

BURLINGTON PLANNING AND ZONING COMMISSION

April 27, 2009

Council Chamber, Burlington Municipal Building

CITY MEMBERS:

George Byrd, Chairman, Present
Paul Cobb, Secretary, Present
John Black, Present
Lynn Cowan, Present
Early Kenan, Jr., Present
Gordon Millspaugh, Absent

EXTRATERRITORIAL MEMBERS:

Bud Apple, Present
Richard Franks, Present
Earl Jagers, Present
Jim Johnson, Present
Rebecca Lashley, 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: Commission Chairman Byrd called the meeting to order at 7:00 p.m.

ITEM NO. 2: Minutes of the meetings held November 24, 2008, January 26, 2009, and February 27, 2009, were unanimously approved. This was a City and extraterritorial item.

ITEM NO. 3: Consent agenda: (City)

- (A) Mr. Jay Lowe, representing Snow Custom Builders, Inc., presented an application for final plat approval of Siblings Unlimited, LLC. The property is located at the northwest corner of Moran Street and Tucker Street and south of Hilldale Drive as shown on plans by Carolina Cornerstone Surveying and Land Design dated March 18, 2009, and containing two lots.
- (B) Mr. Aden Stoltzfus, representing Peters Enterprises, Inc., presented an application for final plat approval of Eric Lane Business Park. The property is located at the end of the Eric Lane cul-de-sac approximately 1,200 feet southwest from the intersection of Interstate 85/40 and NC Highway 62 as shown on plans by Fleming Engineering, Inc., dated April 2, 2009, and containing four lots.

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

Commission Secretary Cobb made a motion to recommend approval of (A) and (B). Lynn Cowan seconded the motion. The Commission voted unanimously to recommend approval of (A) and (B).

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

ITEM NO. 4: Mr. Charles Bateman, representing Burlington University, LLC, 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 uses listed on Exhibit A attached to the submitted application. 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 a City and extraterritorial item.

Mr. Bateman stated that the current rezoning request was less intrusive and intensive than the two previous requests for the 6.9 acre tract. The request in March 2007 by Mr. Chad Sharpe was for 50,000 square feet of retail space, and the request in July 2008, 45,000 square feet. The current request is for 32,000 square feet with a bank proposed for the corner of Rural Retreat and University Drive. He pointed out that the City's Technical Review Committee had extensively vetted the application. He listed the following uses that would be eliminated from the rezoning request: adult establishments; sale or repair of heavy machinery; body, fender and general repair of automobiles; automobile service stations; bulk flammable liquid or gas sales; towing and storage of motor vehicles; freight or passenger transportation terminals; and travel trailer parks.

Mr. Bateman told Commission members that Ramey Kemp and Associates of Raleigh had conducted a traffic study. He introduced Mr. Mark Averette with Alley, Williams, Carmen and King who outlined the traffic study. Mr. Averette stated that right turn movement from the development onto east bound Rural Retreat Road (going toward St. Mark's Church Road) averaged three vehicles at the AM peak hours and 11 at the PM peak hours. He stated that the total primary (new) trips was 2,608 vehicles, the average daily traffic. Mr. Averette stated that the report indicates that traffic generated by the proposed University Boulevard Plaza was not expected to have a significant impact on the study intersections.

Mr. Bateman maintained that commercial zoning would be the highest and best use for the property, and Conditional Business zoning would have less impact on neighbors than high density residential use proposed by the City's Western Loop Planning Area.

He stated that the applicant was committed to the City to secure a sewer easement along University Drive to the site, and if the applicant was unable to negotiate the purchase of the easement, the City could condemn enough property for the easement.

Commission Member Franks asked Mr. Bateman if he had talked to the adjacent landowner about securing the easement, and Mr. Bateman answered that he had not. Mr. Franks commented that in other words, the developer was counting on the City to condemn the property for an easement.

Mr. Bateman explained that only a strip of land along the highway would be needed for the easement.

Commission Member Johnson stated that as of 2 o'clock that afternoon, no one representing the developers had talked to Mrs. Cleo Smith, adjoining property owner.

Mr. Franks asked when was the traffic study conducted, and Mr. Averette answered April 2008. Mr. Franks commented that a lot had changed in that area in a year.

Commission Secretary Cobb asked about the appearance and quality of buildings that would be constructed. Mr. Bateman answered that they would be similar to Alamance Crossing or better.

