



CHATHAM COUNTY BOARD OF COMMISSIONERS AGENDA ABSTRACT

ITEM NUMBER:
MEETING DATE:
12-14-09

PART A

Subject:

Request by **Brian Sawyer** for a conditional use permit on Parcel 82735, located at 525 Farrington Rd., Williams Township, for multiple uses as stated in the application and as allowed in the Table of Permitted Uses for the Neighborhood Business District.

Action Requested: See Recommendations.

Attachments:

The following was submitted at the August 4, 2009 Planning Board meeting:

1. Application packet

The following may be viewed on the Planning Department website at www.chathamnc.org under Rezoning & Subdivision Cases, 2009:

2. Appearance Commission minutes from September 9, 2009 and October 14, 2009 meetings
3. Approval letter from Aqua NC for wastewater
4. Preliminary approval letter from NCDOT
5. Email correspondence from Mark Ashness, CE Group and Fred Royal, Environmental Resources, regarding stormwater measures.

The following is additional information attached to this packet:

6. Photos of existing conditions as of October 19, 2009 on the property.
7. Revised site plan dated November 12, 2009

Submitted By:

Jason Sullivan, Acting 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: Brian Sawyer - conditional use permit

Introduction / Background / Previous Board Actions:

(Planning Board notes can be viewed in the bold, italicized wording)

A quasi-judicial public hearing was initially held on this request September 21, 2009 and was continued to the October 19, 2009 public hearing, which was then continued a third time to the November 16, 2009. No one spoke in opposition of the conditional use permit but there were several concerns brought up. Concerns included safety around property if outside storage or equipment and/or materials are allowed, screening, hours of operation, and the number of uses being requested. Planning staff presented some of these concerns while some were made by citizens. These have been addressed in the following notes and/or conditions.

The Planning Board reviewed this request at their regular monthly meeting on December 1, 2009. Concerns were made and discussed which included but are not limited to storage of equipment and/or materials outside, the design of the building not being in harmony with the surrounding properties, traffic delays from pulling in and out of the property with a pickup truck pulling a trailer full of equipment, the need for two driveways, the number of parking spaces for the business use as well as the residential component, and the time allowing for the beginning of construction before the permit would become void. These were addressed and either satisfied or corrected through conditions as seen below.

Also speaking on behalf of Mr. Sawyer were Ms. Sue Gibbs and Mr. Mark Ashness.

The conditional use permit request cannot be approved unless the request for conditional use rezoning of the property has been recommended for approval.

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 supported, provided the conditional use rezoning district is approved. The proposed use/s is permitted within the district being sought. Mr. Sawyer listed several uses he would like to have approved for this conditional use permit. It is planning staff's recommendation to limit those uses to those only relating to his current business. This will also keep uniformity with the two adjacent properties which have also been approved for business conditional use permits with only one use. Our recommendation is noted below.

The Planning Board supported allowing the use of Mr. Sawyer's current business practice as the only permitted use allowed on the property. A revision to the conditional use permit is an option should the applicant or other occupant wish to seek a change in use/s.

It is the opinion of the planning staff **Finding #2** may be supported. Mr. Sawyer has had a successful landscaping and remodeling contractor business for the past 10 years but has outgrown his home occupation in the area where he resides. Mr. Sawyer stated there are other businesses in the immediate area that are thriving and successful and he wishes to add to that economic base. Planning staff has not been notified as to any other businesses in this immediate area that provide the same services that Mr. Sawyer would like to provide.

A concern was raised about the level of activity that could possibly be conducted on the property for Mr. Sawyer's business. Currently his level of activity has fit within a home occupation use and he is now in need to move that from the residence due to covenants and other restrictions regarding the keeping and/or storing of equipment (bobcat, trailer, ladder, etc.) that he needs to run his general contracting business. A statement by one Board member was his current level of activity is a good indicator as the kind of activity that could be expected. Mr. Sawyer builds house and conducts renovations. On occasion he will need to conduct some landscaping but that is not his primary business per Ms. Sue Gibbs. Mr. Ashness also commented that Mr. Sawyer conducts the majority of the business at the various job sites but that on occasion and by appointment only as stated by Mr. Sawyer, he may have a client come to the office to discuss layouts, color schemes, etc. The question was raised as to how much traffic the beauty shop generates in comparison to this request. The response was the beauty shop would have more traffic.

