

TOWN OF PITTSBORO  
PLANNING BOARD  
MINUTES  
RESCHEDULED REGULAR MEETING  
THURSDAY, SEPTEMBER 6, 2007

ATTENDANCE: Ken Hoyle, Ethel Farrell, Jimmy Collins, Harold Howard, Shannon Plummer.

MINUTES of the August 6 Regular Meeting were not yet available for consideration.

Mr. Hoyle introduced the **Powell Place Condominiums** under Old Business. He indicated that the plans have been redrawn and resubmitted and that Monroe has taken a look at them and prepared some comments for the Board's review.

Mr. Hoyle asked what the price range of these units is intended to be. Mr. Yono responded that they would range from the high \$120's in to the \$140's. Mr. Hoyle asked when it was contemplated that construction would begin. Mr. Yono said about ninety days after plan approval.

Monroe said that at the last meeting one of the issues he had raised was that a Minor Subdivision would be necessary in order to create a plot of land on which this project could be located. That Minor Subdivision has been recorded, so that issue has been abated.

The requests that were made at the last meeting were to get this proposed retaining wall entirely outside of the twenty foot buffer since that is intended to be an undisturbed buffer. By moving buildings 7 and 9 a little to the south, farther in to the project, they were able to shift the road. That allowed buildings 6 and 8 to shift to the south and move the entire retaining wall to the edge of the proposed buffer.

He indicated that they had also reduced the ground elevation in that same area which has resulted in a net reduction in the height of the wall from twenty feet to eleven feet. So they have achieved a fairly significant reduction in the size of the wall, almost cutting it in half.

He noted that they had relocated the access to Mr. Spoon's property at his request. It is not situated in a much more centralized location for Mr. Spoon. They showed a sense of cooperation with the adjoining property owner.

Monroe said he had listed a set of five conditions which he asked the Board to consider if you wish to make a recommendation for approval. They are all conditions that are provided to the town at the point of construction drawings, there is nothing unusual here. Those conditions are:

- Construction drawings must be developed and approved by Hydrostructures before a building permit can be obtained;
- An approved Soil Erosion, Sediment Control Plan must be approved by the State and Hydrostructures before commencement of any grading;
- Design of the wet detention pond must be approved by Hydrostructures;
- A lighting plan must be developed and approved by the planner;

- Before any units are conveyed, the Board of Commissioners must approve and the Register of Deeds must record Condominium Documents.

Mr. Hoyle inquired if that was the same thing as a home owners association. Monroe said it is similar, but it defines the space that is going to be acquired by the people who buy the condominiums and the spaces which will be held in common.

Mr. Hoyle inquired about the wetland situation to the west of the building site. Monroe said that early in the review he had been under the impression that the edge of the detention pond was in the wetland. In fact the wetland is between the two detention ponds, so the wetlands will not be affected.

Mr. Hoyle said that it had been indicated that the retention wall had been moved outside the buffer but he inquired how the wall could be built if it was so close to the buffer without disturbing it. Mr. Yono said they are building the wall from the other side. Since it is essentially a landscape wall it does not require the deep footings. There will be silt fencing put in as they cross toward the detention pond and wetlands. He said there are a couple of feet as leeway before the buffer so the only affect of the buffer will be the access to the Spoon property. He said they do not expect it to be a problem to build the wall without impact to the buffer. He said that if it was a foundation wall that would be a different story.

Mr. Hoyle asked how far the wall will be from the closest units. Mr. Yono said approximately ten feet in one case and a little more in the other case. He said that is why they are putting the fencing that matches the rest of Powell Place on top of the wall as well.

Mr. Hoyle asked how much of these units is going to be visible from the By-pass. Mr. Yono said he did not believe you would be able to see much from 64 because the side of the highway is fairly wooded and there is the buffer which is being maintained and then there is Mr. Spoon's property also. Since the buildings are not extremely high, low visibility is one of the benefits that will derive. The height will be only 30 to 32 feet to the mid-peak line. They are essentially no taller than a single family home. Mr. Hoyle said that the reason he asked the question is that if you are out on I-40 going from Chapel Hill to Raleigh there is a group of brick apartments on the left hand side just beyond Park Drive and they look like a prison there and we don't want to repeat that here. Mr. Hoyle said the Board is only interested in protecting the appearance of Pittsboro.

Mr. Collins asked what the exterior of the structures will consist of. Mr. Yono said it is a residential style building and it will be finished on the outside with hardi-plank like the rest of Powell Place. He said it is your typical single family construction; they look like they are single family homes it's just that they are pushed together. Monroe reminded the Board that they will be subject to the design review standards of Powell Place.