Commission Member Jagers asked about crosswalks and sidewalks.

Mr. Averette stated that a sidewalk would be installed along Rural Retreat Road on the side of the proposed development, and NCDOT would place crosswalks at the intersection.

Commission Member Johnson asked if anyone had talked to Parks and Recreation regarding the possible impact the development would have on Joe Davidson Park.

Planning Director Harkrader stated that he had an informal conversation with Parks Director Tony Laws, and he was opposed to the proposed commercial development.

Mr. Johnson asked if any businesses in the development would be open 24 hours, and was told that there were not. He pointed out that the submitted development conditions did not include this information. Mr. Bateman stated the restriction could be added to the application, but he would rather not make any adjustments if the application was going to be voted down anyway.

Mr. Harkrader gave a chronology of the adoption of the Western Loop Planning Area Future Land Use Plan and displayed a map showing that high-density residential zoning was recommended for this property. He stated that staff had met with Mrs. Smith, adjoining property owner, and that she was opposed to this development. He stated that staff recommended denial of the rezoning request on the basis that it was not consistent with the Western Loop Planning Area Future Land Use Map previously approved by the Commission and City Council. He pointed out that NCDOT and the City would not allow a diagonal bore on University Drive for a sewer line to the proposed development and City Council had made no commitment to condemn the adjacent property to acquire a 200-foot easement to run the line. In addition, Mr. Harkrader stated that the public had made a significant investment in Joe Davidson Park and that investment should be protected.

Commission Member Johnson pointed out that there was presently a home obviously with a working bathroom on the adjacent property so the only reason to run a sewer line along University Drive was for the proposed development.

Commission Member Jagers asked if a high-density residential use was developed on the property would a sewer line along University Drive still have to be installed and was told that it would.

Commission Member Franks stated that he had also talked to Mrs. Smith earlier in the day, and she stated that no one had contacted her about the proposed development. Mr. Franks stated that the developers should have shown her the courtesy by contacting her. He also had concerns about additional traffic on Rural Retreat Road as well as St. Mark's Road and maintained that much had changed in the area since the traffic study was conducted a year ago.

Mr. Black asked Mr. Bateman if he had approached any City Councilmembers regarding acquiring an easement for the sewer line. Mr. Bateman stated that he became aware of the sewer easement about 30 days ago and that he had not contacted anyone on the Council.

Commission Member Franks made a motion to recommend denial of the request for rezoning. Jim Johnson seconded the motion. The Commission voted ten to one to recommend denial. Voting to recommend denial were Franks, Johnson, Byrd, Cobb, Black, Cowan, Kenan, Apple, Lashley and Piper. Voting against the motion to recommend denial was Jagers.

ITEM NO. 5: Mr. Ted Crum, representing Collateral Recovery Solutions, presented an application to rezone from B-2, General Business District, to CB, Conditional Business District, for motor vehicle towing and storage. The property is located at 1784 East Webb Avenue as shown on Alamance County Tax Map 128-518-127.

This was a City item.

Commission Member Black asked that he be allowed to abstain from voting and Commission Member Lashley asked that she be allowed to abstain from participating in the discussion. Commission Secretary Cobb made a motion to allow the Commission members to abstain. Early Kenan seconded the motion. The Commission voted unanimously to allow Black to abstain from voting and Lashley to abstain from participating in the discussion.

Mr. Crum stated that vehicles repossessed by financial institutions would be stored at the facility and that a six-foot tall fence would be installed ten feet from the property line. He pointed out that the vehicles would be drivable and not wrecked and would be stored for a short period. He stated that there are two sliding gates – one on Webb and one on Border Street.

Commission Chairman Byrd asked how many vehicles could be stored at the facility and was told 50.

Commission Secretary Cobb asked what type of security was at the facility and was told cameras. He asked how would anyone know if inoperable cars were being stored.

Mr. Crum stated that a vehicle could have a dead battery or blown motor, but there would be no wrecked cars stored there. He stated that the impounded cars would stay at the site for about three days.

Commission Secretary Cobb questioned how would anyone know that the vehicles were operable or not or if they had been stored at the location more than three days.

Mr. Earl Brogden, who owns the property, and Mr. Crum told Commission members that it was not profitable for them to store the vehicles more than three days. Mr. Crum stated that he was not interested in having inoperable cars at the facility.

