

PLANNING & ZONING REVIEW NOTES

VI. F.

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**SUBJECT:** Request by William R. Copeland for a Conditional Use B-1 Business District with a Conditional Use Permit for *restricted B-1 Business uses* specifically all B-1 Business permitted uses except for the following: Amusement enterprises – Bus, passenger stations – Funeral homes, embalming, crematoria – Fur storage – Laundries or Laundromats and dry cleaning – Pawnshops – Radio and television stations and their towers – on 5.6 acres, located at the northwest quadrant of the intersection of U. S. Highway 64 and Big Woods Road, and New Hope Township.

**ATTACHMENTS:** 1. Letter from Nick Robinson dated January 2006  
2. Chatham County Appearance Commission report Dec. 14, 2005

**INTRODUCTION / BACKGROUND / PREVIOUS BOARD ACTIONS:** A public hearing was held on this request on January 17. Minutes of the hearing may be found on the County home page with the agenda for the Commissioners meeting February 6. Following said hearing the applicant's attorney submitted the attached letter reducing the number of requested uses to one category of eating and drinking establishments. Said letter made the request subject to the site plan submitted.

**ISSUES FOR FURTHER DISCUSSION AND ANALYSIS:** **Zoning District Change--** Before evaluating the details of the developer's site plan the Planning staff and Planning Board are required to make a recommendation on the requested change of the zoning district from RA-5 to Conditional Use Business District. Such a recommendation is partially based on adopted land use plans and policies. The applicant has addressed this issue in their application beginning on page 11 under the heading of Reference to Existing County Plans and continuing to page 13. The Chatham County Land Conservation and Development Plan is a policy guide. The Plan had a draft map which was not adopted by the Board of Commissioners but said map is specifically referenced in the document. On page 2 of the Plan, Resource Protection Areas are described as, "Land designated to provide for farming, forestry, and rural homes along the Haw, Rocky and Deep Rivers and in special resource areas such as the Big Woods area and the Brooks Creek-Terrell's Creek area." These are areas that have the RA-5 zoning designation and/or are designated in the Water Supply Watershed Regulations as River Corridor areas. In general the areas are restricted to residential uses and low densities, with lots averaging five acres in size with no lots smaller than three acres. The property of concern is located within this Big Woods area. The planned unit developments of The Preserve and The Legacy are also located within this Big Woods area but the zoning was changed to allow higher residential densities. On page three of the Plan this area is described, "The plan also designates significant amounts of land where little or no urban and suburban development can or should occur because of resource conditions—water bodies, natural conservation areas and rural resource protection areas encompass 140 square miles." Also on page three, item 3, under Major Recommendations it reads as follow: "Retain the current 5-acre average lot size in the areas designated in the county's

*Re: William R. Copeland*

**ISSUES FOR FURTHER DISCUSSION AND ANALYSIS**

watershed protection ordinance and shown as resource protection areas on the community plan map.” Item 13 on page 4 reads as follows:” Discourage commercial and industrial development in other settings, especially as strip commercial development and in sensitive resource areas.” The subjective nature of a general policy plan may be seen by review of the chart of uses on page 6 of the Plan. Under the heading of Resource Protection Areas the example of uses permitted subject to design standards, performance standards for water and wastewater and payment into mitigation fund are the following: farms, single family houses on large lots, convenience stores, offices and institutional uses. This is addressed in discussion about Economic Centers beginning on page 28 of the Plan. Under the heading of Overview, the text explains the six types of economic development as follows:

1. Agriculture and home based businesses in rural areas
2. Commercial and industrial development within the county’s towns
3. Neighborhood activity centers in compact community corridors
4. Cross-road commercial centers in designated rural locations
5. Economic development centers in carefully designated and planned locations
6. Continued development within other areas currently zoned commercial or industrial.

The text reads as follows: “To focus economic development in these six settings, the county will discourage industrial and commercial development in other places, especially as strip development along the major highways, in environmentally sensitive areas, and in agricultural areas.”

The applicant’s proposal does not fit under the categories as items 1, 2, 3, 5, and 6. The economic development centers referenced in item 5 are described on page 35 at eight separate locations. The location of US 64 and Big Woods Road is not one of the locations. Page 36 of the Plan addresses the cross-roads commercial centers to serve rural areas. The draft land development plan map did not designate the intersection of concern as a cross-roads commercial center location. The Plan states that, “These cross-roads centers should be designed, built and operated primarily to accommodate the needs of the residents of the surrounding rural area.”

You are encouraged to read the entire Land Conservation and Development Plan of 69 pages which is on the Planning page of the County web site at [www.co.chatham.nc.us](http://www.co.chatham.nc.us) and specifically pages 28-38 which address Economic Centers.

The existing land use pattern adjacent to the Copeland property is the large lot subdivision (average five acres in size) of Windfall Creek to the north and west, US Army Corps of Engineers property to the east and southeast and the stream Windfall Creek and undeveloped land to the south of US 64.

After reviewing the entire Plan and the referenced section, it is the Planning Department staff opinion that the proposed change from RA-5 to Conditional Use Business District is not in conformity with the Plan. The applicant’s proposal speaks for itself, but it appears that their argument is that due to the residential growth along Big Woods Road, the scale and design of the request, and the availability of public water and community wastewater treatment system, that the proposal is in conformity with the Plan.