Mr. Hoyle addressed Mr. Spoon saying that he had seen what is proposed, he'd seen the plan and asked him if he was okay with what he had seen as adjacent property owner.

Mr. Spoon said he was fine with it. He said the only request he had was that when they bring in their engineering drawings to figure where their water and sewer lines that they design them so that he could connect to them without having to under a twelve foot wall or something. He asked that they cut the retaining wall at an angle at the entrance to his property so he doesn't have to cut the wall back. Mr. Yono said that was not a problem. Mr. Spoon said he thinks they have done an excellent job and he doesn't have a problem with it.

Mr. Hoyle asked for questions from other members of the Board. Mr. Plummer congratulated the applicant on the reduction of the height of the wall. Mr. Hoyle said he would like to see it lower but realized you can only do so much.

Ms. Farrell said that with the chairman's questions and the recommendations here she is satisfied and **made a motion to recommend the plan be approved with the conditions suggested by Monroe. Mr. Collins seconded the motion.** Mr. Hoyle asked if the motion should be amended to include Mr. Spoon's request with regard to water and sewer line locations. Monroe said that he would make sure that it is something that is worked out between Mr. Spoon and Mr. Yono. Mr. Yono assured the Board that he did not want those lines to go under the wall. **The motion passed unanimously.**

Mr. Hoyle introduced the next item on the agenda, the **Matheny Accessory Dwelling Unit Special Use Permit.** Mr. Hoyle said it is his understanding that Mr. Matheny wishes to add some dwelling space on top of his garage so he can accommodate his grandchildren. Mr. Matheny said that was correct, he had eleven of them and trying to have them visit in a two bedroom house was a little difficult.

Monroe said that Mr. Matheny has already built this garage and is asking the town to permit his finishing the upstairs of it into a habitable space. An accessory dwelling unit above a garage is a permissible activity in the zoning district in which his property is located. The dwelling conforms to the requirements of the homeowners' association and subdivision covenants. The application that Mr. Matheny has submitted complies with the term and requirements of the Special Use Permit. At the Public Hearing there were no speakers against this application and the adjoining property owners had been duly notified. Mr. Hoyle said that the application complies with the Restrictive Covenants of the Ross Ridge subdivision. Monroe said that was correct. Mr. Hoyle asked Mr. Matheny if he had enough capacity in his septic system for the addition. Mr. Matheny said he already had the permit for that. Mr. Collins asked if this was going to be a separate system from his house. Mr. Matheny said it was totally separate.

Mr. Hoyle asked if this was being built for his own personal use, that it is not being built as a rental unit. Mr. Matheny said that was correct. He said the restrictive covenants prohibit him from renting this area out to unrelated individuals.

Monroe said that if the Board wishes to consider a recommendation of approval he would ask that they include the findings of fact from his memo in the recommendation.

Mr. Collins asked Mr. Matheny if he had the permit for that septic tank from the County. Mr. Matheny said he did.

**Mr. Howard moved that the Board recommend approval of the Permit based on the findings of fact listed in Monroe's memo. Ms. Farrell seconded the motion; it passed unanimously.**

Monroe informed Mr. Matheny that this application will go back to the Board of Commissioners at their regular meeting September 24<sup>th</sup>. Mr. Matheny asked if he needed to attend that meeting. Monroe said that it was advised.

Mr. Hoyle introduced the **Echeverry Day Care Special Use Permit** request. Monroe said that Mr. Echeverry is petitioning the town for a Special Use Permit to locate a day care center at a residence at 280 Highway 902. He said that the owner of that property has provided a letter in your packets indicating that there are no objections to a day care center being permitted in this location.

Monroe said that during the public hearing, Mr. Echeverry testified that they have experienced a very long waiting list for entrance to a Spanish immersion day care center

which this is intended to be and that they wanted to offer another opportunity to the community for this kind of facility.

His wife is the licensed center operator and has operated a center for more than twenty years. An employee, Adrianna Espinosa, testified that she is working in a day care center in Chapel Hill and that she has been there for six years in this Spanish immersion day care center; so they bring qualified, competent people to the application process.

The application has satisfied the requirements for the plan submittal as detailed in the Special Use Permit procedure. He said there were no speakers at the public hearing in opposition to this request. He said that if the Board would wish to consider a recommendation of approval, he would ask that they consider including the findings of fact from his memo in that recommendation.

Mr. Collins asked if the sewer system would support the number of occupants the building could support. Mr. Plummer responded that the building was hooked up to the city's sewer system. Ms. Farrell said that the application had passed the sanitation inspection, so this was not an issue.

Mr. Plummer said that in many cases, a day care is better than a neighbor because you don't have any activity at night or on the weekends.

