



Rowan County Planning and Development Department

402 North Main Street, Suite 204 • Salisbury, N.C. 28144-4341
Planning: 704-216-8588 Fax: 704-638-3130

MEMORANDUM

TO: Chairman Edds and Rowan County Board of Commissioners
FROM: Shane Stewart, Assistant Planning Director
DATE: September 8, 2016
RE: **PCUR 03-16**

SUGGESTED BOARD OF COMMISSIONERS ACTION

- Sworn oath for those testifying
- Receive staff report
- Petitioner comments
- Conduct quasi-judicial hearing
- Close hearing and discuss
- Motion to adopt statements
- Motion to Approve / Deny / Table Conditional Use District (Rezoning)
- Three separate motions to adopt findings of fact
- Motion to Approve / Deny / Table **PCUR 03-16** (Conditional Use Permit)

REQUEST

Venture Properties VII, LLC, represented by Ronnie Walsh, is requesting a parallel conditional use rezoning for a 2.21 acre portion of a 3.98 acre tract referenced as Tax Parcel 621-021 owned by Leonard and Phyllis Clark located at 6380 Bringle Ferry Road from Rural Agricultural (**RA**) to Neighborhood Business with an accompanying conditional use district (**NB-CUD**) to accommodate a 9,100 sq.ft. retail store.

As per the enclosed site plan, the remaining 1.77 acres not part of the rezoning would consist of a 1.27 acre parcel created to relocate the Clark's residence and associated storage buildings, and a ½ acre portion combined with Tax Parcel 621-027 owned by Richard Shue.

The adoption of **ZTA 01-16** on September 6, 2016 amended the Zoning Ordinance to remove the option of conditional use rezoning (quasi-judicial) in favor of conditional zoning (legislative) for all applications received after ordinance adoption. Per NCGS 153A-320.1 and 143-755, if a rule or ordinance changes between the time a permit application is received and a permit decision is made, the permit applicant is afforded the

choice of which version of the ordinance would apply to their request. The applicant has expressed a desire to continue under the conditional use rezoning process.

**ZONING
CRITERIA**

1. Relationship and conformity with any plans and policies.

Plans – This property is located within Area 2 as identified by the East Area Land Use Plan, which recognizes a mix of uses and service-oriented development as generally appropriate for the Planning Area. Additionally, the plan indicates the NB district is generally appropriate for locating new or existing businesses along identified thoroughfares (both Bringle Ferry Road and Providence Church Roads are classified as thoroughfares). The plan specifies the NB district may be enhanced by incorporating a series of revisions to the Zoning Ordinance which include appearance standards and increased setbacks, which may be discussed with this application.

Policies – This application does contain the Planning Board encouraged conditional use rezoning request for districts that do not join an existing commercial zoned area.

2. Consistency with the requested zoning district’s purpose and intent.

“Neighborhood Business, NB. This district is designed for retail, limited small manufacturing facilities and service oriented business centers which serve small trading areas. As a result the list of allowed uses is more limited than those in the CBI district. The development standards for these business areas are designed to promote sound, permanent business development and to protect abutting and surrounding residential areas from undesirable aspects of nearby commercial development. This district is also designed to provide opportunities for potential development within the NB district.

Areas zoned NB shall be so located as to conveniently serve the community population. The establishment and subsequent development of this district shall not create or expand problems associated with traffic volumes or circulation. As the district is established to provide for small neighborhood oriented business areas limitations on gross floor area is established. Limitations on total impervious surface are established to minimize the adverse impacts of this type of development on adjacent residential areas. Generally, the NB district shall be two (2) acres or larger. However a lot of record, smaller than two (2) acres may be considered for rezoning to NB if the owner of the lot does not own adjacent property which may be included in the rezoning request.”

This request meets the district’s purpose and intent as a retail operation to serve a small trading area, land use plans recommendations for NB designation, and is located on a corner lot of a major and minor thoroughfare.

3. Compatibility of all uses within the proposed district classification with other properties and conditions in the vicinity.

Compatibility of uses – The below table provides a generalized list of land use categories permitted in the RA and NB districts. A more detailed list may be found in section 21-113 of the Zoning Ordinance.

