

**AGENDA**  
**Regular Meeting of the**  
**Aberdeen Planning Board**

August 21, 2014  
Thursday, 6:00 pm

Robert N. Page Municipal Building  
Aberdeen, North Carolina

1. Call to Order
2. Informational Moment
3. Approval of Agenda
4. Approval of Minutes
  - a. Regular Meeting of April 17, 2014.
  - b. Regular Meeting of May 15, 2014.
  - c. Special Meeting of the Watershed Review Board May 15, 2014.
  - d. Joint Meeting of the Aberdeen Planning Board and Aberdeen Board of Commissioners of June 19, 2014.
5. New Business
  - a. Rezoning Request RZ #14-03 Submitted by James R. Kirkpatrick Revocable Family Trust for Properties Located Near the Intersection of NC Highway 5 and Turning Leaf Way on Security Lane and Tristin Court. The request is to rezone approximately 17.61 acres from Highway Commercial (HC) to R18-14.
  - b. Conditional Use Permit CU #14-04 Submitted by Satish Sharma of Reliance Packaging for a plastics manufacturing business in the Commercial/Light Industrial (C-I) District.
6. Old Business
  - a. General Updates
  - b. General Discussion
7. Adjourn

SPECIAL ACCOMMODATIONS FOR INDIVIDUALS WITH DISABILITIES OR  
IMPAIRMENTS WILL BE MADE UPON REQUEST TO THE EXTENT THAT  
REASONABLE NOTICE IS GIVEN TO THE TOWN OF ABERDEEN

**MINUTES**  
**Regular Meeting of the**  
**Aberdeen Planning Board**

April 17, 2014  
Thursday, 6:00 p.m.

Robert N. Page Municipal Building  
Aberdeen, North Carolina

The Aberdeen Planning Board met Thursday, April 17, 2014 at 6:00 p.m. for the Regular Board Meeting. Members present were Chairman Johnny Ransdell, Sarah Ahmad, Tim Marcham, Janet Peele, and Ken Byrd. Alternate Ron Utley was called to serve in a vacant seat. Members not present were Kelvin Watson, Raymond Lee, and alternate Peter Koch. Others in attendance were Planning Director Pam Graham, Permit Technician Amy Fulp, Jack Berggren, Sam Foley, Ruben Huerta Fuentes, Serafin Garcia, George Najm, and John Moyer.

1. Call to Order:

Chairman Ransdell called the meeting to order at 6:00 pm.

2. Informational Moment

Planning Director Graham talked briefly about the consistency statements in Planning Board packets.

3. Approval of Agenda

Sarah Ahmad made a motion, seconded by Ron Utley, to approve the agenda of the Regular Meeting for April 17, 2014. Motion unanimously carried.

4. Approval of Minutes

Ron Utley made a motion, seconded by Sarah Ahmad, to approve the minutes of the Regular Meeting of February 26, 2014. Motion unanimously carried.

Ron Utley made a motion, seconded by Tim Marcham, to approve the minutes of the Special Called Meeting of the Watershed Review Board of February 26, 2014. Motion unanimously carried.

5. New Business

All parties who expected to give evidence or testimony were sworn in before doing so.

- a. Conditional Zoning CZ #14-03 Submitted by Jack Berggren at 10570 NC Hwy 211.

Planning Director Graham stated Jack Berggren has a pretty sizable facility on Hwy 211 where he has a number of businesses. Mr. Berggren is proposing a new operation at that location, that basically falls under a category that is not addressed in our UDO, which is a brew pub.

Planning Director Graham stated Mr. Berggren is in the C-I District which is Commercial-Light Industrial; retail uses are allowable including restaurants. The manufacturing of the alcohol falls under this category and the serving of food, Mr. Berggren hopes to do this as part of his long range plans which would be permitted as a Use by Right. However the serving of alcohol onsite, without the component of the food, is something that requires a Special Use Permit in that district.

Planning Director Graham stated with this project and consistency with the adopted plans for the Town, the Future Land Use Map for 2005 has it identified as industrial. The zoning now is Commercial-Light Industrial which is more consistent with this proposed use. This area of town will probably continue to support mixed-uses and over time we may see some zoning changes.

Planning Director Graham stated we do have some inconsistency with the long range plan in that this is not necessarily strictly an industrial use that is being proposed; but it is more consistent with the zoning in the area.

Ron Utley asked what is the distance between the R-20 residential area and this establishment. Planning Director Graham stated it is right across the highway from the R-20 residential area.

Ron Utley asked has an impact study been done on the residence in the area to the point of having a bar coming into that neighborhood. Planning Director Graham stated there has not been a study. What would be required is a community meeting and the information acquired would be shared with the Board of Commissioners.