*Re: William R. Copeland*

**ISSUES FOR FURTHER DISCUSSION AND ANALYSIS**

**Conditional Use Permit**—If the Planning Board thinks that the change of the zoning district from RA-5 to Conditional Use business district is justified then the Board is to make a recommendation on the conditional use permit request for eating and drinking establishments based on the site plan submitted. The Board is to make a recommendation on whether the five required findings may be made. The findings are as follows:

1. The use requested is among those listed as an eligible use in the district in which the subject property is located or is to be located.
2. The requested conditional use permit is either essential or desirable for the public convenience or welfare.
3. The requested permit will not impair the integrity or character of the surrounding or adjoining districts, and will not be detrimental to the health, safety or welfare of the community.
4. The requested permit will be consistent with the objectives of the Land Development Plan.
5. Adequate utilities, access roads, drainage, sanitation and/or other necessary facilities have been or are being provided.

The developer addresses the five findings in the application on pages 13-17 with various supporting documentation attached. It is the staff opinion that findings one and five are supported and may be made but findings two and three are questionable and finding four, as discussed above about the zoning change request cannot be made. Finding two is that, the requested conditional use permit is either essential or desirable for the public convenience or welfare. The applicant addresses this finding beginning on page 13. In the past there was a small restaurant at Griffin's Crossroads at the intersection of US 64 and Mt. Gilead Church Road approximately one and a half miles from the requested site. There are seven restaurants to the west in Pittsboro approximately seven miles away and two restaurants to the north at Fearington approximately six miles away. There are restaurants at the intersection of US 64 and NC 55 in Apex approximately 10 miles to the east. Since residential structures have kitchens there may not be a need for restaurants, although they may be desirable. The ideal distance of a restaurant from its customers is not known to the Planning Department. There are plenty of examples of restaurants in rural areas long distances from other commercial or office uses, such as Captain Tom's, The Old Place, and originally Fearington House. The applicant has also addressed finding two from the standpoint of increased employment and increased tax base. The change in use would increase employment and the tax base which has been stated as a desirable for the County. Finding three that the requested permit will not impair the integrity or character of the surrounding or adjoining districts, and will not be detrimental to the health, safety, or welfare of the community is addressed beginning on page 14 of the application. The ability to make this finding depends on the sufficiency of the conditions on the site plan to address the impact of the proposed use. The Appearance Commission has reviewed the request and their recommendations are attached.

*Re: William R. Copeland*

**RECOMMENDATION:** It is the Planning Department staff recommendation that the request to change the zoning from RA-5 to Conditional Use Business District be denied due to lack of conformity with the Land Conservation and Development Plan. It is also the staff recommendation that the conditional use permit request also be denied due to not being able to make the five required findings specifically finding number four.

If the Planning Board thinks that the property should be rezoned and the five findings may be made then below is a list of recommended conditions.

1. Construction Deadlines. This permit shall automatically expire on the second anniversary of its issuance unless (a) construction has commenced after issuance of Zoning Determination and Building Permits; or (b) a timely filed application for an extension of time has been approved by the County. This permit shall automatically expire on the fourth anniversary of its issuance unless the construction of all required improvements has been completed.
2. Site Plan. The site shall be developed substantially in accordance with the plans dated December 19,2005 by Crawford Planning and Design.
3. Watershed Management. A detailed watershed protection plan for the entire project area which shall include impervious surface calculations and a monitoring plan to assure compliance with the maximum impervious surface area allowed herein shall be approved by the Planning Department prior to issuance of a Zoning Determination Permit. Prior to issuance of a Certificate of Occupancy, the developer shall submit evidence satisfactory to the Planning Department of compliance with the approved plan.
4. Storm Water Management. A storm water management plan sufficient to collect and detain the first inch of rainfall runoff from the entire project area shall be approved by the Planning Department prior to issuance of a Zoning Determination permit, and the developer is required to provide the Planning Department with final plans and an impervious surface calculation sheet. The developer shall construct storm water management control measures sufficient to serve the entire project area prior to issuance of a Certificate of Occupancy.
5. Lighting Plan Approval. All area lighting shall meet County standards and not adversely affect adjoining residential areas.
6. Permits. Any required State or Federal permits or encroachment agreements, including a commercial driveway permit(s) from N.C. DOT shall be obtained and copies submitted to the County prior to the issuance of a Zoning Determination Permit.
7. Improvements. Off-site improvements required by N.C. DOT or any other agency shall be constructed at no cost to the County.
8. Parking and off-street loading areas. Parking and off-street loading areas shall be installed in accordance with the ordinances and policies of the County.

*Re: William R. Copeland*

**RECOMMENDATION** – con't

9. Utilities. All plans for underground utilities including water distribution, wastewater collection, gas, electric distribution, communications and cable television shall be approved by the respective utilities involved prior to issuance of a Zoning Determination Permit. Upon completion the County shall be provided as-built plans for all utilities to be accepted for maintenance, if any.
10. Landscaping/Screening. All required screening and buffers shall be in place prior to issuance of a certificate of occupancy. Existing vegetation may be used to fully or partially fulfill the landscaping and buffering requirements of the County. The extent to which the same can be used shall be determined by the Planning Department prior to issuance of the Zoning Determination certificate.
11. Erosion Control. If applicable, an erosion and sedimentation control plan shall be approved by the North Carolina Department of Environmental Health and Natural Resources and submitted to the Planning Department prior to the issuance of a Zoning Determination Permit.
12. Silt Control. The applicant shall take appropriate measures to prevent and remove the deposit of wet or dry silt on adjacent paved roadways.