

# NEW BERN BOARD OF ADJUSTMENT MINUTES

December 17, 2007

The New Bern Board of Adjustment held a regular meeting on Monday, December 17, 2007 at 6:30 p.m. in the Planning Conference Room, 248 Craven Street.

**Members present:** Mr. James Bland, Co-chair  
Mr. Edward Risty  
Mr. Gerald Stallings  
Mr. Thomas Hardin  
Mrs. Alfreda Kinsey  
Mr. John Simmons  
Mr. Dennis Sibole  
Mrs. Doris Foy  
Mr. Richard Scoppe

**Members Excused:** Mr. Dean Knight  
Mr. Harry Gormley  
Mr. Jerry Walker  
Mr. John Reichenbach

**Members Absent:** None

**Staff present:** Mr. Bernard George, Land and Community Development Coordinator  
Mr. Greg McCoy, Zoning Enforcement Officer  
Mrs. Lorraine DiBella, Administrative Assistant

**Minutes:** Reading of the minutes from the regular meeting of November 26, 2007 was waived by unanimous consent and approved with motion by Mr. Simmons, second by Mr. Risty and unanimous vote of the Board.

A prayer for guidance was given by Mrs. Kinsey. Numerous witnesses were sworn.

## **New Business:**

- A. Consideration of special use permit request to allow construction of a gas sales operation/convenience store on a 7.550 acre tract located at 370 Washington Post Road (proposed WilcoHess).**

Staff, Mr. McCoy, presented the application and said the property is located within two zoning districts: C- 4 Neighborhood Business and R-8 Residential Districts. The gas sales operation/convenience store will be located in the C- 4 Neighborhood Business District portion of the property. The proposed project went before the City's Departmental Review Committee on October 11, 2007. Baldwin & Associates, the engineering and land surveying firm representing the owner, submitted revised plans reflecting the comments made by the City's Departmental

Review Committee.

According to Section 15-146 of the Land Use Ordinance, projects in developments that exceed two acres must obtain a Special Use Permit. Staff has not received any inquiries or calls in opposition to the project. Staff recommends as a condition that the owner must obtain a sign permit for all exterior signage and increase buffering on the property line which faces New Bern. Staff is not opposed to this Special Use request.

**Applicant Comments:** Mike Baldwin, 1015 Conference Drive, Greenville, stated he represents the property owner Walter Williams. He said this is a replacement facility to the station approximately 1/4 mile away that is being closed due to the Highway 43 Connector. They are agreeable to the requested buffering. He described the operation saying parking for large (semi) trucks is in the back and less conspicuous, a State Employees Credit Union ATM will be on site, and the driveway permit and erosion control plan are in place. Mr. Baldwin said they have avoided any impact to the wetland areas with the prudent placement of retention ponds and the project will create no runoff onto adjacent properties. He discussed the rainwater mitigation in detail.

Mr. Risty asked about the zoning on the adjacent property (on the right). Mr. Baldwin replied C-4. Mr. Risty asked that the R-8 tracts be pointed out. Co-chair Mr. Bland asked why it was zoned in this fashion. Mr. George explained that the R-8 in the back of the site aligns with the adjoining residential properties and was purposely zoned this way in order to provide a buffer to the residential properties on Briarwood Lane, this site being a continuation of the industrial district. Mr. Baldwin added that Mr. Williams is not interested in residential development of the R-8 tracts.

Mr. Risty asked about the road access.

**Public Comments:** Larry Hill said he and his mother, Marjorie H. Hill, 90, live directly across the road and are vehemently opposed to the project. He said the neighborhood has been residential for years and there is no redeemable value in locating this gas station/convenience store here. He listed reasons why he oppose the project including traffic, congestion with comingling of 18 wheelers and school buses, noise, signs, trash and litter. Later, he added he is not opposed to growth but existing uses need to be considered. He feels DOT projections for traffic are flawed.

Co-chair Bland asked Mr. Hill when he learned about the proposed gas/convenience store. He replied he received written notice concerning tonight's hearing. Mr. Risty raised the question of the rezoning of the property. Mr. George answered that the property has been rezoned several times, most recently in September (actually June 07). Mr. Risty asked if the process for posting and written notices was completed properly. Staff replied yes and that the rezoning was approved unanimously by Planning and Zoning Board and then Board of Aldermen.

