

**TOWN OF PITTSBORO
PLANNING BOARD MEETING MINUTES**

Monday, February 2, 2015, 7:00 PM

ATTENDANCE

Members Present: Raeford Bland, Shannon Plummer, Alfreda Alston, Brian Taylor, Carolyn Elfland, Oakley Bennett. Alternate Member: Bob McConnaughey

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

A. CALL TO ORDER

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

B. APPROVAL OF MINUTES

- **Ms. Alston made motion to approve the minutes of December 1, 2014 and January 5, 2015.**
- **Seconded by Mr. Taylor.**
- **Vote: Unanimous**

C. OLD BUSINESS

1. SP- 2014-10

Walker Auto Parts Store

Action Needed – Discussion, Recommendation to Town Board.

Mr. Bass stated that this is the Walker Auto Parts site that was tabled from last month's meeting. The project is directly across the street in the Food Lion shopping center and the Board had some questions specifically with grading, the retaining wall, and drainage. The applicant is here tonight to answer those questions.

Mr. Bland said that there was another issue with the dumpster and a statement he recalled about removing the trash daily and transporting it to Raleigh.

Mr. Taylor Blake, Designing Engineer representing Walker Auto Parts explained that they do not need a dumpster. They have small vans that make deliveries every day to all the stores and take back all the trash from those stores to the warehouse in Raleigh.

Mr. Bland said that the Board was supposed to approve the site plan, however, they wanted to know about the absence of a dumpster. He believes this building will be there for a long time, therefore, there should be provisions that would accommodate a dumpster if for some use in the future and it would be convenient to set that up now even if it means taking up several parking spaces.

Mr. Blake said that he does not think that Walker would put one in. They are not building this site to turn around and sell it in the near future, they are building this site for the long term. If 25 years from now another business takes over and wants to add a dumpster arrangements and modifications can be made at that time. In regards to the retaining wall it would only be a 3 foot wall and is there to keep their disturbed area under the 20,000 square feet so they do not get into some expensive stormwater, it would save about 10 to 15 feet of grading on that one side of the site.

Ms. Elfland was interested on what Mr. Royal thinks about the retaining wall and runoff and Mr. Bland added that he was also interested on the disturbed area which is related to Carolyn's question. The first question was "What would happen if the disturb area was 51/100 of an acre instead of 49/100 and what would they redo different?"

Mr. Royal replied that the stormwater ordinance would apply to the project.

Mr. Bland wanted clarification due to the number being so close. He wants to know that this disturb area is in fact not going to be more than that.

Mr. Royal said that the ordinance has a line in the proverbial sand and there is no text or criteria that says that you cannot figure out clever ways to stay below the disturbed limits. It either is or isn't. However, he did review their drainage patterns and the water will be going to an existing culvert that is operated by DOT which goes under the driveway of the shopping center. At first he was concerned that it would contribute to the existing ponding of the water that goes into the shopping center after a rain event. This is not going to contribute to that, it is going north into a culvert under the driveway and goes down beyond the property into a creek. It will actually go into a vegetative swale and get some treatment. They are not required to do the full blown

calculations and peak flow attenuation. Thankfully there are no business or homes immediately down stream of this property, it will just go to the creek.

Mr. Bennett asked if there is any potential for contamination from the parking area by customers pouring fluids in their vehicles?

Mr. Blake said that it is unlikely to happen since they do not allow customers to work or repair their vehicles on site. The facility will primarily be delivering to auto shops and garages keeping the retail business to a minimum.

Ms. Elfland asked what would be the requirements if the site was over 20,000 feet. Is it counted separately because it is an outpost?

Mr. Royal said that they would have to build a stormwater device to capture and treat 85% total suspense otherwise they would have to meet the nitrogen loading requirement. It is a separate parcel and not part of the shopping center. This shopping center was developed in the 1970's, if the shopping center as a whole were to redevelop and disturb more than that then they would have to do stormwater. This is one of those cases where the odd out parcel gets developed years down the road and there is no magic wand over the whole site. It would be great to have stormwater for the entire parking lot which is a huge piece of impervious surface but that is not the case.

Mr. Blake said that if they had to do stormwater to meet the standards it would have to be a bower retention or something else at a cost of \$20,000.00 to \$25,000.00. The other thing is that given the size of the lot there is hardly any room to put a bower retention there.

Ms. Elfland asked about the traffic situation in the shopping center when the site is constructed, specifically the entry and exit on the side street driveway.

Mr. Royal stated that they required Walker to convert that into a right out only to avoid any problems and no backing up in that driveway. There will also be a stop sign on that driveway.

Mr. Bennett asked if there would be any 18-wheelers delivering the parts and supplies.

