

Minutes
Special Called Meeting
Aberdeen Town Board

July 5, 2012
Thursday, 10:00 a.m.

Robert N. Page Municipal Building
Aberdeen, North Carolina

The Aberdeen Town Board met Thursday, July 5, 2012 at 10:00 a.m. for a Special Called Meeting. Board members present were Mayor Pro-tem Robert A. Farrell and Commissioners Pat Ann McMurray, Jim Thomas, Alan Parker, and Walter Wright. Mayor Elizabeth B. Mofield was not in attendance for the meeting. Staff members in attendance were Planning Director Kathy Liles, Senior Planner Pam Graham, and Town Clerk Regina Rosy. Reporter for the Pilot Tom Embrey, Reporter for Aberdeen Times Billy Marts, Attorney T.C. Morphis, D.P. Black, Marty Tillman with DOT, Bob Koontz with Hobbs Upchurch & Associates, Nick Lukenss with Moseley Real Estate, Roy Harvel, Diana Brown with Moseley Real Estate, Tommy Huntley, and Graylin King were also in attendance for the meeting.

Mayor Pro-tem Farrell called the meeting to order at 10:12 a.m. once a quorum of the Board was present.

1. Consider approval of Conditional Use Permit CU #12-02 for Retail Sales with High Volume Traffic Generation for an application filed by Moseley Real Estate Advisors affecting land currently owned by Huntley Family Limited Partnership and Bonnie McPeake.

Planning Director Liles stated she would like to take an organized approach to working through the information that has been received up to this point. Exhibit 002 was provided by e-mail and she reviewed this Exhibit with the Board. Applicant has proposed to remove parking spaces throughout the parking lot on Parcel A, a hatched line on Parcel B shows a maximum building area on Parcel B of up to 20,000 square feet, and parking would have to support the use on Parcel B. Changes have also occurred moving towards the DOT access driveway permit.

Planning Director Liles stated the District Engineer for NC DOT, Marty Tillman, is here this morning to discuss the graphic displayed for everyone. Mr. Tillman stated DOT wanted to see a right turn deceleration lane, but unfortunately there is an overhead sign structure. DOT is in agreement with right-in/right-out, provided a concrete median is provided on US Highway 1. No access is being taken from any other business, but rather it just helps the flow of traffic. Commissioner Parker stated DOT would prefer a deceleration lane, but because of the huge expense of moving the overhead sign structure, a concrete median would be the next best

thing. Mr. Tillman stated that is correct. Commissioner Parker was concerned about eliminating the deceleration lane, just because of the expense of moving the overhead sign structure.

Mr. Tillman stated DOT would also recommend a connection to Poplar Street. DOT would like to see that connection but because the developer does not own the property for that connection, it cannot be required by DOT. Commissioner Parker stated the Board keeps getting presented maps of Parcels A, B, and C and it seems the Board is getting two sides to the story – because only CVS is being considered at this point, and Commissioner Parker asked for confirmation on which parcels this conditional use permit is for. Planning Director Liles confirmed that this conditional use permit is for Parcels A, B, and C. Mayor Pro-tem Farrell asked if a connection to Poplar Street could be deferred until Parcel B is developed. Planning Director Liles stated yes, it could be built into the conditions. Mr. Tillman stated the permit that DOT is giving, already provides for Parcels A and B. Planning Director Liles stated as long as it is included in the condition, the connector to Poplar Street could be delayed until development of Parcel B.