Mr. Lawrence Phifer, 365 Washington Post Road, said he too opposes the project. He said he did not receive notice and though there may have been postings on the property, he did not see them.

He said he recently had a heart attack, is an invalid and will require proper rest in order to recover. He believes the gas station/convenience store with the noise of 18 wheelers 5 am to 11 pm will prevent him from getting proper rest he needs.

Mrs. Tammy Witham, 425 Washington Post Road, said she received notice and came out to see what was happening. She has no objection to the project but she is not right across the street.

**Board Discussion:** Mr. Scoppe asked where this site is in relation to the current location of this business (1/4 mile divided by wooded buffer). Mr. George showed the location of the subject site in relation to Colonial Mobile Home Park. The history of development in the area and rezoning was discussed as was future plans for the area (70-80 duplexes, commercial development nearby, apartments behind this site.) He briefly discussed cooperation of city and NCDOT on traffic issues in this area.

Mr. George said the Highway 43 connector and Highway 17 bypass are planned in response to the heavy traffic in the area. Right or wrong, he said, the traffic patterns dictate the commercial development of an area. He assured the audience that plans will be thoroughly reviewed by city staff and “whatever goes in will be the best neighbor it can be.” Because this is a re-location of an existing business, it should not create more traffic.

In response to the public input, Mr. George recommended five conditions be added to the special use permit to address buffering, signage and lighting.

Mr. Baldwin returned to the podium and said he is a little surprised by the opposition. He discussed lighting (it will shine on building no across the street); traffic congestion (will be mitigated by turn lanes); noise (trucks are parked in the back). He said the property was zoned for this type of use. They have caused improvements to be made to the road and utilities. NCDOT has issued driveway permits for the project. The public hearings were properly advertised and the property posted.

Mrs. Kinsey asked about the condition specific to public health. Mr. George answered it would have to apply to the general public and not one individual. Mr. Risty asked about the density and height of the front buffer. Mr. Baldwin answered they expect to plant willow oaks, shu-melon oaks and box woods.

**Upon conclusion of the discussion, the Board voted upon the findings of fact, on the matter of a Special Use Permit to allow construction of a gas sales operation/convenience store on a 7.550 acre tract located at 370 Washington Post Road.**

Staff Mr. George confirmed for the Board that the application is complete.

Staff Mr. McCoy confirmed for the Board that the requested permit is within its jurisdiction according to the table of permissible uses. Motion in agreement was made by Mr. Simmons and second by Mr. Stallings. (This punctuation/spacing does not exist in nature). Motion carried unanimously.

Motion by Mr. Risty, seconded by Mr. Simmons, that the use will not materially endanger the

public health or safety if located where proposed and developed according to the plan as submitted. Motion carried unanimously.

Motion by Mr. Risty, seconded by Mrs. Foy, that the use will not substantially reduce the value of adjoining or abutting property. Members voted yes, save Mr. Scoppe who voted no. Motion carried.

Motion by Mr. Risty, seconded by Mr. Simmons, that 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. Three members (Kinsey, Scoppe and Stallings) voted no. All others voted yes and the motion carried.

Motion by Mr. Simmons, seconded by Mr. Risty, that if completed as proposed in the application and as presented tonight, the project will comply with all of the requirements of the ordinance. Motion carried unanimously.

Motion by Mr. Risty, seconded by Mr. Simmons to grant the special use permit with the following conditions:

1. A Type A screen 6' in height must be established on the road front of the site to include three trees per 100'.
2. Expand buffering on right side.
3. Expand buffering bordering back parking lot.
4. Direct lighting to focus on the store and parking areas to minimize bleed into nearby residences.
5. All exterior signage must be approved and permitted.

Motion carried unanimously. Mr. Baldwin said they will need some “flexibility for the cross easements” in the back.

There was no further business and the meeting adjourned.

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Chairman Dean Knight

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Bernard George, Secretary

