

**Minutes of the
New Bern Planning & Zoning Board
September 1, 2009**

The New Bern Planning & Zoning Board held a regular meeting in the City Hall Courtroom, 300 Pollock Street, on Tuesday, September 1, 2009 at 6:30 p.m.

Members present: Mr. Peter Moffett, Chair
Mr. John McClellan
Mrs. Janet Lamb
Mr. Harry Cotton
Mr. Tim Tabak
Ms. Tiffany Dove

Members excused: Mr. Mark Best
Mrs. Susan Moffat-Thomas
Mr. Tripp Eure

Members absent: None

Staff present: Mr. Bernard George, Land & Community Development Administrator
Mrs. Lorraine DiBella, Administrative Assistant

Prayer: A prayer for guidance was given by Bernard George.

Minutes: Minutes from the August 4, 2009 meeting were approved with motion by Mr. Cotton, second by Mr. Tabak, and unanimous vote by the Board.

New Business

A. Consideration of request to rezone, from A-5F Agriculture Forestry District to A-5 Agriculture District, a 200' by 200' portion of a 20.4 acre tract known as the equestrian facility and pasture in the Gables Run subdivision.

Staff, Mr. George, described the application and stated applicant Gables Run Stables, LLC is requesting to rezone, from A-5F Agriculture Forestry District to A-5 Agriculture District, a 200' x 200' portion of a 20.4 acre tract known as the equestrian facility and pasture located off Gables Road in the Gables Run Subdivision

As background information, Mr. George said the purpose of the A-5 Agriculture District is to promote conservation of agricultural and forestry resources and encourage low density residential uses. The A-5F Agriculture Forestry District is designed to limit some uses in the A-5 Agriculture District that potentially may negatively impact nearby residential uses. Uses such as landfills, quarries, livestock, and mobile homes are prohibited in the A-5F Agriculture Forestry District but are allowed in the A-5 Agriculture District.

In conclusion, Mr. George stated that the small area and isolated location of this proposed rezoning are unique in comparison with nearby properties and adjacent zoning classifications. Although sharing predominately similar permitted uses, the prohibited uses in the A-5F Agriculture Forestry District cause some concern as to future impacts on adjacent residential uses. A majority of those impacts are mitigated by the fact that the small size and relative isolation of the proposed rezoning will not reasonably allow uses (landfill, mine or livestock) that may negatively impact nearby residential uses. However, a mobile home could be potentially problematic if its location is not completely screened, buffered, and mitigated with restricted covenants or deed restrictions.

Applicant Comments: Applicant Jay Bradley, 401 Ives Avenue, New Bern, approached and explained that in order for the stables to operate at this location, insurance carriers require that a caretaker live onsite. For this reason, they seek rezoning in order that a small residence (mobile home) can be placed behind the barn, also buffered by a large green space and completely isolated from other subdivision residences. From the very start of the subdivision the subject lot was never residential, but was set aside to be developed for equestrian use. Mr. Bradley further stated it was simply an oversight in the initial zoning that this small 200 by 200-foot portion was not set out from the A5F Agricultural Forestry District zoning designation in order to accommodate a manufactured home for the caretaker.

In the course of the public dialogue that followed, Mr. Bradley added that in the terms of the sales contract and the restrictive covenant they have agreed to stipulate three things: screening must be adequate; the residence (mobile home) can only be located in the specified location; and the pastures including drainage swales must be kept up and mowed in the fashion that is natural and normal for pastureland.

Mr. George stated that state law forbids stipulations being attached to rezoning requests (this is contract zoning, which is not legal), but deed restrictions between private citizens are commonly used to enforce uses.

Public Comments: Several citizens with questions were in attendance. Matthew Schaefer stated he owns Lot 13, #1 Seabiscuit Lane, situated across the street from the subject property. He asked that the Board examine a copy of the restrictive easements that govern all purchases at Gables Run Subdivision and offered that the easement constitutes a property right that is shared by every owner in the subdivision. Mr. Schaefer said the easement protects the owners to ensure that the subject property remains a horse pasture with a barn, not residential. He would oppose any plan for the “caretaker’s cottage” to be anywhere other than immediate to the barn as proposed. Schaefer suggested that, at a minimum, a proviso be added to any Board decision that would protect the easement, stating that “the rezoning is not intended to change the nature of the ownership of other owners.”

