



Chatham County Planning Board Agenda Notes

Date: May 1, 2012

Agenda Item: VII. 1.

Attachment: #1

☐ **Subdivision**

☒ **Conditional Use Permit**

☐ **Rezoning Request**

☐ **Other:**

Subject:	Request by Talitha Sanders and Ellen Martin for a conditional use permit on Parcel No. 75481, located at 235 Easy Street, Baldwin Township, on 4.564 acres for a daycare center for 15 or fewer children.
Action Requested:	See Recommendations
Attachments:	<ol style="list-style-type: none">1. Application packet is available on the webpage at www.chathamnc.org/planning under Rezoning and Subdivision Cases, 20122. Information from the Department of Insurance OSFM regarding the approved state uses for manufactured homes.3. Osterlund Addendum #14. Email dated 3/28/12 from Al Davis, Building Inspections Supervisor.

Introduction & Background

A public hearing was held on this request March 19, 2012. Planning staff raised concerns that are addressed below. Two neighbors, Robert Franklin and Debra Bright, spoke with concerns that included road maintenance, traffic safety, and structure adequacy for daycare. Andy Osterlund, Architect for the applicant and the applicant also spoke.

The requested permit is on a parcel located within an R-1 Residentially zoned district. Within this district, there are approved uses that are not residential in nature but may be customary residential neighborhood commercial accessories. A daycare center is one such uses. There may be, at times, some additional requirements in place to ensure the intent and character of the use continues to fit within that residential zoning district without being required to obtain a rezoning of the property.

****Updated information is in BOLD****

The Planning Board voted (6-1) to postpone a recommendation to the Board of Commissioners to allow staff time to consult with the county attorney about the legal acceptance of additional information provided at the April 3rd meeting by the applicant. Planning staff was advised by the county attorney the information provided was post hearing evidence and should not be considered in making their recommendation. He also stated the information could be entered

into the record by reopening the public hearing by the Board of Commissioners. This would not cause a new application submittal or the process to start over completely.

However, the Planning Board may still find all findings have been met and may recommend approval of the request based on the information provided in the original application materials and the testimony at the public hearing.

Discussion & Analysis

In order for a matter to be considered for approval, there are five findings that must be addressed and proof given that each one can be supported. Should one condition not be supported, the entire application should be denied. Conditions may be placed in order to achieve a mutually agreeable alternative between the governing body and the applicant in order for the finding to be made. The five findings are addressed below.

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. The use being requested is listed as a permitted use under a conditional use permit as noted in the Table of Permitted Uses in Section 10.13 of the Chatham County Zoning Ordinance. The table also allows for a daycare center in a principle residence provided all buildings, structures, and high intensity areas can meet the double setback from the property lines requirements. The applicant has stated she lives in another structure on this tract and this has not been her principle residence. According to a survey, the manufactured home could not meet the setback requirement therefore requiring the application for the conditional use permit. The applicant has stated she will live in this structure the five (5) days she's operating the center. Planning staff has discussed this with the building inspection's supervisor, Al Davis, who stated this would be acceptable with proof of her residency in this structure (i.e. driver's license, postal service, etc.).

The Planning Board asked that if the setbacks could have been met would this conditional use application have been required and the answer from staff was no, it would not have been required and the applicant would only have dealt with other state or local agencies for permitting.

Although this approval would allow for up to 15 children, the applicant does not wish to be licensed by the state as a daycare "center" and is limited to no more than 5 children. It is Planning staff opinion this finding is met.

FINDING #2 – The requested conditional use permit is either essential or desirable for the public convenience or welfare. The applicant states in the application materials this facility will be providing a service needed in the respect of smaller, more intimate group sizes that would allow more one on one work with each child. They have recognized a specific group of surrounding prospective clients that may require daycare in order to maintain their positions in the workforce.

The applicant conducted an area analysis and there are approximately 12 child care centers in the northeastern portion of the county. Under survey of similar uses, the application lists four (4) facilities the applicant states are “similar scale and building type” to this proposal. They are Little Explorers Child Care (in-home daycare that is permitted for up to 15 children, state certified approval to be over 5 and receives yearly inspections), Little Sweet Potatoes (in-home daycare 5 children or less, not state certified), Robyn’s Nest Creative Learning Center (commercial center that has approximately 188 children), and Pittsboro Montessori School (a school with an associated early childhood program). Out of these four, only one compares to the applicant’s project. It is Planning staff opinion, based on the information provided and submitted with the application, this findings has not been 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. Mr. Robert Franklin spoke against the request because of traffic concerns for maintaining the existing road. He stated he has been repairing the road as a courtesy to the neighbors. He feels the increase in traffic would increase damage and feels the road is too narrow for a lot of passing vehicles. He also stated this could be a safety issue for the children and emergency vehicle access.

