

**Minutes of the  
New Bern Planning & Zoning Board  
November 6, 2007**

The New Bern Planning & Zoning Board held a regular meeting in the 2<sup>nd</sup> floor Courtroom of City Hall, 300 Pollock Street, on Tuesday, November 6, 2007 at 6:30 p.m.

**Members present:** Mr. Peter Moffett, Chairman  
Mrs. Susan Moffat-Thomas  
Mr. Tripp Eure  
Mr. John McClellan  
Mr. Harry Cotton  
Mr. Mark Best  
Mrs. Janet Lamb

**Members excused:** Mrs. Claire P. Martin-Combs

**Members absent:** none

**Staff present:** Mr. Michael W. Avery, Director  
Mrs. Annette Stone, City Planner  
Mrs. Lorraine DiBella, Administrative Assistant  
Lieutenant Ronnie Lovick, NBPD

**Prayer:** A prayer for guidance was given by Mr. Avery, who asked special blessings for Mr. Bernard George, whose father passed away a few days earlier.

**Minutes:** Minutes of the August 6, 2007 meeting were approved with motion by Mr. Eure, second by Mr. McClellan and unanimous vote by the Board.

A 5:30 p.m. Work Session was held with Dr. Kashef giving a project report from on the Subdivision Update work.

Chairman Moffett asked who in the audience came to hear the Lake New Bern agenda item. Two persons stood. Mr. Moffett stated unless there is an objection, items B and C on the agenda will be flip-flopped and Lake New Bern will be heard ahead of the Conditional Use Permit application.

**New Business:**

**A. Consideration of request for extension of general plan approval for Taberna Townes Subdivision.**

Staff Mr. Avery stated Developer Brydge and Lee, Inc. is requesting an extension on the approval for Taberna Townes as required by Section 15-79 (5)C of the Land Use Ordinance. This proposed 41-lot townhouse residential planned unit development on Taberna Way was reviewed and approved by the Planning and Zoning Board at its regular meeting on March 1, 2005. The developers have attested to having faced numerous delays in the furtherance of this project. Staff is not opposed to awarding this extension of time.

Chairman Moffett noted that no public comments are required on a request for an extension. He asked for a motion. Mrs. Moffat-Thomas moved that the extension be granted for Taberna Townes. Mrs. Lamb seconded and the motion carried unanimously.

**C. General plan for Lake New Bern, a 90.275 acre planned unit development, consisting of 96 lots located on the west side of Simmons Street between the railroad right-of-way and Oaks Road.**

Staff Mr. Avery reviewed the subdivision plans on the overhead and said Avolis Engineering is requesting general plan approval for Lake New Bern, a proposed 96 - lot residential planned unit development subdivision on a 90.275 acre tract. Located in the R-10A Residential & C - 4 Neighborhood Business Districts on Simmons Street near the intersection of Oaks Road, the proposed subdivision is designed around a large manmade lake that was formerly Renny's Creek Mine. The average lot size is 5,350 square feet with 72.9 acres dedicated to recreational open area. Approximately 4,965 linear feet of new streets and sidewalks are planned. Utilities and services will be provided by the City of New Bern.

The Departmental Subdivision Plan Review Committee reviewed plans for the proposed development and has determined that the subdivision plans substantially meet the city's requirements for development.

**Applicant Comments:** Kevin Avolis, Avolis Engineering, engineer of record, gave more details on the project, stating Jack Daft is the land planner and architect for the project. He said the plans have been through several modifications based on city's recommendations for the site. There will be three onsite stormwater retention ponds. There are 30 acres of upland and 68 acres of lake and ponds. Developer has worked with the city on extension of utility lines below the railroad tracks on Simmons Street. They have received no negative comments on the project. Scott Dacy, one of the developers, is present tonight to address any questions.

**Public Comments:** Stevie Bennett, 1312 National Avenue, asked about the lot sizes and sizes of the homes. Mr. Avery stated the subdivision complies with lot coverage requirements for a planned unit development.

Joe Mansfield, 315 George Street, asked if a traffic study had been conducted in the area of this subdivision. Mr. Avery replied that the city uses the same standard as NCDOT when requiring traffic studies (only required for subdivisions with over 200 lots). Mr. Mansfield stated 96 additional homes in the area will most certainly impact this already highly congested area. There are also implications for the schools, he said.

**Board Discussion:** Mr. McClellan asked if this is not to be an adult community. Mr. Dacy replied yes, it is to be.

Chairman Moffett added that there appears to be two points of ingress/egress. Mr. Avery confirmed.

