

CHATHAM COUNTY PLANNING BOARD  
MINUTES  
March 3, 2009

The Chatham County Planning Board met in regular session on the above date in the classroom of the Henry H. Dunlap Building in Pittsboro, North Carolina. A quorum was present to begin the meeting. The members present were as follows:

Present:

Jim Hinkley, Chair  
Warren Glick, Vice-Chair  
B. J. Copeland  
James Elza  
Karl Ernst  
Barbara Ford  
Judy Harrelson  
Timothy Keim  
David Klarmann  
Susan Levy

Absent

Delcenia Turner

Planning Department:

Keith Megginson, Planning Director  
Jason Sullivan, Assistant Planning Director  
Angela Birchett, Zoning Administrator  
Tony Wilson, Zoning Enforcement Officer  
Kimberly Tyson, Administrative Support  
Kay Everage, Clerk to the Board

Other

Commissioner Sally Kost, BOC Liaison to the Board  
Tom Glendinning, Parliamentarian to the Board  
Fred Royal, Director, Environmental Resources

- I. CALL TO ORDER: Chair Hinkley called the meeting to order at 6:30 P.M. He introduced Tom Glendinning as the new Planning Board Parliamentarian. He stated that Mr. Glendinning is a member of the Southeastern Board of the American Institute of Parliamentarians; that he is an active Chatham County citizen and a Kiwanis member; that he would be serving the Board pro-bono; and that he would not vote or participate on any issues but would be available to assist the Board with parliamentarian procedures.
  
- II. APPROVAL OF AGENDA: Mr. Copeland made a motion; seconded by Ms. Harrelson to approve the agenda as submitted. Chair Hinkley asked that a report regarding Lystra Gardens Subdivision (that that he had asked Mr. Megginson to present tonight) be added to the front of tonight's agenda. Mr. Glick stated that he had no objections to adding this item to the agenda; and that he questions placing this issue at the front of the agenda with respect to others present representing issues already scheduled on tonight's agenda. It was the consensus of the majority of the Board that the Lystra Gardens Subdivision be reviewed at the end of the agenda under Item VII. Planning Director's Report. The motion to approve the agenda as presented (with this one addition) passed unanimously.

III. CONSENT AGENDA:

- A. Minutes: Consideration of a request for approval of the February 3, 2009 Planning Board minutes.

Ms. Harrelson made a motion; seconded by Mr. Copeland to approve the consent agenda as submitted. There was no discussion and the motion passed unanimously.

End Consent Agenda

IV.

- A. Public Input Session: Fifteen-minute time of public input for issues **not on agenda**. Speakers limited to three minutes each. There were no requests to speak at this time.

- B. Meeting Procedure: Chair Hinkley reviewed the process revised as follows:

Planning Board Meeting Procedure

1. Chair Announces Item for Discussion and Decision
2. Staff Presents its Findings and Report
3. Presentation by Applicant (limited to five minutes)
  - a. Applicants come to the lectern
  - b. Applicants identify themselves
  - c. Comments of applicants are limited to five minutes
4. Comments from the Public (at Chair's discretion)
  - a. Speakers come to lectern
  - b. Speakers give names and addresses
  - c. Comments by speakers are limited to three minutes
5. Discussion by Board
6. Board Action
  - a. Motion and second for action
  - b. Discussion by Board Members
  - c. Restatement of motion by Chair
  - d. Vote on motion

- C. Training Session – New Board Members: Mr. Megginson stated that a training session was held for new Planning Board members on February 24, 2009; that the Planning Department staff was introduced at that time; and that two staff members were present tonight that some Board members have never met. Those staff members were introduced as follows:

- Kimberly Tyson – Administrative Support Specialist - permitting (at the front desk) and various housing grants
- Tony Wilson – Zoning Enforcement Officer

Chair Hinkley stated that he also attended the training session; that the presentation was excellent; that those attending were brought up to date with where the Planning Department is; that the training provided information regarding the history of planning in Chatham County; and that various issues were discussed.

Mr. Keim stated that the session was a great benefit and that he was very appreciative.