Mayor Pro-tem Farrell stated the Washington Street connection was discussed at a previous meeting, but because it is an undeveloped road, it would be very expensive to develop. Mr. Tillman discussed that Washington Street would connect to Johnson Street, and Johnson Street is at the point where nothing else can be done to improve the traffic, and is currently at a level of service “F”. Mr. Tillman stated DOT would not encourage the connection to Washington Street. Mayor Pro-tem Farrell asked if a “no thru trucks” sign can be placed on Washington Street. Commissioner Parker stated according to the traffic study the Town has, there are some level of service “D” issues, and the Town’s UDO requires no less than “C” level of service. Commissioner Parker stated the traffic plan does not meet the Town’s standards. Commissioner Thomas asked if it would help the traffic congestion to have a “no left turn” onto Johnson Street from Poplar Street, in order to reduce the traffic on Johnson Street. Mr. Tillman stated most people cutting through Johnson Street are also cutting to get to Highway 501, and everyone would still end up on US Highway 1, so he does not see that helping much. Planning Director Liles read the segment from the UDO, which stated any roadways or signaled intersections classified at a level of service lower than “C” would be considered deficient and should be addressed. Mayor Pro-tem Farrell stated there is an access on the south side of Parcel B, access where Steak and Eggs is now, and both of those are to DOT’s approval. Mayor Pro-tem Farrell stated one of the questions is what to do about an access to Poplar Street, and a deferment can be made on the issue of connection to Poplar Street.

Planning Director Liles asked Bob Koontz to explain the drawing he has prepared for the site. Mr. Koontz stated the access points, buffering, and signage are governed through this conditional use permit. Commissioner Parker wanted to talk about parking. Mayor Pro-tem Farrell stated there are 66 parking spaces allowed for Parcel A. Commissioner Parker stated the developer wants triple layer parking, whereas Board members want double layer parking. Commissioner Parker stated Walgreens has double layer parking. Commissioner Parker stated if CVS wants to build in Aberdeen, then he feels like CVS needs to accommodate the needs and desires of the Town of Aberdeen. Commissioner McMurray stated Mayor Mofield requested from CVS at the last meeting, that the line of parking by the sidewalk and right-hand turn into the main entrance be removed, and the grassy area be widened. Commissioner McMurray stated she would also like the area by the road from Driveway A to Driveway south B, have the grassy area widened to make it more scenic.

Mr. Lukens stated the Parcel B parking is addressed directly by Aberdeen's Code, which states 1 parking space per 100 square feet of restaurant space is the requirement and is stated in the ordinance. Commissioner McMurray stated it is hard to contemplate today what is going to happen a year from now. Commissioner McMurray stated she would like to see what was discussed at the previous meeting to be reflected in the drawing.

Mayor Pro-tem Farrell asked if the row of parking closest to US Highway 1 was removed, would the project be able to move forward. Mr. Lukens stated no, the project would not be able to move forward. Mr. Lukens stated the requirement of double layer parking is not anywhere in the UDO, and if CVS had known this upfront, then the project would not have moved forward. Mr. Lukens stated he believed the Mayor was comfortable with the additional landscaping brought up during the last meeting. Mayor Pro-tem Farrell asked if the Board could deny this conditional use permit based on the triple layer parking. Planning Director Liles stated it could be in the findings and not be found to be harmonious with the surrounding environment. Billy Marts stated KFC next door has triple layer parking.

Commissioner Parker stated a public hearing was held on this conditional use permit, and 100% of constituents were against the connection to Poplar Street. Planning Director Liles stated the meat of the decision is if the Board decides it is sufficient to have two access points to Parcels A, B and C.

Planning Director Liles stated whether or not Parcel C is a use by right, then staff could still require that driveway connection. Commissioner Parker asked what would happen with Parcel C, since there are two zoning categories for the one parcel.

Commissioner Parker stated he is concerned about Parcel C and what may go in there and when, and if there may be a connection from Poplar Street. Mr. Koontz stated the zoning for the parcel would go to the B-3 zoning district. Commissioner Parker stated he is just really concerned about not knowing what this project may be on Parcel C. Planning Director Liles stated Parcel C is going to be a 20,000 square foot building with a zoning of B-3. Mayor Pro-tem Farrell asked if the Board would have the opportunity to reject a Highway Commercial project development on Parcel C. Planning Director Liles stated yes. Parcels A and B are highway commercial zoning.

