

PLANNING STAFF REPORT ZONING MAP AMENDMENT

SUMMARY:

Hearing Date: October 13, 2015 Planning Board
November 23, 2015 Board of Commissioners

Applicant: David A. West

Property Owner: David West et al

Case Number: 11460

Rezoning Proposal: David A West, applicant, on behalf of David West et al, owner, is requesting approval of a Zoning Map Amendment for a general use rezoning of four (4) tracts totaling approximately 65.56 acres from GB, General Business zoning district to RP, Residential Performance zoning district.

Property Record Number, Acreage, and Location: The subject properties, recorded on Register of Deeds Map Book 40 Page 80, Map Book 50 Page 3 and Deed Book 3918 Pages 73-76 (Attachment 1), are located near the intersection of US HWY 117 and Anderson Rd (SR 1315) in the Union Township and may be further identified by Pender County PINs 3313-88-8748-0000, 3313-99-5261-0000, 3313-79-6117-0000 and 3313-98-3668-0000.

RECOMMENDATION

The application consists of a general use rezoning of four (4) tracts totaling approximately 65.56 acres from GB, General Business zoning district to RP, Residential Performance zoning district. As submitted, the request complies with all criteria set forth in Section 3.3.8 Review Criteria for Rezoning of the Pender County Unified Development Ordinance and is consistent with one (1) goal and three (3) policies of the 2010 Comprehensive Land Use Plan and potentially conflicts with one policy. Therefore, the Administrator is respectfully recommending approval of the request as described.

HISTORY

The portions of the subject properties along US HWY 117 were designated as B2, Business zoning district on the 2003 Pender County Zoning Map (Attachment 2). The remainder of the subject properties were designated RA, Rural Agricultural zoning district. With the adoption of the 2010 Pender County Unified Development Ordinance, the designation of all four (4) subject properties was changed to GB, General Business zoning district.

According to the Zoning Ordinance, certain residential structures were permitted on some business zoned properties (Attachment 3). The existing residential structures located on the subject properties were permitted prior to the Unified Development Ordinance adoption in 2010.

The existing structures located on the subject properties are considered an existing non-conformity with respect to current zoning regulations. According to Section 10.3 of the Pender County Unified Development Ordinance; A nonconforming use is a principal or accessory land use, other than a nonconforming sign, that was lawfully established in accordance with zoning regulations in effect at the time of its establishment but that is no longer allowed by the use regulations of the zoning district in which it is now located. A nonconforming use(s) may continue, subject to the regulations of this Section.

DESCRIPTION

David A. West, applicant, on behalf of David West et al, owner, is requesting approval of a Zoning Map Amendment for a general use rezoning of rezoning of four (4) tracts totaling approximately 65.56 acres from GB, General Business zoning district to RP, Residential Performance zoning district. The subject properties, recorded on Register of Deeds Map Book 40 Page 80, Map Book 50 Page 3 and Deed Book 3918 Pages 73-76 (Attachment 1), are located near the intersection of US HWY 117 and Anderson Rd (SR 1315) in the Union Township. The properties may be further identified by Pender County PINs 3313-88-8748-0000, 3313-99-5261-0000, 3313-79-6117-0000 and 3313-98-3668-0000.

The minimum acreage to rezone to RP, Residential Performance zoning district is five (5) acres. As these parcels are in an assemblage comprising of approximately 65.56 acres the request meets the minimum acreage for rezoning per Section 4.14 Zoning District Dimensional Requirements of the Pender County Unified Development Ordinance, for the RP, Residential Performance zoning district. Additionally, the subject properties meet the requirement of Pender County Unified Development Ordinance Section 4.14.3 as they are adjacent to properties that are currently zoned RP, Residential Performance zoning district to the south of one of the parcels and to the north of another subject property.

The subject properties meet the minimum lot size of 15,000 square feet as the smallest existing property in this request is approximately 1.5 acres.

Access

As shown on the aerial, the westernmost tract has direct access to Anderson Rd. (SR 1315) to the south and direct access to US HWY 117 to the east. The largest parcel to the west of US HWY 117 has direct access to US HWY 117. One of the outparcels to the northwest has direct access on US HWY 117 and the second outparcel to the southwest has a thirty (30) foot access easement recorded for access to US HWY 117 (Attachment 1).