Mr. Elza stated that the three (3) hour session was great.

V. ZONING AND ORDINANCE AMENDMENTS: *Items from January 26, 2009 Public Hearing.*

- A. Request by R. L. Matthews to rezone Parcel #19386 consisting of approximately 1.197 acres, located at 545 Old Farrington Rd., Williams Township, from R-1 to Conditional Use Neighborhood Business District.

Ms. Birchett reviewed the agenda notes for this request. She stated that the Planning Department recommends approval for rezoning to Conditional Use Neighborhood Business (CU-NB); and that the Planning Board has up to three (3) meetings to make a recommendation to the Board of Commissioners.

**Raymond L. Matthews**, applicant, was present.

**Jack Haggerty**, architect for the project was present. Mr. Haggerty stated that this lot is a suitable candidate for rezoning; that rezoning would allow a business to locate on the lot; that fairly dense residential areas surround the property mainly to the rear; that the front of the property faces a more rural portion; that in keeping with the Land Conservation Development Plan the property would not be altered (currently a single-family residence) meaning the character of the property would not change; that no increase in required water and/or sewer services would be needed; that there would be only a slight increase in impervious surface; and that the rezoning of the property would be beneficial to Chatham County.

Board discussion followed concerning:

- nature of the business,
- creation of a new commercial area, and
- consistency with the new zoning regulations as they relate to the new districts created with the revision.

Mr. Matthews addressed the above concerns.

Motion to approve:

Ms. Ford made a motion; seconded by Mr. Keim to approve the rezoning request to Conditional Use Neighborhood Business (CU-NB) as submitted and as recommended by staff. Discussion followed. Mr. Glick voiced concern regarding rezoning a property in a residential area for a business location. Ms. Harrelson noted the importance of encouraging Chatham County businesses and doing business within Chatham County. The motion passed 9-1 with all Board members present voting in favor of the motion; except Mr. Glick who voted against.

- B. Request by R.L. Matthews for a conditional use permit on Parcel #19386 consisting of approximately 1.197 acres, located at 545 Old Farrington Rd., for a “heating, plumbing, electrical, cabinet, and similar shop” business.

Ms. Birchett reviewed the agenda notes and the required five (5) findings for this request. She stated that this is the second part of the request; that no one spoke in opposition during the recent quasi-judicial public hearing; that since this was sworn testimony any information requested tonight would be only for clarification of the

required five (5) findings addressed in the application; that there were some concerns or clarifications asked at the public hearing by staff and by the Chatham County Appearance Commission; that these are referenced in tonight's agenda notes; and that staff recommends that the application be approved. Ms. Birchett noted two "site specific conditions" listed in tonight's staff recommendations regarding, 1) recommendations of the Chatham County Appearance Commission to be followed, and 2) parking.

Board discussion followed. Some specifics noted were:

- activities to take place on the property
- applicant certified in the use of Freon and amount to be stored on property
- number of vehicles left at the property after hours
- site triangle for this property vs. site triangle of adjacent parcel, i.e. beauty shop

**Jack Haggerty**, architect for the project stated that recommendations of the Appearance Commission would be maintained. Mr. Haggerty addressed the above specifics. It was noted that the site triangle issue is a regulatory matter for NCDOT and would be authorized on their approved plans and permits.

Motion to approve

Ms. Harrelson made a motion; seconded by Ms. Levy, to approve the request as submitted and as recommended by staff (including conditions 1-12). There was no further discussion and the motion passed 9-1. Mr. Glick voted against.

Conditions are as follows:

**Site Specific Conditions:**

1. The recommendations of the CCAC shall be followed and plantings shall be made at the next optimal planting season after approval. In addition to these recommendations, the applicant shall submit a sign design to the Planning Department that will be reviewed by the CCAC before a permit may be issued for said sign. The sign can be no larger than 25 square feet, no taller than six feet, and a monument style sign. Annual reviews by the Planning Department and/or the CCAC may be made to ensure landscaping, signage, and lighting continue to support the intent of the ordinances and the listed requirements.
2. The amount of area for parking required by the ordinance shall be made available. However, the graveling, paving, or otherwise preparation for the entire area does not have to be created until which time the applicant needs the additional space. This will limit the amount of disturbance and decrease the amount of impervious surface on the property.