Land Use Category	RA	NB
Residential	Permitted	Most Permitted
Agriculture	Permitted	Permitted
Mining	Not Allowed	Not Allowed
Construction	Permitted with SR	Most permitted with SR
Manufacturing	Many permitted with SR	Some permitted with SR
Transportation, Communications, etc.	Some permitted with SR and CUP	Few permitted with SR
Wholesale Trade	Most permitted with SR	Few permitted with SR
Retail Trade	Permitted with SR	Permitted with SR
Finance, Insurance, etc.	Permitted with SR	Permitted with SR
Services	Most permitted with SR	Some permitted with SR
Public Administration	Some permitted with SR	Some permitted

Note: “Permitted with SR” means permitted subject to compliance with a defined list of special requirements; “CUP” means subject to a conditional use permit by the Board of Commissioners.

Conditions in the vicinity (see enclosed map) –

North

- 6.7 acre CBI-CUD area approved in 2001 (with several subsequent amendments) allowing a range of businesses including automotive repair, greenhouses, retail operation, and residence at 1940 Providence Church Rd. .34 miles north.
- Hailey’s Manufactured Home Park containing six (6) spaces .40 miles north.
- Parkland subdivision established in 1984 containing 21 lots .42 miles north.
- Rowan County Recycling site at 1985 Providence Church Rd. .45 miles northeast.

South

- “DanNicholas” convenience store, nail salon, and boat repair business located southeast at 6415 and 6417 Bringle Ferry Rd. permitted as a home-based business in the RA district subject to compliance with Special Requirements (SR) listed in the Zoning Ordinance.
- Concentration of residential uses on a variety of lot sizes.

East

- Park Villa subdivision established in 1973 containing nine (9) lots immediately northeast.

- Providence United Methodist Church at 6450 Providence Church Rd. 550 feet east.
- Dan Nicholas Park at 6800 Providence Church Rd. .31 miles east.
- Concentration of residential uses.

West

- Providence Country subdivision established in 1976 containing 59 lots 275 feet west.
- Scatter of residential uses and large undeveloped lots.

4. Potential impact on facilities such as roads, utilities and schools.

Roads – The proposed parcel would contain 180 ft. of frontage on Providence Church Rd. (minor thoroughfare) and 305 ft. on Bringle Ferry Rd. (major thoroughfare). These road segments have estimated daily vehicle capacities of 13,600 and 14,600 respectively according to the NCDOT Comprehensive Transportation Plan. Comparatively, traffic counts for Bringle Ferry Rd. total 3,600 vehicles in 2012 (historical high of 4,400 in 2010) taken .26 miles east of the intersection while Providence Church Rd. received 1,500 in 2014 with a historical high of 1,800 in 2006 taken 388 ft. south of the intersection. Since the estimated capacity is largely based on pavement width and speed limit, it should only be used as basic information regarding the volume to capacity ratio rather than the single measure in assessing the road’s operational capability.

The ITE Trip Generation Manual (7th edition, 2003) for free-standing discount stores estimates this store could generate approximately 510 trips per day. Since the manual does not contain a comparable use to that proposed herein, caution should be used when considering this value. Regardless, the additional traffic generated by the store would not exceed the estimated carrying capacity.

Due to citizen concerns raised at the Planning Board meeting regarding accidents at the intersection, Planning Staff obtained 911 call logs from the past five (5) years (September 1, 2011 to September 6, 2016) for vehicle accidents within 500 feet of the intersection. The below table records a total of 15 accidents which were reported during this 5 year period. Staff should have a figure from DOT by the hearing data to compare this intersection with the statewide average for vehicle accidents.