Commissioner Parker stated the Town Board has the opportunity to create a condition today for Parcel C to limit what can be placed on the property. Mr. Koontz suggested that any development on Parcel C be required to come back before the Board for approval, since that seems to be a big concern from the Board. Attorney Morphis stated it would not be an amendment to the map, it would be a restrictive use condition for this parcel of land. Attorney Morphis stated he would suggest the following condition be added: restrict uses on Parcel C, including the portion zoned Highway Commercial to uses of a B-3 district.

Commissioner Parker stated he does not want to just give this proposed development a rubber stamp, he wants to consider the well-being of citizens in Aberdeen.

Mayor Pro-tem Farrell asked what would happen with the split zoning on Parcel C. Attorney Morphis stated if half of the property was in Highway Commercial zoning, and half in B-3, then it would have to comply with both zoning districts, and also any conditions approved today with the conditional use permit. Attorney Morphis stated if a condition is not placed on this situation, then a use by right would not come back to the Town Board. Planning Director Liles suggested if anything is classified as a major modification, then it has to come through both Boards, which would be a good way to handle this. The decision was made to classify it as major modification.

Regarding signage, Planning Director Liles stated as part of an integrated development plan, freestanding signage shall allow for one sign on Parcel A to service those businesses located on Parcel A and C and one sign on Parcel B to service those businesses located on Parcel B. Commissioner McMurray asked about the signage at the main entrance – will it show businesses for Parcels A, B, and C. Mr. Lukens gave examples of Texas Roadhouse, Starbucks, TJ Maxx areas and how their signage is very similar to what CVS is proposing. Commissioner Parker stated a UDO has been adopted since all of these other projects. Commissioner Parker

stated the Town has to follow the UDO for future development. Commissioner Parker stated if the Town is not going to follow the UDO, why was it even created?

Commissioner Parker asked about Parcel B and how the figure of 20,000 square feet was developed for this parcel. Mr. Lukens explained the process of how that number was reached, and basically the generally accepted retail industry standard is 10,000 square feet per acre.

Mayor Pro-tem Farrell tried to summarize discussions from the morning, which included going from six driveway entrances to two for this project. Commissioner Parker stated he wants to make sure that anything done today requires that if a cut-through to Poplar Street will be approved in the future, that the Town Board will have final approval on that matter. Planning Director Liles read Transportation requirement #7. Planning Director Liles requested that Transportation requirement #6 be removed from the conditions. Commissioner Parker was concerned about Transportation condition #7 and wanted more clarification.

Commissioner Parker asked about the proposed freestanding signs and if it could be denied. Planning Director Liles stated if the Board is not going to allow a freestanding sign, then there needs to be a really good reason, since it is allowed by the Code. Mayor Pro-tem Farrell stated a "No Thru Trucks" sign needs to be added in the conditions, in the event that there is a connection to Poplar Street in the future.

A motion was made by Commissioner Thomas that CU #12-02 is complete as submitted upon which to base a decision. Seconded by Commissioner Wright. Commissioner Parker stated it appears there is a development with unknown future uses on Parcels B and C. Commissioner Parker stated he is not sure that this application is complete since there are so many unanswered questions. Commissioner Parker asked Town Attorney Morphis if he could vote no because he was not satisfied with the parking submitted. Attorney Morphis stated no, because this motion is if the application is complete as submitted. Planning Director Liles stated other issues come back regularly on situations such as this. Attorney Morphis stated the Board could say to the applicant that there is not enough evidence to support findings. Motion unanimously carried.

A motion was made by Commissioner Thomas that CU #12-02 satisfies Finding #1 and will not endanger public health or safety. Seconded by Commissioner Wright. Commissioner Parker stated there is a traffic study that is level of service "D" and in his opinion is a public safety issue and does not comply with the Town of Aberdeen UDO language. Commissioner Parker stated he believes this project does

endanger public safety. Motion carried with a 4-1 vote, Commissioner Parker voted no, and Mayor Pro-tem Farrell and Commissioners Wright, McMurray and Thomas voted yes.

