



Chatham County Planning Board Agenda Notes

Date: November 1, 2010

Agenda Item: VI.

Attachment #: 1

Subdivision

Conditional Use Permit

Rezoning Request

Other: _____

Subject:	A request by HBP, LLC for a revision to the existing conditional use permit on Parcel No. 2407, known as Polk's Village, 10677 US 15-501 N, to add additional uses on the property.
Action Requested:	See Recommendations
Attachments:	<ol style="list-style-type: none"> 1. Application packet provided to Planning Board in the September 14, 2010 meeting documentation. 2. Copy of letter of support from the Economic Development Corporation. 3. Spreadsheet of approved uses for Polk's Village and William's Corner as well as the requested uses for Polk's Village. 4. Copy of the September 25, 2006 Planning Board addendum regarding need and desirability for the uses. 5. Information packet from Styers & Kemerait for BOC minutes for Polk's Village in 2006. 6. Planning Board minutes from 9/5/2006 and 10/3/2006 for Polk's Centre/Village 7. Minutes from the BOC and PB during the approval process for William's Corner dated 9/19/05; 11/1/05; 12/6/05; 1/3/06; and 1/17/06. 8. Followup information dated October 18, 2010 from The Design Response per the BOC request. 9. Followup information dated October 19, 2010 from Brantley Powell per the BOC request. 10. Most recent approved site and landscaping plan dated July 2009.

Introduction & Background

A public hearing was held on this request on September 20, 2010, which was continued to October 18, 2010 at the request of the Commissioners. Mr. Jack Smyre of The Design Response presented at both hearings on behalf of Mr. Brantley Powell, owner. Mr. Powell also presented additional information as requested. Also present were Richard Adams with Kimley-Horne & Associates for traffic information and Karen Kemerait representing Williams Corner .

This conditional use permit, previously called Polk's Centre, now referred to as Polk's Village, was approved on October 16, 2006. There was a list of specific uses approved as part of the conditional use permit and as stated in their application. The attached spreadsheet (attachment #3) outlines those approved uses. On July 21, 2008, an extension of the conditional use permit was granted for one year (October 17, 2009) before the permit would expire. In the interim, the Permit Extension Act was passed by the Legislature, which allows the conditional use permit to remain valid until October 16, 2012 before the permit will expire, unless the first building permit has been secured.

Prior to this project getting approval, Williams Corner was approved across US 15-501 Non January 17, 2006 . During the review of any conditional use permit submittal one of the findings that must be met is "need and desirability". A concern was raised for the Polk's Village project on duplicate uses approved for Williams Corner. An addendum was prepared by the applicant, Travis Blake, addressing those concerns (see attachment #4). Numerous times, the applicant stated the uses in Polk's Village would be unique and diversified providing for ample client mix and would have no direct competition with other projects due to the "unique and eclectic mix of businesses". During the discussion on this request, this issue was raised again by Karen Kemerait on behalf of Williams Corner. As a result, the applicant agreed to remove and/or modify some of the uses asked for on the original submittal of August 18, 2010.

Discussion & Analysis

Staff was requested to meet with representatives for UNC Hospital who are looking to bring a medical office into Chatham County earlier this year. UNC's representatives stated they were looking at two project sites; one in Williams Corner and one in Polk's Village. Staff pulled approvals and site plans from both projects to confirm with the representatives exactly what uses were permitted, building size restrictions, layout of the projects, and access. In reviewing these records, it was discovered that Polk's Village was not approved for medical offices therefore they could not be considered without applying for and being approved for a revision to the conditional use permit. It is staff's opinion, based on information provided as part of the original conditional use permit approval, the reason it was not part of the original list of uses was for diversity between the two developments, as understood during the approval process of this development. The five findings required to be met for a conditional use permit approval are:

Finding #1 - "The use/s requested are among those listed as an eligible conditional use in the district in which the subject property is located or is to be located". It is staff's opinion this finding is met. The uses described in the revised list under the October 18, 2010 materials (see attachment

#8) are all listed as permitted uses with the conditional use district approved for the development. It is staff's opinion this finding has been met.

Finding #2 - "The requested conditional use permit is either essential or desirable for the public convenience or welfare". The Board of Commissioners agreed this finding was being met based on the approval given October 16, 2006. Therefore, it is staff's opinion this finding continues to be met.

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". It is staff's opinion this finding has not been met. Staff understands that competition between businesses is part of business; however, this development went through months of debate on how it would be unique from the approximately 2 million square feet of commercial space already approved along the US 15-501 corridor. This development was approved for 125,000 square feet of commercial space and approximately 400,000 square feet are planned for the development named Williams Corner across US 15-501 from this site. The representative for Mr. Powell, at that time, stated at the October 3, 2006 Planning Board meeting there would be no duplication of services unless the two services think they are compatible (see attachment #6). At the time of the approval, it was also stated there were letters of interest for the development that included an office supply business, flex space, and large market restaurants.

During the approval process for this development, the site plan depicted the uses being sought, as did Williams Corner. From the beginning, the Williams Corner site plan showed medical facilities and offices along with a residential component and daycare center while Polk's Village did not. The reasons for that were stated previously. It is staff's opinion this finding has not been met.