Extraterritorial Commission Member Lashley, who was not eligible to vote on the rezoning request, stated that she and her husband own the business across the street and she wanted to know about the type of fencing that would be installed – would it be a six-foot tall chain link with barbed wire at the top or would it be privacy fencing.

Mr. Crum stated that it would be chain link with barbed wire since the vehicles stored would not be wrecked and need to be hidden from view.

Ms. Annie Albright, 142 Border Street, stated she was concerned that the fence might block the view for traffic entering Webb Avenue from Border Street since there is no stoplight at the intersection.

Mr. Crum stated the proposed fence would be set back 10 feet from the property line for the entire length of the lot along Webb Avenue. The required sight triangle at the intersection of Webb Avenue and Border Street would allow the fence to taper out towards the other end of the lot. Mr. Crum stated that he wanted to maintain the 10-foot setback the entire lot length to ensure better visibility.

Planning Director Harkrader stated that staff recommended approval of the request for rezoning with the use and development conditions including setbacks for general commercial use. In addition, there will be repossessed and not wrecked vehicles at the site.

Commission Member Kenan made a motion to recommend approval of the request for rezoning. The motion died for the lack of a second.

Commission Secretary Cobb made a motion to recommend denial of the rezoning. He stated that section of town continues to be degraded and pointed out the location of the former Kayser-Roth building, where part has been demolished and part left standing. He stated he was also concerned about wrecked cars at various service stations along Webb Avenue and asked that staff and the Commission discuss the Webb Avenue situation at the next meeting. He maintained that a six-foot tall fence proposed for the site would not hide the impounded cars as he was over six feet tall himself and could see over the fence.

Commission Member Cowan seconded the motion to recommend denial. Voting to recommend denial were Cobb and Cowan. Voting against the motion to recommend denial were Byrd and Kenan. John Black had abstained from voting.

ITEM NO. 6: Mr. Lawson Brown, representing Jacobi Keziah Property, LLC, presented an application to rezone from R-15, Residential District and O&I, Office and Institutional District, to CB, Conditional Business District, for a Unified Business Development allowing all uses and standards permitted in a B-2, General Business District, excluding uses listed on Exhibit A attached to the submitted application with .56 acre being rezoned to O&I. The property is located on the southeast corner of South Church Street and University Drive as shown on Alamance County Tax Map 3-27, Lots 6, 75, 76 and 78.

This was a City and extraterritorial item.

Commission Secretary Cobb asked that he be allowed to abstain from voting due to a conflict of interest. Commission Member Jagers made a motion to allow Mr. Cobb to abstain from voting. Richard Franks seconded the motion. The Commission voted unanimously to allow Mr. Cobb to abstain from voting.

Mr. Brown introduced Mr. Ed Tam, Project Manager for Belleau Wood Development Company; Rick Gunn, realtor; Mr. Jimmy Collins with Concept Builders; Mr. John Davenport with Davenport Engineering, who conducted the traffic study; Mr. Sam Smith with Stimmel Associates, Design Consultants; Mr. Newly Burnette, Lighting Engineer with Bright Engineering Consultants; Mr. Noral Stewart, Acoustical Engineer with Stewart Acoustical Consultants; Mr. Aden Stoltzfus and Mr. Brent Cockrum with Fleming Engineering; and Mr. Dan Carthel with Environmental Consulting Services.

Mr. Brown gave an overview of the project that had been in the planning stages for over a year. The approximate 19-acre tract includes the development of seven lots for commercial development, including a convenience store/gas station at the corner of South Church and University Drive, a bank, drug store, restaurant and three retail sites, and nine three-story

condominiums with 96 single-family units. The Conditional Business zoning for the Unified Business Development would allow all uses permitted in B-2, General Business, zoning excluding the following: adult establishments; agricultural implements, heavy machinery sales, repairs, rental or storage; amusements other than those conducted in fully enclosed buildings; automobile tire retreading or recapping; automobile body and fender repairing; automobile sales, new and used; automobile repair shops; board and rooming houses; churches; drive-in theaters; bulk storage of flammable liquids; heliports or helipstops; itinerant merchants; manufacturing; motor vehicle towing and storages services; open air sales; sheet metal and roofing shops; outdoor storage; community non-profit swimming pools; telecommunication towers; freight transportation terminals; travel trailer parks; and woodworking shops.