**Staff Comments:** Mr. Avery stated that staff recommends approval of this subdivision with two

conditions. First, the developer must satisfy concerns of the City Public Works Department that some of the road designs hamper the maneuverability of emergency and other vehicles within certain turns. Secondly, staff is requesting that the plan be revised to create more open access for the public to the lake and additionally, that piers be added so that the lake is an amenity for all the community not just the lots that are directly lakeside. Staff suggested a total of three piers appropriately spaced. Mr. Avolis and the owner stated they were in agreement to provide 3-4 piers.

Mr. Avolis stated he believes the modifications have already been made to the streets and Danny Meadows (Director of Public Works) will have at least two more opportunities to review the plans before final approval is requested.

**Motion** was made by Mrs. Lamb, with second by Mr. Eure, to recommend general plan approval for Lake New Bern subdivision with two conditions: (1) City Public Works Department must review and approve changes to road designs required to improve maneuverability of emergency and other vehicles within certain turns; and (2) At least three appropriately spaced piers will be erected lakeside to give access for the public.

The motion carried unanimously.

**B. Request for a Conditional Use Permit (CUP) to construct a 75' high retail and residential building located at 300 South Front Street.**

Staff Mr. Avery described the application stating that UHF Development Group is requesting a Conditional Use Permit for 300 South Front Street, in order to construct a five-story, 19,451 square foot retail and residential building located at the northwest corner of South Front and Craven Streets. According to Section 15-146 of the Land Use Ordinance, any structure that exceeds 50' in height requires a Conditional Use Permit. The first floor will consist of retail space and residences will occupy floors two thru five. The property is located in the C-1 Central Business District where there are no minimum parking requirements, however, eleven onsite parking spaces will be provided. Utilities and services will be provided by the City of New Bern.

Mr. Avery explained the requirements and procedures for conditional use permits as set forth in Section 15-57 of the Land Use Ordinance, specifically,

(a) Before being presented to the Board of Aldermen, an application for a conditional use permit shall be referred to the Planning and Zoning Board for action in accordance with this section. In addition, at the request of the Planning and Zoning Board, the Board of Aldermen may continue the public hearing to allow the Planning and Zoning Board more time to consider or reconsider the application.

(b) When presented to the Planning and Zoning Board, the application shall be accompanied by a report setting forth the planning staffs proposed findings concerning the application's compliance with section 15-49 and other requirements of this ordinance, as well as any staff recommendations. If the planning staff report proposes a finding or conclusion that the application fails to comply with section 15-49 or any other requirement of this ordinance, it shall identify the requirement in question and specifically state supporting reasons for the proposed findings or conclusions.

(c) The Planning and Zoning Board shall consider the application and the attached staff report within 45 days of the receipt of a completed application, and shall hear from the applicant or members of

the public. (Posting of notice is provided for in Section 15-25 (e).)

(d) After reviewing the application, the Planning and Zoning Board shall report to the Board of Aldermen whether it concurs in whole or in part with the staffs proposed findings and conditions, and, to the extent there are differences, the Planning and Zoning Board shall propose its own recommendations and the reasons therefore.

The Departmental Site Plan Review Committee has reviewed plans for the proposed development and determined that the plans substantially meet the city's requirements for development. Staff recommends approval of the conditional use permit application.

Staff Mrs. Stone addressed the Board and stated City standards define height as that point where the roof meets the wall. In this case, height is 75'. Drawings were examined. The fifth story is set back 7-10 feet and will be less noticeable. Mrs. Stone discussed and showed pictures identifying heights of various significant structures in the downtown. (Elks Building, 93'; City Hall, 123'; courthouse, 91'; steeples even higher). She discussed the importance of corner lot buildings in landscape scope and scheme. She said the plans were reviewed on several occasions by the Historic Preservation Commission which granted a Certificate of Appropriateness for its construction.

**Applicant Comments:** James E. Thiem III, Hager Smith Design, PA, Raleigh, said this project had been specifically envisioned and designed to fit the downtown both in use and in character. He said it is common in urban design that corner buildings are significant structures. He stated landscape-wise, it is their intent to extend improvements on S. Front Street to equal those on Craven. He said 15 parking spaces are being created with developer investigating off-site parking opportunities.

