

PLANNING & ZONING REVIEW NOTES

VI. B.

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**SUBJECT:** Public hearing requests to rezone all or a portion of business properties made non-conforming by an initial RA-40 (now R-1) zoning within the following areas:

- 1500 feet of Moncure-Pittsboro Road from the Town of Pittsboro extraterritorial planning jurisdiction to US 1,
- 1500 feet of 87 South/US 15-501 South from the Town of Pittsboro extraterritorial planning jurisdiction to the Chatham County/Lee County line,
- 1500 feet of US 421 North from the Town of Siler City extraterritorial planning jurisdiction to the Chatham County/Randolph County line,
- 1500 feet of US 421 South from the Town of Siler City extraterritorial planning jurisdiction to the Chatham County/Lee County line,
- 1500 feet of US 64 between the Town of Pittsboro extraterritorial planning jurisdiction and the Town of Siler City extraterritorial planning jurisdiction,
- area bounded by the Chatham County/Alamance County line, Town of Pittsboro extraterritorial planning jurisdiction, Old Graham Road, Mt. Olive Church Road , and 1500 feet west of NC 87 North.

**ACTION REQUESTED:** See Recommendations following each item

**ATTACHMENTS:** 1. Written comments from the public hearing.  
2. Public hearing packet (Please refer to the handout provided prior to the public hearing.)

**INTRODUCTION / BACKGROUND / PREVIOUS BOARD ACTIONS:**

The following is a timeline of activities that have occurred regarding the businesses impacted by the corridor rezoning.

- November 19, 2007 – Initial RA-40 zoning adopted for unzoned properties within 1500 feet of the major corridors.
- March 4, 2008 – Letters mailed to non-conforming business property owners with an affidavit to rezone their property.
- April 15, 2008 – Letters mailed to non-conforming business property owners inviting them to attend a meeting on May 12.
- May 12, 2008 - Meeting #1 to discuss business properties made non-conforming by the initial zoning.
- May 23, 2008 – Letters mailed to non-conforming business property owners who did not respond to earlier mailings or attend the May 12 meeting.
- October 16, 2008 – Letters mailed to non-conforming business property owners inviting them to attend a second meeting on November 20.
- November 20, 2008 – Meeting #2 to discuss business properties made non-conforming by the initial zoning.
- January 26, 2009 – Work session to finalize properties for rezoning and schedule public hearing.
- May 6, 2009 – Work session to finalize rezoning boundaries for remaining properties.

- April 27, 2009 – Public hearing on business rezoning.

The Board of Commissioners has met several times with the property owners of businesses made non-conforming by an initial zoning of property in November 2007. A public hearing was held on April 27, 2009 and several people spoke on the different properties as described below. *These comments can be viewed in the bold, italicized wording:*

#### **ISSUES FOR FURTHER DISCUSSION AND ANALYSIS & RECOMMENDATIONS:**

The notes are prepared in the order they were presented at the public hearing, however individual requests within the corridors have been separated where comments in opposition were received.

**A.** Public hearing request to rezone all or a portion of parcel #60115, owned by KAPP ROBERT J & MCGINNIS BRIAN, from Residential 1 to Light Industrial (page 33 in the packet). *Mr. Robert Kapp and Mr. Brian McGinnis spoke regarding the existing and proposed expansion of this property. Mr. Kapp stated they did not request the initial zoning of this property and felt this rezoning was limiting their ability to expand their business as outlined in their business plan. Mr. McGinnis stated it would cause undue and unfair expense to be required to apply for a conditional use permit on the balance of land they already had a plan to develop. Mr. Kapp stated this action is not consistent with the Board's position, as stated by Commissioner Lucier at the beginning of the meeting, encouraging business growth, existing and future, and working with these existing business owners to make sure their businesses continue to flourish. It was verified by the business owners, as asked by Commissioner Kost, that they own the storage facility at the corner of US 64 E and Mt. Gilead Church Road as well. No one else spoke on this request.* RECOMMENDATION: Deny the rezoning as shown and require the landowner's request for the entire parcel to be rezoned to go back through public hearing. Staff's opinion is that the other businesses on US 64 W have been recommended to be approved for their entire tracts as seen in Item "M" with the exception of the largest tract of 22 acres, Parcel No. 12228, for Jenkins Gas, where a reduction was requested. The other businesses are 3.07 acres and 6 acres. This property is 10.36 acres. There have been new design standards put into the Chatham County Zoning Ordinance that will regulate the appearance along the roadway, the depth of buffers, and new lighting regulations that were not available when the property began its development.