Monroe said that the rear yard, where the play area will be located, is already fenced and that is one of the requirements for a day care center with a special use permit.

Mr. Hoyle asked if the applicant had already applied for a state license to operate a day care center. Mr. Echeverry (through his interpreter) replied that they had.

Mr. Plummer asked the age groups which would be included in the center. Mr. Echeverry replied that the ages will be from one to five years.

Mr. Plummer said that he had spoken with Robyn Allgood who owns a day care center and she is almost at capacity and she felt there is a need for additional day care centers. They are licensed for 188 children, but she is starting out with a limited staff so she can only accommodate a certain number of children.

Mr. Hoyle said that he knows it is certainly needed in the area and he wishes the Echeverry's well in the endeavor.

Ms. Farrell said that with the state regulations and local requirements, she thinks what is being proposed here is reasonable. **Ms. Farrell made a motion that the Board recommend approval of the Special Use Permit with the stipulation that the Board adopt the findings of fact in Monroe's memo. Mr. Plummer seconded the motion; the motion passed unanimously.**

Monroe advised the applicant that the application would appear on the agenda of the Board of Commissioners on the 24th of September.

Mr. Hoyle introduced the next item on the agenda, the **Spoon rezoning** request on 1.5 acres.

Monroe said this is the parcel of land Mr. Spoon owns adjacent to the Powell Place Condos. Monroe said that this piece of property adjoins the By-pass exit ramp and was severed from the remainder of the piece that is on the north side of the By-pass. It is a piece that is 1.5 acres that remains from a parcel that was about 20 acres previously. Mr. Spoon has asked that this be rezoned from R-A2 to O&I, so that it might be possible to build an office building there. If the lot were left in the current zoning, it would preclude him from building anything but a single family residence because the lot is not large enough to qualify for the minimum lot size in the R-A2 district. Monroe said that he suggested that the application be requested at O&I since the property is adjacent to a

residential zone and the people in the residential area needed the reassurance that there would not be some retail use or something like a gas station there, but something that would be more compatible with their residence and would be a day-time operation for the most part.

Monroe said that he had included in the packet recommendations that he would ask the Board to consider in the deliberation of this request. He asked the Board to consider the two Resolutions when they reach the point of desiring to make a recommendation.

Mr. Hoyle asked Mr. Spoon if the width of the access from the condos would be sufficient to accommodate what he contemplates for his property. Mr. Spoon said it would; he is just contemplating a small office building. Mr. Hoyle asked if the building would be a triangular shape to be the same as the lot. Mr. Spoon said it would probably be something similar to that.

Mr. Howard asked how much of the lot is taken up by the wetlands. Mr. Spoon said a good deal of it, there is just the area to the east of the wetlands that can be used. Mr. Spoon said he could only get one crossing over the wetland so the amount of land that can be used is limited. Mr. Hoyle asked if there was any access to the west side of the property. Mr. Spoon said there was not, he said he had asked representatives of Powell Place but they never returned his calls. He said it would have been a really good way to go out of his site but they sold the lots as single family and there is a really good buffer so there is little to no chance that it will ever occur.

Mr. Hoyle said that if the Board recommends an approval of the rezoning and the Commissioners grant it, Mr. Spoon would still have to come back with a site plan for the towns' consideration.

**Mr. Howard made a motion that the Board adopt a Resolution to Approve the rezoning and recommend that the Commissioners grant Mr. Spoon's request to rezone. Mr. Plummer seconded the motion; it passed unanimously.**

Mr. Hoyle introduced the next item on the agenda, the **Hawks' Ridge Subdivision-Preliminary Plat**. He said the application is presented by Mr. John Blair and it is on the property that the Board was asked to examine as an MUPD nearly a year ago.

Monroe said that Mr. Blair is seeking to obtain town approval to build 34 lots on 96.75 acres. The density more than satisfies the underlying zoning and qualifies Mr. Blair to be considered for the Low Density Option in the Watershed Protection Overlay district so he will not have to plan for a stormwater detention facility because he is not planning to attempt developing to the High Density Option. The roads that have been proposed satisfy the requirements for the Low Density Option.

The engineer has proposed an alternative kind of system for wastewater treatment. The system has been licensed by the state of North Carolina and requires less land to treat the same quantity of effluent as a conventional system. In addition, it requires less maintenance. Given the proximity to a stream in the project area and to the Haw Natural Area owned by the State of North Carolina, it would seem to be a wise choice to propose this alternative wastewater system.

Monroe said that he has raised an issue about having to have DOT approval where the system crosses the roadway since these will be DOT maintained roads. Monroe said that Brian Emerson from HydroStructures explained to him prior to the meeting that where the sewer lines cross the road, they will use DOT approved piping and not use E-Z Flow. He said that will not be an issue with DOT except to get an encroachment agreement to cross the roadway.