Mr. Blake replied that only small vans would be delivering the parts and supplies to the store.

➤ **Mr. Bland asked for a motion.**

- **Mr. Bennett made a motion to recommend approval of the site plan for Walker Auto Parts.**
- **Ms. Alston seconded.**
- **Vote: Unanimous.**

D. NEW BUSINESS

1. REZ-2015-01

Branston, LLC

Action Needed – Discussion, Recommendation to Town Board

Mr. Bass: This is a rezoning request from Branston, LLC. The location is off of US 64 east of Pittsboro, the property is approximately 97.3 acres of vacant woodland (undeveloped). The existing zoning is RA-5 (Rural Agricultural) and the proposed zoning is RA-2 (Residential Agricultural). To the North and East is vacant undeveloped property zoned RA-5 and it's owned by the State of North Carolina. To the north and south is vacant undeveloped property zoned RA-2. Recent rezoning's in the near area include a tract directly across US 64, from RA- to C-2 on March 22, 2010 and the Chatham Park PDD on December 8, 2014 which is in the vicinity to the north and northeast of this property. With respect to the Land Use Plan and Future Land Use Map the subject properties are designated as Low Density Residential. The Low Density Residential neighborhood category would include residential developments at a low enough density to support on-site septic systems.

The primary difference between the two zonings districts is the lot size, RA-5 is five acres and RA-2 is two acres, otherwise, the permitted uses are identical with one odd exception which is that you can sell Christmas trees on RA-2 with a Special Use Permit.

In regards to public facilities water and wastewater are not available to the property. Residential developments would be served by well and septic systems.

The population change would be associated with the number of residential lot size. Limiting factors would include the allowance for the road, any associated open space, well head areas, and septic fields and reserve areas.

The property is located immediately of US 64 which is a major state east west corridor. Any developments would need to be served by the extension of an existing road.

Staff recommends approval of the proposed amendment and advises that it is consistent with the Land Use Plan and other applicable plans and policies. It is recommended that the Board adopts the staff report which addresses plan consistency and other matters which is consistent with the Town's Land Use Plan. It is a reasonable location for such zoning and would be suitable for those uses permitted within the proposed district. 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 by R-A2 and R-A5 zoning districts. The adjacent R-A5 land is publically owned by the State and is likely to remain so.

Mr. Bland asked if anyone wanted to speak about the history of this site. It seems that it was incorrectly done in the past and now it should be done formally and appropriately.

Mr. David Lasley of Piedmont Land Design stated that they are the land planners, civil engineers and landscape architects for the proposed development of this particular piece of property. To his knowledge back in 2008 the property was brought forward for the approval of a preliminary subdivision called River Hawk Ridge. Time passed and it did not get developed, more recently they did some investigation and worked with Mr. Bass and they are reopening the old case zoning. After review it seemed that they did not have anything from a zoning standpoint that looked like it had been zoned properly. They decided that the best action to take was to clean it up, get it right and file a request to rezone the property from the RA-5 to RA-2 which is appropriate and is how the original plan was. This is a request that is consistent with the Town's Land Use Plan and other applicable pans and policies and it is suitable for the location.

Mr. Bland said that it was passed under the assumption that it was already zoned RA-2 and it had been previously approved, however, with the economic downturn everything stopped and here we are again.

Mr. Bass stated that this is the rezoning action, this will come back to the Board for a subdivision request as a separate action.

Mr. Bland moved to adopt staff's recommendation and to recommend approval of the proposed rezoning. Seconded by Mr. Bennett

Vote: Unanimous

Letters to the adjacent neighbors will be sent out by Mr. Bass and a public hearing will be scheduled with the Town Board of Commissioners.

2. SP-2014-07

Pittsboro Feed Store

Action Needed – Discussion, Recommendation to Town Board

Mr. Bass stated that this proposal is being presented to the Board as a site plan for review and recommendation. The location is Commerce Court and US 64 Business (Lot 10). The lot faces US 64 in the Business Park Subdivision. Proposed use is for Commercial Building, it is .828 acres, zoned C2 (Highway Commercial), utilities are within the immediate vicinity and are available to the property.

This plans have been reviewed in accordance with the Town's applicable development ordinances by the appropriate departments. The proposal is to construct a one story commercial building totaling 4,486 square feet.

Staff recommends approval for the proposed request, subject to issuance of a stormwater Permit and authorization by the Town Engineer. Included in the packet is the Town Engineer's memo dated 07/11/2014 and comments from Hydrostructures, PA stating all the water and sewer specifications were addressed. The plan is very straight forward, the only real issue is dealing with the stormwater, which effect the entire business park. There are four things for Recommend Approval Conditions they would like to discuss and have questions about.