**B.** Public hearing request to rezone all or a portion of parcel #8924, owned by MOORES MACHINE CO INC, from Residential 1 to Light Industrial (page 8 in the packet). *No one spoke on this request.* RECOMMENDATION: Approve the rezoning as shown.

**C.** Public hearing request to rezone all or a portion of parcels #63897 and #60964, owned by HORNER CHARLES LEONARD & CHUNG, from Residential 1 to General Business (pages 37 and 44 in the packet). *Mr. Horner was in the audience and was asked by Commissioner Lucier if he would like to speak and he declined. No one spoke on this request.* RECOMMENDATION: Approve the rezoning as shown.

**D.** Public hearing request to rezone all or a portion of parcel #5971, owned by FOUSHEE FRANK T & EMILY & CARM, from Residential 1 to Heavy Industrial (page 3 in the packet). *Mr. Tom Terrell, Attorney, for Ferrell Gas, spoke and stated a lease agreement between the landowners and Ferrell Gas has existed since 1995, which included the entire parcel, and at some point they may like to expand the facility. Mr. Patrick Bradshaw, Attorney, for the landowners, spoke and stated a rezoning of the entire tract would be the better use for the*

*property. If not, the back portion would be required to be subdivided so it could be used as residential property. This would be difficult to accomplish as there is no access to the property and the current easements would not permit an additional lot to be utilized. There is also an old chicken lagoon on the property that would require a 50 foot buffer around it and could not be disturbed per NCDWQ (Division of Water Quality) requirements. This, in his opinion, would not leave ample room for a driveway, nor would Ferrell Gas want a private, residential drive through their equipment and material storage area to serve the residentially zoned portion of the tract.*

*Mr. John Wright, adjacent landowner to the north, also spoke. He was not in favor of the rezoning. He stated he was never afforded an opportunity to voice his position on the initial use of the property and was never notified by anyone, including the landowner, of the intended use of the property until it was done. Mr. Wright was living on his property prior to the beginning of the business on this property. Mr. Wright stated he has a shop building that is very close to the existing gas tanks and fears there's a great potential for a fire or explosion of the material. He also stated he smells the gas fumes all day long and has great concerns about that as well. Mr. Wright is against the rezoning that would allow for an expansion of the current use.* RECOMMENDATION: Deny the rezoning as shown and reduce the amount of area for the Heavy Industrial use to three (3) acres to be located in the front portion of the property. Planning staff's opinion is an access can be provided through this property to the back portion of the lot or the remainder of the parcel can be recombined with the existing rear lot, Parcel No. 70612, that has been deemed unbuildable due to lack of appropriate soils and therefore would have access from the existing easement road off Cobblestone Lane.

**E.** Public hearing request to rezone all or a portion of parcel #75440, owned by B G GAINES & SONS OIL CO INC, from Residential 1 to Heavy Industrial (page 52 in the packet). *No one spoke on the request.* RECOMMENDATION: Approve the rezoning as shown.

**F.** Public hearing request to rezone all or a portion of parcel #78285, owned by FAIR DENNIS M & STARR H, from Residential 1 to General Business (page 58 in the packet). *Mr. Dennis Fair spoke at the hearing. His initial concern was for a proposed RV park that was shown on a site plan and the amount of buffering that is required within a General Business District. He stated the requirement calls for a 50 foot buffer and he had planned on a 20 foot buffer, which is the general requirement for setbacks within the business district. Commissioner Lucier asked if that was a correct statement and planning staff advised the Board of Commissioners had approved about one year ago to allow recreational camps and grounds within the B-1 Business District, where it was not previously allowed, but with increased setbacks/buffers of 50 feet for protection to adjacent residential properties. However, Commissioner Lucier advised Mr. Fair this meeting was not to discuss specific site plans and that could be discussed at a later date. He also asked Mr. Fair if the General Business District is the appropriate classification to fit his proposed project or if he wanted the Light Industrial District as he stated at one point. Mr. Fair stated the General Business District would be the classification he needed. Commissioner Kost asked Mr. Fair if he had spoken to the community (neighbors) concerning his proposed development and he stated that he had. Mr. Hinkley, Chair of the Planning Board, asked for clarification on the apparent easement extending across the property. Mr. Fair stated it is an easement of 100 feet in width for Progress Energy. No one else spoke on the request.* RECOMMENDATION: Approve the rezoning as shown.