Mr. Hoyle asked which road we were talking about. Monroe said Hawks' Perch and he asked Mr. Emerson if there would be another crossing. He said there would be a crossing at River Hawks Ridge and another crossing at Hawk's Perch and that will be it. Monroe said that those two crossings will require a DOT encroachment agreement and as long as they are not taking the E-Z Flow pipe under the streets, there should be no problem obtaining that agreement.

Monroe said that he had talked to Fire Chief Griffin about a concern that, since they wouldn't have stormwater detention requirements, there is no source of water for fighting a fire on this tract. Chief Griffin responded rather nonchalantly that that is a fact of life in that part of town. He said there is a fairly sizeable pond on Dee Farrell Road and if there were a fire situation they would simply truck water over and that is their standard operating procedure. He was not at all concerned about the lack of an immediate source of water on the property or adjacent to it.

Mr. Collins asked if this would not require somebody's approval to use this pond. He asked if they could do it by mandate or what. Monroe said they have already used that pond for fire fighting. Mr. Collins said that they have been doing it. Monroe said that was right and there was no concern by the Chief about his ability to obtain water for fire suppression.

The one element about this plan that is very complicated is that the septic areas are not all on site because of the finding of suitable soils for percolation for locating septic fields. HydroStructures was challenged to find a way to bring septic fields to all of the properties located in areas with non-supporting soils. That is why they have gone in the direction of creating sewer easements and they will pump effluent to specific areas. Because these areas are located off-site Monroe said he thought it would be a good idea for restrictive covenants to identify those areas and protect them from any kind of active use.

In addition, Monroe said that since there is no dedicated recreation space, Mr. Blair should be aware that there will be a recreation impact fee that will be attached to the subdivision approval at the time of recording and that the fee will be \$500 per lot created.

Monroe said that with the conditions he has included in his memo he believes that this application has satisfied the requirements of the Subdivision Regulations.

Mr. Hoyle asked the engineer if the areas where the sewer will be pumped to is useable area. Mr. Emerson said that the septic locations are in soils that would support the systems; the effluent will be pumped to ground that would be similar to ground that would be found in a rural lot but the design of the system will require less area.

Mr. Howard asked if the pipe for septic in the areas where there are easements will be run before the lots will be done or how will it be accomplished. Mr. Emerson said that it is going to have to be orchestrated because all the pipe has to be put in before the housing development occurs. He said that the installation has got to be orchestrated where it is marked so there will be no more land disturbing activity than necessary.

Mr. Plummer asked if there was any involvement with the County Health Department since this is licensed with the state. Mr. Emerson said he had contacted Andy Singer about this and he said that with the terrain they have out here this system would be advisable and could be permitted by the County. Mr. Plummer asked if there would be a drain field per-se, or are there chambers. He said that because there is so much less area used he was just wondering. He explained how the system functioned better than gravel

since the particles allow better absorption than gravel and requires less area to be effective.

Mr. Collins said that he was familiar with the system from his time working with the Health Department. He said the material is much more absorptive and therefore, you get more contact with the pellets than you do with rock. He said the systems do work very nice. He said that the one thing you need to be careful of is that the repair area for these systems doesn't grow up in trees. He said you can't disturb the area but you have to protect it for future development if needed. He said if you are real careful at installation, the system will work very well. He said that it cuts down on labor because one man can set them in.

Mr. Plummer asked if the Soil Erosion, Sedimentation Control Plan would be reviewed by someone on staff since it is in the ETJ. Monroe said that it would go through the State with review by Hydrostructures.

Ms. Farrell said that Monroe had listed several conditions in his memo but she asked about street lighting and sidewalks. Monroe said that he didn't think sidewalks or lighting would be appropriate since there is no place to go to. This is a rural subdivision and if there were a park then lighting and walks would be necessary, but Mr. Blair is going to pay a recreation fee in lieu of building a park so the need for walking is lessened. Putting a sidewalk in doesn't seem to serve any useful purpose. Monroe said that the Lighting Ordinance is part of the subdivision ordinance and would govern the required installation-in this case it should be minimal at best.

Monroe said that the one item that he thinks is most important is the slope of Hawk's Ridge Road so that the run-off from that road does not go in to the stream buffer; it should flow to the south rather than having a typical crowned street.

Mr. Hoyle asked how this application is affected by the moratorium. Monroe said that since Mr. Blair was not asking for municipal sewer, it is not affected by the moratorium.