**Standard Site Conditions:**

3. All required local, state, or federal permits (i.e. NCDOT commercial driveway permits, NCDWQ, Chatham County Erosion & Sedimentation Control, Environmental Health Section, Storm water Management, etc.) shall be obtained, if required, and copies submitted to the Planning Department prior to the issuance of a Certificate of Occupancy.

4. Lighting shall be installed and maintained as per the adopted lighting regulations located in Section 13 of the revised Chatham County Zoning Ordinance. Any lighting or fixtures found to be non-compliant, existing or new, with the regulations shall be replaced at the expense of the landowner/operator and shall hold no liability against Chatham County for the compliance measures.
5. An "as-built" impervious surface calculation shall be submitted to the Planning Department prior to issuance of a certificate of occupancy.
6. Off-site improvements required by NCDOT or any other agency shall be constructed at no cost to Chatham County.
7. A building permit shall be obtained and remain valid at all times or this permit shall become void. The first building permit shall be approved within 24 months of this approval or the permit becomes void; or from the time of the expiration of an appeal period or any court decision, whichever is later.

**Standard Administrative Conditions:**

8. Appeal - The County shall be under no obligation to defend any action, cause of action, claim, or appeal involving the decision taken herein. In the event a response is authorized by the County concerning this resolution, or any action to enforce the provisions hereof, the applicant, its successors or assigns shall indemnify and hold the County harmless from all loss, cost or expense, including reasonable attorneys fees, incurred in connection with the defense of or response to any and all known or unknown actions, causes of action, claims, demands, damages, costs, loss, expenses, compensation, and all consequential damages on account of or resulting from this decision. Nothing in this paragraph shall require the applicant to indemnify and hold the County harmless from any losses or costs associated with defense of the County's actions or procedures in considering and acting upon this application.
9. Fees - Applicant and/or landowner shall pay to the County all required fees and charges attributable to the development of its project in a timely manner, including, but not limited to, utility, subdivision, zoning, and building inspection, established from time to time.
10. Continued Validity - The continued validity and effectiveness of this approval was expressly conditioned upon the continued determination with the plans and conditions listed above.
11. Non-Severability - If any of the above conditions is held to be invalid, this approval in its entirety shall be void.
12. Non-Waiver - Nothing contained herein shall be deemed to waive any discretion on the part of the County as to further development of the applicant's property and this permit shall not give the applicant any vested right to develop its property in any other manner than as set forth herein.

- C. Request by Redd Dog LLC to rezone Parcels #2684 and #2683 (to be recombined) consisting of approximately 1.83 acres collectively, located at the corner of US 15-501 N and Woodbridge Dr., Baldwin Township, from R-2 to Conditional Use Community Business District.

Ms. Birchett reviewed the agenda notes for this rezoning request. She stated that the public hearing for this request was continued at the January 26, 2009 hearing until February 16, 2009; and that there were some questions and concerns at the January hearing that were later addressed by the applicant.

**Dr. Patricia Pagel-Smith**, 453 Wildflower Lane, Silk Hope, NC, applicant, was present. Dr. Pagel-Smith stated that the purpose of the request is to have a free standing veterinary hospital; that their present facility at Cole Park Plaza is no longer adequate to serve their needs; and that this is an opportunity to have a larger and permanent facility.

Board discussion followed and some particulars noted were:

- proposal not like a strip shopping center of continuous, attached, commercial structures
- surrounding properties, i.e., residential, contractor's storage yard, and church
- conformance with the proposed Major Corridor Ordinance
- draft map indicates this area as neighborhood economic development node
- access
- most existing mature vegetation (along front of property) to remain with additional vegetative plantings
- proposed pedestrian sidewalk in front of property
- sub-surface drip system
- proposed rain garden

**Michael Fiocco**, Land Development Manager was present representing the applicant. Mr. Fiocco addressed some of the above topics.