TRAFFIC ACCIDENTS SEPTEMBER 1, 2011 TO SEPTEMBER 6, 2016			
Bringle Ferry / Providence Church Roads 500 feet in all directions of intersection			
Call Time	General Location	Nature	Day
3/17/2012 4:34:44 AM	6365 BRINGLE FERRY RD	29B1 TRAFFIC ACCIDENT WITH INJ	Saturday
4/13/2012 3:40:56 PM	BRINGLE FERRY RD/PROVIDENCE CHURCH RD	131B1 TRAFFIC ACCIDENT	Friday
6/21/2012 5:26:56 PM	BRINGLE FERRY RD/PROVIDENCE CHURCH RD	131B1 TRAFFIC ACCIDENT	Thursday
11/12/2012 1:44:46 PM	BRINGLE FERRY RD/PROVIDENCE CHURCH RD	131B1 TRAFFIC ACCIDENT	Monday
2/1/2013 11:59:55 PM	PROVIDENCE CHURCH RD/BRINGLE FERRY RD	131B1 TRAFFIC ACCIDENT	Friday
3/9/2013 4:41:44 PM	6380 BRINGLE FERRY RD	29B1 TRAFFIC ACCIDENT WITH INJ	Saturday
4/23/2013 8:26:16 AM	BRINGLE FERRY RD/PROVIDENCE CHURCH RD	29B1 TRAFFIC ACCIDENT WITH INJ	Tuesday
5/16/2013 6:32:10 PM	6415 BRINGLE FERRY RD	131B1 TRAFFIC ACCIDENT	Thursday
6/17/2013 9:52:19 PM	1539 PROVIDENCE CHURCH RD	131B1 TRAFFIC ACCIDENT	Monday
6/23/2013 8:50:14 PM	PROVIDENCE CHURCH RD/BRINGLE FERRY RD	29B1 TRAFFIC ACCIDENT INJURY	Sunday
12/26/2013 6:47:37 AM	1448 PROVIDENCE CHURCH RD	131B1 TRAFFIC ACCIDENT	Thursday
1/7/2014 11:42:17 AM	1485 PROVIDENCE CHURCH RD	131B1 TRAFFIC ACCIDENT	Tuesday
2/13/2014 10:24:27 PM	6445 BRINGLE FERRY RD	131B1 TRAFFIC ACCIDENT	Thursday
2/17/2015 6:12:40 PM	BRINGLE FERRY RD/PROVIDENCE CHURCH RD	29B1 TRAFFIC ACCIDENT INJURY	Tuesday
10/16/2015 11:00:05 AM	PROVIDENCE CHURCH RD/BRINGLE FERRY RD	VEHICLE ACCIDENT PROP DAMAGE	Friday
TOTAL ACCIDENTS: 15			
Source: Telecommunications Dept. 911 call log			

Utilities – A perk test has been approved for the proposed store but additional evaluation is needed for the existing manufactured home to be relocated.

Schools – N/A.

EVALUATION CRITERIA

As provided in Section 21-59, the applicant has attached his responses to the evaluation criteria with staff comments indicated below.

1. Adequate transportation access to the site exists. NCDOT approved commercial driveway permit # 16-010-Rd for the requested connection to Providence Church Rd.

2. The use will not significantly detract from the character of the surrounding area. The opposite corner of the intersection contains a retail store constructed in 1972, according to Tax Assessor records, which expanded in 2007 to include a nail salon and boat repair as a business allowed subject to compliance with SR standards in the RA district (i.e. among other standards, owner lives on property). With this exception, all other immediate properties are residential. Ironically, the proposed development subject to SR in the NB district and recommendations from the land use plan could generate a development more conducive to the surrounding properties than allowed in the RA subject to SR. Special Requirements in the NB include the following:

- Lighting shielded to prevent light and glare spillover to adjacent residentially developed properties;
- Minimum lot size of 2 acres (with some exceptions);
- Building size limited to the lesser of 10% of the lot acreage or 10,000 sq.ft.;

- Impervious surface limited to 65%;
- Hours of operation limited to 6:00 AM to 11:00 PM;
- Outdoor storage including dumpsters must be to the building rear, not within setbacks, and screened from residences; and
- Outdoor display limited to 2,500 sq.ft.

3. Hazardous safety conditions will not result. The proposed retail store is subject to NCDOT and Rowan County Building Inspection standards. No hazardous safety conditions are anticipated.

4. The use will not generate significant noise, odor, glare or dust.

Noise – Noise levels should experience a minimal increase during business hours proposed as 8:00 AM through 10:00 PM Monday through Sunday from vehicles entering / existing the site and product deliveries.

Odor & Glare – Odor should be minimal. Building elevation plans indicate wall pack lighting will be located along the front and both sides of the building.

Dust – N/A. All travel areas are proposed with asphalt.

5. Excessive traffic or parking problems will not result. The proposed site plan provides 30 spaces compared to the 26 required by the Zoning Ordinance. The site is designed to facilitate on-site movements without need to back out on Providence Church Rd.