**Ms. Farrell made a motion that the Board recommend approval of the Preliminary Subdivision Plan subject to the conditions listed in Monroe's memo. Mr. Plummer seconded the motion; it passed unanimously.**

Mr. Plummer asked the Board's permission to recuse himself from the next item on the agenda since he is the applicant. **The Board consented to allow Mr. Plummer to be recused.** He withdrew from his seat and proceeded to the audience.

Mr. Hoyle introduced the next item and explained that according to the rules of the Planning Board, Mr. Plummer did not have to recuse himself but could have participated in the discussion of the request and be excluded from voting on it. He said he felt it was admirable of him to recuse himself to remain above influencing the Board in it s consideration of the request.

Monroe said that the application that Mr. Plummer has brought to us is adjacent to his Diner property; it is currently zoned R-10 and he asks the town to consider a change to C-2. The adjoining properties to the west and south are zoned R-10, those properties on the east and north are zoned C-2. He said that the Land Use Plan identifies the area from the intersection of Hwy 64 and NC 87 all the way to Dr. Rouse Wilson's dental office as Traditional Neighborhood. That is defined in the LUP as that kind of neighborhood that effectively mixes uses that are single family and infill that are compatible non-residential uses. So, there is room to find that the request satisfies the requirements of the Land Use Plan.

Monroe said that there are a number of questions that he has asked the Board to consider in its deliberation. Those are:

- Is there a good possibility that the request, as proposed, would have an adverse impact on the property values in the vicinity;
- Is there a good possibility that the request, as proposed, would result in lessening the enjoyment of the adjacent properties;
- Is there the possibility, that the request, as proposed, could cause serious noise, odors, or other disturbances.

Monroe said that Ms. Andrews has provided the Board with a memorandum in which she poses answers to those questions and asks that the Board consider delaying action on its request to give her the time to confer with the property owners who are concerned about the rezoning or to ask Mr. Plummer to withdraw his application and resubmit a Conditional Use Permit application with a site plan.

Monroe said that Mr. Plummer is within his rights to ask for a legislative rezoning; it is not an unusual action in the Town of Pittsboro and he says he understands how it does tend to create a sense of discomfort for adjoining and nearby property owners who don't have a sense of control over the treatment of their concerns. He is entirely within his right to submit this application in the form in which it is presented for the Planning Board's consideration.

In this form, the Board of Commissioners are not permitted to limit the things which could occur on that property; they have to consider the entire range of uses in the C-2 district as a possibility. So, in your deliberations, you will have to keep in mind that you cannot reach a contract with the property owner to specify what he is intending to do on this property—that would be regarded as contract zoning and would be found unconstitutional by the courts of the state of North Carolina. Monroe said that the only way that kind of action can occur is if Mr. Plummer withdraws his application and resubmits it for consideration of a Conditional Use Permit.

If work proceeds forward on this application and the Commissioners deny it, Mr. Plummer would not be able to resubmit it for consideration for six months. Mr. Hoyle asked Monroe to enumerate some of the C-2 uses which could be considered. Monroe said that most retail uses would be permitted in the C-2 district, restaurant uses would be allowed, car sales and repair; just about anything retail or office would be allowed. Mr. Hoyle asked Monroe what he meant by “compatible, non-residential use”. Monroe said that small offices are compatible non-residential uses; he said that the way Mr. Plummer has conducted the operation of his Diner has demonstrated itself to be compatible with residential use. He said that he has never had a complaint in the four years he has been in Pittsboro and he has had a lot of complaints to investigate. So, conceivably, done right, a restaurant can be a compatible non-residential use; the key is to do it right.

Mr. Hoyle asked Monroe if he could see a “compatible non-residential use” a building in which they could have banquets and meetings. Monroe said that it is entirely conceivable if it done right and controlled properly by the owner.

Mr. Hoyle said that, for clarification, what Mr. Plummer is asking to be rezoned is parcel 72864. Monroe said that is correct.

Mr. Hoyle asked Mr. Plummer to tell him exactly where Thrift Street is at. Mr. Plummer showed the Board where the street was and what constituted the neighborhood.

Mr. Plummer stated that the property he is requesting to be rezoned has a house on it adjacent to the Diner and faces Hwy 64. He said there is actually another house on the lot with the restaurant which is non-conforming right now; you are not supposed to have two principal buildings on a C-2 lot.

Mr. Plummer said he would like to explain a little more of what he is trying to do for the sake of the neighbors who are present tonight. He said that in the past few months the town has had several restaurants that have been approved and there are several more on the way. He said the KFC/Taco Bell site plan has been approved, there is Andy's and Dominoes'; the building being built by Heath Williams is seeking a restaurant, the Carolina Brewery is opened with a Hop Shop beside it; Powell Place is going to have commercial which will surely have a restaurant or two; and Mr. Spoon has spoken of getting a MacDonald's; and with the rezoning of Pittsboro Place he is confident there will be at least one restaurant there.