Notice made to adjoining property owners was discussed with Mr. George stating that the only notification that is required for the Planning and Zoning Board hearing is that the property be posted which did occur. It is only a courtesy that staff sent written notice to nearby residents. When the Board of Alderman schedules the public hearing for making the final decision on the rezoning request, written notice to adjoining property owners within 100' is required by ordinance and will be mailed.

Mr. Schaefer questioned the status of the property transfer and cited a portion of an August 22 letter sent by the HOA that said in part that the sale is contingent on getting the rezoning that would allow for setting up the caretaker’s home. Chairman Moffett interjected that these are not questions pertinent to

this public hearing and suggested that a community meeting for discussion and clarification of these matters would be timely and appropriate.

The classification of manufactured homes was discussed. Mr. George explained that a Class A manufactured home is not constructed in accordance with the requirements of the North Carolina Uniform Residential Building Code, is composed of two or more components, each of which was substantially assembled in a manufacturing plant and designed to be transported to the home site, and is only permitted in manufactured home parks and the A-5, R-6 and R-20 zoning districts. A Class B manufactured home is one constructed after July 1, 1996 that meets or exceeds the construction standards by the US Department of Housing and Urban Development and must have a continuous, permanent masonry curtain wall. Mr. George said only double-wide homes with front doors facing the street are allowed in the City but in rural areas, single wide homes are allowed with some flexibility in lot placement.

Patricia Naumann, 41 Gables Road, stated she is the co-author of an email that Gables Run property owners had received from their homeowners association chairman about the development of this property. She highlighted the terms reached by the HOA and the buyers. She said the restrictive covenants for residents in Gables Run requires them to mow the swales in front of their homes even though they are technically City property. The homeowners board voted unanimously in favor of support of the equestrian facility and nine favorable responses to the letter were received from members. She added that the entrance to the caretaker's home will be from behind the barn, not off Gables Run Road. She feels strongly that the rezoning will be a very good thing for the entire subdivision.

Joshua Pope, 106 Laura Drive, spoke in favor, asked about the screening and whether the deed restrictions could be made public. Again, a meeting of the concerned residents was recommended.

Bill Drake, 6789 River Road, said he sits on the architectural review board for the HOA and stated the applicant/owners have been very cooperative and have gone above and beyond in their accommodation to the community. Mr. Scott Hart made comments in favor of the rezoning request.

Board Comments: It was noted that rezoning significantly increases the possibility for successful rezoning requests on adjoining properties. An error on the developer's map was noted. Comments made by Board members, staff and the public spoke to the worthiness of such public dialogue, democracy in action, etc. Mr. Tabak asked if there is any other option other than rezoning that would allow the installation of the caretaker's home. The answer was no.

Motion was made by Mr. Tabak, second by Mr. Cotton and unanimous vote of Board, to recommend approval of the rezoning request.

Old Business

A. Upcoming Board appointments

The discussion continued concerning Planning & Zoning Board appointments and re-appointments. Mr. George stated he has conferred with Planning Director Michael Avery who conferred with City Manager Bill Hartman in this regard. It was agreed that Board membership needs to be brought into compliance with the Land Use Ordinance which allows for members to serve a maximum of two

consecutive terms (an approximate six year maximum). In review of the Board roster, the following rotation was set forth and discussed.

1. Harry Cotton and Susan Moffat-Thomas, longest standing members, to be replaced by December 30, 2009.
2. Mark Best and Peter Moffett to be replaced by June 30, 2010.
3. Janet Lamb to be replaced by December 30, 2010.
4. John McClellan and Tripp Eure to be replaced by June 30, 2011.

Mr. McClellan asked if another banquet will be held in honor of the city boards. Mr. George answered that he will discuss the suggestion with Mr. Avery, Planning Director, and report back at the next meeting.

There being no further business, the meeting adjourned.

Peter Moffett, Chairman

Bernard George, Secretary