**G.** Public hearing request to rezone all or a portion of parcel #8931, owned by GAINES MARY LISA & GAINES BEN PHILIP JR, from Residential 1 to General Business (page 10 in the packet). *Planning staff stated this request came in later due to confusion on the part of the landowners as to what needed to be done. No one spoke on this request.* RECOMMENDATION: Approve the rezoning as shown.

**H.** The properties or portions of properties located within 1500 feet of Moncure-Pittsboro Road from the Town of Pittsboro extraterritorial planning jurisdiction to US 1 is Parcel 65007 owned by ORANGE-CHATHAM COMPREHENSIVE to Office & Institutional. *No one spoke on this request.* RECOMMENDATION: Approve the rezoning listed above as shown.

1. Parcel 70760 owned by FOUSHEE WILLIAM RALPH to Heavy Industrial (page 50 in the packet). *Ms. Kinte, adjacent landowner of Parcel/s #11113 & #11120, spoke against the rezoning of this parcel. She stated she understood that the current activities had been “grandfathered” in and the uses could continue. Her concerns for changing the non-conforming uses to straight zoning classifications included buffering, water supply contamination, noise, air pollution, and traffic. Ms. Kinte and her family own several parcels of land beginning at her parcel extending down to Mt. View Church Road.* RECOMMENDATION: Deny the rezoning as shown leaving the property in a non-conforming situation. It is planning staff’s opinion this tract is located within a heavily populated residential area where industrial uses are not encouraged per the Land Conservation and Development Plan. Please refer to Page 27 under Economic Centers where the continuation of current activities will be supported in existing industrial and commercial areas. The property also has steep slopes noted as well as an area labeled as in a national wetland inventory. It is planning staff’s opinion this area is not considered appropriate for said classification.

2. Parcel 11131 owned by FOUSHEE ALICE N to Light Industrial (page 25 in the packet). *Ms. Kinte, adjacent landowner of Parcel/s #11113 & #11120, spoke against the rezoning of this parcel. She stated she understood that the current activities had been “grandfathered” in and the uses could continue. Her concerns for changing the non-conforming uses to straight zoning classifications included buffering, water supply contamination, noise, air pollution, and traffic. Ms. Kinte and her family own several parcels of land beginning at her parcel extending down to Mt. View Church Road.* RECOMMENDATION: Approve the rezoning as shown.

**I.** The properties or portions of properties located in area bounded by the Chatham County/Alamance County line, Town of Pittsboro extraterritorial planning jurisdiction, Old Graham Road, Mt. Olive Church Road, and 1500 feet west of NC 87 North, are Parcel 10781 owned by VAUGHN GLENETTE M & RONALD E to Light Industrial; Parcel 10810 owned by VAUGHN GLENETTE M ETUX RONALD E to Light Industrial; Parcel 76313 owned by PATTERSON ROBERT H & MARY LOU & RAINEY MARY to Light Industrial; Parcel 5938 owned by KIDD WILLIAM ROY to Light Industrial; Parcel 5942 owned by KIDD WILLIAM ROY to Light Industrial; Parcel 67698 owned by BRIGHT DEBRA ETUX DAVID to Office & Institutional; Parcel 84651 owned by CHATHAM LAND INVESTMENTS LLC to General Business. RECOMMENDATION: Approve the rezonings listed above as shown.