A motion was made by Commissioner Thomas that CU #12-02 satisfies Finding #2 and will not injure the value of adjoining or abutting property. Seconded by Commissioner Wright. Motion unanimously carried.

A motion was made by Commissioner Thomas that CU #12-02 satisfies Finding #3 and will be in harmony with the area in which it is located. Seconded by Commissioner Wright. Motion unanimously carried.

A motion was made by Commissioner Thomas that CU #12-02 satisfies Finding #4 and will be in conformity with the land-use plan, thoroughfare plan, or other plan (Hazard Mitigation, Pedestrian and Bicycle Plan) officially adopted by the Town Board. Seconded by Commissioner Wright. Commissioner Parker asked if this does comply with the pedestrian and bicycle plan. Planning Director Liles stated the plan has been reviewed, bicycle parking requirement has been met, and sidewalk connection requirement has been met. Motion unanimously carried.

A motion was made by Commissioner Thomas, based on the findings of fact and the evidence presented, the Board recommends approval of CU #12-02 with the following conditions:

Conditional Use Permit Requirements:

1. The Conditional Use Permit (CUP) shall run with the land and applies to the entirety of the three properties reflected in LRK# 50831, 52972 and 50835 as identified in Moore County Tax Records.
2. Except as otherwise reflected in this approval, the project shall conform to the attached site plan.
3. Development of the site will be governed by the CUP and applicable provisions of the Town of Aberdeen's Unified Development Ordinance.
4. Removal of property and other changes to the CUP will require an amendment by appropriate governing body for insignificant, minor and major modifications.

Permitted Uses:

1. In addition to those uses allowed by right, such as offices, the following categories of special and conditional uses are allowed on Parcels A and B zoned for Highway Commercial (HC) as referenced in §152-146, Table of Uses, Unified Development Ordinance:

- a. 2.000 (Retail and Wholesale Sales and Rental of Goods, Merchandise and Equipment) not including bulk petroleum sales,
 - b. 6.130 (Movie theaters), and
 - c. 8.100 (Restaurants). These include uses identified by Land Use Codes 881 and 820 in the Traffic Impact Analysis.
2. Any development request for Parcel C requires a major modification of the conditional use permit.
3. The allowable building envelope for Parcel B is shown on the attached site plan associates with the CUP and the allowable square footage on Parcel B shall not exceed 20,000 SF.

General-Final Site Plan and Construction Drawing Permit Requirements:

1. Final Site Plan approval and all construction documents must be approved by Planning, Fire, Public Works, NCDENR, NCDOT or any other applicable reviewing agencies prior to issuance of a Zoning Compliance Permit and building permit for each parcel.
2. The Final Site Plan must be approved by the Fire Department to ensure that all safety issues are addressed including fire service flow, hydrants and emergency vehicle access.
3. Drainage and storm-water management details and calculations must be submitted and approved by Planning and Public Works and prior to submittal to NCDENR. NCDOT must indicate acceptance of storm-water discharge from the site as part of the permitting process.
4. Water distribution and sewer collection permits must be approved by NCDENR and provided to the Town of Aberdeen before work can commence. The NCDENR approved Sedimentation and Erosion Control Plan must be provided before a Zoning Compliance Permit is issued. No clearing or substantial alteration as stated in the UDO is allowed until an approved Zoning Compliance Permit is issued, which is contingent on Final Site Plan approval.
5. The CUP does not authorize blanket approval for clear-cutting all three parcels of land.