Utilities

The properties have access to Pender County public water along US HWY 117. The larger parcels in this request are currently vacant and undeveloped. Both outparcels to the west have a private waste water disposal method, the properties cannot be used for building development, unless an approved waste water disposal method has been approved and permitted by the Pender county Environmental Health Department or the appropriate State Agency.

Proximity to Municipal Corporate Limits

The subject properties are directly adjacent to the incorporated area of Watha, as well as, near the extraterritorial planning jurisdiction of the Town of Watha. The 2010 Comprehensive Land Use Plan Policy 1A.1.1 encourages; development in and around municipal corporate limits and other developed areas within the County to yield a more compact pattern of development that will reduce suburban/rural sprawl.

EVALUATION

This Zoning Map Amendment request has been evaluated for compliance with the Pender County Unified Development Ordinance and the 2010 Pender County Comprehensive Land Use Plan, as well as the existing land uses and zoning classifications in the surrounding area. The Zoning Map Amendment does not conflict with any existing policies, land uses, or zoning classifications.

3.3.8 Review Criteria for Rezoning

The Planning Board and Board of Commissioners shall consider the following matters in considering a rezoning request:

- A. *Whether the range of uses permitted by the proposed change would be appropriate to the area concerned (including not being detrimental to the natural environment, not adversely affecting the health or safety of residents or workers in the area, not being detrimental to the use or development of adjacent property, and not materially or adversely affecting the character of the general neighborhood);*
- B. *Whether adequate public facilities/services (i.e., water, wastewater, roads) exist, are planned, or can be reasonably provided to serve the needs of any permitted uses likely to be constructed as a result of such change;*
- C. *Whether the proposed change is consistent with the County's Comprehensive Land Use Plan and CAMA Land Use Plan or any other adopted land use document.*
- D. *Whether the proposed amendment is reasonable as it relates to the public interest.*

2010 Comprehensive Land Use Compliance

The 2010 Comprehensive Land Use Plan designates the subject properties as "Suburban Growth." The Suburban Growth land use classification identifies those areas of Pender County where significant residential growth is expected to occur within the planning horizon. Areas designated as Suburban Growth are located primarily adjacent to municipal planning jurisdictions and within or near high growth, un-incorporated areas of the County. Suburban Growth designates areas where public water and public sewer are available or are planned in the near future. Uses that would typically be allowed in Suburban Growth areas include medium-high density residential (single-family site-built and modular homes); limited non-residential uses (commercial, office, or public/institutional) that meet locational criteria. Locational criteria for non-residential uses include frontage and access to a major State highway or secondary road, location at a major intersection, proximity to similar uses, and spatial separation from non-compatible uses such as existing residential development

This Zoning Map Amendment request is consistent with one (1) goal and three (3) policies of the 2010 Comprehensive Land Use Plan and potentially conflicts with one policy. The following goals and policies within this plan may be relevant to support the proposed Zoning Map Amendment:

Growth Management Goal 1A.1: Manage the physical growth and development of Pender County by promoting more intensive land uses in key locations identified for such growth while preserving and protecting the unique physical character and social assets of the predominant rural lifestyle and coastal environment that makes the County a unique place to live.

Policy 1A.1.1 Encourage development in and around municipal corporate limits and other developed areas within the County to yield a more compact pattern of development that will reduce suburban/rural sprawl.

Policy A.1.2 Encourage development in areas where the necessary infrastructure- roads, water, sewer and schools- are available, planned or can be most cost effectively provided and extended to serve existing and future development.

Policy 1A.1.5: The County supports a pro-business/pro-growth attitude, balanced by a concern for preserving the natural assets and quality of life factors that make the area attractive to visitors and permanent residents alike.

This Zoning Map Amendment proposal potentially is not consistent with:

Policy 8A.1.2 Consider consequences of traditional development practices which are not compatible with agricultural operations and the extension of utility infrastructure into identified prime agricultural areas.