Mr. Brown told Commission members that he and the developers had met with over 600 residents of the Twin Lakes community as well as the management staff, several of whom were present and not opposed to the rezoning. He stated that they had also met with the physicians at Burlington Pediatrics, who were 100 percent in agreement with the proposed development and had stated so in a letter.

Mr. Brown stated that they had also met with Mr. Joe Kalo, an attorney with Wishart Norris Henninger and Pittman, who was representing several of the neighbors in the Huffman Lane area. Mr. Brown said that the developers had tried to address any concerns the neighbors had with the proposed development. He pointed out that there was only one home and lot included in the development that was located outside the City limits. He stated that the home was built about five years ago, and the request includes rezoning that property to Office-Institutional.

Mr. Brown told Commission members that a traffic study had been conducted at the developers' expense, and that the \$1.5 million in traffic improvements, which would also be made at the developers' expense, would include the installation of a traffic light on South Church Street at the intersection of the development and the main entrance into Twin Lakes, which will also be the main entrance into the proposed Unified Business Development. Additional turn lanes will also be added at the intersection of South Church Street and University Drive and several right-turn lanes into and out of the facility.

Mr. Brown stated that hydrological studies indicate that there would be no increase in water runoff because of the development. He pointed out that underground pipes running behind Burlington Pediatrics will be removed and a natural stream reinstated. Two ponds on the tract would also be removed thus eliminating the current danger of an overflow.

Lighting spillover from the proposed convenience store/gas station has also been addressed, according to Mr. Brown. Since the proposed Sheetz facility would not require interstate exposure, a back-lit canopy has been eliminated.

Mr. Brown stated that a signage plan for the commercially-zoned lots had been submitted and approved by City staff and buffers would offer separation between the proposed development and adjoining residential properties. A six-foot tall fence inside the property line as well as vegetation would also offer privacy for the condominium development. Mr. Brown explained that the nine condominiums would be constructed in phases thus allowing vegetation to grow and offer more privacy. He theorized that three or four neighbors on Huffman Lane would be impacted by the development and noted that the developers are relinquishing all rights to access to Huffman Lane.

Mr. John Davenport with Davenport Engineering reviewed traffic improvements for the proposed development. He stated that a concrete median island would be erected on South Church Street and a traffic light installed at the intersection of South Church Street and Wade Coble Drive, which is the main entrance into Twin Lakes and Keziah Street, the main entrance into the proposed Unified Business Development. He told Commission members that all proposed roadway improvements, signal modifications and installations would be at the expense of the developers and had been approved by NCDOT and City staff.

Mr. Davenport stated that adequate right-of-way on South Church Street and University Drive for future improvements would be obtained.

Commission Member Jagers inquired about sidewalks and bike paths.

Mr. Davenport explained that a multi-purpose path would be preserved on University Drive and pedestrian crossings would be installed by NCDOT.

Mr. Sam Smith with Stimmel Associates stated that sidewalks would not be constructed along South Church Street due to future widening.

Commission Member Franks asked if a delivery truck were traveling north on University Drive, how would it get to the proposed fast-food restaurant. Using a pointer on the overhead screen, Mr. Davenport showed the route of the delivery truck and stated that it would be using the drive located away from the residential district.

Mr. Brown stated that he had met with Mr. Kalo, who was representing several of the neighbors, several times in the past four months. Commission Member Johnson asked how many times had he met with the neighbors, and Mr. Brown answered once. Mr. Brown added that he and the developers had made reasonable efforts to address neighbors' concerns. He maintained that the rezoning request presented a logical extension of existing zoning with the Shops at Waterford across the road on University Drive. He pointed out that multifamily zoning is often used as a buffer between a single-family residential area and commercial development and that the proposed zoning offers the highest and best use of the property. He also stated that both developers – Mr. Tam, who had developed Walgreen's at the corner of South Church and Shadowbrook Drive, and Mr. Collins, who had built several condominium complexes in the area – were both credible developers.

Mr. Joe Kalo stated that he was speaking on behalf of 21 residents in Glenwood Acres: Bonnie and Thomas Kerr, R. Chris Pittard, Rennie and Lorraine Moretti, Thomas and Joan Nelson, David and Karen Parks, Barbara and Richard O'Bryant, Tom Hamilton, Linda and Bill Abplanap, Dr. Conrad J. Brown, William and Susan Bryan, Amy Albright, Dewey and Jan Williams and Javier and Regina Gonzalez.