Transportation Requirements:

1. NCDOT and the Town of Aberdeen must approve all roadway improvements and driveway access permits prior to start of construction.
2. The CUP is void without written approval of Mr. Black to the Town of Aberdeen for the proposed transportation improvement and access closure changes. A copy of all proposed changes shall be attached to the approval.
3. All proposed road improvements must be reflected on the Final Site Plan, including those mandated by NCDOT. All NCDOT issues must be addressed before the site plan is finalized. Access to the Site shall be limited to two

- points only on US Hwy 1, one being the full service signalized access point (Site Drive 1) and the other being the right-in/right-out southern access (Site Drive 2). Each access shall be built to NCDOT standards.
4. Site Drive 1 shall be modified to accommodate three-lane access to the stub out to Parcel C.
 5. Sidewalks are to be replaced along US Highway 1 where damaged or removed as part of street construction activities and as reflected on the plan.
 6. No connection to Poplar Street shall be constructed with development of Parcels A and B. The proposed connection to Poplar Street shall be deferred to further review by the Board of Commissioners along with development plans for Parcel C if a connection to Poplar Street is requested with the development of Parcel C.
 7. Site drives shall be posted for “no thru trucks.”
 8. If connection to Poplar Street is made, traffic calming measures such as stop signs, narrower lane widths and speed bumps shall be considered in strategic locations along any drives connecting US Hwy 1 to Poplar Street in an effort to minimize the amount of cut-through traffic from US Highway 1 to Poplar Street.
 9. There shall be no connection to Washington Street with the development of Parcel A and B, but there shall be a stub out provided to Parcel C with the development of Parcel A and B and at the time of the earlier to occur (i) construction of a connection to Poplar Street or (ii) development of Parcel C, there shall be a stub out provided on Parcel C to Washington Street.
 10. At the time of connection to Poplar Street, there shall be a sidewalk installed connecting from the terminus of the sidewalk installed on Parcel A to Poplar Street.
 11. Bicycle parking shall be provided at the time of construction of vertical improvements on each parcel. Post and loop or inverted U parking is recommended.
 12. Proposed improvements should include a grass strip (3’ wide minimum) between the proposed sidewalk and the proposed back of curb along US Hwy 1.

Site Development Requirements:

1. Parking for Parcel A shall not exceed 66 parking spaces. Parking on Parcel B shall be in compliance with the Zoning Ordinance and should therefore provide parking at a rate of no less than 4 per 1,000 SF of floor area or no more than 5 per 1,000 SF of floor area for retail uses and no less than 1 per every 100 SF of floor area for restaurant uses. The developer should reduce parking as much as reasonably possible. If the uses of Parcel B require more parking than is possible to provide on Parcel B, then additional parking may be provided on Parcel A as a minor modification to the CUP as approved by

the Board of Commissioners. Plans should include parking layout, parking dimensions and materials.

2. Vehicle accommodation areas shall comply with Appendix D of the UDO. Any deviation from Appendix D must be authorized by the Public Works Director.
3. Identify truck loading and unloading areas on the site plan. They must demonstrate adequate unobstructed ingress and egress, be to the side or rear of all dumpsters and compactors and shall be screened from view from public streets and adjacent properties.
4. The project must provide screening throughout the site consistent with the landscape requirements of the UDO. Such requirements shall be satisfied around the perimeter of the entire development with the exception of the portion of the development adjoining the Black's property where there is not adequate land area for screening and configuration of Site Drive 1 and therefore cannot be provided. Such screening shall be installed at the time of construction on each parcel and shall not be required between each individual parcels A, B and C. A warm season sod shall be chosen.
5. The site plan shall reflect that the parking lot islands are planted with tree spacing as approved by the Planning Department to offset that portion of the development for the allowance to reduce screening adjacent to the Blacks' property.
6. The applicant shall confirm with the US Fish and Wildlife Service that this site does not provide required habitat for Red-Cockaded Woodpeckers.
7. Applicant shall comply with the tree conservation requirements of the UDO. No trees will be allowed to be removed from Parcel C without Site Plan approval.
8. Any site plan requirements that have not been met for Parcels A, B or C must be satisfied before a zoning compliance permit may be issued for each parcel. Final site plan approvals must be granted by all reviewing entities to ensure all code requirements are satisfied as well as any conditions established as a result of the CUP. Any field revisions are subject to review and approval under Article 152-65 of the UDO including insignificant, minor and major changes.

