

**Minutes of the  
New Bern Planning & Zoning Board  
March 4, 2008**

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 Thursday, March 4, 2008 at 6:30 p.m.

**Members present:** Mr. Peter Moffett, Chairman  
Mr. John McClellan  
Mrs. Claire P. Martin-Combs  
Mrs. Susan Moffat-Thomas  
Mr. Harry Cotton  
Mr. Mark Best  
Mrs. Janet Lamb  
Mr. Tim Tabak

**Members excused:** 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 Mr. George.

**Minutes:** Minutes of the January 3, 2008 meeting were approved, motion by Mr. McClellan, second by Mrs. Martin-Combs and unanimous vote by the Board.

Following brief discussion, it was agreed that items 2 and 3 would be alternated for the mutual benefit of the Board and public.

**New Business:**

- 1. Consider a request to extend the City of New Bern Extraterritorial Jurisdiction (ETJ), and initially zone to R-10A Residential District, approximately 80.13+/- acres located adjacent to the east side of Highway 17 North, west side of Duck Creek and south of the intersection of Elza Court and Galloway Road.**

Staff Mr. George discussed the proposed ETJ extension and initial zoning. He stated that the subject property is approximately 80.13 acres located adjacent to the city's corporate limits on the east side of Highway 17 North, west side of Duck Creek and south of the intersection of Elza Court and Galloway Road. The owner is Realmark Rivershore, LLC. The initial zoning classification proposed for the subject property is R-10A Residential District, which is designed to accommodate single, two, and multifamily homes with a minimum lot size of 10,000 square feet per unit and an additional 5,000 square feet for each attached unit.

Mr. George discussed briefly the process and purpose of an Extraterritorial Jurisdiction, specifically

how it allows cities to regulate land use through the application of zoning, subdivision, and building inspections in areas adjacent to their corporate boundaries. He spoke briefly about the developer's intended use, including condos, marina and supporting uses, i.e. boat dockage and storage, ship's store, etc. All residents of the ETJ area have the right to apply to the Craven County Board of Commissioners to serve as a representative on the City of New Bern Planning & Zoning Board and the Board of Adjustment when vacancies become available.

This agenda item was tabled at the P & Z Board's July 3, 2007 meeting at the request of the Board of Aldermen. The board has been requested to consider this issue again. The requested initial classification of R-10A Residential District is consistent with the zoning classification and use of adjacent properties located in the city limits. In addition, the proposed zoning classification is consistent with the City of New Bern Land Use Plan and other development plans.

**Public Comments:** None

**Board Discussion:** There was discussion on Chairman's Moffett observation of a potential inconsistency in the acreage information. Mr. George stated all acreage calculations would include the approximate 8 acres of wetlands. Mrs. Moffat-Thomas asked if Bridgeton is not planning to set their own zoning standards in this area. Mr. George answered yes, adding that Bridgeton in cooperation with another local municipality has hired a zoning official and it's likely that they will expand their ETJ.

Mr. George stated staff recommends approval of the requested ETJ extension and initial zoning.

**Motion** by Mr. McClellan, second by Mr. Best and unanimous vote of Board to approve the City request to extend the Extraterritorial Jurisdiction (ETJ), and initially zone to R-10A Residential District, approximately 80.13+/- acres located adjacent to the east side of Highway 17 North, west side of Duck Creek and south of the intersection of Elza Court and Galloway Road.

**2. Consider a proposal to amend sections of the Land Use Ordinance dealing with group homes, and homes for the handicapped, aged or infirmed.**

City Attorney Scott Davis addressed the Board and stated that this is a preliminary look at a subject that comes up on a regular basis. He said the federal court upheld litigation from Wilmington, NC, which allowed a ½ mile separation between group homes. He said he is seeking the direction of the Board and the public as he attempts to draft an ordinance for New Bern that will have some shelf-life and not be obsolete in 5 years. Mr. Davis stated that the challenge is two-fold. There is concern that the hosting neighborhoods would not be overburdened with group homes and that they must be scattered so that its residents become integrated with the community. In his examination of the subject, Mr. Davis further stated that the a pure linear separation does not work and would eventually result in a full saturation of allowable group homes. Yet under federal law, no city can restrict the homes. The ordinance should be written allowing exceptions within 2000' when the proposed location of any group home is separated by a large connector street or body of water. Density might be considered a factor, for example, when an R-6 Residential community has reached built-out.

**Board Discussion:** Mrs. Lamb suggested that the board be able to examine what other communities are using as separation elements. Mr. Tabak asked if a map can be created that shows land features that may qualify as separations. Mr. Best asked how many more group homes have been added since the

subject was first brought to the board. Mr. George answered he is unsure but the City is now approximately 30 square miles.

