

..TITLE

A request by John E Booth Farms, LLC, Kathryn Butler, for a General Neighborhood Business (NB) Rezoning on a portion of Parcel No. 19681, being approximately 6.50 acres out of the 14.02 acre tract, located at 8913 NC 751, Durham, NC, Chatham County, Williams Township, and as part of the Chatham/Cary Joint Land Use Area.

..ABSTRACT

Action Requested:

A request by John E Booth Farms, LLC, Kathryn Butler, for a General Neighborhood Business (NB) Rezoning on a portion of Parcel No. 19681, being approximately 6.50 acres out of the 14.02 acre tract, located at 8913 NC 751, Durham, NC, Chatham County, Williams Township, and as part of the Chatham/Cary Joint Land Use Area.

Introduction & Background:

A legislative public hearing was held on September 15, 2014. Planning staff presented the application and the applicant, Ms. Butler and her attorney, Mr. Robinson, both spoke on the request as well as one neighbor, Karey Liptok, who spoke in support of the rezoning. There were also two other on-line comments submitted to the County Manager's Office with one in favor of the rezoning and one that may be against the general rezoning of the property. The one against was concerned about loud music, stray animals, and the use of equipment. It appeared the majority of the complaints were directly related to the nursery business nearby and not this property.

In October 1987, Mr. Booth was approved for a conditional use permit on approximately 2.6 acres out of the approximate 14 acre tract for use as a commercial landscape design, lawn and garden center. This request will increase the commercial area to 6.5 acres out of the 14 +/- tract.

In October 2009, the owner then added an agricultural component with a vineyard and winery. The vineyard was located on property not covered under the conditional use permit and was considered a bona fide agricultural use and thus exempt from zoning regulation. The grapes grown on-site were being used to make products and were also for demonstration and teaching of the growing of grapes. A portion of the existing building was remodeled to house the winery where tasting and purchases could be made. The original conditional use permit remained as well.

In May 2014, the winery and vineyard was no longer in use. One-half of the vineyard had died and the current occupant withdrew his lease and vacated the property. There is currently no agricultural use or exemptions approved on this property with the exception of the conditional use permit area which is still valid. The existing structure was brought up to commercial code and amenities were added which were also permitted and inspected; a sitting area deck and a gazebo.

In 2012, Chatham County and the Town of Cary adopted a Joint Land Use Plan that includes this property. It was recognized at that time as a non-residential permitted use and is depicted on the currently adopted use map as “existing commercial zoning”; although zoning is not the correct term with the actual conditional use permit approval. When this property received the conditional use permit, it was not required to also have the underlying zoning changed, therefore it remains residential.

At the time of adoption of the Joint Land Use Plan an interlocal agreement was also adopted that includes a provision allowing current non-residential uses to expand. Per Section 6c of the interlocal agreement, a landowner can request that a rezoning extend an additional 100 feet beyond the boundary of the area shown on the plan map. The Town of Cary planning staff agrees with this interpretation and has no issue with the zoning classification and changes.

The Planning Board met at their regularly scheduled meeting on October 7, 2014. There was limited discussion on the request. The Planning Board voted unanimously to recommend approval of the rezoning.

Discussion & Analysis:

This is a general rezoning request. Section 19 of the Chatham County Zoning Ordinance sets the standard for which a general rezoning map amendment is to be processed.

1. In response to any alleged error in the Ordinance, if any, which may be remedied by this proposed amendment, the applicant has also filed a Zoning Ordinance Text Amendment to clarify certain allowed uses within the business designations. There are no other errors claimed in this request.
2. The changed or changing conditions, if any, in the area or in the County generally, which make the proposed amendment reasonably necessary for the promotion of the public health, safety, and general welfare. This property also adjoins a 19 acre tract currently being used for commercial purposes as a nursery, lawn and garden center, landscaping, and design. It is located near the Durham County line and the Southpoint Mall area which the applicant feels is a viable resource for business success. In the past, the Vineyards at Southpoint (previous name) was primarily used for a tasting room with limited events. Because of the secluded area where the business activity is held, many request for events such as weddings, receptions, parties, small music/video events and family reunions were being sought. Because of the size of the venue, the property would not be able to hold large events. The size of the septic system, the occupancy limits on the buildings, and other factors also limit the number of people who can be on the property at one time. This proposal is for a small

venue option where the applicant expects to be able to host between 100-200 people.

Should the property no longer used as an event facility, the Neighborhood Zoning District list several uses that could potentially locate on the property. However, due to the size of the requested rezoning, other uses would be limited in scope. The access to the facility, the location of the pond, and the placement of structures also limit the type of other commercial business that could locate there. There are many factors that must be taken into account when making sure a business can locate in a specified area. All activities related to that business must be located on the approved commercial area.

3. The manner in which the proposed amendment will carry out the intent and purpose of the adopted Land Use Plan or part thereof would be to return to the zoning classifications it had when the Plan was adopted. On page 11, Policy Objective of the Plan, recommendations to support and promote recreation, tourism, and historic resources are encouraged. There is a historical structure on this property that the applicant brought to the property years ago in order to preserve it. The Plan also encourages the support and approval of small neighborhood economic centers. Since this property is already designated as a commercial use in the Chatham-Cary Joint Land Use Plan, the applicant feels this approval would continue with the conforming use already in place. It will give a zoning designation to further enhance the existing use and future uses on the site.
4. Other circumstances, factors, and reasons which the applicant offers in support of the proposed amendment are the additional 100 foot expansion around the project site will not change the streetscape or viewshed currently in place. The vineyard is planned to remain and the pastoral appearance seen from the roadway. The applicant also owns the adjoining parcels to the south and east of the tract.

Based on planning staff review, the standards of the ordinance may be met and therefore recommend approval of the rezoning request as submitted.

Recommendation:

The Planning Board, by a vote of 8-0-1, recommends adoption of a resolution approving the following consistency statement - It is the opinion of the Planning Board the rezoning request for that portion of Parcel No. 19681, being approximately 6.5 acres, is consistent with the goals and objectives of the Land Use Plans of Chatham County. Since their discussion of this issue, case law has been provided that now requires that a

Consistency Statement give specific reasons in the approval or denial of such statements. The wording in **BOLD** is additional information added by staff since the Planning Board meeting and is recommended for inclusion in the adoption of the resolution, in addition to the recommendation of the Planning Board.

CONSISTENCY STATEMENT

It is the opinion of the Planning Board the rezoning request for that portion of Parcel No. 19681, being approximately 6.5 acres, is consistent with the goals and objectives of the Land Use Plans of Chatham County **by supporting and promoting recreation, tourism, and historical resources as well as small neighborhood economic centers. Since this property is already designated as a commercial use in the Chatham-Cary Joint Land Use Plan, the applicant feels this approval would continue with the conforming use already in place. It will give a zoning designation to further enhance the existing use and future uses on the site.**

The Planning Board, by unanimous vote, recommends approval of the rezoning and adoption of an Ordinance Amending the Zoning Ordinance of Chatham County to rezone a portion of Parcel No. 19681 from R-1, Residential to General Neighborhood Business (NB), being approximately 6.50 acres out of the 14.02 acre tract, located at 8913 NC 751.