Sarah Ahmad asked when she looked at the plans she saw a tasting room and would this be in the future? Mr. Berggren stated yes and it would be in the same area as the restaurant.

Janet Peele asked would there be after hours use and music or noise involved in the evenings. Mr. Berggren stated the target timing is 2:00 p.m. until around 10:00 p.m. The tasting section is so the brewery gets a chance to have customers sample the market beer. There will also be some music to entertain the customers.

Janet Peele asked how far it is from the public entrance of the establishment to the residences across the street. Mr. Berggren stated there is a highway between them, maybe 1000ft. Planning Director Graham stated we also have a noise ordinance that they would be subject to.

Sarah Ahmad asked would there be anything outside or is everything going to be inside the building. Mr. Berggren stated at some point they want to have a patio outside with some tables.

Sarah Ahmad asked about the smell and how they would handle the waste. Mr. Berggren stated as far as the smell it is already an industrial area. They are so far away from any residences that he can't imagine they would smell anything. Sam Foley stated most of the brewing will be going on at night.

Chairman Ransdell stated what we need to consider and be aware of is this is not a honky-tonk bar. It is a growing industry in North Carolina and it is called craft brewing. Everywhere they have gone they have been a real asset to the communities.

Sam Foley stated he will be the primary brew master. A bar scene is not what he is trying to create. They want to be a craft manufacturer of quality beer with a North Carolina label on it.

Sarah Ahmad asked because it is conditional zoning if somebody else brought the property could they just have a bar or would they have to have the manufacturing also that we see here. Planning Director Graham stated she does not think that is correct; consumption of alcohol is one of the allowed uses but it does not mean that they would also be required to manufacture it there.

Chairman Ransdell wanted to talk about conditional zoning and manufacturing. If you look at their proposal they are talking about starting with a 7 to 10 barrel system. What they are proposing is to be a distributor and distribute over a general area. They want to be a craft brewery to distribute beer.

Chairman Ransdell asked has NCDOT looked at their access to the site. Planning Director Graham stated she has done a very preliminary site plan review. The Planning Department will typically give NCDOT a call when they see a change of use on one of their highways. Chairman Ransdell asked for this to be one of the conditions.

Motion 1 made by Ken Byrd, seconded by Janet Peele, that Conditional Zoning CZ #14-03 is consistent with all adopted plans of the Town of Aberdeen. Motion carried by a vote of 5 to 1, Ron Utley opposed.

Motion 2 made by Ken Byrd, seconded by Ron Utley, based on the information presented by the applicant, staff, and other interested parties, Conditional Zoning CZ #14-03 does have an acceptable level of impact on both the immediate area and the community as a whole. Motion unanimously carried.

Chairman Ransdell read the recommended conditions. Planning Director Graham stated on #3 they may want to add, "any and all approvals from other regulatory agencies, including but not limited to NCDOT, must be obtained prior to a notice to proceed by the Planning Department. Chairman Ransdell stated that would be fine.

Motion 3 made by Ken Byrd, seconded by Tim Marcham, the Planning Board does recommend approval of Conditional Zoning CZ #14-03 to the Town of Aberdeen Board of Commissioners subject to the following conditions:

1. The applicant must conduct a community meeting with mailed notice complying with the requirements of the Unified Development Ordinance prior to the Public Hearing by the Board of Commissioners.
2. Conditional and Special Use Permits for the uses on the property are not required. A final site plan and all construction documents must be approved through the inter-departmental review process and shall be in general conformance with the proposed sketch plan attached to this proposal. The Conditional Zoning is contingent upon approval of the Site and Building Plans.
3. Any and all approvals from other regulatory agencies, including but not limited to NCDOT, must be obtained prior to a notice to proceed by the Planning Department.
4. A bicycle rack will be installed to meet the Comprehensive Pedestrian/Bicycle Plan the town adopted.
5. Staff is directed to enter Conditional Zoning District C-I-C for property identified by PID# 20040356 on the official zoning map and add a label for CZ #14-03 upon final approval.

Motion carried by a vote of 5 to 1, Ron Utley opposed.

- b. Special Use Permit SU #14-02 Submitted by Ruben Huerta Fuentes for Food Consumption outside fully enclosed structure at existing restaurant.

Planning Director Graham stated our applicant is Ruben Huerta Fuentes who is actually the contractor for the proposal. Serafin Garcia is also here tonight, he is the owner and operator of Mazatlan Mexican Restaurant.

Planning Director Graham stated for any restaurant use that wants to include outdoor dining it requires a special use permit. We have an existing restaurant that has a full menu, a bar, and does conduct all of their business within the four walls of the restaurant. The applicant is requesting to build an outside patio with railing in front of the building.

