

DRAFT

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**MINUTES
TOWN OF PITTSBORO
PLANNING BOARD MEETING
Wednesday, September 4, 2013, 7:00 PM**

ATTENDANCE

Members Present: John Clifford, Kenneth Hoyle, Raeford Bland, Bob McConnaughey, Steve Barker

Staff Present: Stuart Bass, Planning Director, Paul Messick, Town Attorney, Ileana Platon, Administrative Support Specialist.

A. CALL TO ORDER

Chairman Clifford called the meeting to order at 7:00 pm

B. APPROVAL OF MINUTES

- **Motion made by Mr. Hoyle to table the minutes of July and August till next meeting.**
- **Seconded by Mr. Clifford**

C. NEW BUSINESS

- 1. REZ-2013-03 Stewart Rezoning Request**
Proposed Rezoning - 117 East Salisbury, former residential office conversion C-2 to O&I
Action Needed - Discussion Consideration of Recommendation to Town Board of Commissioners

Mr. Bass stated that James and Susanna Stewart are proposing to rezone .244 acres at 117 East Salisbury Street from C-2 (Highway Commercial) to O & I (Office and Institutional). To the north of the property there is Commercially Zoned Property, C-2 fronting Thompson Street on both sides, to the South there is Commercially Zoned Property, C-2. US Highway 64 East is one

block south. West there is Central Commercial District Zoning C-4 and East is a continuation of commercial Zoning C-2, then single family residences, zoned R-10, residential. The C-2 zoning dates back to at least 1989.

The current zoning C-2, is defined as certain areas that are primarily designed for citizens using the major highways that run through or around the City. The district is customarily located along the major arterial highways. This district is intended to provide retail, office and service areas for the benefit of residents in nearby areas and non-residents.

The proposed zoning, O & I, is defined as certain land areas with structures that provide office spaces, for professional services and for certain institutional functions: and residential accommodations, usually medium or high density. This district is normally small, and may include older homes undergoing conversion.

All public facilities and services rendered by the Town are available and currently applied to the site. The Office and Institutional (O & I) district does allow for single family residences.

East Street (US Business 64) is a Major Thoroughfare and is located one block south of the property. The most recent NCDOT traffic count near the property shows an average daily traffic volume of 12,000 in 2012.

The proposed rezoning is consistent with the Town's Land Use Plan. The Office & Institutional District provides for uses that the Mixed Used Town Center area contemplates being located within the designated area. It is a reasonable location for such zoning and would be suitable for those uses permitted within the proposed district and although zoned C-2 Highway Commercial, the character of Salisbury Street within the immediate vicinity is residential.

An important issue for consideration is the location of the proposed parcel in relation to the surrounding zoning district. In this instance the parcel would be bounded on all sides by either C-4 or C-2 zoning districts. Such a small scale zoning, i.e. the zoning of one parcel, is by definition spot zoning.

Spot zoning in North Carolina is permissible is reasonable. The courts have set forth the following factors to be used in an analysis;

- (1) The size and nature of the tract. Generally, the larger the area, and the greater the number of property owners, the higher a likelihood of validity. Although the size of the parcel is relative, in this instance, the parcel is similar to those around it.

- (2) Compatibility with existing plans. Does the existing plan provide a public purpose? The Town's Land Use Plan is not inconsistent with the proposed zoning.
- (3) Consideration of impacts on the landowner, the immediate neighbors, and the surrounding community. What are the benefits and to what extent are they. This would be considered a "down zoning" from their current zoning district.
- (4) The relation between the differences in uses from the two districts. The greater the difference in permitted uses, the more likely the rezoning will be found unreasonable, the primary difference would be the elimination of a number of retail allowances.

Mr. Bass then stated that his personal recommendation is for approval. He believes the rezoning is in character with the neighborhood which is primarily residential, there are a few office type uses but they are not very intense. He also questions why the area was rezoned C-2 back in 1989.

Mr. McConnaughey stated that no one in the neighborhood really knew about it. It was one homeowner which made the other residents sign a petition and had it rezone to Residential-Commercial (C-2) and he may still have a copy of that petition.