Motion to approve

Mr. Klarmann made a motion; seconded by Mr. Ernst to approve the rezoning request to Conditional Use Community Business (CU-CB) as submitted and as recommended by staff. There was no further discussion and the motion passed unanimously.

- D. Request by Redd Dog LLC for a conditional use permit on Parcels #2684 and #2683 (to be recombined) consisting of 1.83 acres collectively, located at the corner of US 15-501 N and Woodbridge Dr., for a "Veterinary clinics and hospitals with dog runs or equivalent facilities" business.

Ms. Birchett reviewed the agenda notes and the required five (5) findings for this conditional use permit request. She stated that there was no opposition (on either part) presented at the public hearing; that there was some clarification noted regarding noise, dumpster location, lay down areas for materials during construction, waterline size, and the number of dogs that could be boarded at one time; and that these were addressed in tonight's agenda notes. Ms. Birchett noted that staff recommends approval of the request as submitted.

Board discussion followed. Some clarification questions reviewed included:

- proposed facility involves only small animals (approx. 25)
- no outside boarding proposed
- Bio-retention pond to be earth and dam lined; design would not have LEED certification – utilize several aspects of renewable materials
- reflective roof system
- cisterns
- access
- noise
- green design building proposed

**Dr. Pagel-Smith, Michael Fiocco,** and soils scientist **Michael Wood,** addressed various specifics noted above.

Motion to approve

Mr. Copeland made a motion; seconded by Ms. Ford, that this application be approved as submitted and as recommended by staff. There was no further discussion and the motion passed unanimously.

Conditions are as follows:

**Site Specific Conditions:**

1. All recommendations from the CCAC shall be followed as stated from their December 10, 2008 meeting. Plantings shall be made after site preparations (grading and clearing) have been completed and at the next optimal planting season. Annual inspections of landscaping may be made by Planning Department personnel and/or the CCAC to ensure the intent of the buffers remain to be met.
2. The revised site plans submitted February 12, 2009 shall be the plan incorporated into the design of this project.

**Standard Site Conditions:**

3. All required local, state, or federal permits (i.e. NCDOT commercial driveway permits, NCDWQ, Chatham County Erosion & Sedimentation Control, Environmental Health Division, Storm water Management, etc.) shall be obtained, if required, and copies submitted to the Planning Department prior to the issuance of the first building permit.
4. An “as-built” impervious surface calculation shall be submitted to the Planning Department prior to issuance of a certificate of occupancy.
5. Off-site improvements required by NCDOT or any other agency shall be constructed at no cost to Chatham County.
6. A building permit, on the primary structure, shall be obtained and remain valid at all times, with an approved, passing inspection within 24 months of this approval or the permit becomes void; or from the time of the expiration of an appeal period or any court decision, whichever is later.

**Standard Administrative Conditions:**

7. Appeal - The County shall be under no obligation to defend any action, cause of action, claim, or appeal involving the decision taken herein. In the event a response is authorized by the County concerning this resolution, or any action to enforce the provisions hereof, the applicant, its successors or assigns shall indemnify and hold the County harmless from all loss, cost or expense, including reasonable attorneys fees, incurred in connection with the defense of or response to any and all known or unknown actions, causes of action, claims, demands, damages, costs, loss, expenses, compensation, and all consequential damages on account of or resulting from this decision. Nothing in this paragraph shall require the applicant to indemnify and hold the County harmless from any losses or costs associated with defense of the County's actions or procedures in considering and acting upon this application.
8. Fees - Applicant and/or landowner shall pay to the County all required fees and charges attributable to the development of its project in a timely manner, including, but not limited to, utility, subdivision, zoning, and building inspection, established from time to time.
9. Continued Validity - The continued validity and effectiveness of this approval was expressly conditioned upon the continued determination with the plans and conditions listed above.
10. Non-Severability - If any of the above conditions is held to be invalid, this approval in its entirety shall be void.
11. Non-Waiver - Nothing contained herein shall be deemed to waive any discretion on the part of the County as to further development of the applicant's property and this permit shall not give the applicant any vested right to develop its property in any other manner than as set forth herein

**Item for March 16, 2009 Public Hearing:**

- E. Public Hearing request by Contentnea Creek Development Co. for an amendment to the conditional use permit on a revision to Condition No. 4 and Condition No. 10 on property located at 739 Hatley Road, Parcel No. 17357; 82822; 82823, on approximately 130 acres, New Hope Township.