**Public Comments:** Nancy Hollows, President of the Preservation Legal Action Team (PLAT), 626 Hancock Street, stated the group's focus is to preserve the character and integrity of the downtown historic district for the economy and quality of life for generations to come. She asked if the 75' ceiling is flat or vaulted (it will be flat). She presented a memo and photos to the Board. She said PLAT supports development in the downtown that is harmonious and they believe the height and mass of this project makes it incompatible. Mrs. Hollows elaborated by drawing comparisons to nearby buildings. She said this is the first stop light that visitors will come to and the building will overwhelm the block and dwarf everything else nearby. PLAT requests that the application be denied.

Paul Switzer, 417 Metcalf Street, also a PLAT member, asked how a height limit of 35' became the City's standard. Mr. Avery stated it was a standard that came about of necessity because the length of the fire ladders were 35'. He explained that by right a developer can build to 35'. For heights 35-50', a special use permit is required. Over 50', a conditional use permit is required.

Continuing, Mr. Switzer said development in the downtown is very important but not at the height and mass of the subject project. Referring to the six criteria that must be met in order to award a conditional use permit, he said the application clearly meets criteria items 1-5 but item 6 is not met. Six reads: The location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and in general conformity with the plan of development of the city.

Judy Harkin, 519 Johnson Street, said when she moved to New Bern in 1992, she was struck with the beauty and historic integrity of the downtown. She presented a copy of the August 10, 2006 *Sun Journal* with headline “Alderman approve sale of New Bern lot”. Mrs. Harkin read from the article, “UHF gives 1.5 mil to rent property at corner of Craven and S. Front Street..... UHF agreed to build on the site to meet City requirements which includes retail space on the bottom floor, three levels of residential space and 15 parking spaces for the retail store. The City is also requiring the owner to work with Talbots, a women and children’s clothing store, that has expressed interest in renting the bottom floor. Construction should start 120 days after a closing date and should take 6-8 months (Annette Stone, City Planning). Closing is subject to the permitting process. Representatives from UHF could not be reached for comment.” Mrs. Harkin said she does not believe that when this article appeared “we were looking at this kind of a plan..... not five stories, not 75-90 feet.” The building is massive and not like anything else in the downtown. She questioned whether parking issues will be made worse by this building.

Stevie Bennett, 1312 National Avenue, asked if this project height is approved, will it not set a benchmark for all further requests. She said she has not heard one good thing about the Sky Sail project. She asked how many parking spaces would be required in another district. She said this project goes forward on the assumption that a parking deck will be built but that is only speculation. Business owners in the downtown should be alarmed that more of the parking is going to be taken up by residents of this building. Mrs. Bennett asked why variances are allowed if height limits are established by the Ordinance.

Jerry Hobbins, 229 New Street, elaborated on why he believes the height and mass of this building are inappropriate and incompatible to the downtown. He said developers are motivated by pure greed. He compared the proposed building with the Elks Building (grade: 11 MSL vs 13.8; length: 161' on S. Front Street vs 100' on Pollock). He stated the tall buildings cited earlier by City Planner Annette Stone were built long before the City adopted the Land Use Ordinance. The Ordinance, he said, requires parking for residential properties. Mr. Hobbins said other properties, i.e., Crystal Building and Sky Sail, had to provide parking. He said in his opinion the building will create a decline in tourism. Mrs. Harkin asked who currently owns the property. It was explained that the developer’s offer is contingent upon completion of the permitting process.

Mrs. Stone said there is no parking requirement for the commercial part of the building and when the City put the property out for bid it stipulated, among other things, that 15 parking spaces would be necessary in the development of the property.

George Delaney, 219 New Street, asked for clarification on the process. It was explained that Planning and Zoning Board only makes a recommendation to the Board of Aldermen who make the final decision on the matter. He questioned why the flexibility is built into the Ordinance to allow building twice as large as everything else. He said the community can and should influence these decisions. He said he feels like Don Quixote and is concerned that pro-growth proponents and strict historic preservationists should be working together.

Mr. Troy Smith, Ward & Smith Attorneys, 2410 Turtle Bay, asked to speak, saying he represents the developer and is also a concerned citizen. Objection was made by Jerry Hobbins that time for proponents of the project to speak was passed. Chairman Moffett said he will not preclude the testimony. Mr. Smith continued and stated: the issue of Criteria 6 specifically “character and integrity” is a matter of semantics and means consistent, not same; the Historic Preservation Commission has approved the plan; the

neighbors and business owners immediate to the project are not speaking out against it; we need to take a practical look at progress. "If we weren't going to progress, we wouldn't need a Planning Board or but one set of zoning rules," he said.

