

NEW BERN BOARD OF ADJUSTMENT MINUTES

May 19, 2008

The New Bern Board of Adjustment held a regular meeting on Monday, May 19, 2008 at 6:30 p.m. in the City Hall Courtroom, 300 Pollock Street.

Members present: Mr. James Bland, Vice-Chair
Mr. Harry Gormley
Mr. John Reichenbach
Mr. Edward Risty
Mrs. Doris Foy
Mr. Gerald Stallings
Mr. Thomas Hardin
Mr. Richard Scoppe
Mr. John Simmons
Mrs. Alfreda Kinsey

Members Excused: Mr. Dean Knight, Chairman
Mr. Jerry Walker

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: Minutes from the regular meeting of April 28, 2008 were approved with motion by Mr. Simmons, second by Mrs. Foy and unanimous vote of the Board.

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

Old Business:

- 1. Continuation of consideration of special use permit request to construct seven multi-family buildings consisting of 76 units on a 7.38 acre tract located on Trent Road near the intersection of Lowes Boulevard.**

Staff Mr. George introduced the application and said it was tabled from the April 28, 2008 meeting due to the lack of building elevation plans. A special use permit is required because the subject property is more than two acres and the plan is for five or more multi-family units. The applicant, River Square, LLC, seeks to construct ten multi-family buildings consisting of 76 units with a clubhouse on the 7.38 acre development on Trent Road near the intersection of Lowes Boulevard. The proposed project was reviewed by the City's Departmental Review Committee on April 13, 2008.

Several additional site visits have been made since the previous meeting and the developer has made revisions to their original concepts based on community concerns. Mr. George introduced the project engineer.

Applicant Comments: Kevin Avolis, Avolis Engineering, stated he is the project engineer. Mr. Avolis said in response to concerns raised by adjoining property owners, the developers met several times with staff and NCDOT. He discussed modifications they made to the site plan to address some of the citizens concerns including: relocation of the driveway 156' from the Trent Village driveway; relocation of the taller buildings to the Lowes Blvd side of the property; plans to maintain and enhance the existing vegetation buffer and install fencing to discourage trespassers; and, grade property and develop stormwater system so as to reduce runoff and even treat water that is currently draining into Trent Village.

Mr. Avolis discussed each of the above modifications in detail. He stated the developer is bound by stormwater regulations to increase the stormwater runoff by no more than 10% (pre-development vs post-development). NCDOT has verbally agreed to the driveway separation and may be eventually persuaded to approve the installation of right and left turn lanes. Mr. Avolis discussed efforts that are currently underway for improvements to drainage in the area. He addressed the different stormwater devices planned for this project and said there is a very likely possibility that the work done at this site would reduce the excessive runoff currently suffered by the residents in Trent Village.

Matt Raab, project engineer with Wynnefield Properties, addressed the provisions of the ordinance on which the Board would base their findings and decide the special use permit request. He stated that public health and safety would not be endangered as they intent to build a quality project in accordance with all codes. The buildings will be sprinkled and all construction conducted with the highest of safety standards. On the matter of whether the project would de-value surrounding properties, Mr. Raab referred to the elevations and described the buildings and landscaping. He said the buildings will be brick and vinyl, two and three story units of high quality. He spoke to the reputation of his company for producing and managing such properties. They have 40 such projects throughout the state including Wyndsor Place here in New Bern.

On the question of whether this project is in harmony with the character of the neighborhood, Mr. Raab described the surrounding properties, both residential and commercial, and stated this project is the ideal transitional element from residential to industrial. The highest building is 39' at the ridge.

Public Comments:

Many residents of the Trent Village community appeared and expressed their concerns about increased traffic onto an already-congested road, stormwater runoff and drainage problems, trespassers into the neighborhood, property values, and increase in crime.

Steve Baucom, 3107 Macon Court, president of the Trent Village Homeowners Association, detailed the above concerns and questioned whether the CP & L right of way would preclude the installation of a fence that could entirely encompass the project. He said the neighborhood is concerned with a rise in gang activity in the area and worries that such a project with low rental costs will attract the wrong element (people).