Mr. Kalo compared Glenwood Acres to May's Lake and described both as serene, residential areas that one does not usually find within a City. He stated that with the proposed development, the ponds would go away as will the habitat prone to thrive in such areas. By way of the overhead screen, he showed pictures of the Glenwood Acres area and pointed out the residents had maintained the private drive into the development.

Mr. Kalo reminded Commission members that unlike this proposal, when Walgreen's was developed, the neighborhood was not split up. The proposed development would bring heavy traffic, a new road and nine three-story condominiums all of which will ruin the appearance and eliminate walking paths.

Mr. Tim Kennedy, 118 Random Lane, stated that he had issues with the hydrological studies presented. He also stated that while this was supposedly a mixed use development, there were very little Office-Institutional uses being offered, and the developers are only speculating what commercial development would go there – maybe a Taco Bell – and asked Commission members how many more corner drug stores are needed. He stated that he had never been contacted by the developers or their representatives. He told Commission members that on two occasions since he moved into his home on Random Lane -- in September 2006 and March 2007 -- the creek had overflowed and flooded his yard. He stated that two years ago he contacted a City engineer who was very nice and explained the situation with the surrounding wetlands. Mr. Kennedy pointed out that the ponds are spring-fed and he wanted to be assured hydrologic concerns were going to be addressed. He told Commission members that he foresees a big problem.

Commission Member Franks asked what percentage of the development is considered green space and was told approximately 4.57 acres. Mr. Franks then inquired about the 50-year floodplain.

Mr. Dan Carthel with ECS commented about the stream running through the site and some floodplain issues.

Commission Member Johnson stated that he had been trained in hydrology and that he knew there were over four acres from the property that drain to the Gunn Creek area.

Commission Member Black stated that he knew how droughts could affect wells but admitted he was not aware that the removal of ponds could affect spring-fed wells.

Mr. Carthel pointed out that even without the proposed development, Mrs. Keziah could drain the ponds tomorrow.

Mr. Brown stated that Ms. Keziah owns the property and ponds and has the legal right to them and that none of the other residents has a legal right to them, specifically that none of the other residents has any right or claim to the ponds or water.

Mr. Reynol Moretti told Commission members that he had lived in Glenwood Acres for 20 years and he and neighbors had stocked the ponds. He stated that up until a few years ago, the wetlands were part of the pasture. Pointing out the uniqueness of the area, he relayed his concerns about the decrease of property values because of the proposed Unified Business Development as well as an increase in crime. He stated that there is only one way in and one way out of Glenwood Acres and that property owners had always maintained the private drive.

Mr. Moretti emphasized the lack of compatibility with Glenwood Acres and the proposed shopping center. He stated that he counted 17 vacant stores at Savannah West and questioned why some of these proposed businesses couldn't move into the large number of empty commercial sites available. He asked Commission members to use their heads and hearts when deciding whether or not to approve this commercial development.

Mr. Tom Nelson, 936 Huffman Lane, questioned the proposed development being a mixed use development and stated he was not sure if this was the proper venue to bring up the fact that Mr. Collins' attorney offered to represent any neighbors that would state that they were in favor of the development. Mr. Collins told Mr. Nelson that his attorney, Lawson Brown, was in the room. Chairman Byrd stated that the Commission could not deal with speculation and hearsay in conversations with others not present.

Mr. Mike Brough of Chapel Hill, an attorney, stated that he represented Twin Lakes and there were a number of concerns that the retirement community had with the proposed development. He stated that as others had mentioned, they were also concerned with hydrology and the chance that water could back up from Michael's Branch and flood the low-lying areas. He pointed out that hydrology studies are still being made. Another concern was an agreement being reached between the developers and Twin Lakes concerning an additional turn lane at the Church Street/Wade Coble intersection. He stated that he hoped an agreement could be reached before and if the application is presented to City Council. Another concern is that when South Church Street is widened in the future, all of an easement for the right-of-way would not be taken from Twin Lakes – that a fair share would be taken from the proposed shopping center. Mr. Brough concluded that Twin Lakes does not oppose the proposed development.