Mr. Smith spoke about the history of the downtown and this site in particular saying it was originally Benny Wylie's Body Shop. He said the shop had no air conditioning in that day and the doors would be left open in the summer so that the sounds of automotive repairs (beating out fenders) poured into the streets. He spoke of living, working and doing all his shopping in downtown New Bern for 30 years. In the second and third generation, the downtown "died." Only in the last generation have things turned around for the City. Businesses in downtown still struggle and the influx of residents is vital to the downtown's economic success. In closing, Mr. Smith said he seriously doubts that this project will ruin the tourist trade. Looking up as you walk by is counter to the human experience, he said, and the height will not be significant from the street level. We all wish the Queen Anne Hotel was still here (corner of Middle and S. Front Street) but we would have a hard time building it today. This developer has worked closely with staff to produce a project that is consistent, capable and acceptable to HPC and the City.

Terry Startzman, 212 Change Street, asked if the Historic Preservation Commission (HPC) considered height and mass in their review of this plan. Mrs. Stone answered yes, it could have been denied because of height and mass concerns. Mr. Startzman testified that he has since spoken with HPC members who said they were not aware of the height and several did not know they could deny the project based on height.

Mrs. Stone stated the survey was still underway when HPC reviewed; they did not have the height MSL but they certainly knew the grade height of the building, she said. Discussion followed on what exact plans were seen by HPC. Mrs. Stone asserted the plans were the same only in smaller format. Mr. Startzman suggested the plan be sent back to the HPC for more consideration. Mrs. Stone said HPC cannot revoke the Certificate of Appropriateness. Attorney Mr. Smith objected, saying the developer has done everything that has been asked of him.

Mrs. Stone said the plans were reviewed in several public hearings, the last of which was May 16, 2007 when Historic Preservation Commission approved it. Minutes from the meeting were produced and reviewed. Mrs. Stone stated the only public comment made at the meeting was by Mr. Hobbins who, according to the minutes, said "the project is well-designed for its mass."

Mrs. Bennet asked about the public hearings and was told all HPC meetings are open to the public, the agendas are posted and broadcasted well in advance; the meetings are regularly scheduled and property owners within 100' are sent written notification.

**Board Discussion:** Mr. McClellan asked if this height is approved for the historic downtown, where will it stop. It will set a precedent, he said. Mr. Avery reviewed the findings of fact and the six criteria on which the Board would vote. He discussed their options: approve, deny, approve with options, or table. He said the plans have been through the Department Review process, approved by HPC and staff recommends they be accepted.

Mr. Best asked for a definition of harmony and conformity and asked what degree of similarity is required. He said the use seems to be in conformity but not the structure itself in comparison to those surrounding. Mr. Avery answered that harmony and conformity call for a project to be congruent with its

surroundings and blend well into the neighborhood. It's somewhat subjective. Mrs. Stone added that the Ordinance also requires a harmony of use which this project meets.

Mrs. Lamb asked about lot coverage and was told that 100% lot coverage is allowed when certain standards of stormwater mitigation are met.

Mr. McClellan moved that the developer be asked to reduce the height to 64'. Mr. Eure stated he does not believe an exact height should be set. The motion failed for lack of a second.

Mr. McClellan moved that the application be denied for recommendation. After brief discussion, he withdrew the motion.

Mrs. Lamb asked Mr. Avery to again read the criteria the Board will be considering. They are as follows:

- (1) The requested permit is within its jurisdiction according to the table of permissible uses;
- (2) The application is complete;
- (3) If completed as proposed in the application, the development will comply with all of the requirements of this ordinance;
- (4) The use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved;
- (5) The use will not substantially reduce the value of adjoining or abutting property, or that the use is a public necessity; and
- (6) The location and character of the use, if developed according to the plan submitted and approved, will be in harmony with the area in which it is to be located and in general conformity with the plan of development of the city.

Land Use Ordinance, Section 15-56

**Motion:** Mrs. Lamb moved that Planning & Zoning Board advise the Board of Alderman that they agree with criteria 1-5 but disagreed with item 6 (harmony and conformity). Mr. Best seconded. On discussion, Susan Moffat-Thomas said is not "new ground" and cited the 1908 Elks Building as an anchor signature building on a prominent corner. Upon vote, the motion passed 5-2 with Harry Cotton and Susan Moffat-Thomas voting nay.

The meeting adjourned.

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Peter Moffett, Chairman

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Michael Avery, Secretary

