



**CHATHAM COUNTY
BOARD OF COMMISSIONERS
AGENDA ABSTRACT**

ITEM NUMBER:
MEETING DATE:
8-18-08

PART A

Subject:

Request by **Jack Michenfelder** for an amendment to the existing Conditional Use B-1 Permit for a nursery, garden center, retail shop, and landscaping business to allow the sale of Parcel No. 17707, New Hope Township, located at 10544 US 64 E, Apex, NC.

Action Requested:

See Recommendations.

Attachments:

The following was provided prior to the July 21, 2008 public hearing and may be reviewed from the Planning Department website at www.chathamnc.org/planning, Rezoning & Subdivision Cases, 2008:

1. Application packet

The following additional information may be reviewed on the Planning Department website:

2. Arcview map
3. Copy of Planning Board minutes from August 6, 2002

Submitted By:

Keith Megginson, Planning Director

Date

County Manager Review:

Charlie Horne, County Manager

Date

This abstract requires review by:

County Attorney

Date Reviewed

Finance Officer

Date Reviewed

Budget Officer

Date Reviewed

PART B

Introduction / Background / Previous Board Actions:

(The Planning Board comments and recommendations can be viewed in the bold, italicized wording)

A quasi-judicial public hearing was held on this request July 21, 2008. The applicant was the only one who spoke. There was no opposition on the request.

The Planning Board met August 5, 2008 during their regularly scheduled meeting. A vote of 9-0 to approve this request as recommended by staff was made. Some clarifying questions were asked of staff on what types of uses could be placed on this property once it was sold. Staff stated that the B-1 section of the parcel (because it will and does currently have “split” zoning), could potentially have any of the permitted uses listed in the B-1 section of the Zoning Ordinance in or on that portion. However, the section of the property that is zoned “conditional use B-1” could only do what the current permit allows (growing and storing of plants) unless a revision to the permit was sought and approved by the Board. No further discussions were held.

On August 19, 2002, the applicant received an approval for conditional use rezoning of Parcel No. 62092 and a portion of Parcel No. 17707. The correct address for Parcel No. 17707 is 10544 US 64 East even though the access driveway is located on Beaver Creek Rd.

A portion of Parcel No. 17707 already had a straight B-1 Business zoning classification where at one time it was a separate, independent lot. The approval for that rezoning was October 18, 1993. On Plat 95-263, the applicant had a “recombination” approved (1995) that added the portion that was under CU-B1 (1 acre, A2) back to Parcel No. 17707 and the portion labeled B-1 Business (1.147 acres, A1). This created one parcel lot but with two different zoning classifications. The B-1 Business portion has the current gift shop and retail sales business for the nursery. The CU-B1 was reserved for an area to display plants and as a plant growing area.

Issues for Further Discussion and Analysis:

The applicant wishes to sell Parcel No. 17707 in its entirety. He has also requested the zoning classifications remain as approved allowing for the split zoning.

Condition No. 2 of the original approval states “the tracts of land, parcel #62092, consisting of 3 acres and parcel #17707, consisting of 2.14 acres may not be sold as separate tracts without revision to this permit since the tracts are considered as one for zoning purposes and notice of such condition shall be recorded as a restrictive covenant on the two parcels in the office of Register of Deeds”. Commissioner Lucier asked at the public hearing for research as to why Condition No. 2 was made. A copy of the Planning

Board minutes are located on the webpage. The Board of Commissioners met on August 19, 2002 and there was no further discussion noted in those minutes regarding Condition No. 2. It appears the condition was made to simply have uniformity with zoning areas and not so much a “legal” separation of land. It is, per deed and tax records, one parcel of land consisting of 2.147 acres and has two different zoning classifications on it. Mr. Michenfelder’s conditional use permit for Parcel No. 62092 will be reduced by one (1) acre leaving him with the three (3) acres

which is the size of the tract.

An issue of concern in the original approval was for restroom availability. A permit to add a handicap accessible restroom at 86 Beaver Creek Road (the applicant's home) was required by the Building Inspections Department. A permit from the Environmental Health Section of the Chatham County Health Department dated October 6, 2000 stating there was no need for changes to the existing drain line as installed. Planning staff spoke with Mr. Michenfelder to clarify there is a restroom on Parcel No. 17707 in the gift shop as well as the one they use for the public located on Parcel No. 62092 in the residence.

Recommendation: It is the recommendation of the Planning Department and Planning Board, by vote of 9-0, that the request be approved.