Mr. Tim Kennedy from the Rainbow Hills Subdivision stated that the ponds were spring-fed. He had flooding problems in his yard in 2006 when the Shoppes at Waterford was being built. He expressed concerns with mosquitoes and wildlife from future flooding and clearing.

Ms. Joan Nelson, 936 Huffman Lane, stated that she was opposed to the mixed use development and described it as “commercial zoning on steroids.” She stated that in her opinion, the proposed development was the worse-case scenario for that area and it would ruin the neighborhood. She asked that Commission members to not say yes to the request and also said the neighborhood would support an O&I development.

Ms. Susan Carden, 3739 Tartan Lane, stated that she had not been contacted by the developers or their representatives about the rezoning request. She stated that she was concerned about the proposed condominiums. She noted that several developers have gone out of business and left homes and condominiums unfinished and market conditions are changing every day.

Mr. Johnathon Carden questioned the economy and the demand for new condominiums. He asked if all construction would be done at once or would it be built in phases.

Mr. Collins stated that he had sold more condominiums in the last three months than he has sold all year. He told Commission members that the condominiums would be constructed in phases and sales would determine the time-frame for construction.

Ms. Sandra Darroch, 983 Huffman Lane, stated that she and her husband had lived in their home for six years, and in her opinion, the community is not as close knit as some of the residents portray. She noted that none of the neighbors had ever approached them. She also pointed out the abundance of mosquitoes and the overgrown pond and grass.

In conclusion, Mr. Brown told Commission members and property owners that the developers were bound to all development conditions presented to the City, and this included those conditions addressing stormwater. He asked that letters from Mr. Brough, attorney representing Twin Lakes, and the physicians at Burlington Pediatrics approving the rezoning and development of the Unified Business Development be entered into the minutes.

Mr. Brown asked the Commission to not consider what is best for 13 or 14 residents but consider what is best for the City of Burlington. He maintained that the proposed Unified Business Development would not devastate the neighborhood.

Planning Director Harkrader stated that staff recommended approval of the request for rezoning with the Use and Development Conditions submitted by the developers. He stated

that the request for rezoning meets basic provisions of the Western Loop Corridor Plan for Planned Community Mixed Use Development. He noted that the developers have been attentive to hydrology concerns and quality stream restoration. He added that over 1,300 linear new feet of road structure would be constructed and two signals installed at the expense of the developers. Sidewalks would also be constructed on the new street through the development and the condominiums would offer a buffer between the residential area and commercial development.

Mr. Harkrader stated that both Mr. Tam and Mr. Collins were noted for their integrity and had several quality successful developments in the City. He stated that he had discussed the proposed development with the Town of Elon's manager and planner who, along with City staff, had no problems with the conditional rezoning request.

Commission Member Johnson stated that he had questions about the lack of hydrologic studies submitted for review and how neighbors' and Commission members' concerns with stormwater were not fully addressed.

Commission Member Cowan made a motion to recommend denial of the request for rezoning on the basis that there was a lack of information presented to address stormwater runoff and hydrology issues. Rebecca Lashley seconded the motion. The Commission voted unanimously to recommend denial of the request for rezoning. Mr. Cobb had abstained from voting.

ITEM NO. 7: The Commission considered proposed amendments to Section 32.19:D of the City of Burlington Zoning Ordinance text. The amendments pertain to procedures for presenting protest petitions to City Council.

This was a City and extraterritorial item.

Planning Director Harkrader stated that changes in the Zoning Ordinance text are warranted because state statutes had been amended. He stated that staff recommended approval of the amendments.

Commission Member Franks made a motion to recommend approval of the amendments. Paul Cobb seconded the motion. The Commission voted unanimously to recommend approval of the following amendments:

AMEND SECTION 32.19:D AS FOLLOWS:

FROM:

D. Procedure Before City Council:

3. Protest: In case of a protest against such change or amendment in the form of a petition signed by the owners of 20 percent or more either of the area of the lots included in such proposed change, or of those immediately adjacent thereto either in the rear thereof or on either side thereof, extending 100 feet from or of those directly opposite thereto extending 100 feet from the street frontage of such opposite lots, such amendment or change shall not become effective except by favorable vote of three-fourths of all members of the City Council.
 - a. No protest against any change or amendment shall be effective for the purposes of this paragraph unless it be in the form of a written petition

actually bearing the signatures of the requisite number of property owners and stating that the signers do protest the proposed change or amendment and unless it shall have been received by the City Clerk in sufficient time to allow the City at least two normal days excluding Saturdays, Sundays and legal holidays, prior to the date established for a public hearing on the proposed change or amendment to determine the sufficiency and accuracy of the petition.