Unified Development Ordinance Compliance

This is a general use rezoning, which will allow all uses permitted by-right in the RP, Residential Performance zoning district as shown in Section 5.2.3 Permitted Use Table of the Pender County Unified Development Ordinance. According to Section 4.7.2 of the Pender County Unified Development Ordinance, the RP, Residential Performance zoning district is intended to allow a variety of residential uses and densities as well as limited commercial activities and agritourism. Existing or new agricultural and farm uses shall be allowed on undeveloped land prior to development. The RP, Residential Performance zoning district shall meet the following general standards:

- 1) Buildings on the periphery of a Residential Performance Development shall be setback no less than twenty (20') feet from the adjoining property line. Additional buffers may be required based on the adjacent land use. See buffer chart in Section 8.2.6.
- 2) All undivided areas within the development (other than street rights-of-way, parking, and structures) shall be designated as open space as defined in Appendix A Definitions and Article 8. Such open space shall be offered to the public or encumbered for the perpetual benefit of the residents.
- 3) Private streets will be permitted in Performance Residential Developments; however, dedication of public streets and utility easements shall be required if such are indicated on the official plans as adopted by Pender County or any municipality if it is determined by the County Planning Board.
- 4) When a development proposal is submitted under this Article, it shall be processed as a Master Plan.
- 5) Projects proposing less than ten (10) lots shall be submitted as one phase and must be contiguous when submitted for final plat.
- 6) A homeowners association shall be established and kept continuously active, for the maintenance of open and private spaces and stormwater runoff, along with any private water, sewer or roads, when warranted.
- 7) All requirements of Article 9 Flood Damage Prevention must be met.
- 8) Any land designated as usable open space shall be used in calculating the density for a proposed development.
- 9) Buffer strips shall be required and maintained by the Homeowner's Association.
- 10) All preliminary plans shall provide the approximate delineation of Corps of Engineers Section 404

Existing Zoning and Land Use

There are four (4) separate parcels requested as part of the Zoning Map Amendment.

The westernmost parcel (3313-79-6117-0000) is vacant and used for agriculture. This property is bordered to the North by Welsh Landing residential subdivision, to the East by a single family residential home with an existing business on the property, to the south by single family residential structures accessing directly on Anderson Road (SR 1315) and to the west by a vacant agricultural land and Interstate 40.

The parcels to the east of US HWY 117 (3313-88-8748-0000, 3313-99-5261-0000 and 3313-98-3668-0000) together are bordered to the west by US HWY 117, to the east of the Northeast Cape Fear River, to the south by the residential subdivision Three Cypress, to the north boarded by Riverview Memorial Park (cemetery) and a single family residential parcel with an existing business.

There are two existing residential structures on the subject properties to the east of US HWY 117. One structure accesses off Whitetail Lane (private) and the other has direct access to US HWY 117.

The existing zoning in the proximity of the requested Zoning Map Amendment is GB, General Business zoning district and some RP, Residential Performance zoning district for the aforementioned residential subdivisions; Welsh Landing and Three Cypress. To the west of the westernmost parcel is the Town of Watha.

Environmental Concerns

According to FEMA Flood Insurance Rate Map Number 3720331300J Panel 3313 and 3720332300J Panel 3323 (adopted February 16, 2007) a portion of the easternmost property is located within the AE Flood Zone, with the Northeast Cape Fear River being the flood source. The remaining areas of the properties are not located within any Special Flood Hazard Area (SFHA).

Additionally there may be navigable waters on this property requiring compliance with CAMA regulations managed by the Division of Coastal Management. Areas of the subject properties may contain wetlands and would need to be verified before any land disturbing activities take place.

Public Notifications

Public notice of the proposal for map change has been advertised in the Pender-Topsail Post and Voice. Adjacent property owners have been given written notice of the request, and a sign has been placed on the subject properties. Prior to any development on the subject properties, all necessary local, state, and federal permits would be required.

RECOMMENDATION

The application consists of a general use rezoning of four (4) tracts totaling approximately 65.56 acres from GB, General Business zoning district to RP, Residential Performance zoning district. As submitted, the request complies with all criteria set forth in Section 3.3.8 Review Criteria for Rezoning of the Pender County Unified Development Ordinance and is consistent with one (1) goal and three (3) policies of the 2010 Comprehensive Land Use Plan and potentially conflicts with one policy. Therefore, the Administrator is respectfully recommending approval of the request as described.

BOARD ACTION FOR REZONING REQUEST

Motion: _____ Seconded: _____

Approved: _____ Denied: _____ Unanimous: _____

Williams: __ McClammy: __ Fullerton: __ Baker: __ Edens: __ Marshburn: __ Nalee: __