The property is about 10 years old, basically if fully developed there is a wet pond for the entire site. Unfortunately the Miller's bought the property in 2005 but since then the Town adopted the Stormwater Management Ordinance for New Development and Redevelopment in the Jordan Lake Watershed. The biggest issue they have is the Nitrates, basically the site is not big enough to put a sand filter or bioswale to take care of the Nitrates and Phosphates. The current pond which was built before the Jordan Lake law is not designed to do that. The question they have is that the entire site was built like a housing development, where the lots have the roads there and water and sewer is on site and the pond was there prior to Jordan Lake. However, his understanding is that now they have to abide by the Jordan Lake rules even though everything was in place prior to Jordan Lake. If that happens they are going to have to buy into the program to pay for someone else to do it versus them. When they started this the pond was in bad shape, trees everywhere. Dan Deacon still owns the majority of the complex and since then the pond has been cleared and it does hold water.

There are a couple thing that are missing; a recorded plat for the pond and there is not a written maintenance plan for all the landowners. Within the covenants of the purchase of the property

there is a covenant that all property owners are liable for the cost to improve the property and the pond. The requirements would be:

1. To verify that the pond that is there is correct and if it is not it must be fixed. However, that would be going back to pre-Jordan Lake, then they would have to put together a maintenance plan and get it recorded before they can get the CO.
2. To apply to the phosphate, nitrogen levels.

If they get everything that is wanted they have no problem getting the maintenance written and recorded. His question is if the provisions were done prior to Jordan Lake is it grandfathered because it has already been developed, it is basically site ready.

Mr. Bland asked that by Jordan Lake it means the Jordan Lake Stormwater Rules. He then suggested that the question be addressed to Mr. Messick, Town Attorney.

Mr. Messick said that he did not know the answer since he has not seen this before, but he will be glad to take a look at it and see what can be done.

Mr. Bland said that this was really the starting point of every one's question, what really has to be done basically because of what time they started on this project and under what rules they have to follow.

Mr. Glenn Hodges, BAR Construction Company, stated that by the site development plan the road and curb and gutter were put in. The water and sewer was brought to the site.

Mr. Royal, Town Engineer stated that he wrote a memo to Mr. Bass in July 2014 listing four Recommended Approval Conditions.

- A. Refurbish the wet pond back to the original design configurations and provide for continued maintenance. Town inspection and approval required.

This means bring the pond back into its originally design condition, don't do more than that. Show him what the design was and if it's not meeting it do some more grading or whatever it needs to make it fixed.

- B. Submit a recorded and signed (by responsible party) an Operations and Maintenance Agreement for the perpetual inspection and maintenance of the wet pond. This document may exist and we are working to discover its existence. It must be recorded Prior to the building Certificate of Occupancy (CO).

This is to keep the pond in good shape and avoid letting it get to where it is now.

- C. After the pond has been maintained and approved by the Town, provide an “as-built” record drawing of the pond in digital and hardcopy formats.
- D. Provide the Jordan Lake nutrient calculations for the development indicating the Annual total nitrogen and phosphorus loading. Depending on the results, we will work with the owner to meet these performance requirements. It may include a partial off-set payment to the NC Ecosystem Enhancement Program (EPP)

Mr. Taylor asked why the pond fell into the state it is now. Wasn't it supposed to be maintained by the landowner by the way it was initially designed? **Mr. Royal** replied that it happens all the time. The developer still owns the majority of the lots which have not been sold or developed and maybe that is why it fell into disarray. **Mr. Taylor** asked that if the landowner still owns the remaining lots shouldn't he be responsible to restore the pond?

Mr. Plummer asked if there had been an oversight of the Town all these years, now when someone comes and tries to build something it is an issue and everything has to be fixed. **Mr. Bass** stated that this is the first commercial development since the Jordan Lake Rules.

Mr. Royal said that the original pond was designed to just capture the first inch of runoff from the entire site assuming it was fully developed, so it is “big enough” to meet the rules back then.

Ms. Elfland said that it looks like this was supposed to be the answer for the entire development to meet the requirements of ten years ago. However, now that lots are being sold and developed it does not meet the new requirements. The bottom line is that the owners of the parcel are being told to fix the pond and that would get them on their way to where they need to go, but, it still does not get them to meet the current requirements. The other option to meet the new requirements is to buy into the EEP if they can't do it on site. What happens then to all the other land that has not been developed? So if this applicant fixes the pond they get the whole development halfway there which essentially would help the developer and the rest of the lots he has available, then everyone that comes along would have to buy into the EEP to meet their numbers.