1. Parcel 67174 owned by L & J CERAMICS LLC to Light Industrial. *Planning staff forwarded two (2) letters addressed to the Board of Commissioners, one from adjacent landowner, Britta Hansen of 304 Wrights Way and distant adjacent landowner, located*

*in the Terrell's Creek subdivision, Grimsley Hobbs of 200 Terrell's Trace. Both letters are for opposition of the rezoning of the property. Concerns addressed included damage to residential character, possible negative impacts on property values, compromising two new small subdivisions that are committed to green development, increase in traffic, and the increase in stormwater runoff if the business use changes to something else as it relates to the closeness to the Haw River where nearby streams could be affected.* RECOMMENDATION: Deny the rezoning as shown leaving property as a non-conforming situation. These structures were originally permitted as personal use, residential structures not to be open to the public; not a business. One structure was for the making of pottery to be sold off site and one for material storage. These two structures were inspected as non-commercial structures.

**J.** The properties or portions of properties located within 1500 feet of NC 87 South/US 15-501 South from the Town of Pittsboro extraterritorial planning jurisdiction to the Chatham County/Lee County line are Parcel 11005 owned by MINNESOTA MINING & MFG CO to Heavy Industrial; Parcel 60537 owned by CIECIORKA KEVIN S & DOROTHY H to Heavy Industrial; Parcel 7068 owned by DEAN SIDNEY L ETUX SHIRLEY J LIFE ESTATE to General Business; Parcel 18540 owned by PAVLIK RAY to General Business. *Planning staff had received a letter from Mr. Wade Barber regarding 3M's agreement with the rezoning request. Two gentlemen, representing 3M, spoke at the public hearing giving their support for the rezoning of the areas noted. No one spoke on any of these parcels.* RECOMMENDATION: Approve the rezonings listed above as shown.

1. Parcel 18402 owned by BRIGHT JOANNE L TRUSTEE & WALTER ANTHONY TRUSTEE to Light Industrial (page 31 in the packet). *Mr. Anthony Bright spoke on this request. He stated that back in the 70's the NCDOT office "took" approximately 12 acres of their lands along US 15-501 S/NC 87 S for the widening of the roadway. He was advised then he was left with prime, commercial, road front property. He stated he wanted the entire tract to be considered for rezoning to Light Industrial. Staff has reviewed Mr. Bright's affidavit and he did indicate he wanted the entire tract rezoned to Light Industrial and also sent an email to staff confirming his request in November 2008. The parcel is approximately 42.5 acres and approximately 30 acres is currently zoned R-1 (formerly RA-40) and the balance is unzoned. The area used for the telecommunications tower is approximately 1 acre, which is the area shown on the map for the public hearing, and the balance appears to be wooded, under a forestry management plan per the applicant.* RECOMMENDATION: Approve the rezoning as shown.

**K.** The properties or portions of properties located within 1500 feet of US 421 South from the Town of Siler City extraterritorial planning jurisdiction to the Chatham County/Lee County line are Parcel 9723 owned by BROWN DAVID to Heavy Industrial; Parcel 8508 owned by MOORE LEWIS DANIELS & ANN DIXO to Light Industrial; Parcel 8509 owned by MOORE LEWIS DANIELS & ANN DIXO to Light Industrial; Parcel 8891 owned by GOLDCO LLC to Office & Institutional; Parcel 8925 owned by TUCKER GARY LYNN to Light Industrial; Parcel 9032 owned by MAYA CIRO MAYA & GUILLERMINA VALDEZ to Light Industrial; Parcel 9503 owned by CAMPBELL PAINT & BODY LLC to General Business; Parcel 11635 owned by ELSENBECK BRANDON W to Light Industrial; Parcel 62615 owned by KELLY PROPERTIES OF GOLDSTON LLC to Heavy Industrial; Parcel 80189 owned by MURCHISON ROBERT to General Business; Parcel 80145 owned by MOORE BERTIS E & BERTIS E & LUANNE MOORE JOHNSON TRUSTEES to General Business; Parcel 76187