Chair Hinkley stated that the above is scheduled for the upcoming public hearing March 16, 2009 and copies of the application packet were distributed earlier tonight to the Board.

VI. OLD BUSINESS:

No reports were submitted.

VII. NEW BUSINESS:

- A. Planning Director's Report

1. ***Lystra Gardens***

Mr. Megginson stated that this development was recently issued a "Notice of Violation" [NOV]; that Jim Willis and Rachael Thorn, of the Chatham County Department of Soil

Erosion & Sedimentation Control, visited the property to substantiate the activity occurring; that the activity was interpreted it to be a violation of the Chatham County Erosion Control Ordinance, i.e., heavy equipment removing trees on property; that a NOV was issued to stop the land disturbance that would provide parking for the equipment used for the timbering; that the applicant is moving forward with their consultants for an application for subdivision preliminary approval; that there were six (6) conditions with the Commissioner's approval June 2007; that this approval came time for expiration and the applicant was granted an extension (and development schedule) until March 18, 2009; that the developer is moving forward to obtain various agency permits, i.e., NCDOT, water approval; that Matt Michelow, applicant, was unable to attend tonight's meeting; but that Mr. Lee from the maintenance crew was present.

Chair Hinkley inquired about the disposition of the Planning Board regarding this issue. Mr. Megginson stated that three (3) parts of government are, executive, legislative, and judicial; that the Planning Board advises the Commissioners in a legislative capacity; that this is an executive (enforcement) issue that Jim Willis and his staff have addressed; and that the Commissioners would welcome comments from the Planning Board.

**Blake Lee**, one of the crew members timbering the property, was present representing the developer.

**Fred Royal**, Director, Chatham County Environmental Resources, was present. Mr. Royal stated that the Environmental Review Board [ERB] continues to review the report; and that review of the Environmental Assessment [EA] has not yet been completed.

Board discussion followed. Mr. Klarmann asked if a soil and erosion control plan was in place. Mr. Megginson noted that there are two parts to the soil and erosion control plan - the plan and the permit, and that the permit is issued after preliminary plat approval. Mr. Royal stated that he understands that a plan has been submitted and that there are comments that have not yet been addressed; and that Mr. Willis has not formally approved the plan (that is part of the preliminary submittal that expires March 18, 2009). Pictures of some land disturbance on the property were shown to Board members. Some specifics discussed by the Board were:

- various regulations violated, i.e. subdivision, erosion control
- maximum fine \$5,000/incident/day – developer should be fined
- process – not adhered
- pre-work - existing old roadbed through the woods
- erosion control – executive issue (Public Works)
- expiration of sketch – new regulations would apply

#### Motion

Mr. Glick made a motion; seconded by Mr. Keim, ***“that it be resolved that this subdivision be halted immediately and that sketch design be rescinded”***. After discussion the motion passed 7-2-1 with Glick, Keim, Ford, Hinkley, Copeland, Harrelson, and Levy voting in favor of the motion; and Elsa and Klarmann voting against; and Ernst abstaining. Mr. Ernst stated that he is unclear about the legal

standing the Board has on an issue such as this; and that without knowing this he does not intend to vote one way or the other.

B. Planning Board Members Items

**1. Annual Report by Commissioner Sally Kost**

Commissioner Kost stated that one of her duties, as chair of the Planning Board last year, is to prepare an annual report summarizing for the Board of Commissioners and the Citizens of Chatham County the work of the Chatham County Planning Board. She presented a summary of her report titled:

- ✚ “Annual Report, Chatham County Planning Board, March 2009”, including two spread sheets titled, “2008 Rezoning Requests” and “2008 Subdivisions”.