Ms. Debra Bright also spoke on her concerns regarding the road upkeep. She stated everyone needs to help in the road maintenance and more traffic would create even more disrepair. She also noted, at one time she too had an in-home daycare for five children or less in this area and realized this area was not adequate nor did she feel this manufactured home and site were adequate. She also noted that the Division of Child Development had specific standards that didn’t appear to be met. She did not provide a list of those standards nor did she provide evidence as to which standards were not being met.

The applicant’s representative stated at the public hearing that NCDOT’s representative did not have any issues with this road nor its access. Per NCDOT, this is a private road, not subject to their regulations, and they would not have any requirements to provide with respect to the proposed use. The number of trips per day is proposed to be about 12 with peak times between 7am to 9am then 4pm to 6pm.

The Chatham County Appearance Commission reviewed the landscaping plan and made recommendations that have been agreed upon by the applicant. Those recommendations are conditioned below. There is no additional lighting proposed and signage is proposed to one sign, non-illuminated, no larger than two sq. ft. per the applicant. The ordinance would allow up to four sq. ft. and so has been conditioned as such below.

It is Planning staff opinion private road maintenance agreements are settled between the property owners in the nature of a civil action or recorded document and therefore is not considered as supporting or enforceable evidence for this proposal. It is Planning staff opinion this finding is met.

FINDING #4 – The requested permit will be consistent with the objectives of the Land Use Plan.

The Land Conservation and Development Plan of Chatham County, hereafter referred to as “the Plan”, provides a general outline of the types of developments encouraged in different parts of the county. The Plan was adopted in 2001. However, a map has not been adopted to outline where certain types of non-residential uses are guided or encouraged.

One of the Plan’s objectives as seen on page 10 is for balanced growth with different types of development guided to suitable locations while maintaining the rural character and quality of life of the county. This property will maintain its rural character. Other than adding some landscaping, signage, and playground areas, the site is virtually unchanged. Page 11 outlines the encouragement for home-based businesses as well to retain the rural character of the surrounding areas. It has been somewhat unclear if this is in fact the applicant/operator’s primary residence although she does reside on the property.

Page 38 is an overview of ground and surface water resources protection. This property is located within the WSIV-Protected Area Jordan Lake watershed district. Since the property will not have curb and gutter, the maximum impervious surface is 36% of the tract. The proposed impervious surface for the site is well below 20%. The information provided on the landscaping plan did not include the other residence and driveway associated with that residence. That too is minimal per the aerial photos of the site. The Environmental Quality director did not see any issues. It is Planning staff opinion this finding is 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. The property has an existing well and septic system for this structure. Because the daycare will be five children or less, requirements and regulations for testing, resizing of the septic system, and monitoring are not required by the Environmental Health Department.

Although not required, the applicant has stated they plan to install a rain garden for use with stormwater runoff. If they continue with this proposal, per the Environmental Quality director, it would be good to let him review the plan to make sure it is constructed properly. Because there is less than 20,000 sq. ft. of land disturbance, stormwater, erosion and sedimentation control rules would not apply.

No other improvements are proposed or required. It is Planning staff opinion this finding may be met.

Based on the above five findings, it is Planning staff opinion Finding No. 2 has not been met with the information provided by the applicant and therefore recommends denial of the request.

During the re-review of this information, staff realized the time limit for the standard site conditions had been omitted mistakenly and has now been included as Condition No. 6.

Recommendation

Planning staff recommends denial of this request. Planning Board has up to three meetings to make a recommendation to the Board of Commissioners. At this time, it is requested the following conditions be reviewed if the decision is to be in support of the application.

Site Specific Conditions

1. The site may have one non-illuminated sign no larger than four (4) sq. ft. which is larger than the applicant requested.
2. Recommendations by the CCAC and the Chatham County Design Guidelines shall be complied with as approved.

Standard Site Conditions

3. Signage, parking, and lighting shall conform to the Chatham County Zoning Ordinance unless otherwise stated in a specific condition noted above.
4. The application 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 Department or other approving board before any such changes can take place.
5. All required local, state, or federal permits (i.e. NCDOT commercial driveway permits, NCDWQ, Chatham County Erosion & Sedimentation Control, Environmental Health Division, Storm water Management, Building Inspections, Fire Marshal, etc.) shall be obtained, if required, and copies submitted to the Planning Department prior to the initiation of the operation/business.
6. A certificate of occupancy shall be issued within two (2) years from the date of this approval or this permit becomes null and void.

Standard Administrative Conditions:

7. 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.
8. Continued Validity - The continued validity and effectiveness of this approval was expressly conditioned upon the continued determination with the plans and conditions listed above.
9. Non-Severability - If any of the above conditions is held to be invalid, this approval in its entirety shall be void.
10. 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.