Billy Bloomfield, 3005 Guilford Court, said he works for the City. He said the Trent Village community has spent \$600 in efforts to keep trespassers out. Regarding the drainage issues, Mr. Newfield said the upgrading cited as underway is to address existing conditions. The ditch is already at full capacity, he said.

Carolyn Massey testified that she moved her mother into this neighborhood because it is closed, safe and quiet. She questioned Mr. Avolis' testimony as to the additional 10% runoff. Mr. Avolis responded that 10% is the allowable standard but he believes the property can be developed to produce no additional runoff into Trent Village and perhaps even improve drainage.

On question concerning the proposed location of the dumpster, Mr. Avolis said it is planned for this location as a convenience to the sanitation crew so the trucks do not have to navigate the parking lots past the homes. The dumpster area will be fenced.

Mr. George answered that a type A screening is solid, opaque, up to 6' high with 3 trees every 100'. Mr. Avolis described in detail the buffering they plan including a fence that will be erected "to the greatest extent possible." Mr. Raab answered that they expect the construction time frame to be approximately eight months. He further stated that the property could possibly be developed commercially which would create even more traffic in the area.

Mr. Raab asked to be able to respond to some of the public comments. He spoke in length about traffic in the area and stormwater drainage concerns. He stated that Wynnefield Properties holds a thirty year mortgage on its rental properties and has an in-house management team. With the investment they have in these projects, it would not make sense to let the units get run down or be inhabited by criminal types. Background, credit and criminal checks are done on all prospective tenants. He stated the homes are not government subsidized; the developer is able to offer lower rents through "specialized financing", more specifically by utilizing federal tax credits and partnering with large corporations (i.e. GE, Sun Trust Bank, Morgan Stanley) who participate to gain tax benefits. The two bedroom units will rent for \$430-500. The three bedrooms will rent for \$500-565. Sample tenants would be teachers assistants, first year police officers or correction officers.

Sue Austin, 3106 Macon Court, reiterated many of the previously stated concerns and added that "low income housing attracts people who don't care, keep things clean or discipline their children." How can this possibly appreciate our property, she asked. She believes crime will increase that cannot be handled by the over-extended police force.

Linda Bloomfield, 3005 Guilford Court, said she is concerned with the safety of the citizens from the proposed development, many who will not have vehicles but will be walking along Trent Road.

Eric Smith, 2501 Montgomery Court, stated he is a retired assistant deputy for the Justice Department. He complimented the developers on their technical presentation. Following, he said rapid growth that results in a saturation of density produces socio-economic impacts which lead to heightened crime rates. In example, he cited the instance of 6-7 break-ins occurring in the Carolina Woods community. He said it would be better if the property is developed commercially; it was be transitional traffic, not 200-400 neighbors in their back yard. He drew disparaging comparisons between this development and Craven Terrace where, according to Mr. Smith, the rent for a three bedroom apartment is \$450.

David McQuire, 4005 Gaston Court, and Kevin Rogers, 4004 Yadkin Court, both spoke to

flooding experiences they had suffered. Mr. Rogers stated when WalMart expanded, they were promised that drainage would not worsened but it did.

Ursula Martin, 3101 Macon Court, stated she grew up in Trent Court and moved to Trent Village in 2001. She is not against this project on principal but is only concerned with the safety of her children. They play outside with the other neighborhood children at the basketball court in her driveway. The son leaves his bicycle outside and they have never had any problems. A single mother, she worries that the influx of neighbors may affect her family's safety.

Cynthia Rogers, 4004 Yadkin Court, asked who makes developers keep their promises to the citizens.

There was no further public discourse and Co-chair Bland closed the public hearing.

Board Discussion: Mr. Reichenbach noted there is a park planned for the children and asked if the pond will be fenced (yes). Mr. Gormley asked if foot traffic in and out of the proposed development has any option other than the access road (no). Mr. Scoppe asked if the access road (driveway) will have sidewalks (no).

In response to questions from Mr. Reichenbach, Mr. Scoppe and Mr. Gormley, Mr. Raab said DOT is satisfied with the current driveway plan which is 156' from the Trent Village entrance; the proposed access road width is 24' and not curb and gutter; the roads in Trent Village are city-maintained.