He said that the situation he has found himself in is that he is in a 35 year old building that is really antiquated. It was built in 1972 and he said he is two years older than the building. He said he has a lot of issues with the property because it was set up as an original fried chicken take-out. He said that over the years it has been piece-mealed together; the dining room was added on, the drive-thru was added on. He said he is at a point in his life that he realizes that he is probably going to run this restaurant for the rest of his life. He said he lives in the same neighborhood as the concerned parties in the audience tonight and if he is going to be here for the next twenty years, then he needs to build a new restaurant.

With the current zoning standards the way they are, he said he couldn't duplicate what is there now because of impervious surface requirements and setbacks. He said that he does have a house behind it that he bought a couple of years ago as a rental. He said he is seeking to extend this zoning to that additional .24 acre. He said it is not a large piece of land. He said that would give him more room to grow and build a 4000 to 5000 square foot structure where he could seat maybe 100 people. He said he needs the C-2 zoning for a couple of reasons; first, if he wants to build a new restaurant it needs have a drive thru and for that it needs to be C-2. He said that on a rainy day, the drive thru is literally half of his business. He said that when they first took over the restaurant, he wanted to close the drive thru and his wife said no, just keep it open; he said that if he hadn't listened to her he wouldn't be here tonight because the drive thru has really been an integral part of the success of the restaurant. The other reason he said he needs C-2 is so that he can recombine the lots to have one big enough to build upon.

Mr. Plummer said he would like to address some of the concerns expressed by the neighbors. As far as property values go, any time a commercial piece is introduced to an area that is close to residential, even as a realtor, he knows that causes some concerns; especially that it might be detrimental to our property value. He said he could assure them that he wouldn't try to do anything that would be detrimental to the neighborhood-if anything, he said he would be complimentary and feels that a restaurant can be complimentary; more so than a convenience store.

He said that he understands that the town has to look at everything that would be allowed under C-2 zoning. He said that he could assure them that an intersection with 20,000 vehicles a day is not conducive for an asphalt company. He said he wouldn't do anything to injure our property values and his mother-in-law lives beside him and he wouldn't dare do anything to harm her property value.

In response to Ms. Andrews statement that a rezoning would nearly double the commercial property in the area; he asked what “in the area” means. He said that if it means rock throwing distance he thinks that is reasonable. Within rock throwing distance there is Anna’s QuikStop, two more pieces east that are commercial, Van Finch’s property behind the QuikStop, the bed & breakfast that is coming is O&I, the coffee shop/car wash is C-2, the house behind it is O&I, right down the street is Habitat and the Eye Doctor and across the street from the frame shop to the Community College is zoned commercial. So, with a request to add .24 acre he said he feels it is not accurate to say he is doubling the commercial land.

Next he cited her statement “without a plan for review or any conditional uses imposed on the C-2 property if re-zoned, neither affected citizens nor the town can protect against potentially inappropriate or unforeseen uses of the property”. He said he fully understands that this would make folks uncomfortable because they don’t fully understand what he is going to do. He said to the neighbors that this is his life; his dad was in restaurants his whole life and he has been doing this for 37 years counting the time he helped his dad. He said his goal is to stay competitive in this market and to be able to have a restaurant on that corner. Because of all the competition coming, he said if he can’t do this he may be forced to sell out and he doesn’t want to have to do that. He said he would do everything in his power to allow a buffer greater than the zoning ordinance would require.

He referred to the question of whether this would cause noise, odor or other disturbances, and as far as noise goes, a restaurant is really a pretty good neighbor considering the fact they close 8 or 9 o’clock. He said he is closed at 10 o’clock on Saturday and closed on Sunday and he will continue to do that, so you have a commercial neighbor where no one is present on the weekend. As far as odor, that is a consideration a restaurant causes; if you go out about 5:30 in the morning there is the smell of fresh cooking bacon if the wind is blowing just right, and if you are a vegetarian, that might be offensive.

Mr. Plummer said that the only other odor would come from dumpsters; those can produce a lot of odors and a lot of fly problems. He said that there are a lot of innovative things you can do for dumpsters. Most restaurants breed their own flies if you don’t do something to keep the fly population down. When a dumpster has a lot of odor, that is generally from bacteria and you can help that situation by getting it dumped twice a week.

He said that some of the confusion stems from Ms. Andrew’s work with the County Planning Board and with representing applicants before the County. The County has Conditional Use zoning which requires the preparation of a site plan; but in Pittsboro, legislative zoning is allowed, in fact, there are six properties being considered for rezoning currently and none of them have site plans. He said that because of all this commotion that is why he is in this position, he wants to be able to do something.