Mr. Sawyer has received a preliminary review and subsequent approval from NCDOT for the driveway locations and has been advised the value of the property would increase with the addition of the structure and the use to be made thereof though the exact increase is not known at this time. The current value per Mr. Sawyer and the Chatham County Tax Office is \$72, 700.

Mr. Sawyer's operation will include 1-2 full time positions. A residential component is to be added to the second floor of the structure where a caretaker will reside. Mixed use buildings are permitted in the Neighborhood Districts.

Although Mr. Sawyer stated in his responses to questions relating to outside storage that he would have a need for it and would show said area on the newest site plan, the most recent submitted site plan dated November 12, 2009 does not show such an area. This has been referenced in the below conditions. Changes in the site plan to include this area could result in further review from the erosion control office or the environmental resources office due to a change in disturbed area. Mr. Sawyer will be required to satisfy all ordinances and/or policies should he decide to proceed with a revision to the site plan.

It is the opinion of the planning staff that **Finding #3** may be supported. Mr. Sawyer has stated his equipment, not including vehicles, will be housed within the structure as well as materials to be used on the job sites. There is no area noted on the revised site plan dated November 12, 2009 showing where any outside storage of materials will be located, so it is planning staff's opinion no outside storage of materials will be permitted unless expressly allowed for in the following conditions.

Traffic to the site should be minimal. Open office hours will be made by appointment only by the owner on an as needed basis and with this being a 1-2 man operation it is not anticipated that there will be a significant flow of traffic. NCDOT has reviewed the driveway request and has no concerns at this time.

The question was asked why two driveways. Mr. Ashness stated for safety and to be able to get the truck and trailer off the roadway as soon as possible was the main focus for allowing the two driveways, which already existed, to remain. It is designed as a one way in one way out to eliminate backing towards the public roadway with said equipment.

Mr. Sawyer met with the Chatham County Appearance Commission (CCAC) on two occasions and those notes may be viewed on the website. Measures have been taken in the revised site plan dated November 12, 2009 to accommodate concerns that arose from the various public hearings and at the CCAC meetings. The Chatham County Zoning Ordinance also provides guidance and requirements as it relates to new development and site construction for landscaping and buffering. The proposed landscaping, other than any changes recommended by the CCAC, is acceptable. Lighting proposed is to be minimal and will comply with the regulations in the Chatham County Zoning Ordinance for any lighting use on the property. Mr. Sawyer has proposed one sign, 3 feet by 8 feet (24 sq ft) in the front yard of the property that will comply with any sign regulations as set forth in the zoning ordinance including any lighting that may be installed.

On the revised site plan were seen Leyland Cypress trees which were specifically noted as unacceptable on the minutes from the October 14th Appearance Commission meeting. Mr. Mark Ashness stated they put there as "bonus" trees to simple shield the parking lot areas. They were not a requirement for screening and buffering of the property. It was agreed that this type of tree would be replaced with some other as described by the Appearance Commission.

It is the opinion of planning staff that **Finding #4** may be supported. This property is in an area already supported by various "neighborhood business" uses as defined in the zoning ordinance. The Land Conservation and Development Plan, herein after called "the Plan", specifically mentions a focus on "balanced" growth as seen on Page 1. The adjoining two properties received conditional use rezonings and conditional use permits for specific uses. Within one mile of this property are general retail, personal service, and offices that also support the surrounding area.

Page 12 of the Plan encourages to site commercial clusters so they extend up side roads off main thoroughfares. This business will be located within a cluster of two other businesses on Old Farrington Road behind the other businesses located on Mt. Carmel Church Road.

