



Chatham County Planning Board Agenda Notes

Date: January 8, 2019

Agenda Item: VIII-1

Attachment #: 3

- Subdivision**
 Conditional Use Permit
 Rezoning Request
 Other:

Subject:	A Legislative Public Hearing to consider County-initiated rezonings of 5 parcels in the formerly unzoned portion of Chatham County.
Action Requested:	See Recommendation
Attachments:	<ol style="list-style-type: none"> 1. GIS Map of the parcels under consideration for rezoning. 2. October 2014 NC Department of Environment and Natural Resources; Division of Energy, Mineral, and Land Resources; Land Quality Section Mining Permit 3. Mine site layout

Introduction & Background:
 After nearly two years of discussion and study, on August 15th, 2016, the Chatham County Board of Commissioners voted to zone the formerly unzoned portions of the county to R-1 and R-5 residential. The Comprehensive Land Use Plan specifically supports “rezonings for businesses uses or properties made non-conforming by the extension of zoning in 2016.” (Land Use Policy #7, Strategy 7.2). Consequently, prior to the adoption of county-wide zoning, the Chatham County Planning Department sent a business listing form to every property owner in the unzoned portion of the county. Nearly 13,000 forms were mailed. The business listing form asked property owners to list any non-residential use of their land, so the Planning Department could properly document any non-conforming uses and prepare for future rezonings. The Planning Department received over 1,000 forms. Approximately 300 forms described non-conforming businesses, while the remaining 700 listed either agricultural uses of the land (which were exempted from zoning regulations via the bona fide farm exemption) or otherwise permitted uses, such as a residence. Aerial images of these 300 businesses were captured, as well, in order to further establish non-conforming status.

Discussion & Analysis:
 In addition to mailing and documenting business listing forms, Planning staff compiled tax and fire inspection records to determine if there were any other businesses in the formerly unzoned portions of the county. After combining tax and fire inspection records, along with

the business listing forms, staff determined that 524 parcels in the formerly unzoned part of the county may contain non-conforming uses or businesses. In order to confirm that these non-conforming uses actually existed, staff performed site visits to each parcel, spoke with the property owners, and documented the current use of the property. After several months of visiting properties, the following observations were made by staff:

- 204 parcels appear to be eligible for rezoning to a non-residential zoning district
- 48 parcels are eligible for the issuance of a home occupation permit (HOP)
- 272 parcels are not eligible for rezoning or issuance of a home occupation permit

During the site visiting process, the interior of multiple parcels were inaccessible to staff due to “No Trespassing” signage, the presence of loose dogs, or physical barriers, such as locked gates, fences, or washed out roads. However, the tax data, aerial imagery, and some visual confirmation from the site visits allowed staff to recommend rezonings, issuance of HOPs, or maintenance of the status quo for these parcels.

Based on the observed use, staff determined which zoning classification would be most appropriate to consider to use for rezoning the property. Since many uses are permitted in multiple zoning classifications, staff recommended that the parcels be eligible for rezoning to the least intensive permitted zoning classifications possible. For example, if a use were allowed in both light and heavy industrial zoning district, then staff recommended that the parcel should be eligible to be rezoned to the light industrial classification. Furthermore, some uses are permitted in an R-1 or R-5 district with the issuance of Conditional Use Permit. It should be noted that many of the non-conforming uses on parcels eligible for rezoning do not occur across the entirety of the parcels. Many uses are limited to a single building or small portion of the parcel.

After the inventory of businesses was completed, the next step was to meet with property owners eligible for a rezoning to determine if they wish to rezone their property, and if so, how much of the property they would like to rezone. Planning staff contacted property owners and scheduled these meetings. Additionally, planning staff coordinated with representatives from the Chatham County Tax Department, as the issue of changes in tax value was likely to arise. In addition, on March 1st, at the direction of the Board of Commissioners, Planning staff also sent a letter to 35 property owners who have vacant buildings on their property in the formerly unzoned portion of the county, offering them the opportunity to request a rezoning to any zoning district. These vacant buildings had been previously identified by Planning staff during site visits in the summer of 2017.

For the first round of business rezoning cases that were processed earlier this year, 52 parcels were requested by their owners to be rezoned, 20 parcels were requested to remain in their current zoning district, and 180 parcels’ owners did not respond to the letter regarding rezoning. Out of 51 Home Occupation permit applications sent out to properties that qualified for an HOP, 17 have been completed and returned to Planning staff. Of the 52 properties considered for rezoning 49 were approved and 3 were denied (click the following link for more information about those rezoning cases -

<http://www.chathamnc.org/government/departments-programs/planning/rezonings-subdivision-cases/2018-items/businesses-rezoning-52-properties>). Since the first round of

business rezonings cases was initiated, staff has received requests to rezone an additional 17 properties.