Some specifics and major accomplishments noted were:

	2007 Requests	2008 Requests / Lots / Avg. Density		
Sketch Design	17	1	2	
Preliminary Plat Approvals	21	7	380	1.10 acres
Final Plat Approval	25	10	162	2.26 acres
Rezoning	6	8		
Changes in Development Schedule	Not available	10		

- 12 regular meetings, 3 special meetings, and 1 community forum (proposed changes to Subdivision Regulations and Zoning Ordinance) - one meeting held on a bus, i.e., Briar Chapel visit = total of 46 hours.
- several time extension requests (7 subdivisions and 3 conditional use permits)
- extensive ordinance work (revisions to the Subdivision Regulations and Zoning Ordinance and Major Corridor Task Force changes and proposals regarding the Major Corridor Ordinance) – required numerous subcommittee meetings
- Moratorium on subdivisions greater than 25 units in effect 11 months in 2008 effected sketch design requests
- 58 Minor Subdivisions reviewed = total of 87 lots created (19 were ‘family subdivisions’)
- Lighting Ordinance became effective for zoned areas of the county February 1, 2008 - Planning Board recommends applying to entire county

Board members were provided copies of the report and a copy is also filed in the Planning Department.

Motion to approve

Mr. Copeland made a motion; seconded by Mr. Ernst to approve the annual report as submitted by Commissioner Kost. The Board applauded Commissioner Kost for her dedication and support to Chatham County and the Planning Board. Chair Hinkley stated that Ms. Kost was a great chair; that she kept the Board focused; and that the Board had an extremely productive year under her guidance.

### Commissioner Goals

Commissioner Kost stated that the Board of Commissioners adopted goals for FY 2009 and 2010; that some of the goals deal with the Land Conservation and Development Plan; and that the Planning Board would be provided copies of these goals.

### **2. Attending Public Hearings**

Chair Hinkley expressed the importance for Planning Board members to attend public hearings. He stated that information gathered at the hearings prepare members for issues that are then considered at Planning Board meetings.

Discussion followed. Mr. Klarmann voiced concern regarding the Commissioner's meeting format. He stated that instead of allowing numerous speakers to address the same issue, that one representative speak for a specific group for both pros and cons. Mr. Glick suggested the Commissioner's consider moving these issues up front on the agenda thus allowing Planning Board members to leave afterwards.

### Motion to Adjourn

Mr. Ernst made a motion to adjourn the meeting. The motion died for lack of a second. Mr. Ernst left the meeting at this time.

### **3. Resolution – Pittsboro to Chapel Hill Bus Service**

Chair Hinkley distributed copies of a resolution to Board members (that he prepared) for consideration. The resolution recommends and encourages the Town of Pittsboro to take part financially in the Pittsboro to Chapel Hill Bus Service. A copy of the resolution is filed in the Planning Department. Chair Hinkley stated that his idea came from an editorial written by Tim Keim (for the Herald and Sun Newspaper) regarding transportation between Pittsboro and Chapel Hill; that the County Commissioners have said that they would contribute 75% of the local matching from a grant that would be given to the county and to the town (the town would contribute 25%); that unfortunately some of the Pittsboro Town Board of Commissioners think this project would be too costly and are not supportive; that the legislative body that created the Board in our ordinance has given us the responsibility to work with other units of government in the county; that this is an issue important to the economic development of Pittsboro and Chatham County; that Chapel Hill Transit is also looking into this and might be willing to provide the buses, drivers and etc.; that an estimated \$3.00/trip would be a good deal compared to current parking expenses at UNC; and that this issue is on the Town of Pittsboro agenda for Monday, March 9, 2009.

Mr. Keim stated that there have been no negotiations yet between the Town of Pittsboro and Chatham County; that the 75%-25% has not been established; that a \$176,000 (50% of the total cost over 18 months) balance would be split and the government would pay the other \$176,000; and that the buses would pick up in Pittsboro three times a day.

Discussion followed. Some Board members voiced concern that this resolution is premature; that the issue has not yet gone before the County Commissioners; and that additional information is needed before the Planning Board could take any action at this time. Mr. Elza stated that he would like to see the transit study and agreement from Chapel Hill before making an endorsement on the issue. Mr. Glick stated that, rather

