

PLANNING & ZONING REVIEW NOTES

VIII. D.

SUBJECT:

Request by **LIR, LLC** for a Conditional Use B-1 permit on an existing Conditional Use B-1 District portion of Parcel No. 17707, located at 10544 US 64 E, on approximately 1 acre for an eating and drinking establishment in connection with the 1.147 portion currently zoned B-1 Business, New Hope Township.

ATTACHMENTS:

The following was submitted at the October 7, 2008 Planning Board meeting:

1. Application packet

The following may be viewed on the Planning Department website at www.chathamnc.org under Rezoning & Subdivision Cases, 2008:

2. Arcview map
3. Public hearing comments from Nicolas Robinson, Attorney
4. Recommendations from the Chatham County Appearance Commission
5. Grill n Go traffic summary

INTRODUCTION & BACKGROUND:

A quasi-judicial public hearing was held on this request November 17, 2008. No one spoke in opposition of the request. There were concerns made regarding site layout, turn-around areas, buffers, building design, and signage that are addressed in the notes below and as seen in the conditions following the recommendation.

DISCUSSION & ANALYSIS:

A recommendation of this request is based on the five findings as set out in the ordinance. They are listed as follows:

Finding #1-The use requested is among those listed as an eligible conditional use in the district in which the subject property is located or is to be located.

Finding #2-The requested conditional use permit is either essential or desirable for the public convenience or welfare.

Finding #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.

Finding #4-The requested permit will be consistent with the objectives of the Land Conservation and Development Plan.

Finding #5-Adequate utilities, access roads, drainage, sanitation and/or other necessary facilities have been or are being provided.

DISCUSSION & ANALYSIS – cont.

It is the opinion of the planning staff **Finding #1** may be made. This property has split zoning with 1.147 acres zoned straight B-1 Business (formerly the Mich Gardens Retail Center) and one acre that has a Conditional Use B-1 Business permit for greenhouses which was also previously associated with Mich Gardens. Within the list of permitted uses for business districts is an eating and drinking establishment. With respect to the proposed zoning ordinance amendments, this use is also permitted in the new Neighborhood Business District and would meet the requirements for such as designation.

It is the opinion of the planning staff **Finding #2** has been met. In June 2008, Chatham County developed an Economic Development Strategic Plan. On page 22 there is a chart that indicates how much “leakage” is going outside of the county for certain types of businesses. The food category indicates that 40% goes outside of our county. This plan encourages proper planning of non-residential uses with respect to façade, setbacks, and access points. These developments should use existing traffic control devices and not contribute a considerable amount of additional traffic congestion. Page 26 states a factor in supporting tourism industry requires increasing tourism and hospitality –related infrastructure such as restaurants. The report goes on to state this type tourism opportunity is potentially an underutilized sources of economic development.

The application makes mention that there are no drive-thru restaurants from the US 64 E off ramp to the Chatham/Wake County line; a span of approximately 10 miles. With respect to the amount of tourism contributing to Jordan Lake, the two convenience stores command a large amount of food business. There is one sit down restaurant site approved at the intersection of US 64 and Big Woods Road it but has not been developed.

It is anticipated the property taxes would increase from approximately \$257,000 to \$600,000 with no added expenditures from the county. The business is anticipated to offer four to five permanent jobs.

It is the opinion of the planning staff that **Finding #3** has not been met but may be met with conditions. The application states a meeting with NCDOT has been conducted and a commercial driveway permit for one driveway off Beaver Creek Road may be approved. No driveway access will be permitted on US 64. A traffic impact summary was conducted and it is anticipated the traffic count to remain below the 10,000 vehicles per day allowance as stated. The summary states this type of business is most busy during the lunch time hours than when traffic along US 64 is heavier in the am and pm peak hours.

