

**PLANNING STAFF REPORT
ZONING MAP AMENDMENT**

SUMMARY:

Hearing Date: July 6, 2016 Planning Board
August 15, 2016 Board of Commissioners
Applicant: Live Oak Development
Property Owner: Kevin Mills et al
Case Number: ZMA 233-2016

Rezoning Proposal: Live Oak Development, applicant, on behalf of Kevin Mills, owner, is requesting approval of a Zoning Map Amendment of one (1) tract totaling approximately 5.53 acres from the RP, Residential Performance zoning district to the GB, General Business zoning district.

Property Record Number, Acreage, and Location: The subject property is located along the east side of Old Whitfield Road (SR 1726) and Machine Gun Road (private) approximately 1,200 feet to the west of US HWY 17 in the Topsail Township and may be further identified by Pender County PIN: 4215-23-1857-0000.

RECOMMENDATION

The application is for a zoning map amendment of one (1) tract totaling approximately 5.53 acres from RP, Residential Performance zoning district to GB, General Business zoning district. As submitted, the request complies with all but one of the criteria set forth in Section 3.3 Review Criteria for Rezoning of the Pender County Unified Development Ordinance. The portion of the unified Development Ordinance this request is inconsistent with is 3.3.1 (E), which states that the request must show substantial compliance with the goals and policies of the Comprehensive Land Use Plan. The Future Land Use Map in the 2010 Comprehensive Land Use Plan has this parcel designated as Rural Growth. General Business is not compatible with Rural Growth due to its definition. This creates an inconsistency.

There are no other known conflicts with any adopted plans. If an amendment to the 2010 Comprehensive Land Use Plan is approved designating the Future Land Use designation to Mixed Use, Staff will support the request for this rezoning. This is because the Mixed Use land use designation supports the expansion of water and sewer, and land uses associated with the GB, General Business zoning district.

HISTORY

The property is vacant and undeveloped. This property was purchased by the current owner on October 4, 2007. The sale included a perpetual access easement for ingress and egress, 200 gallons per day of wastewater on the existing septic tank, and use of the existing well. There is no additional known history.

DESCRIPTION

Live Oak Construction, applicant, on behalf of Kevin Mills., owner, is requesting approval of a Zoning Map Amendment of one (1) tract totaling approximately 5.53 acres from the RP, Residential Performance zoning district to the GB, General Business zoning district. The subject property is located along the east side of Old Whitfield Road (SR 1726) and Machine Gun Road (private) approximately 1,200 feet to the west of US HWY 17 in the Topsail Township.

The minimum acreage to rezone to GB, General Business zoning district is one (1) acre according to Section 4.14 of the Pender County Unified Development Ordinance. This request is in compliance in this regard, as there are approximately 5.53 acres requested for this general use rezoning.

Access

The property has direct access from Old Whitfield Road (SR 1726), which becomes Machine Gun Road. Old Whitfield Road is public for 885 feet from US HWY 17 South, until it intersects with Oak Grove Drive (private) and becomes private. The width of Old Whitfield Road is varies between 20-25 feet. Just north of 256 Old Whitfield Road, the road narrows significantly and transitions from asphalt to a dirt material. The northern portion of this property is accessed by Machine Gun Road, which is an unimproved extension of Old Whitfield Road. There is no access from any other portion of the parcel.

Utilities

The property is served by well water at this point in time. According to the GIS records it is in the Rocky Top Water and Sewer District. Any final zoning approvals are contingent upon review and approval by Pender County Utilities and the Environmental Health Department. Any changes or approvals will be evaluated at the time of site development.

Environmental Concerns

There are no Areas of Environmental Concern (AEC) located on the property nor any regulated Special Flood Hazard Area (SFHA) according to FEMA Flood Insurance Rate Map Number 3720321400J, adopted February 16, 2007. There may be wetlands located on the property subject to review and approval of the Army Corps of Engineers.

All applicable state, federal and local agency permits are required prior to the issuance of final zoning.

EVALUATION

A) 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 public notification sign has been placed on the property.

B) Existing Zoning in Area: The existing zoning on the subject parcel is RP, Residential Performance zoning district. Directly adjacent to this property to the north, south and west is zoned RP, Residential Performance. There is an undeveloped 18.5 acre tract of land to the east that is zoned GB, General Business.

C) Existing Land Use in Area: The parcel is currently undeveloped. There is low density residential to the north, south and west. The parcel to the east is undeveloped. Further south down Old Whitfield Road (about a quarter mile) is a shopping center with Eastern Outfitters and several smaller stores in it.