He said that if he was to tear down and build he would have to build where the property line is; he said the house is about one inch off the property line. He said he would have to push the restaurant back and sit on top of that property line. But if the lot is rezoned he could recombine them and have more control over where the restaurant would go. He said that with the drive thru, the building needs to sit in the middle of the properties. He said he would exercise care about the dumpster location, he doesn’t want to hurt any of his neighbors.

He said that as Monroe had pointed out, he cannot submit a site plan in a legislative rezoning. Monroe said that was correct. He said he is asking the Board to consider this rezoning tonight; it would go to a public hearing and everyone will have a chance to speak at the hearing. He said he would gladly sit down with the neighbors any time; he would be happy to have Ms. Andrews mediate, whatever the neighbors wanted. He said he wanted to try to do things in a neighborly fashion so that everybody can be happy. He said that he felt a nice new restaurant on the corner would compliment the neighborhood a lot more than a forty year old building with structural issues. He said he wanted to point out to the Board that not everyone present tonight is an opponent of the rezoning; there are some people here in favor of it. He said he feels like he needs to do this sooner than later because of so many new restaurants coming to town.

Mr. Hoyle said that he had read with interest that the General Assembly has come up with an idea to control odor in dumpsters; they now have worms in them to break down the bacteria. Mr. Plummer said he had seen that too.

Ms. Farrell asked if the town had any control with regard to buffers. Monroe said that if the property is rezoned then at the point of site plan review we would have a say on buffers against the residential areas that would be two sides. Mr. Plummer said that before he would submit a site plan to the town he would take it to the neighbors now that he knows who is concerned. He gave them his word. Ms. Farrell said that in her opinion, dumpsters and buffers are very important. He reminded the Board that the town didn't used to have setbacks and that as a member of this Board he voted on imposing them and thinks it is better for it. Mr. Plummer said that we need to remember that the town has a new lighting ordinance and that his site plan would be subject to those standards, so lighting would have to be shielded.

Mr. Hoyle said that this is not a public hearing but this is somewhat of a little different type situation and he said that, unless a member of the Board has an objection, he thinks we should here from Ms. Andrews since she is representing four parties.

Ms. Andrews said that she and Mr. Plummer have very strong long-term ties and it is not her intention to come in on behalf of the folks she represents and cast any sort of aspersions about Mr. Plummer's integrity or his ability to follow through on his word or to commit to any obligations he has made here because it is not that simple. She said her clients just don't know what is going to happen. She said she does happen to know that there are people looking for a place for a Waffle House and they would need something even smaller than what is being looked at here and that would not be something her clients would be happy with. She doesn't think they would be happy with rodents from dumpsters either.

She said that when Mr. Plummer came to see her, the first thing they talked about was what is the straight rezoning and how does that affect her clients. In looking at the uses in the C-2 district there are some things in there that really give pause to these neighbors. She said that her first thought since she had experience with the County was to see if she could get some sort of agreement from this property owner about what he was going to try to do. She noted that Monroe correctly points out that there is no ability for the Board to require this actual agreement between Shannon and the property owners since that would be contract zoning and unconstitutional and she agrees. However, through the Conditional Use process the Board could get to review a site plan and get a judgment about which of those C-2 uses would be on that property. You, as the town Board would

have some level of comfort as would the Commissioners and the neighbors and citizens of the town. They would have some level of comfort about their ability to resell their homes and not lose property values. She said that it is fine for us to sit here today and say that Shannon will do a restaurant but even he would have to admit that he is not sure he is going to do anything now or it could be five years from now. Say that five years from now he is not in a position financially to act on a plan to knock down the buildings and start over or to build a separate structure to house catered events or banquets. She said that she is not sure what he is going to do and is not even sure he knows what he is going to do. He certainly could if he came to you with a Conditional Use application and a site plan; it would have a good clear indication of what type of landscaping requirements, buffer, noise control, traffic control and other things.

To address the point in her letter she said that Shannon pointed out the number of current commercial properties in the area and the question has to be asked is there already enough in this part of town. If you feel there is then this is something that needs to be denied or at least reconsidered or withdrawn.