The Chatham County Appearance Commission met and reviewed the landscape plan submitted by the applicant. They did not recommend any changes to the submitted plan. There were some concerns raised at the public hearing concerning the distance of the landscaping from the right-of-way. The proposed amendments to the Zoning Ordinance include a section on landscaping and buffering. The landscape table requires there to be a 20 foot semi-opaque vegetated buffer. However, the guidelines at the time of this

DISCUSSION & ANALYSIS – cont.

request submittal state the vegetated buffer is to be a minimum of 10 feet, semi-opaque screening. The landscaping plan submitted shows compliance with this requirement.

The Zoning Ordinance requires building and structure setbacks to be a minimum of 50 feet from a front property line and 20 feet from a side and rear property line. In the case of a corner lot, the existing regulation states the side with the least amount of frontage is considered to be the front. The site does not appear to be in compliance with this requirement. There were concerns raised at the public hearing that there were no measurements noted on the site plan from the road right-of-way to give a clearer picture of the site. This is addressed in the below condition. Landscaping is allowed within the setback areas for screening purposes. The site plan also shows two sign locations on the property; one in the front and one at the driveway entrance on Beaver Creek Road. However, no size or type of sign is mentioned in the application or on the site plan. This will be addressed in the conditions. A concern as to the “appearance” of the structure in the form of a rendering was raised. The applicant stated they could provide such a rendering by the Planning Board meeting. The applicant stated they will also be incorporating some “green” initiatives in the design of the structure but had not determined to what extent that would be. The applicant stated they could have information on this by the Planning Board meeting. If these two items are not available at the Planning Board meeting, staff may recommend additions to the below conditions.

This property is located within a WSIV-CA Critical Watershed. Section 302.D.d states that non-residential uses within 1,000 feet of the intersection of US 64 and SR 1008 are limited to those uses in Attachment B. Eating and drinking establishments are permitted uses.

The site plans submitted show a 12 foot wide driveway. It is not clear as to the turning radius of the entrance drive extending around to the rear of the building where it then splits into two separate drive-thru areas. The concern raised was regarding vehicles that may change their mind once they’ve entered the property and there being no way for them to continue around into the exit lane. Widening of the entry lane or an added lane may need to be considered. There was also a concern raised there was no way for a vehicle to go back through the drive-thru if they forgot something without going back out onto the public roadway, turning around, and coming back in. The below conditions will address that. In doing so, the Watershed Ordinance allows for up to 24% impervious surface. The submitted site plans shows the project at 21.7% which is less than the 27.5% that currently exists. Section 103.C of the Watershed Ordinance states the existing built upon area is not required be included in the overall impervious calculations. Therefore, it is staff opinion there should be room to add additional impervious surface to expand the entrance drive into two lanes as well. Please review the condition below.

It is the opinion of planning staff that **Finding #4** has been met. The Land Conservation and Development Plan, referred here after as the Plan, list several policies outlining economic development areas. Though this intersection is not specifically mentioned as an economic development area, business has existed on three of the four corners for more than 25 years. Page 12 of the Plan encourages commercial uses to be sited along major

DISCUSSION & ANALYSIS – cont.

highways in clusters. Page 27 directs the county to continue to support areas where current activities in existing industrial and commercial uses exist.

It is the opinion of planning staff that **Finding #5** has been met. The property is currently served by a well and a conventional septic system and plans to continue to do so for the wastewater for the restroom and kitchen. However, the location of the well and current septic area is not noted on the site plans. This is addressed in the conditions below. The applicant proposed to utilize a pump and haul for the grease trap waste until an on site system is approved by the county or state agency.

Stormwater management is shown to meet the two year 24 hour storm event with 1.09 acres of disturbance. There is a new Stormwater Management Ordinance being proposed as well as a revision to the Erosion and Sedimentation Control Ordinance. At this time, this project is not required to follow the guidelines set out in these new revisions and meets the current regulation.

Currently there are two access roads to the property. NCDOT has requested one of those be abandoned and will issue a commercial driveway permit for one full movement access only.

It is the opinion of the Planning staff that all five conditions have been met as stated above, some with conditions, and therefore is recommend to be approved.