It is the opinion of planning staff that **Finding #5** may be supported and may require additional conditions to be stated, which may be seen below in the recommendations. Mr. Sawyer plans to use the county water system for this property and will go through the proper agency/s to abandon an existing well on the property. This site will tie into the existing wastewater system owned and operated by Aqua NC. Two driveways have been proposed to NCDOT and as shown on the site plan. A preliminary review by NCDOT states they are acceptable at this time. The drives are currently located a minimum of 20 feet from either side property line.

Page 38 of the plan provides guidelines on ground and surface water resources protection. The applicant has stated in the application that land disturbance and grading will be done as minimal as possible. There have been several new regulations adopted by the Board regarding stormwater measures and erosion and sedimentation control measures. One of the new criteria relates to the amount of ground disturbance. The applicant has reduced the amount of impervious surface as well as the area of disturbance so that these measures may not be applicable. Stormwater measures are triggered once an area of disturbance reaches 20,000 square feet. The applicant has proposed 19,400 square feet. The total impervious surface for the site is to be approximately 18.3% of the 36% allowed by the Watershed Protection Ordinance. The Environmental Resources Director, Fred Royal, has conducted a preliminary review of the stormwater plan and is satisfied the design is in keeping with the ordinance and management of stormwater runoff will be maintained.

As indicated in the email correspondence from Mark Ashness and Fred Royal, there may not be a requirement for stormwater measures based on the amount of disturbed area for the project. If needed, Mr. Sawyer has stated it will be done to comply with the ordinance.

There are no issues with the Chatham County Historical Society or the Office of State Archaeology at this time.

A discussion was made on a concern due to the legislative Bill 831 (Permit Extension Act), that 24 months to complete the first building permit was going to be too long since the clock would not start until after December 31, 2010. It had been agreed to by the Planning Board and Planning staff to reduce that amount to 12 months which in turn would allow the project to still have the same time frame (around December 2011) requirement to begin construction.

It is the planning staff's *and Planning Board's* recommendation to approve this request based on the five findings being met and with the expressed conditions as noted below.

Recommendation: It is the recommendation of the Planning staff *and the Planning Board by vote of 9-1* that this application be approved. It is requested the Board of Commissioners review any additional conditions imposed upon the request at this time should their recommendation be for approval of the request:

Site Specific Conditions:

1. The uses permitted with this conditional use permit application are limited to those of mixed use building that is limited to a contractor's office with related storage and residential on the second story. Storage of materials and/or equipment is limited to internal storage only unless a revised site plan detailing a specified outside storage area and means of fencing and screening are provided and approved. This will result in an amendment to the conditional use permit.

Standard Site Conditions:

2. All parts of the application, notes, and approved recommendations as provided for and/or conditioned, are considered to be the standards as set forth and shall comply as stated. Changes or variations must be approved through the Planning Division or other approving board before any such changes can take place.
3. All required local, state, or federal permits (i.e. NCDOT commercial driveway permits, NCDWQ, Chatham County Erosion & Sedimentation Control, Environmental Health Division, Stormwater Management, etc.) shall be obtained, if required, and copies submitted to the Planning Department prior to the issuance of the first building permit.
4. An "as-built" impervious surface calculation shall be submitted to the Planning Department prior to issuance of a certificate of occupancy.
5. Off-site improvements required by NCDOT or any other agency shall be constructed at no cost to Chatham County.
6. A building permit on the primary structure shall be obtained; receive an approved passing inspection; and remain valid at all times within 12 months of this approval or the conditional use permit becomes void; or from the time of the expiration of an appeal period or any court decision, whichever is later.

Standard Administrative Conditions:

7. 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..
8. 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.
9. Continued Validity - The continued validity and effectiveness of this approval was expressly conditioned upon the continued determination with the plans and conditions listed above.

10. Non-Severability - If any of the above conditions is held to be invalid, this approval in its entirety shall be void.
11. 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.