

PLANNING & ZONING REVIEW NOTES

VI. A.

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**SUBJECT:**

A request by Christopher M. Fortunes, dba **Evergreen Companies, Inc.** for a Conditional Use Permit “renewal” for a landscaping business, lawn and garden shop, and florist shop located on Parcel No. 71030, at 11115 US 64 E, New Hope Township.

**ATTACHMENTS:**

*The following was submitted at the March 4, 2008 Planning Board meeting:*

1. Application packet

*The following may be viewed on the Planning Department website at [www.chathamnc.org](http://www.chathamnc.org) under Rezoning & Subdivision Cases, 2008:*

2. Arcview map
3. Letter dated March 7, 2008 from Thomas L. Bennett
4. Improvement permit and map from Environmental Health dated June 15, 2007

**INTRODUCTION & BACKGROUND:**

The Planning Board reviewed this request at the April 1, 2008 meeting. Mr. Bennett requested the opportunity to speak on the issues he raised at the public hearing. Chair Kost allowed the comments. Mr. Fortunes then asked to clarify some of the concerns addressed in the application notes as well as directed to Mr. Bennett’s concerns. Chair Kost allowed the comments. Staff advised the Board the structure on the property had not been completed, it was still a work in progress, and a certificate of occupancy had not been issued by the Building Inspections Department or signed off by the Planning Department. Concerns regarding vegetative screening, dumping, and the use of the property were also addressed. The Planning Department addressed these concerns when they were made. Compliance was achieved and no other complaints had been received by the Planning Department until this request. The Planning Board reviewed the conditions as outlined and *voted 10-0 to defer until their next meeting on May 7<sup>th</sup>* to allow the Appearance Commission to give their recommendations as recommended by the Planning staff.

A quasi-judicial public hearing was held on this request March 17, 2008. Mr. Thomas L. Bennett was the only one who spoke on the request. Approval for a Conditional Use B-1 zoning district and a Conditional Use Permit was issued April 18, 2005. Condition No. 4 of the approval stated “a building permit shall be obtained within 12 months from the date of approval by the Board of County Commissioners and remain valid at all times or the conditional use permit becomes null and void”. A building permit was issued March 10, 2006 to begin construction of the business as approved. On April 10, 2006, Mr. Fortunes advised the Chatham County Central Permitting Department he was not able to financially complete everything internally as he had hoped and at the time was permitting a metal, commercial storage building which would not be “occupied” for the business

**INTRODUCTION & BACKGROUND** - con't

operations. He stated he would return for an alterations permit to complete the inside of the building for the up fit. The last building inspection performed on the property was an insulation inspection on December 4, 2006. Per the International Building Code used by the Chatham County building inspectors, a building permit must have the first inspection after the permit is issued within the first six months. There must be at least one recordable inspection made every 12 months to ensure work has progressed, whether minimal or significant. A project could extend into years before it is complete unless there are specific instructions to say otherwise in a conditional use permit.

There were several issues raised at the public hearing by Mr. Bennett that are addressed in the following notes and the written comments can be located on the webpage. In September 2006 a complaint was received in the Planning Department stating there was illegal burning of land clearing and inert debris, materials being dumped on the site such as yard waste, rock, gravel, dirt, sod, scrap metal, and landscaping material such as mulch. An on-site inspection by the Planning Department and Waste Management was conducted on September 22, 2006. The Chatham County Fire Marshal was also advised of the burning activity. The rock, gravel, concrete, and dirt were being brought in as "beneficial fill" as defined by the North Carolina Department of Natural Resources, Solid Waste Division to improve the area to the east of the property. Mr. Fortunes advised the Planning Department he was not going to be able to locate the septic field area where he had shown on the original site plan, which was shown as "Natural Area and Septic Field", and was going to use this area for material storage for items like mulch, pine straw, etc. Waste management advised Mr. Fortunes that the illegal dumping of LCID material and yard waste that is generated off site is not a permitted use. Some of the timber located on the property was the result of clearing the lot for development when he gained the original approval. According the NCDNR, Solid Waste Division, clearing of vegetation on-site is not required to be disposed of; it can stay on top of the ground indefinitely. It can also be burned with the appropriate burn permits from the Fire Marshal's Office. However, waste that is generated off site must be disposed of at a permitted facility. According to the Environmental Enforcement Officer the property came into compliance.

Mr. Bennett raised the issue of planting along the shared property line. There were approximately five to seven cypress trees that had not been planted along the rear property where it adjoins Mr. Bennett's property. Mr. Fortunes made the corrections and planted all the remaining vegetation according to the site plan approval.

During construction of a project, port-a-johns are a permissible use. This project has not received a certificate of occupancy for completion of the structure up to this date. An email received from Dr. Hal House on February 20, 2007 stated he was working on a new septic system design for this property; a non-discharge system. Mr. Fortunes advised this office the original site intended for the septic area was not sufficient for the system and therefore had to be relocated.

**DISCUSSION & ANALYSIS:**

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

***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.

It is the opinion of the planning staff **Finding #1** may be made. The Conditional Use B-1 zoning district remains valid on this property.