Easements/Utilities/Plats:

1. The Final Site Plan shall reflect all relevant easements/rights-of-way to the Town of Aberdeen including any easements for public utilities, sidewalks and drainage.
2. This project will require a recombination plat that accommodates all requirements of the conditional use permit and creates the individual parcels. Easements shall be acquired from the adjacent properties, specifically where the proposed primary entrance impacts the Black's property to the north and shown on a recorded recombination plat for the project.

Signage:

1. As part of an Integrated Development Plan, freestanding signage shall allow for one sign on Parcel A to service those businesses located on Parcel A and C and one sign on Parcel B to service those businesses located on Parcel B.

Site Lighting:

1. The applicant's final approved photometric plan (lighting plan) shall be required to either achieve IESNA standards across the site while maintaining acceptable uniformity ratios or meet the standards proposed for the HCOD as determined by Staff.

Commissioner Parker asked if Commissioner Thomas would allow a friendly amendment to allow B-3 uses only to Parcel C. Commissioner Thomas asked if it is for the entire Parcel C. Commissioner Thomas accepted the friendly amendment. Mr. Lukens stated the property owner is not in attendance to view his opinion and he does not understand what the benefit would be to change the zoning on the property. Commissioner Thomas stated Highway Commercial is the least restrictive zoning in Aberdeen, and B-3 is a step down and is in fact an area of residential use behind this property. Commissioner Thomas stated he does in fact realize that it would limit opportunities for development of this parcel. Commissioner Parker stated this amendment would make a cumbersome situation more clear. Planning Director Liles stated if the Board makes a decision to do B-3, then there needs to be a finding that there is an extenuating circumstance that requires this. Commissioner Parker stated there is a residential neighborhood that borders this property and it is his opinion that it is a good idea to have B-3 as a buffer to transition the HC districts to the residential districts. Commissioner Parker stated he would like the language for Parcel C to be a transitional zoning of B-3. Mayor Pro-tem Farrell pointed out that the point of Parcel C touches US Highway 1. Attorney Morphis stated essentially there needs to be a motion for the amendment and give a finding to support that motion. Mayor Pro-tem Farrell stated he is afraid that the owner will be restricted in uses since the front piece of the property is on US Highway 1. Commissioner Parker asked what happens if the building structure is half on one side, and half on the other side of the zoning district line. Attorney Morphis stated if it is not properly zoned, then it would have to be rezoned. Commissioner Parker asked what the setbacks off Poplar Street are; front set back would be 30 feet, rear setback would be 20 feet said Planning Director Liles. Mayor Pro-tem Farrell stated the motion was asked to be amended to include the B-3 zoning restriction for Parcel C. Mayor Pro-tem Farrell and Commissioners Thomas and Wright voted no for the friendly

amendment, and Commissioners McMurray and Parker voted yes. Motion failed 2-3. Original motion was seconded by Commissioner Wright. Motion carried 3-2, with Commissioners Parker and McMurray voting no, and Mayor Pro-tem Farrell, and Commissioners Wright and Thomas voting yes.

2. Closed Session pursuant to N.C.G.S. 143-318-11(a)(3) to consult with attorney to preserve the attorney-client privilege; and N.C.G.S. 143-318-11(a)(5) to establish or instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating the price and other material terms of a contract or proposed contract concerning the acquisition of real property by purchase, option, exchange, or lease.

A motion was made by Commissioner Wright, seconded by Commissioner Parker, to go into Closed Session pursuant to N.C.G.S. 143-318-11(a)(3) to consult with attorney to preserve the attorney-client privilege; and N.C.G.S. 143-318-11(a)(5) to establish or instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating the price and other material terms of a contract or proposed contract concerning the acquisition of real property by purchase, option, exchange, or lease. Motion unanimously carried.

The Board returned from Closed Session.

A motion was made by Commissioner Wright, seconded by Commissioner Parker, to adjourn regular session. Motion unanimously carried.

Regina M. Rosy, Town Clerk

Minutes were completed in
Draft form on July 5, 2012

Robert A. Farrell, Mayor Pro-tem

Minutes were approved
on August 13, 2012