owned by CHEROKEE LAND CO LLC to Heavy Industrial; Parcel 75559 owned by HUNNEWELL RICHARD L & DEBRA A to General Business; Parcel 72029 owned by CHEROKEE SANFORD GROUP LLC to Heavy Industrial; Parcel 66177 owned by REAVIS ALBERT G to Heavy Industrial; Parcel 64618 owned by AMERITRANS LLC to Light Industrial; Parcel 63303 owned by BOREN CLAY PRODUCTS CO to Heavy Industrial; Parcel 9504 owned by CAMPBELL PAINT & BODY LLC to General Business; Parcel 62623 owned by BOREN CLAY PRODUCTS CO to Heavy Industrial; Parcel 9711 owned by MURCHISON ROBERT to General Business; Parcel 61435 owned by TOWNSEND FARMS INC to Heavy Industrial; Parcel 9831 owned by BOREN CLAY PRODUCTS CO to Heavy Industrial; Parcel 62669 owned by RETAIL PROPANE CO LLC to Heavy Industrial; Parcel 9827 owned by BOREN CLAY PRODUCTS CO to Heavy Industrial; Parcel 9843 owned by VAN THOMAS CONT INC to General Business; Parcel 9895 owned by KING ALTON RAYVON & BERTA FAYE J to General Business; Parcel 9895 owned by KING ALTON RAYVON & BERTA FAYE J to General Business; Parcel 9914 owned by RUSSELL MANUFACTURING & SALES to Light Industrial; Parcel 11643 owned by PALLETONE OF NC INC to Heavy Industrial; Parcel 11665 owned by COX KATHY MOODY to General Business; Parcel 60144 owned by GRIGG J MICHAEL to Heavy Industrial; Parcel 9826 owned by BOREN CLAY PRODUCTS CO to Heavy Industrial. ***No one spoke on these requests.*** RECOMMENDATION: Approve the rezonings listed above as shown.

**L.** The properties or portions of properties located within 1500 feet of US 421 North from the Town of Siler City extraterritorial planning jurisdiction to the Chatham County/Randolph County line are Parcel 61599 owned by BROWER STEPHEN LEE to Heavy Industrial; Parcel 76196 owned by BROWER STEPHEN LEE & ELLEN S to Heavy Industrial (pages 39 and 56 in the packet). ***Mr. Wayne Dunlap spoke on this request. He and his family have purchased a farm adjacent to this property and have concerns on the nuisances that may be coming from the abandoned mobile home recycling business. Commissioner Lucier asked if other agencies had been advised of the situation existing on these properties and planning staff advised the Environmental Health Division of the Chatham County Health Department had been notified and that a discussion of the property could be made at a later date at the Board's discretion. Commissioner Lucier stated they would look into the situation. Mr. Dunlap stated there are safety issues regarding fire, stray, unkept animals, and property boundaries not being maintained.*** RECOMMENDATION: Deny the rezoning as shown leaving the property as a non-conforming situation. There are no other industrial uses or approvals along US 421 N. Access to this property cannot be made directly from US 421 N but is made by way of local two lane roads some of which are gravel.

**M.** The properties or portions of properties located within 1500 feet of US 64 between the Town of Pittsboro extraterritorial planning jurisdiction and the Town of Siler City extraterritorial planning jurisdiction are Parcel 76151 owned by PAYNE FREDERICK JOHN & CATHERINE to General Business; Parcel 12228 owned by JOHNSON MYRTLE WOMBLE to Heavy Industrial; Parcel 60119 owned by JASPER MATTHEW & PLUMMER SHANNON to General Business. RECOMMENDATION: Approve the rezonings listed above as shown.

1. Parcel 11929 owned by HEARD CLAUDE J & DOROTHY E TRUSTEES to Light Industrial. ***Planning staff received an email letter from the son-in-law of the landowners expressing concerns on behalf of the landowners. Staff also received phone calls from Mrs. Heard regarding the area to be rezoned for the cell tower. The concern is for the access drive to their residential property will be shared with the***

*access to the cell tower site. The landowner's are in the process of subdividing their land for family and did not want this to hinder that process or create a violation of the subdivision ordinance as it relates to access. RECOMMENDATION: Approve the rezoning but with a modification that would reduce the area to the smallest size necessary for a non-residential subdivision lot for the cell tower.*