Mr. Reichenbach asked if the access road will be moved. Mr. Avolis replied the drawings show where the road is planned. DOT is satisfied with the 156' which separates it from the Trent Road entrance. Only one access road is allowed at this time. Mr. Risty asked if the Planning and Zoning Board has reviewed this plan (Mr. George answered no); if the plan is in conformity with the City Land Use Plan (yes); and whether these is need in the City for low income (affordable) housing (yes).

Mr. Bland, co-chair, stated the Board must seek the best harmony within the limitations of the statutes. He said he has lived at his address for 46 years and only in the last 15 years has he had any drainage problems. It is nature's way on dealing here growth and development here in the coastal plain.

Mr. Bland asked the applicant to explain how this use of the property will not endanger public health and safety. Mr. Raab again explained that the homes would be a quality product that would enhance the neighborhood. He testified that the developer will make a diligent effort to control stormwater runoff and ideally they will be able to treat some of the water that flows into Trent Village now. The tenants will be thoroughly screened. The construction will be conducted in a safe manner and according to all applicable codes.

Mr. Bland asked the applicant to explain how this use of the property will not reduce the value of adjoining or abutting properties. Mr. Raab again explained how the development will enhance the area, how well it will be managed and maintained and how the elaborate buffering and fencing will shelter the adjoining properties. He showed photographs of some other apartment complexes owned by Wynnefield Properties. He restated their long-term commitment to a quality neighborhood.

Mr. Bland asked the applicant to explain how the location and use of the property is in harmony with the area in which it is proposed to be located. Mr. Raab discussed the uses in the area which include both residential, industrial and commercial. He discussed the preference for the community of residential development as opposed to manufacturing or commercial.

Staff Mr. George confirmed for the Board that the requested permit is within its jurisdiction according to the table of permissible uses and that the application is complete. The Board agreed by unanimous acclamation.

Motion by Mr. Risty, seconded by Mrs. Foy, that the use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted. Six members (Bland, Foy, Hardin, Kinsey, Risty and Simmons) voted yes (it will not endanger the public). Four members (Gormley, Reichenbach, Scoppe and Stallings) voted no. Motion carried.

Motion by Mr. Risty, seconded by Mr. Hardin, that the use will not substantially reduce the value of adjoining or abutting property. After clarification on the motion, a second vote was taken. Three members (Foy, Hardin and Risty) voted yes (it will not reduce value). Seven members (Bland, Gormley, Kinsey, Reichenbach, Scoppe, Simmons and Stallings) voted no. Motion failed.

Motion by Mr. Risty, seconded by Mr. Gormley, 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. Eight members (Bland, Foy, Gormley, Hardin, Reichenbach, Risty, Simmons and Stallings) voted yes (it is in harmony). Two members (Kinsey and Scoppe) voted no. Motion carried.

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

The request for a special use permit was denied due to the failed motion on the question of project effect on the value of adjoining properties.

Mr. George advised that the applicant has 30 days in which to appeal the Board's decision. An appeal from the decision of the Board of Adjustment would be heard by the ????

New Business

2. Consideration of a variance application for relief of three encroachments into the minimum 35' front yard setback at 106 Allen Drive.

Staff, Mr. McCoy stated that John T. Aylward is seeking relief of three encroachments of the minimum 35' front yard setback at his property at 106 Allen Drive. The encroachments are 5.6', 1.3' and 9.2' in three small sections of the residence. Due to an incorrect measurement of the plot by the applicant's professional home designer, encroachments into the covered walkway, entryway, and the corner of the dining room were created. Staff has not received any calls in opposition to the Variance request and has no objection to the granting of it.

Applicant Comments: Gary Clemmons, attorney representing the applicant, presented large scales drawings and described in great detail the applicant's effort to renovate his dwelling by changing the style from Pueblo to Tuscan. He described the unfortunate oversight by the design firm that

resulted in the encroachments. The home sits in the center of two lots measuring 3.16 acres, is surrounded by wetlands and connected to the Trent River by a long dock. Mr. Clemmons argued that without the covered walkway and the proposed architectural design, the garage wall would be flat and lifeless and that the construction of the walkway is in harmony with the house and the neighborhood. The surrounding neighbors were contacted and have posed no opposition to it, rather are excited by it.

