



**CHATHAM COUNTY
BOARD OF COMMISSIONERS
AGENDA ABSTRACT**

ITEM NUMBER:
MEETING DATE:
1-20-09

PART A

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.

Action Requested:

See Recommendations.

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
6. Revised site plans for corrections requested
7. Rendering of proposed building

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

Re: LIR, LLC

Introduction / Background / Previous Board Actions: (*Planning Board comments may be viewed in the bold, italicized wording*)

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.

The Planning Board met during their regularly scheduled meeting on December 2, 2008 to review this request. There were changes made to the conditions listed at the end of the recommendation which can be viewed below. There were concerns or questions raised at the public hearing which is addressed below. The Planning Board voted unanimously (8-0) to approve the request with the conditions listed below.

Issues for Further Discussion and 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.

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.

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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 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 did not appear to be in compliance with this requirement. ***A revised site plan was submitted on December 2, 2008 detailing the correct lot configuration to comply with the Zoning Ordinance requirements..*** 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 has been corrected with the revised site plans submitted to comply with the Zoning Ordinance requirements..*** 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 is 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. ***A rendering map was provided and reviewed by the Board and Planning staff to provide a “general” idea as to what the project would look like. This rendering is not considered to be part of the application nor an approved site plan for the project.*** 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

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be. The applicant stated they could have information on this by the Planning Board meeting. ***Means of how the applicant planned to incorporate such devices were not satisfactorily provided at the Planning Board meeting.*** If these two items are not available at the Planning Board meeting, the Board of Commissioners 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 showed 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. ***The revised site plans submitted at the Planning Board meeting*** 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 revised site plan shows the change in the configuration to accommodate this concern.*** 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. ***The revised site plans shows compliance would still be met with the increase in lane size and additional cross-over section.*** 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 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 or may be met through conditions. 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. ***This can also been seen on the revised site plans submitted. The Environmental Health Division of the Chatham County Health Department has advised this must be approved by NCDWQ (North Carolina Division of Water Quality) and not at the local level. Since the Planning Board meeting there has also been a concern by the Environmental Health Division that the current septic system is located under the proposed drives and/or structures/buildings. This is addressed in the below***

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conditions.

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 that was proposed as well as a revision to the Erosion and Sedimentation Control Ordinance at the time of this application submission. At this time, this project is not required to follow the guidelines set out in these new revisions and meets the current regulation. ***However, it was agreed upon by the Planning Board and the applicant a condition would be placed in the recommendations that require compliance with the new regulations that were adopted on December 1, 2008 and came effective on December 2, 2008 for stormwater and erosion control.***

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 located on Beaver Creek Road.

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: It is the recommendation of the Planning staff and Planning Board (unanimous vote 8-0) that this application be approved. It is requested the Commissioners 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. Development of this property shall meet the December 1, 2008 adopted Stormwater Management Ordinance and Erosion Control Ordinance.
3. An additional entrance lane or widening of the proposed entrance land 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.
4. Signage allowed is restricted to two (2) freestanding signs and one (1) to be located on the building. One fronting on US 64 E no larger than 10 x 15 and no higher than is permitted by the Zoning Ordinance, Section 15.7 and one fronting at the entrance of the project on SR 1008 (Beaver Creek Road) no larger than 10 x10 and no higher than is permitted by the Zoning Ordinance, Section 15.7. The building sign shall meet the sign requirements as stated in the Zoning Ordinance, Section 15.7.

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5. A new site plan shall be submitted detailing the location of the septic system, including tanks, lines, and repair areas, as well as the well location prior to issuance of the zoning compliance permit of the building application.

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.
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.

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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.