Finding #4 - "The requested permit will be consistent with the objectives of the Land Use Plan". It is staff's opinion this finding was previously met but has not been met in this revision request. Page 1 of the Plan states "Land developments and conservation will reflect balanced growth". This is done by having benefits and burdens of growth shared, growth consisting of a mix of different types of development, and development is guided to suitable locations and designed appropriately. It is staff's opinion, if uses are added to more closely resemble the development across the street; this objective will not be met. Therefore, it is staff opinion this finding has not been met.

Finding #5 - "Adequate utilities, access roads, storm drainage, recreation, open space, and other necessary facilities have been or are being provided consistent with the county's plans, policies and regulations". After two years from the date of approval a request for an extension of the conditional use permit was filed due to approaching expiration dates on the approval, which was granted. During this time, extensive review from the NCDOT District Engineer's Office and Congestion Management group was conducted. The specific layout of access roads, signalization, and traffic counts was approved. The two developments were reviewed at the same time because the intersections and signalization would be required to be coordinated. The NCDOT commercial driveway permits for both developments listed specific uses that were used in the consideration of their decision. Mr. Adams with Kimley-Horne stated to the board at the public hearing that he was

comfortable that the additional uses, including the medical office, would not increase overall traffic generation, but would reduce the am and pm peak hour trips because trip generation for medical facilities is spread throughout the day. Also noted within the report were "fast-food" restaurants. The original approval was based on large market restaurants because that was also a concern of the adjacent property owners when the proposal first came to the board. A fast-food restaurant would have a continuing change in traffic generation, which could be good, verses a sit down restaurant with surges of traffic. The daycare center was also removed from the list of proposed uses in order to reduce traffic generation. There were also limits put onto the size of certain uses such as the food store and moving some square footage of the retail and office space to the medical use category.

Wastewater usage was reviewed by Agri-Waste Technology (see attachment #8). The letter refers to the original review of the uses and type of system allowed on the property, along with the construction authorization from Chatham County Environmental Health Department dated August 2009. However, the letter also states that there are several uses that would require specific restrictions in order for them to be conducted on the site due to the types of waste they have the potential to generate, including medical clinics. It is staff opinion this finding has not been met but could be met through conditions.

Recommendation

It is staff's recommendation to deny this request based on Findings 3-5 not being met. The Planning Board has up to three (3) meetings to make a recommendation to the Board of Commissioners. Should the board's recommendation be in favor of the request, staff has listed below a set of specific conditions to be included with any approval request.

Site Specific Conditions:

1. The site plan dated July 2009 shall be considered the existing approved plan. In its revision is the addition of a five (5) foot wide sidewalk from Polk's Landing Road across from Holly Ridge Road into the development to allow for pedestrian connectivity that also includes bicycle/disability access ramps; the addition of four (4) bike racks installed at central points throughout the development; the modified evergreen undisturbed margin along Polk's Landing Road bordering the development which allows for selective clearing and revegetation with new plantings; the addition of a sign on Polk's Landing Road at the first entrance into the development stating "shopping center entrance only," and that entrance should be wide enough to accommodate a tractor-trailer.

2. The additional uses allowed to be added to the original list of uses are: ABC Stores, Appliance Sales & Service, Cabinet Shops (excluding manufacture), Catering Establishments, Dairy Bars and Ice Cream Shops, Specialty Food Store limited to 12,000 square feet maximum and no outside storage or displays, Music Stores, Photographic Studio, camera shops, Post Office internal to primary use structure only (no stand alone facilities), Repair shops for jewelry, shoes, radios, televisions and other small office or household appliances with no outside storage or displays, Secretarial & Job

Service Agency, Sporting Good Sales with no outside storage or displays for a total of 12 additional uses.

3. The recommendations of the Chatham County Appearance Commission (CCAC) for landscaping and screening of dumpsters shall remain in effect as originally approved. The CCAC and the Planning Division may conduct yearly inspections to ensure design and intent are maintained and may advise of additions or changes be made to the site whether to the developers expense or some other entity.

4. The interior road leading through the development from US 15-501 S connecting to Polks Landing Road shall be installed and maintained in its entirety before the certificate of occupancy for the first structure is approved and prior to Polks Landing Road being converted to right out only at US 15-501.

5. This development was approved for a permit extension in July 2008. Due to the 2009 Permit Extension Act, this project shall obtain the first building permit before such permit will expire which will be October 16, 2012. The building permit shall remain active and valid at all times once issued.

6. A revised letter of approval from NCDOT shall be submitted to the Planning Division before any land disturbing activity may take place. Any requirements for changes or upgrades shall not affect nor be the burden of Williams Corner. Copies of all permits, changes, extensions, or modifications shall be submitted to the Planning Division before any land disturbing activity shall begin.

7. Setbacks from Cub Creek shall be 100 feet on each side for buffers and the stormwater management pond. A new storm water management plan shall be submitted to the Planning/Zoning Division prior to issuance of the first building permit. The design shall at a minimum as specified in Section 8.5.4 Storm Water Runoff in the original application.

8. The site plan shall be developed as approved in July 2009. A reduction in one building's square footage may be transferred to another building in the development with no one building exceeding 40,000 square feet.

Standard Site and Permit Conditions:

9. Signage, parking, and lighting shall conform to the current regulations in the Chatham County Zoning Ordinance (December 2008 version).

10. 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.

11. 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.

Standard Administrative Conditions:

12. 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.

13. 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.

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

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

16. 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.