

# **Application for Conditional Zoning District on Lot 17, The Hamptons**

## **– “Ward’s Hollow –**



**Opposing: Windjam Development Group, LLC  
Developer of “The Hamptons”**

# LAND USE DEVELOPMENT PLAN



## **The Vision for Chatham County**

*Chatham County will be a place that cooperatively controls its own destiny to assure the state of well-being desired by all of our people, while proudly preserving diverse cultural heritages and the County's rural character.*

-- Vision prepared by the Strategic Plan Development Committee and signed by the five governing boards in the County.

# LAND USE DEVELOPMENT PLAN



## **Land Conservation & Development Policies**

Two fundamental policies are considered in every issue addressed by the plan:

*1. Land development & conservation will reflect balanced growth.*

Balanced growth means that development is welcomed, but in ways that ensure that:

- benefits and burdens of growth are shared,
- growth consists of a mix of different types of development, and
- development is guided to suitable locations and is designed appropriately.

*2. Chatham County's approach to land development & conservation will be open, pro-active and cooperative.*

An open, pro-active and cooperative approach means:

- making citizens aware of land use changes,
- preparing ahead for development issues instead of reacting to specific development proposals or growth-shaping influences, and
- working closely with other jurisdictions.

# ***CHATHAM COUNTY STRATEGIC PLAN OUTCOMES AND GOALS***

## ***I. BALANCED GROWTH***

5. More intensive land uses, e.g. commercial, high density residential, and industrial, concentrated in or near Chatham's existing towns.

5. Such concentration increase efficiency with which essential services, e.g. water, fire protection, can be provided, and help to preserve the "great outdoors" as a primary county asset.

# LAND USE DEVELOPMENT PLAN



13. Discourage commercial and industrial development in other settings, especially as strip commercial development and in sensitive resource areas.

# ZONING DISTRICTS



## **R1 Residential District**

This district is primarily for low to moderate density residential development within the residential-agricultural areas of the jurisdiction.

## **RB Regional Business District**

This district is similar to the old General Business District in that a wider array of uses is allowed and there are not limitations on single-occupant, single-use structure sizes or outdoor storage and display of merchandise.

# ZONING TABLE OF PERMITTED USES



## Zoning District

**R5 R2 R1 O&IB-1 NB CB RB IL IH**

Circuses, carnivals, exhibition shows, sideshows, races, trade shows, flea markets, banquets, conventions, religious events, arts and crafts shows, stage shows, athletic events and other similar events, including temporary living quarters such as mobile homes and recreational vehicles provided that the stay of such temporary living quarters shall be limited to a period of not more than five days longer than the duration of the event and no more than 30 total days in any 12 month period for any one separate event

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# SECTION 5 – Conditional Zoning Districts



## Section 5.1 – Purpose

Conditional Zoning districts are zoning district in which the development and use of the property is subject to predetermined ordinance standards and the rules, regulations, and conditions imposed as part of the legislative decision creating the district and apply it to particular property.

Some land uses are of such a nature or scale that they have significant impacts on both the immediate surrounding area and on the entire community, which cannot be predetermined and controlled by general district standards. The review process established in this Ordinance provides for accommodation of such uses by a reclassification of property into a conditional zoning district, subject to specific conditions, ***which ensure compatibility of the use with neighboring properties***. A conditional zoning district is not intended for securing early zoning for a proposal, except when that proposal ***is consistent with an approved land use plan or the proposal can demonstrate that public infrastructure needed to serve the development will be made available within a reasonable time period***.



# APPLICATION DOESN'T MEET PURPOSE STATED IN SECTION 5.1



- No conditions can “ensure compatibility” of intense commercial use for private gain in well established residential area
- Proposed use not “consistent with approved land use plan” for Mt. Gilead Rd. Corridor
- No infrastructure improvements related to traffic, sanitation to be made available “within a reasonable time period”

# REQUIREMENTS IMPOSED ON APPLICANT



- Section 5.3 A – Application: [A]ll applications shall also contain the following information:
  1. The alleged error in this Ordinance, if any, which would be remedied by the proposed amendment with a detailed explanation of such error in the Ordinance and detailed reasons how the proposed amendment will correct the same.
  2. The changed or changing conditions, if any, of the area or in the County generally, which make the proposed amendment *reasonably necessary to the promotion of the **public** health, safety and general welfare*.
  3. The manner in which the proposed amendment will carry out the intent and purpose of any adopted plans or part thereof.

# REQUIREMENTS IMPOSED ON APPLICANT



## **5.3. General Requirements**

Property may be rezoned to a conditional zoning district only in response to and consistent with an application submitted in compliance with Section 5.