RECOMMENDATION:

The Planning Board has up to three meetings to make a recommendation to the Board of Commissioners on this request. It is the recommendation of the Planning staff that this application be approved. It is requested the Planning Board review any additional conditions imposed upon the request at this time:

Site Specific Conditions:

1. The Appearance Commission and the Planning Department may review the landscaping after planting and then yearly to ensure the intent of the Type B screening is being met. Plants are to be maintained to thrive and survive at all times by whatever means necessary by the applicants/owners.
2. The stormwater detention basin and pond area shall have plantings used to better utilize more of a “bio-retention” type area. A plan detailing what vegetation shall be used shall be submitted to the Planning Department prior to obtaining the first building permit.
3. An additional entrance lane shall be installed as well as a cross over lane to allow vehicles to go back through the drive-thru if necessary and to allow for follow-thru traffic. An engineer’s letter shall be provided to the Planning Department certifying drives will meet the requirement for vehicles with boats and recreational vehicles to adequately maneuver the turns including turn radius and pass areas.

Re: LIR, LLC

Site Specific Conditions – cont.

4. A revised impervious surface projection shall be submitted to the Planning Department prior to issuance of the first building permit detailing the addition of the increased drive lanes.
5. A revised site plan showing the correct front and side property locations with building, structure, and high activity area setbacks, the location of the existing well and septic areas, and measurements from the road right-of-ways shall be provided to the Planning Department prior to the issuance of the first building permit.

Standard Site Conditions:

6. All required local, state, or federal permits (i.e. NCDOT commercial driveway permits, NCDWQ, Chatham County Erosion & Sedimentation Control, Environmental Health Section, etc.) shall be obtained and copies submitted to the Planning Department prior to the issuance of a Certificate of Occupancy.
7. Lighting shall be installed and maintained as per the adopted lighting regulations located in Section 11A of the Chatham County Zoning Ordinance. Any lighting or fixtures found to be non-compliant, existing or new, with the regulations shall be replaced at the expense of the landowner/operator and shall hold no liability against Chatham County for the compliance measures.
8. An “as-built” impervious surface calculation shall be submitted to the Planning Department prior to issuance of a certificate of occupancy.
9. Off-site improvements required by NCDOT or any other agency shall be constructed at no cost to Chatham County.
10. A building permit shall be obtained and remain valid at all times or this permit shall become void. The first building permit shall be approved within 24 months of this approval or the permit becomes void; or from the time of the expiration of an appeal period or any court decision, whichever is later.

Standard Administrative Conditions:

11. Appeal - The County shall be under no obligation to defend any action, cause of action, claim, or appeal involving the decision taken herein. In the event a response is authorized by the County concerning this resolution, or any action to enforce the provisions hereof, the applicant, its successors or assigns shall indemnify and hold the County harmless from all loss, cost or expense, including reasonable attorneys fees, incurred in connection with the defense of or response to any and all known or unknown actions, causes of action, claims, demands, damages, costs, loss, expenses, compensation, and all consequential damages on account of or resulting from this decision. Nothing in this paragraph shall require the applicant to indemnify and hold the County harmless from any losses or costs associated with defense of the County’s actions or procedures in considering and acting upon this application.

Standard Administrative Conditions – cont.

12. Fees - Applicant and/or landowner shall pay to the County all required fees and charges attributable to the development of its project in a timely manner, including, but not limited to, utility, subdivision, zoning, and building inspection, established from time to time.
13. Continued Validity - The continued validity and effectiveness of this approval was expressly conditioned upon the continued determination with the plans and conditions listed above.
14. Non-Severability - If any of the above conditions is held to be invalid, this approval in its entirety shall be void.
15. Non-Waiver - Nothing contained herein shall be deemed to waive any discretion on the part of the County as to further development of the applicant's property and this permit shall not give the applicant any vested right to develop its property in any other manner than as set forth herein.