It is the opinion of the planning staff **Finding #2** may made. It was decided in the initial application submittal that the location and project were essential and desirable for the public convenience and welfare due to the increase in subdivision approvals. It was determined landscaping products and available resources were needed to aid in compliance with the requirements set out in the county's design guidelines and other ordinance requirements for things such as keeping with the "rural character" and stormwater runoff control measures. If the proposed "draft" scenic, corridor overlay ordinance is adopted, it is staff opinion these types of businesses may be in higher demand or at least the expansion of existing landscaping businesses. Currently there are four vendors of plant material in this area of Chatham County; John Deere Landscapes, Apex Nurseries, For Gardens Sake, and Mich Gardens. John Deere sells to landscape contractors and is not set up for retail sales. Apex Nurseries is a wholesale nursery that grows and sells to landscapers also. They generally do not carry items other than plants. For Gardens Sake is the closest comparison to this proposed use. They sell retail and also can install the product. Mr. Fortunes will carry a mix of landscape supplies and tools as well as plant material. Mich Gardens sells plant material but does not carry the volume of product mix Mr. Fortunes intends to carry. They also do not carry any hardscape, irrigation, drainage, or landscape lighting supplies that Mr. Fortunes has stated he will eventually have available.

It is the opinion of the planning staff **Finding #3** may be argued but may be made. All required NCDOT driveway permits have previously been approved and issued. There have been no complaints concerning traffic to and from this property since the project began. The proposed use creates no additional strain on Chatham County Emergency Services. To further enhance the visual impacts and screening of the property, the display area with trees and plants will also have a water feature that will have three waterfalls. Parking in front of the building has been eliminated. Noise generated from the site is not anticipated to be in violation of the County Noise Ordinance. Any chemicals such as fertilizer will be stored indoors in granular bags. The sign constructed on the property is in compliance with the original approval of the conditional use permit.

**DISCUSSION & ANALYSIS:** - con't

It is the opinion of planning staff **Finding #4** has been supported. There currently exists an approved Conditional Use B-1 District on the property. Minimal land disturbance and removal of existing vegetation has kept the property in conformance with the Land Plan for preserving rural character. The project is bringing employment opportunities and providing goods and services to Chatham County citizens.

It is the opinion of planning staff **Finding #5** has been or is being supported through conditions. The project will be served by the County water system. Mr. Fortunes has also noted in the application renewal he plans to utilize a "re-use" system for wastewater. An improvements permit was issued by the Chatham County Environmental Health Department for a subsurface drip irrigation system with TSII pretreatment for up to 28 employees and 1400 square feet of retail area. This information can be viewed on the webpage. Stormwater runoff has been managed on the site with no violations noted.

The applicant was not prepared to submit a new landscape plan at the March 12<sup>th</sup> Appearance Commission meeting. A second meeting was scheduled for the April 9<sup>th</sup> meeting which Mr. Fortunes attended. A revised site plan was submitted via email and the members of the Appearance Commission have reviewed the plan and offer recommendations as stated in Condition No. 1.

**RECOMMENDATION:**

The Planning Board voted 10-0 on April 1, 2008 to defer their recommendation pending the Appearance Commission recommendations. It is the recommendation of the Planning staff that the conditional use permit request be approved. The Planning Board has one more meeting to make a recommendation to the Board of Commissioners on this request. It is recommended the site specific conditions No. 1 – 4 be reviewed at this time if the Planning Board's recommendation is to be a favorable one:

**Site Specific Conditions:**

1. Landscaping shall be installed as directed by the Appearance Commission at the next optimal planting time and as per the revised site plan. In addition to the revised plan, landscaping shall include but is not limited to an extension of trees and plants as approved by the Appearance Commission around the original natural area and septic area noted on the original site plan from the rear, along the side, and across the front to shield views of mulch and other landscaping materials to be stored in that location. There is to also be a 2<sup>nd</sup> row of plantings on the rear of the property line extending past the existing nursery area where it adjoins the adjacent property line.
2. One 4 x 8 foot monument style sign, as built, shall remain as originally approved. No other signage will be permitted.
3. Fencing shall be installed around the area noted as "plant inventory" as shown on the revised site plan.
4. The construction and certificate of occupancy on the existing structure shall be complete and issued within 12 months from the date of this approval by the Board

*Re: Christopher M. Fortunes*

**RECOMMENDATION** – con't

of Commissioners or a timely filed request for an extension be approved prior to the expiration of this conditional use permit.

**Standard Site Conditions:**

5. All required local, state, or federal permits (i.e. NCDOT commercial driveway permits, NCDWQ, Chatham County Erosion & Sedimentation Control, Environmental Health Division, etc.) shall be obtained and copies submitted to the Planning Department prior to the issuance of a certificate of occupancy.
6. 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 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.
7. An “as-built” impervious surface calculation shall be submitted to the Planning Department prior to issuance of a certificate of occupancy.
8. Parking shall meet Section 12 Off-Street Parking and Loading of the Zoning Ordinance which requires one space per 300 square feet of gross floor area.
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.

**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.
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.