed out that a facility such as Mr. Niebauer was referring to would have dissimilar needs than a smaller child care facility such as the one at his church or one in a private home. Parking is usually not a problem at a church, which has plenty of space available for staff and parents.

Commission Secretary Cobb noted that most of the time 100 percent of the staff would not be present leaving vacant parking spaces for parents. He also stated that schools often have programs and parties whereby more parking spaces for parents and grandparents would be needed.

Commission Member Johnson suggested that the parking spaces required for each employee and staff member be amended to one space but one space for each 10 children remain the same. Commission members were in agreement.

Planning Director Harkrader outlined changes to Section 32.3:A.7 which lists maximum lot coverage in all residential districts. He stated that the current regulations stipulate that all buildings and accessory buildings on any lot shall cover not more than 30 percent of the area of such lot and that the Zoning Ordinance amendment would require graduated lot coverage in residential zoning districts.

Mr. Harkrader explained that the City was receiving more requests for one-story homes with less yards. He stated that it seems to be a trend for larger one-story homes to be constructed on smaller lots. Seniors, particularly, desire single-story living spaces.

Commission Chairman Byrd commented that as homeowners get older, they often prefer one-story homes opting not having to go up steps.

Commission Member Cowan stated that she had a real issue with being able to build a home with little or no yards.

Commission Secretary Cobb commented that economics also play a part in lots being smaller.

After further discussion, the consensus of Commission members was to lower the graduated lot coverage for residential districts by 5 percent opposed to the 10 percent presented by staff.

Commission Member Cobb made a motion to recommend approval of the amendments with the change in off-street parking space requirements for child care facilities and the percentage of maximum lot coverage in residential districts. Ellis Piper seconded the motion.

The Commission voted nine to two to recommend approval of the amendments. Voting to recommend approval were Cobb, Piper, Byrd, Black, Hargrave, Apple, Franks, Jagers and Ware. Voting against the motion to recommend approval of the amendments were Cowan and Johnson. The following amendments were recommended for approval:

**AMEND PAGES 1 AND 2 (32.i) OF THE TABLE OF CONTENTS:**

Under 32.5, Office-Institutional District, remove D. (PEC Planned Employment Center Districts)

Under 32.7A, Conditional Zoning Districts, add F, Conditional Planned Employment Center, Page 8.

**AMEND SECTION 32.3:A.7:**

**From:**

7. Maximum Lot Coverage: All buildings and accessory buildings on any lot, including all improvements extending five feet or more above ground level, shall cover not more than 30 percent of the area of such lot, except that townhouse developments are exempted from this requirement. (See Section 32.13.M)

**To:**

7. Maximum Lot Coverage: Buildings and accessory buildings **within R-30, R-15, R-12, R-9 and R-6 zoning classifications shall observe the following maximum lot coverage requirements:**

**R-30 and R-15 Residential Districts – 35%**

**R-12 and R-9 Residential Districts – 40%**

**R-6 Residential Districts – 45%**

**Maximum lot coverage requirements shall not apply to townhouse developments or to lots covered by conditional zoning.**

**AMEND SECTION 32.5:B.4. AS FOLLOWS:**

**From:**

4. Height Limit: No building shall exceed a height of two stories or 32 feet, except the height of a non-residential building may be increased to 50 feet if two side yards of not less than 25 feet wide each are provided.

**To:**

4. Height Limit: No building shall exceed a height of **three** stories or **45** feet, except the height of a non-residential building may be increased to **60** feet if two side yards of not less than 25 feet wide each are provided. **The height of structures within the district may be subject to Airport Overlay Zoning height restrictions and/or Federal Aviation Administration requirements.**

**AMEND SECTION 32.5:D.6.b. AS FOLLOWS:**

**From:**

- b. Lot setbacks:
  - (1) Front setback – Minimum of 15 feet is required and a maximum of 75 feet is allowed.
  - (2) Side and rear yard – Minimum setback of 25 feet is required.

**To:**

- b. Lot setbacks:
  - (1) Front setback – **A minimum 40-foot setback is required.**
  - (2) Side and rear yard – Minimum setback of 25 feet is required.

**AMEND SECTION 32.5:D.6 BY ADDING A NEW SUBSECTION, e, AS FOLLOWS:**

- e. Height Requirements – There shall be no height requirement within CPEC zoning districts. However, the height of structures within the district may be subject to Airport Overlay Zoning and Federal Aviation Administration requirements.

**AMEND SECTION 32.5:D.10.c. AND e.:**

**From:**

- c. Parking areas adjacent to rights-of-way shall be physically separated by landscaping or other features to a height of three feet. A combination of walls, berms and landscape materials is highly recommended. Sidewalks may be placed within this landscaping.
- e. Required setback areas adjacent to streets and those abutting a residential district shall be continuously maintained in lawn or live groundcover. Allowed uses in these areas are bikeways, pedestrian paths and water-quality facilities.

**To:**

- c. Parking areas adjacent to rights-of-way shall be physically separated by landscaping or other features. A combination of walls, berms and landscape materials is highly recommended. Sidewalks **and other pedestrian-oriented amenities** may be placed within this landscaping **area**.
- e. **Vehicular parking areas shall be no closer than ten feet to any street right-of-way line.** Allowed uses **within parking setback areas include** bikeways, pedestrian paths and water-quality facilities.

**AMEND SECTION 32.5.D. AND SECTION 32.9, TABLE OF PERMITTED USES, AS FOLLOWS:**

In Section 32.5.D. change all references to Planned Employment Center (PEC) to Conditional Planned Employment Center.

In Section 32.9, Table of Permitted Uses, change all references to PEC to CPEC.

**AMEND SECTION 32.5:D, PLANNED EMPLOYMENT CENTER (PEC) ZONING DISTRICT, AND SECTION 32.7A AS FOLLOWS:**

In Section 32.5, transfer the entire Subsection D to Section 32.7A by creating a new Subsection F.

**AMEND SECTION 32.9, TABLE OF PERMITTED USES, AS FOLLOWS:**

Change the title block within PEC Planned Employment Center Districts to read “Conditional Planned Employment Center.”

(This change will make the PEC title block consistent with other Conditional zoning title blocks within the table.)

**AMEND SECTION 32.11:C, “OFF-STREET PARKING SPACES,” AS FOLLOWS:**

**From:**

Child Care Facility

1 ½ spaces for each employee and staff member. In addition, one space for each 10 children shall be provided for the loading and unloading of children. This area shall not be on the street right-of-way nor shall it in any way obstruct or interfere with traffic circulation in the area of the facility.

**To:**

Child Care Facility

**One space** for each employee and staff member. In addition, one space for each 10 children shall be provided for the loading and unloading of children. This area shall not be on the street right-of-way nor shall it in any way obstruct or interfere with traffic circulation in the area of the facility.

**AMEND SECTION 32.22, “DEFINITIONS,” AS FOLLOWS:**

**From:**

Townhouse Developments: A townhouse development shall consist of one or more residential structures comprised of two or more attached single-family residences intended for owner

occupancy to be developed in accordance with the provisions of Section 32.13:M. Nothing herein shall be construed to prohibit the construction of one or more detached single-family structures within a townhouse development.

**To:**

Townhouse Developments: A townhouse development shall consist of one or more residential structures comprised of two or more attached single-family residences intended for owner occupancy to be developed in accordance with the provisions of Section **32.10:TT**. Nothing herein shall be construed to prohibit the construction of one or more detached single-family structures within a townhouse development.

(This change clarifies the location of townhouse provisions within the Zoning Ordinance.)

There being no further business to discuss, the meeting was adjourned at 9:15 p.m.

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

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