Mr. Royal said the one issue is that the pond was never maintained, why, nobody knows, none of the current Town Staff was here at the time and there is not agreement in place. The developer Mr. Deacon, has been very active in this and has set up an HOA. This HOA would be the

responsible party on the operation and maintenance agreement, it is up to them to legally get that worked out. If the pond gets “repaired” they would get the OMN.

Ms. Elfland stated that part of the big problem is that the original developer has not followed through with what should have been done at the time.

Mr. Messick said that at the time this was done there were only watershed rules, there was no stormwater rules. The watershed rules were not followed either but the stormwater has been superimposed over and above the watershed, so it was more or less compliant with the watershed rules. But now we have the Jordan Rules for Nitrogen and Phosphorus that are over and above what it used to be.

Ms. Elfland said that between the developer and whoever will own the other parcels they will have to get it in compliance with what was originally approved, then figure out among themselves who is going to pay for it, who is going to do it, and the legal stuff that goes along with it.

Mr. Hodges said that when they run their calculations they will develop some Phosphates and Nitrogen. The problem they have is that there is no place to fix that, the water will go straight to the pond. If they are the first ones in the pond the pond has some value but the next tenant will be out of luck.

Mr. Royal added that the wet pond may be big enough to handle all the runoff for Nitrogen and Phosphorus and it depends on the actual design of the pond.

Ms. Elfland suggested that they run the numbers since Mr. Royal said that this pond may be big enough.

Mr. Bennett asked Mr. Messick if the Town could enforce the developer to bring the pond up to compliance.

Mr. Messick said that they are indirectly doing that by saying that they will have to comply with the stormwater rules.

The Board members then asked how can this be done and by whom?

Mr. Messick said that buyer should be inquisitive to find what need to be done before the sale is finalized. Unfortunately the applicants bought this piece of property 8 years ago and prior to the

new stormwater rules. The Town is indirectly enforcing it to the extent that if it does not comply with the watershed rules the first inch of runoff then the Town could enforce that. However, you can't enforce the stormwater rules against the original developer on a vacant lot because they are not generating anything. The existing lots that have been developed are going to be grandfathered in because they were there before the stormwater rules came to effect.

Ms. Efland stated that the pond has to be fixed, it has to meet with the requirements. There has to be a Platt and it has to be reported and there has to be F filters on and there has to be a maintenance agreement. How do they do this and what is the next step.

Mr. Bass stated that the question brought to the Board tonight is that; is the Board comfortable recommending an approval subject to the items in Mr. Royal's memo?

Ms. Efland said that the entire state of North Carolina has water and sewer and ponds where it's got it when all the rules for Jordan Lake and the Neuse Lake were voted in. Why isn't everyone grandfathered in?

Mr. Taylor asked Mr. Messick if the grandfathering implies if the structure is already established when the rule changed or does it apply equally to property.

Mr. Messick said that the key is in what the word development means. A vacant lot is not developed, this may be developed in some sense because there are utilities there but is not developed in the sense that they are going to start moving in. It is when development occurs, not when ownership changes hands. The other two structures that are already there are grandfathered in because they were built before the Jordan Rules came into effect.

Mr. Taylor stated that his problem with this is that somebody allowed the pond to go into disarray from the original standard, that is who should be responsible to restore it back. How much is it going to cost to bring it back to the original standard and do they really want to do that?

Mr. Hodges said that it is a catch 22 question. They can do "as build" a pond getting it working correctly and if they take the calculations of the lots still there and just their lot they can more likely make it work. However, when the other lots are sold they will have to add more nitrates and phosphates to the pond. Basically there is a development that was there prior to Jordan Lake and it was not correctly maintained and now it is going to have to be upgraded to Jordan Lake Rules.

The Board gave some suggestions to resolve the cost and responsibility of this problem. **Mr. Royal** wanted to clarify that the pond does not have to meet the Jordan Rules, it just has to meet the way it was when it was originally designed. It would cost a lot more to fix that pond to meet today's standards.

Ms. Elfland said that they should move to recommend approval contingent on Mr. Royal's memo then the applicant can move forward and discuss between all the parties on how they are going to meet the requirements in that memo.

- **Ms. Elfland moved to recommend approval contingent on the applicant meeting the conditions set forth in the Town's Engineer's memo dated January 28th.**
- **Seconded by Mr. Bennett.**
- **Vote: Unanimously**

D. BOARD MEMBER CONCERNS

None

E. REPORTS AND ANNOUNCEMENTS

None

F. ADJOURNMENT

- **Chairman Bland asked for motion to adjourn.**
- **Ms. Alston made motion to adjourn.**
- **Motion carried unanimously.**

Planning Board meeting adjourned at 8:02pm

Next Planning Board Meeting is scheduled for Monday March 2, 2015

Sleana A. Platon

Administrative Support Specialist