Mr. Bass then stated that the spot zoning is not without precedent within town limits and the few ones that exist are spread out throughout town.

Mr. Messick defined spot zoning as the selection of a small tract that is uniformed and zoned as something else, the problem with it is that it may be considered to be arbitrary. There is good spot zoning and bad spot zoning. In bad spot zoning everyone is in agreement that is wrong because is arbitrary, but sometimes is hard to tell if it is good spot zoning. It all depends on whether there is a need for the particular use that is being requested and the difference in treatment between the one area and the basic area is justified.

Mr. Hoyle stated that to his knowledge the house has been used as an office for many years.

Mr. Bass explained that the house is now vacant and the owners are concerned that it may not be easy to rent it again as an office, and would like the flexibility to rent it as a residential home.

Mr. Messick stated that if the planning board thinks that the entire block should not be C-2 but O&I then it would eliminate that spot and perhaps make more sense, although part of it is commercial.

Mr. Clifford asked Mr. Bass for a more defined explanation on #4 on the Staff Recommendations.

Mr. Bass explained that the greater the difference between the uses the more likely the court will find the spot zoning unreasonable, for example you could not put a C-2 district in the middle of a residential neighborhood that was not associated with a busy highway. In this instance a major difference between the two zoning is the elimination of many retail uses that are associated with a C-2 zoning. The C-2 zoning is very broad, it allows for a wide variety of uses, O&I zoning is more restricted.

Mr. Bland stated that the O&I zoning is more widely residential and that most of that entire block is residential. **Mr. Bass** responded that single family residence is permitted by right on an O&I zone.

Mr. Hoyle was concerned on the many different zoning districts around the area and if in the future it would be asked why spot zoning was permitted on this particular area.

Mr. Messick stated that by changing the entire block except Clapp's Carwash it would not be spot zoning.

Mr. Hoyle suggested that if the Board would deny the request because it would be considered spot zoning it can be communicated to the applicants that they could come back and get the entire block rezoned or the Town can do it on its own.

Mr. Bland stated that he is not in opposition he is just seeing from a perspective of what is going on and a broader area instead of a small area and without affirming or denying this current matter.

Mr. Messick stated that the issue can be that the board recommends non approval because it is spot zoning but if the applicants want to consider rezoning a larger area then that could be supported.

Mr. Hoyle made motion to deny the request because it is spot zoning but consider rezoning a larger tract. Mr. Bland seconded.

Vote: 4-0

D. OLD BUSINESS

None

E. BOARD MEMBER CONCERNS

Mr. Clifford wanted to give an update to the rest of the members, in reference to the sign up by Cruizers he received an e-mail from Mr. Bas stating that communication has been made with the owners of the property and they will immediately begin working on a sign.

Mr. Bass stated that the property owners had apologized for the delay and will make it a priority, and will contact them again if he does not hear from them within one week.

F. REPORTS AND ANNOUNCEMENTS

Mr. Hoyle wanted to go back to a situation that Mr. Plummer brought up in the previous meeting concerning Maxx Auto Sales across from Al's carwash on 64 West, and asked if they had submitted a site plan to change the house into a garage.

Mr. Bass stated that the area is zoned C-2.

Mr. Hoyle is aware of the C-2 zoning and again asked if they had submitted a site plan. He also asked if they had obtained a driveway permit and presumes they have the appropriate grease pits to accommodate the disposal of oil and grease.

Mr. Bass stated that is a permitted use by right so they just moved into it, there was not a site plan issued. The Fire Marshall is aware of this and after their conversation has placed them in a routine inspection schedule. For the oil and grease they are using the two car garage that is attached to the house.

Mr. Hoyle stated that it still does not answer his question and wanted to know if they had the capacity to take care of the oil and grease. What do they do with the waste?

Mr. Bass assumes it is disposed in a proper manner.

G. ADJOURNMENT

Mr. Clifford made motion to adjourn.

Seconded by Mr. Hoyle

Meeting adjourned at 7:35pm.

Next Planning Board Meeting is scheduled for Monday, October 7, 2013 at 7:00pm