- b. Form of Protest: All protest petitions shall be on the form provided for such purpose by the City Clerk.
- c. Information Required: Such form shall be deemed improperly filed until all information called for on the form has been furnished.

TO:

D. Procedure Before City Council: (changes shown in bold type)

3. Protest Petitions:

- a. **Zoning ordinances may from time to time be amended, supplemented, changed, modified or repealed. In case, however, of a qualified protest against a zoning map amendment, that amendment shall not become effective except by favorable vote of three-fourths of all the members of the City Council. For the purposes of this subsection, vacant positions on the Council and members who are excused from voting shall not be considered "members of the Council" for calculation of the requisite super majority.**
- b. **To qualify as a protest under this section, the petition must be signed by the owners of either (i) 20 percent or more of the area included in the proposed change, or, (ii) five percent of a 100-foot wide buffer extending along the entire boundary of each discrete or separate area proposed to be rezoned. A street right-of-way shall not be considered in computing the 100-foot buffer area as long as that street right-of-way is 100 feet wide or less. When less than an entire parcel of land is subject to the proposed zoning map amendment, the 100-foot buffer shall be measured from the property line of that parcel. In the absence of evidence to the contrary, the City may rely on the county tax listing to determine the "owners" of potentially qualifying areas.**
- c. **The foregoing provisions concerning protests shall not be applicable to any amendment that initially zones property added to the territorial coverage of the ordinance as a result of annexation or otherwise or to an amendment to an adopted:**
 - (i) **Special use district**
 - (ii) **Conditional use district**
 - (iii) **Conditional District if the amendment does not change the types of uses that are permitted within the district; or increase the approved density for residential development; or increase the**

total approved size of non-residential development; or reduce the size of any buffers or screening approved for the special use district, conditional use district, or conditional district.

- d. Amendments in the Zoning Ordinance shall not be applicable or enforceable without consent of the owner with regard to buildings and uses for which either (i) building permits have been issued pursuant to G.S. 160A-417 prior to the enactment of the ordinance making the change or changes so long as the permits remain valid and unexpired pursuant to G.S. 160A-418 and unrevoked pursuant to G.S. 160A-422 or (ii) a vested right has been established pursuant to G.S. 160A-385.1 and such vested right remains valid and unexpired pursuant to G.S. 160A-385.1.

4. Protest Petition Procedures:

- a. No protest against any change or amendment shall be effective for the purposes of this paragraph unless it be in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do protest the proposed change or amendment and unless it shall have been received by the City Clerk in sufficient time to allow the City at least two normal days excluding Saturdays, Sundays and legal holidays, prior to the date established for a public hearing on the proposed change or amendment to determine the sufficiency and accuracy of the petition.

A person who has signed a protest petition may withdraw his or her name from the petition at any time prior to the vote on the proposed zoning amendment. Only those protest petitions that meet the qualifying standards set forth in G.S. 160A-385 at the time of the vote on the zoning amendment shall trigger the supermajority voting requirement.

- b. Form of Protest: All protest petitions shall be on the form provided for such purpose by the City Clerk.
- c. Information Required: Such form shall be deemed improperly filed until all information called for on the form has been furnished.

ITEM NO. 8: The Commission considered a proposed amendment Section 32.9, Table of Permitted Uses, of the City of Burlington Zoning Ordinance text. The amendment would permit the use of family care homes in B-1, Neighborhood Business Districts, as a matter of right.

This was a City and extraterritorial item.

Staff recommended approval of the amendment.

Commission Member Cowan made a motion to recommend approval of the amendment. John Black seconded the motion. The Commission voted unanimously to recommend approval of the following amendment:

In Section 32.9, Table of Permitted Uses, under FAMILY CARE HOMES, place an "X" in the B-1, Neighborhood Business District, column to allow this use as a matter of right.

Planning Director Harkrader stated that Commission Secretary Cobb requested that members discuss Webb Avenue at its next meeting.

There being no further business to discuss, the meeting was adjourned at 10:28 p.m.

George A. Byrd, Jr., Chairman

Paul E. Cobb, Jr., Secretary