Planning staff is now ready to move forward with a County-initiated rezoning of the additional 17 business properties and this request include 5 parcels that are currently approved for a mining operation. A GIS web application (<https://chathamncgis.maps.arcgis.com/apps/webappviewer/index.html?id=8a3a205b2dbd41459379332f46537df3>) has been created identifying the properties that have the potential for rezoning, and the list of the 17 parcels requested to be rezoned has been included as an attachment. It should be noted that Planning staff may receive more requests for eligible business properties to be rezoned in the future and we will bring those forward for a third and final round of county initiated rezonings. Based on staff's prior conversations with the board, we will be contacting the property owners who have not responded to the offer to rezone their property and offer them one final chance to have their property rezoned at no cost to them.

A public hearing was held on December 17, 2018 to consider rezoning 5 parcels (parcel numbers 61910, 9314, 80392, 9649 and 9303), which are located south of the Town of Goldston town limits between South Main Street and Goldston Carbonton Road. Seven people spoke during the hearing and written comments were provided by the Town of Goldston Board (all written comments have been provided online). All of the comments provided were in either in opposition to the rezoning to Heavy Industrial or expressed concern about the mine operation. During the hearing, planning staff noted that a mining permit was issued in October 2014 by the NC Department of Environmental Quality (now named NC Department of Environmental Quality (NCDEQ)) covering all, or a portion of, the five properties and the use was considered a legal non-conformity under the standards of the Zoning Ordinance. Comments included opposition to mining operation due to blasting that has occurred, possible damage to homes and wells, lack of communication from the blasting company and mine operator, increased heavy truck traffic; industrial zoning would introduce other objectionable uses; the proposed zoning does not meet the objectives of the comprehensive plan; and property owners near the site do not have the means to move to another location or litigate if damage occurs to their property.

The Board of Commissioners also asked several questions and staff advised that NC DEQ and County Fire Marshal staff would be the most appropriate to address them. The following questions were posed to NCDEQ Mining Program staff and the responses are included:

1. What is the liability of the mine owner or operator for damage that may occur to homes or wells in the community? *The liability is a civil matter. We call the site in compliance or out of compliance. It is up to the damaged individual to pursue civilly.*
2. Is there any recourse for the Town of Goldston if there's damage to water or sewer infrastructure that can be tied to blasting connected with mine? *Same as #1. We can look at the records and determine if they are out of compliance with the blasting conditions within the permit.*

3. Does the state require that a bond or other type of financial guarantee be issued to cover a mining operation and does it cover damage to adjoining properties? *The bond we require is a reclamation bond to be used to guarantee reclamation of the site only.*
4. Prior to blasting is there any monitoring or pre-blast survey of surrounding properties required of the mine operator? *No pre-blast surveys are required. All blasts must be measured by a seismograph at a distance no farther than the closest non-company owned off-site occupied dwelling.*
5. How long is the permit valid for the Daurity Springs mine and can it be renewed prior to the expiration? *The NC Legislature passed law doing away with renewals in 2017. The permit is good for the life of the mine as long as they pay their annual fees. Whenever they modify the permit we look at the operation. If they don't modify the permit is what it is.*

The County Fire Marshal was also contacted regarding whether blasting permits have been issued for the site and notification requirements. The County Fire Marshal, Thomas Bender, provided the following response: *"Blasting requirements are contained in Chapter 33 of the NC Fire Prevention Code. A permit for blasting is required and must be renewed every thirty (30) days. A permit was issued for Daurity Springs Mine. The person and/or the firm must also provide proof of insurance. The only notification requirement is when the blasting is to be conducted within the vicinity of utility lines or right-of-ways and must be done at least twenty-four (24) hours in advance. A fire inspector views the initial blast but is not required to be present at every blast conducted. I hope that I have addressed your inquiry. If I can be of further assistance to you, please contact me."*

Since the public hearing, staff has been in contact with the Daurity Springs mine operator and made them aware of the concerns brought up during the hearing and they indicated that they intend to reach out to the property owners. They also indicated they will attend the Planning Board meeting and noted there was a miscommunication about the rescheduled public hearing date.

Please note that the request before the Planning Board is to consider whether to rezone the 5 parcels from R1, Residential, to Heavy Industrial in response to the extension of residential zoning in 2016. The final decision on whether to rezone the parcels will not impact the current use of the properties for a mining operation as long as it complies with the non-conforming provisions of the Zoning Ordinance.

If the Planning Board recommends approval of the rezoning, the following consistency statement is provided for consideration: The request is consistent with the comprehensive plan of Chatham County, Plan Chatham, by supporting the diversification of the tax base and generation of more high-quality, in-county jobs to reduce dependence on residential property taxes, create economic opportunity and reduce out-commuting. Specifically, this request supports Land Use Policy #7, Strategy 7.2 which encourages support for "rezonings for businesses uses or properties made non-conforming by the extension of zoning in 2016.

If the Planning Board recommends denial of the rezoning, the following consistency statement is provided for consideration: The rezoning request for parcels numbers 61910, 9314, 80392, 9649 and 9303 from R-1 Residential to IH-Heavy Industrial is not in compliance with Plan Chatham, it impairs the integrity of the neighborhood and is inconsistent with the spirit of the Board of Commissioner goals and health goals.

Recommendation:

Discuss the rezoning request and the board has up to three meetings to make a recommendation to the Board of Commissioners on the rezoning and consistency statement.