# APPLICANT HAS NOT SATISFIED REQUIREMENTS OF ORDINANCE



- Does not allege any error in R1 Ordinance, or reasons why the proposed use would fix any such error
- Makes no showing regarding “changed or changing conditions” of well established residential corridor
- Makes no showing regarding how proposed use “reasonably necessary to the promotion of the public health, safety and general welfare.”
- Make no showing how proposed use is consistent with “intent and purpose” of County’s land use plans
- Proposed use = strictly private benefit: inconsistent with Ordinance

# PERMITTED USES WITHIN CONDITIONAL ZONING DISTRICTS



- **Section 5.4 – Uses Within District.**

**Within a conditional zoning district, only those uses listed (or determined to be equivalent uses) as permitted uses or conditional uses in the corresponding zoning district shall be permitted, and no use shall be permitted except as a conditional use subject to approval of a conditional zoning district rezoning authorized by the Board of Commissioners as provided herein.**

**Proposed use – not listed as permitted or conditional use in R1, as property is present zoned**

**Rezoning to RB, as conditional use or otherwise, inconsistent with approved land use plan**

# REVIEW PROCEDURE



- **Section 5.7 E: Once the Public Hearing is closed by the Board of Commissioners, the Planning Board and Board of Commissioners shall review the application pursuant to the procedure outlined in Sections 19.6-19.11.**

## SECTION 19 - AMENDMENT TO ZONING ORDINANCE



- Section 19.1 – Statement of Intent.

For the purpose of establishing and maintaining sound, stable and desirable development within Chatham County this Ordinance shall not be amended except to correct an error in the Ordinance or, because of changed or changing conditions in a particular area or in the County generally....These amendments shall be *reasonably necessary to promote the **public** health, safety and general welfare and to achieve the purposes of the adopted Land Use Plan.*

# SECTION 19- AMENDMENT TO ZONING ORDINANCE



- Section 19.6 – Public Hearing and Notice Thereof
- Section 19.7 – Planning Department Prepares Final Analysis and Recommendation
- Section 19.8 – Planning Board Action on the Amendment Application “....The Planning Board shall provide a written recommendation to the Board of Commissioners that addresses consistency with the adopted comprehensive plan and other matters as deemed appropriate....”
- Section 19.9 – Board of Commissioners Receives Recommendation of Planning Board “...Prior to adopting or rejecting any zoning amendment, the Board of Commissioners shall adopt a statement describing whether its action is consistent with an adopted comprehensive plan, is reasonable, and in the *public* interest.”



# COUNTY DERIVES ZONING POWER FROM THE STATE



- The power to zone real property is vested in the General Assembly by the Constitution of NC, who has delegated that authority to local government. Chrismon v. Guilford Co., 322 N.C. 611 (1988)
- In exercising zoning powers, County may not act unreasonably, arbitrarily or capriciously
- Conditional use zoning authorized in North Carolina.
- “We have said, however, that in order to be legal and proper, conditional use zoning, like any type of zoning, must be reasonable, neither arbitrary nor unduly discriminatory, and in the public interest.” Chrismon
- Conditional use zoning cannot be “spot zoning” and be legal

# SPOT ZONING



- “A zoning ordinance, or amendment, which singles out and reclassifies a relatively small tract owned by a single person and surrounded by a much larger area uniformly zoned, so as to impose upon the small tract greater restrictions than those imposed the larger area, *or so as to relieve the small tract from restrictions to which the rest of the area is subjected*, is called ‘spot zoning.’
- Spot zoning beyond the authority of the County “in the absence of a clear showing of a reasonable basis therefor.” Chrismon

# FACTOR SUFFICIENT TO SHOW REASONABLE BASIS



- Size of tract in question
- The compatibility of the disputed zoning action with an existing comprehensive zoning plan
- The benefits and detriments resulting from the zoning action for the owner of the newly zoned property, his neighbors and the surrounding neighbors
- The relationship between the uses envisioned under the new zoning and the uses currently present in adjacent tracts
- “The true vice of illegal spot zoning is in its inevitable effect of granting a discriminatory benefit to one landowner and a corresponding detriment to the neighbors or the community without adequate public advantage or justification.”

Chrismon

# PROPOSED USE WOULD CONSTITUTE ILLEGAL SPOT ZONING



- Tract, as presently zoned, suitable for all uses in R1. No showing that it is not
- Proposed use inconsistent with land use plan and character of surrounding community
- “Most likely to be found invalid is an amendment which reclassifies land in a manner inconsistent with the surrounding neighborhood.” Chrismon
- No benefits to surrounding property
- Detriments to surrounding property
- Benefit granted to applicant “without public advantage or benefit”
- “[T]he evil to be avoided is an attempt ‘to wrench a single small lot from its environment and give it a new rating *which disturbs the tenor of the neighborhood.*”
- “[R]ezoning of a parcel in an old and well established residential district to a commercial or industrial district would *clearly be objectionable.*”  
Chrismon