Mr. McClellan asked about the law when a group home is abandoned. Mr. Davis replied if the abandonment is voluntary, the use lapses. If the non-use is due to an act of God, the owner/user has 6 months to rebuilt or conclude other efforts needed to re-establish residency. In addition, Mr. Davis said groups homes are exempt from any zoning limitations; homes could assuredly pop up on the perimeters of the City limits where City has no jurisdiction; a cap cannot be placed on the number of homes as they are protected by federal laws.

In response to a question by Mr. Tabak, Mr. Davis said Trent Woods had lost a lawsuit when they sought to disallow group homes. He said at a subsequent meeting, he will provide a tighter draft of the proposed ordinance amendment as well as a map with greater detail.

**3. Consideration of an application for a Conditional Use Permit (CUP) to construct a mixed-use condominium and restaurant with an approximately 61' cornice height and 66' at the highest point of the roof surface located at 237-239 Craven Street.**

Staff, Mr. George, said the Board of Adjustment recently granted a special use permit for the proposed development. However, the developer has since revised the original plans by adding an additional floor with a restaurant. Due to the proposed building exceeding 50 feet in height, a conditional use permit is now required. The Board of Aldermen has scheduled a public hearing on the matter for its regular meeting on March 25, 2008.

The development, known as Colonial Place, is in the C-1 Central Business District's retail core and is exempt from off street parking and building setback requirements. The approximate height is 61 feet at the cornice line and 66 feet at the highest point of the roof surface.

Staff reports the application is in compliance with the Land Use Ordinance and consistent with the plan of development for the City of New Bern. Staff recommends the approval of the CUP.

**Applicant Comments:** Sarah Afflerback, architect with Maune, Belangia and Faulkenberry, representing the owner, stated that the City Historic Preservation Commission (HPC) awarded the project a Certificate of Appropriateness on February 20, 2008. She presented large drawings of the project with different elevations. She further discussed the 5<sup>th</sup> story setback and the planned revitalization of Federal Alley to a pedestrian walkway. Mrs. Afflerback touched on the findings of fact (required by a conditional use permit) and stated the permit is within the Board of Aldermen's jurisdiction, the application is complete, the development will comply with all the requirements of the ordinance, the use will not materially endanger the public health or safety, the use will not substantially reduce the value of adjoining or abutting property, and the location and character of the use 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.

**Public Comments:** Jerry Hobbins, 229 New Street, spoke in opposition to the project. He compared the height to the Elks Building at 79', the Dunn Building at 52' and the courthouse, 51' at its peak. He said this building will have a negative impact on the skyline. He believes the building is out of scale and the top (setback) 5<sup>th</sup> floor seems "unrelated to the rest of the structure." He questioned the commingling of

residents and restaurant-goers, the sanitation of a garbage chute, the fire separations and traffic congestion.

Mrs. Afflerback pointed out that certain elements, yet to be worked out, will have to go back for review by both HPC and the City's Departmental Review Committee. Mr. Hobbins stated he believes all this should be done prior to a hearing requesting a conditional use permit.

Mr. Hobbins asked if the conditional use permit will spell out that the fifth floor is to be a restaurant and the life safety of the private residents preserved. Mr. George answered yes. Hobbins said this board voted against the 300 S. Front Street (Talbots) project and he believes they are being pressured by attorneys to pass this project.

**Board Discussion:** Mrs. Lamb asked if the City's Departmental Review Committee had any comments about the plans. Mrs. Afflerback said they have been addressed in the current drawings.

Mrs. Lamb questioned whether the process should not require that departmental review be completed first. Mr. George responded that the departmental review is completed first. All departmental review comments as well as any health or fire department requirements have to be met, and once they are, the applicant is ready for building permits. Because hearings for conditional use permits can only occur once per month, it is a courtesy extended to the developer(s) to work these things in tandem.

Discussion concerning parking ensued with Susan Moffat-Thomas saying in the past, City has been so anxious to get businesses into downtown that parking requirements were waived (by ordinance).

Mr. Moffett added that the ordinance is out-dated and does not address the multi-levels of residential parking needs. In defense of this project, Mrs. Afflerback said the developer/owner is leasing 22 parking spaces from the City until the much anticipated parking deck is built.

Discussion continued concerning the shortage of parking spaces and the parking study.

Mr. George stated the Planning and Zoning Board should send a letter to the Board of Aldermen stating their concerns with the parking issues.

**Motion** was made by Mr. Cotton and second by Susan Moffat-Thomas to recommend approval of the conditional use permit for 237-239 Craven Street. The Board voted unanimously that all findings of fact were accepted, specifically:

- (1) The requested permit is within the Board of Aldermen's 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 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;

- (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 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.

There being no further discussion, the meeting adjourned.

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Peter Moffett, Chairman

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Bernard George, Secretary