D) 2010 Comprehensive Land Use Plan: The 2010 Comprehensive Land Use Plan designates the subject property as Rural Growth. The Rural Growth land use classification defines those areas of Pender County where urban services, i.e., public water and sewer services, are not expected to be extended within the planning horizon. Rural Growth areas are where preservation of agricultural operations is a primary concern and where conflicts between agricultural and non-agricultural uses are to be discouraged.

E) Unified Development Ordinance Compliance: Article 3.3 of the Unified Development Ordinance provides for standards that shall be followed by the Planning Board before a favorable recommendation of approval for a rezoning can be made.

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 and in the public interest.

This General Use Rezoning is inconsistent with the 2010 Comprehensive Land Use Plan because there are conflicts between the requested new zoning designation of GB, General Business, and the Rural Growth Future Land Use designation.

The 2010 Comprehensive Land Use Plan describes Rural Growth: Rural Growth areas are intended to protect agricultural and forestry operations that are a major part of the County's economic base and that are key to preservation of the County's rural landscape. Major job-creating activities that are compatible with farms, forestry and very low-density development are appropriate. Development within Rural Growth areas should be limited to only those types of land uses and development intensities that can be accommodated by services typical in non-urban areas, e.g., private on-site water supply (or public water, as available) and on-site septic systems. Development with private package sewage treatment plants or premature extension of public sewer systems into these areas is discouraged. Public sewer should not be extended except to the extent necessary to protect public health when existing community wastewater systems fail or a pattern of failure of on-site systems occurs in a specific area. Uses that would typically be allowed in Rural Growth areas include very low-density residential development (single-family site-built, modular, and manufactured homes) on one acre or greater size lots; agriculture, forestry, churches; very limited nonresidential uses - commercial, office, or public/institutional - meeting locational criteria. Locational criteria for non-residential uses in Rural Growth areas include frontage and access to a major State highway or secondary road, location at a major rural intersection, proximity to similar existing non-residential uses, and spatial separation from non-compatible uses such as existing residential development. Areas designated as Rural Growth are located primarily in the western portion of the County with other Rural Growth areas designated surrounding the Holly Shelter Game Land and Angola Bay Game Land in eastern Pender County. Agricultural/farming operations and very low residential development intensities.

In Section 4.9.1 The Unified Development Ordinance describes General Business zoning district in the following way: This district is primarily intended to accommodate uses which require close access to major highways. The district is established to provide convenient locations for businesses which serve the needs of surrounding residents, including office, retail, and personal service uses.

The parcel is located about a quarter mile north of US HWY 17 and is located directly adjacent to a tract of land already zoned GB, General Business zoning district. It is noteworthy that the parcel is on the border between Mixed Use and Rural Growth Future Land Use categories. The parcel zoned GB, General Business zoning district that is to the east of this tract has a Future Land Use designation of both Mixed Use and Rural Growth.

Policy 3A.1.4 of the 2010 Land Use Plan states the County must consistently use the 2010 Comprehensive Land Use Plan to determine if a rezoning request is appropriate and consistent with local policies. The plan should be used as a guide in developing and approving land development proposals and for setting capital improvement plans and priorities. Effective January 1, 2006, the State of North Carolina amended planning statutes to strengthen the role of adopted plans in the consideration of zoning amendments. A statement from the planning board that the proposed amendment is inconsistent with a plan; however, does not preclude the governing board from adopting the amendment. The board decision does not have to be consistent with the comprehensive plan, but any inconsistency must be identified and explained. The comprehensive plan recommends that if a proposed zoning amendment is not in compliance with the plan, that a plan amendment be submitted and considered prior to or concurrent with consideration of the rezoning request

RECOMMENDATION

The application consists of a zoning map amendment request for approximately 5.53 acres from RP, Residential Performance zoning district to GB, General Business zoning district. Because the comprehensive plan recommends that if a proposed zoning amendment is not in compliance with the plan, that a plan amendment be submitted and considered prior to or concurrent with consideration of the rezoning request, the Administrator respectfully requests that the Planning Board consider taking this action. If an amendment to 2010 Comprehensive Plan Future Land Use Map is made to make the parcel designation Mixed Use, staff will support this rezoning request.

BOARD ACTION FOR CONTIDTIONAL REZONING REQUEST

Motion: _____ Seconded: _____

Approved: _____ Denied: _____ Unanimous: _____

Williams: __ Fullerton: _ Baker: __ Carter: _____ Edens: _____ McClammy: ____ Nalee: _____