She said that with regard to her statement that the application would nearly double the square footage; she said she simply did a quick PAC Card review and backed out the asphalt area from the tax maps and found he is adding another half acre or so of commercial square footage there, but the thing we don't know is what it will be. With regard to his guarantee of value and buffer and where he is going to put the dumpsters and lighting, her clients do not have the luxury of relying on that and as much as they believe his intentions with regard to the neighborhood that he lives in, that is just not how the market is right now. You have people coming in from the outside who are paying tremendous amounts of money for small pieces of property and doing some things that aren't necessarily in the best interests of residents of nearby properties. She said that they are asking for the Board to protect the interests of the neighbors and the citizens. She said that with regards to his competitiveness in the market with all the restaurants that are coming in, she certainly agrees that a hometown business owner is someone we ought to support; but the use can certainly be granted through conditional use and they would not be opposed to continuing with an understanding of what is going to happen there and with some understanding of the time frame as well. She said they have had the indication that this might be something imminent or it might be five years and the uncertainty is very discomfoting; hours of operation is one of their bigger concerns. She said her clients had gotten together and listed things they are really concerned about and hours of operation was high on the list. She said she is not aware of anything in the zoning ordinance that says restaurants are going to open at 10 and close on Sunday or any of those things. But if it is going to be a Waffle House, and she is not suggesting that it is, she knows the types of tracts they are looking at and they are going to be open all the time, and that would create some impacts especially for these people who are right behind this in that neighborhood.

She said that with regard to innovation, especially around dumpsters and odor control, her thinking out of the box framework for contacting Shannon was to say to meet together because this happened very quickly. Normally she would not have been able to comment at the Planning Board meeting and would have to wait to get to the Commissioners. She said she knows that on some occasions the Commissioners have acted right after the public hearing so she was concerned about having adequate time to

prepare all the thoughts in response to the application or the work her way through the town zoning ordinance which is quite a bit different from the County ordinance. So she worked to pull it together quickly to get the Board some framework for what their concerns were. She said she called Shannon and asked if he would be willing to withdraw even for a short time to give us some time to develop things that would address her clients concerns. They are pretty straightforward things like:

- where are the dumpsters going to be located;
- where are the lights going to be located;
- can they get a buffer;
- can he not cut down the magnolia tree.

They are just normal things that would come up in a site plan review that can be managed and controlled with some bit of clarity and permanency. She asked the Board to deliver a permanency to the decision with regards to C-2 and all of the list of uses allowed. She said that as much as they would like some guarantees that Mr. Plummer is going to do what he said he is going to do she said she does not think they have the ability to stipulate an economic situation in the future or develop an economic situation of commercial designed property in town. She said that she would certainly be present at the hearing and would follow through with the offer to meet with Mr. Plummer to try to devise some restrictions, covenants or some sort of contractual obligations between them. She said she would not characterize her clients in opposition at this time, but very concerned about their futures.

Mr. Hoyle noted that the procedure now followed by the town is that the Planning Board has its review and makes a recommendation based on the technical aspects of the application then the Commissioners have a public hearing and make a decision.

Chris Gandif said that a year ago Mr. Plummer approached him and asked if he would help him remodel the existing building. He said they laid a new floor, put in all new booths and he did the paint job on the interior walls. Mr. Plummer said that if he helped, he would let him eat at the restaurant free for a year. So they agreed. He said he would love to eat there free but he can't because it is always crowded. He said he has known Shannon for 10 years and he is not going to fall back on his word. He is going to succeed and he is going to do it with integrity. He said he would like to see him stay competitive with the new restaurants and he thinks it would be great to have a new restaurant there. Two other neighborhood residents spoke in favor of the request because they would like to see him stay a part of the community and not have to sell out to someone like a Waffle House.

Mr. Hoyle asked Mr. Plummer how long the restaurant had been there. He said it was built in 1972 and that his father ran it from 1988 to 1997 when he and his wife purchased the business from him and they were able to purchase the real estate in 2002.

Mr. Howard said he knew that Mr. Plummer already had the lot just to the west of the Diner and the property owner to the west of that is not objecting to the request. He said that there is a 21 foot section of a lot on Thrift Street that adjoins this piece of property. He feels that everything down to Dr. Wilsons' office will be zoned C-2. He said he thought it was coming, and that it is just a matter of time before that area is going to change. **Ms. Farrell made a motion that the Board adopt the Resolution of Approval and recommend that the Commissioners approve the request. Mr. Collins seconded the motion; it passed unanimously.**

Monroe informed the members of the audience that this recommendation will go to the Board of Commissioners on the second Monday of October to schedule a public hearing which will be conducted on the fourth Monday and adjoining property owners will receive notice of the hearing.

The Board invited Mr. Plummer to rejoin the meeting.

Monroe informed the Board that the Commissioners had hired Bill Terry as Manager. He will join the town October 1. He is currently the Sustainable Facilities Manager for Chapel Hill.

**Mr. Howard made a motion to adjourn. Ms. Farrell seconded the motion; the meeting adjourned at 8:18 pm.**