Mr. Clemmons argued the standards on which the variance is considered stating that strict adherence to the rules would create unnecessary hardships and great cost to the applicant. The encroachments were not self-created by Mr. Aylward. If granted, the variance would not result in a use variance but would be a one time allowance to provide for this current remodeling project. The applicant's property is blocked from sight of any other by landscaping. A casual observer will not be aware of any impact created by the variance.

Public Comments: None

Board Discussion: Mr. Reichenbach asked if the residence was in compliance prior to these renovations. (Yes) He asked how much of a hardship would be incurred by correcting the mistake and bringing the construction to proper setbacks. Mr. Clemmons answered that in addition to the investment already made, it would take \$50-60K to correct it.

Motion by Mr. Risty that strict adherence to the ordinance would create practical difficulties and unnecessary hardships for the applicant. Second by Mr. Scoppe and unanimous yes vote by Board.

Motion by Mr. Risty that the variance would be consistent with the intent and purpose of the ordinance. Second by Mr. Gormley and unanimous yes vote by Board.

Motion by Mr. Risty that the variance would be consistent with the overall public welfare and substantial justice will be done in granting the variance. Second by Mr. Simmons and unanimous yes vote by Board.

3. Consideration of a special use permit request to operate a dog daycare facility/kennel at 1819-B Racetrack Road.

Staff, Mr. McCoy stated this Special Use Permit request by A. Frederick Morton is for the operation of a dog daycare facility/kennel at 1819 - B Racetrack Road. Section 15 -146 of the Land Use Ordinance requires a Special Use Permit in order to have an enclosed kennel in a C-3 Commercial District. The operation will exist in a recently constructed building adjacent to a large building supply company and across from another large building supply company. The property was posted with notice of this hearing and adjoining property owners were also mailed notices. Staff has not received any inquiries or calls in opposition to the request and is not opposed to the issuance of same.

Applicant Comments: Fred Morton, property owner and applicant, described the operation (Camp Bow Wow®) as an upscale dog-sitting service providing grooming, day care, boarding and socialization in a supervised environment. A site map and floor plan design were examined. Mr. Morton said the building is basically a warehouse that is ideal for this use. Camp Bow Wow® is a national franchised organization with the highest standards for this type of business.

Public Comments: None

Board Discussion: Several members asked specific details about the operation. Mr. Morton answered that dogs will be inside at all times except during potty breaks at which time they will be escorted by a staffer. Mr. Risty asked the proximity of the closest residents. They are about 1/4 past the concrete plant which is between this operation the nearest residents. It was established that the concrete plant and nearby construction companies produce noise in the area.

The staffing of the business was discussed. The interior design will have 55 kennels. Up to 111 animals per day can attend Camp Bow Wow. No staff will stay overnight 7 p.m. to 7 a.m. but animals have their own cabins with no access outside at night.

Public Comments: Wes Heckman, 114 Derby Park Ave, stated he came to the hearing because he mistakenly thought the operation was in the Old Pace International building which would have been an issue for him.

Aaron Clark, 300 Derby Park Ave, stated he is concerned about increased traffic on Racetrack Road and spoke to the need for a traffic signal at Racetrack Road and Neuse Blvd.

Motion by Mr. Risty that the requested permit is within its jurisdiction according to the table of permissible uses and that the application is complete. Second by Mr. Stallings. Motion carried unanimously.

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

Motion by Mr. Gormley, seconded by Mr. Risty, 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. Reichenbach, seconded by Mr. Simmons, that the use will not substantially reduce the value of adjoining or abutting property. Motion carried unanimously.

Motion by Mr. Gormley, seconded by Mr. Risty, 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. Motion carried unanimously.

Motion by Mr. Risty, seconded by Mr. Reichenbach to grant the special use permit. Motion carried unanimously.

There was no further business and the meeting adjourned.

Co-chair James Bland

Bernard George, Secretary