6. The use will not create significant visual impacts for adjoining properties or passersby. Visually speaking, the structure would serve as the predominant feature of the intersection. The applicant is proposing a façade combination of brick and hardie plank lap siding (fiber cement) with metal trim accent on all four (4) building sides to provide a more aesthetically pleasing structure. The store will be screened to the north and west sides by Green Giant evergreens 6-8 feet tall at time of planting 5 feet on center. A cluster of red maple trees are proposed along the small strip of property on the northwest side and dogwood trees along both frontages to address appearance standards referenced in the land use plan. Free standing signage will be monument style (low to ground) in lieu of the typical pylon (sign face on tall pole). Each of these measures is a collective attempt to provide a development that will be in harmony with surrounding properties.

DECISION MAKING

In addition to the above criteria, sec. 21-362 (c) of the Zoning Ordinance indicates the primary question before the Planning Board / Board of Commissioners in a rezoning decision is “whether the proposed change advances the public health, safety, or welfare as well as the intent and spirit of the ordinance.” Additionally, deliberations by the board(s) “shall not regard as controlling any advantages or disadvantages to the

individual requesting the change but shall consider the impact of the proposed zoning change on the public at large.”

PROCEDURES

The Board of Commissioners must develop a statement of consistency describing whether its action is consistent with any adopted comprehensive plans and indicate why their action is reasonable and in the public interest [sec. 21-362 (j)]. Since this is a small-scale rezoning request, a statement analyzing the reasonableness of the decision is also necessary. While spot zoning in North Carolina is considered illegal, it may be determined as reasonable based on a number of factors including the following established by the courts:

- 1. Size and nature of the tract;**
- 2. Compatibility with existing plans;**
- 3. The impact of the zoning decision on the landowner, the immediate neighbors, and the surrounding community; and**
- 4. The relationship between the newly allowed uses in a spot rezoning and the previously allowed uses.**

The Board of Commissioners must also adopt facts supporting the below findings of fact based on the above six (6) evaluation criteria:

1. The development of the property in accordance with the proposed conditions will not materially endanger the public health or safety;
2. That the development of the property in accordance with the proposed conditions will not substantially injure the value of adjoining or abutting property, or that the development is a public necessity; and
3. That the location and character of the development in accordance with the proposed conditions will be in general harmony with the area in which it is located and in general conformity with any adopted county plans.

See enclosed checklist to guide decision. Planning Staff will provide example findings for consideration at the hearing.

STAFF COMMENTS

Based on the purpose and intent of the NB district and land use plan recommendations, this request appears to be a reasonable zoning designation. As always, public comment / concerns should be incorporated as appropriate. If approved, Planning Staff encourage the consideration of the below conditions of approval:

1. Prior to the issuance of a zoning permit for the store, all relocated improvements on the residual 1.27 acre tract are subject to applicable development review and permits;

2. Prior to the issuance of a zoning permit for the store, provide copy of deed showing combination of ½ acre portion of land with Tax Parcel 621-027;
3. Façade detail shall be brick and hardie plank lap siding as per exterior elevation plan; and
4. Overall height of monument signage limited to six (6) feet.

JULY 25, 2016 PLANNING BOARD MEETING

Staff estimates approximately 30 citizens attended the Planning Board meeting; nine (9) of which spoke in opposition to the request. In general, their concerns were increased traffic levels (in general, mixed with truck traffic, and school bus stops), current accident rate at an already dangerous intersection, decreased property values, increase in breaking and enterings, do not want to see “the city” in the country, and reference to existing local stores that serve the area.

In addition to these speakers, the applicant, his engineer, and both property owners spoke in favor of the request. One citizen did speak in favor of the request and looks forward to another retail option in the area. The Planning Board voted (5-1) to recommend approval based on the above four (4) conditions and the following statements:

STATEMENT OF CONSISTENCY

“PCUR-03-16 is consistent with Area 2 of the Eastern Area Land Use Plan based on the plan calling for mixed uses and service oriented development for that area.”

STATEMENT OF REASONABLENESS

“PCUR-03-16 is reasonable because of frontage on two thoroughfares. It is also reasonable because of the architectural standards in the plan mitigate the effect on neighboring parcels.”