Planning Director Graham stated the general area surrounding the subject property is indicated as Commercial on the 2030 Land Develop-

ment Plan's Future Land Use Map, and is thereby consistent with this proposal. The Pedestrian and Bicycle Plans make no recommendations for the property with exception of a bicycle rack, and the proposed use does not trigger a review of the Green Growth Toolbox data for the property.

Ken Byrd asked will they have a rail around the patio. Mr. Fuentes stated they will have a 4 foot high style fence. Ken Byrd asked will there be access from the restaurant itself or will they have to go out of the front door to get to the patio. Mr. Fuentes stated there will be a door coming out of the restaurant onto the patio.

Ken Byrd asked would the fence be capable of containing litter if he were to drop his plate. Mr. Fuentes stated it will be a wooden type fence with slats about 3 to 4 inches apart. Planning Director Graham asked the Board if they would be comfortable with Staff making a site visit and determining whether the fence is sufficient and Ken Byrd stated yes.

Chairman Ransdell asked would there be any landscaping required. Planning Director Graham stated if he came in as a new facility there would be. He is really limited because there is so much asphalt.

Motion 1 made by Ron Utley, seconded by Ken Byrd, SU #14-02 is complete as submitted. Motion unanimously carried.

Motion 2 made by Ron Utley, seconded by Ken Byrd, SU #14-02 satisfies Finding #1: will not endanger public health or safety. Motion unanimously carried.

Motion 3 made by Ron Utley, seconded by Ken Byrd, SU #14-02 satisfies Finding #2: will not injure the value of adjoining or abutting property. Motion unanimously carried.

Motion 4 made by Tim Marcham, seconded by Ken Byrd, SU #14-02 satisfies Finding #3: will be in harmony with the area in which it is located. Motion unanimously carried.

Motion 5 made by Sarah Ahmad, seconded by Ron Utley, SU #14-02 satisfies Finding #4: will be in conformity with the land-use plan, thoroughfare plan, or other plan (Hazard Mitigation, Pedestrian and Bicycle Plans) officially adopted by the Town Board. Motion unanimously carried.

Motion 6 made by Ken Byrd, based on the findings of fact and the evidence presented, the Planning Board approves with conditions SU #14-02 and add that Staff will make a site visit to determine fencing type and spacing to try and contain debris. Planning Director Graham recommended adding this to condition #1 to say "approval of the Special Use is contingent upon an approved site plan from the Planning Department Staff

to include a site visit and fence product review for compliance with the UDO screening requirements”. Ken Byrd stated that would work for him and the motion was seconded by Janet Peele. Chairperson Ransdell stated motion 6 will be approval with conditions as amended. Motion unanimously carried.

- c. Special Use Permit SU #14-03 Submitted by George Najm for Auto Sales at 324 Fields Drive (Unit B) Aberdeen, NC 28315.

Planning Director Graham stated George Najm is here with us tonight. This structure is divided into 3 units and he is taking one of the spaces for an office for his auto sales. Mr. Najm explained this to Jae Kim as being mostly an internet based business and he doesn't anticipate having a large inventory of vehicles on site.

Planning Director Graham stated the general area surrounding the subject property is indicated as Commercial on the 2030 Land Development Plan's Future Land Use Map, and is thereby consistent with this proposal. The Pedestrian and Bicycle Plans make no recommendations for Fields Drive, and the proposed use does not trigger a review of the Green Growth Toolbox data for the property. The proposed use is not inconsistent with plans adopted by the town.

Ken Byrd asked Mr. Najm if he will be clearing anything from the street back so you can see the cars on the side easier and Mr. Najm stated no.

Ron Utley asked Mr. Najm if he is a car dealer and he stated the state requires that he have an office first and he has to get approval from the Planning Board and then he can get his license.

John Moyer stated he is familiar with the property and he is not opposed to someone starting a business. His only question is space available and even if it is only for internet sales he is sure that people will want to come and see the cars. He wants to make sure that he will not lose any value with his property since his property adjoins this property.

Ron Utley asked Mr. Moyer about any negative impacts due to him trying to sell his adjoining property. Mr. Moyer stated he is worried about the cars being parked along the side. Ron Utley asked Mr. Najm where he plans to park the cars and he stated they have no plans to encroach on Mr. Moyer's property.

Ron Utley asked Planning Director Graham if they can limit the number of vehicles. Planning Director Graham stated they have a 15' side setback and the UDO restricts parking in that setback and they would probably end up with parking closer to the building.

Ron Utley asked if they were to encroach on adjacent property can the permit be terminated. Planning Director Graham stated they usually leave property line disputes to civil matters. But the UDO requirement can be put on the zoning permit stating no parking will be permitted in the 15' side setback.

Ron Utley asked Planning Director Graham does she feel like the applicant has met the requirements of her department. Planning Director Graham stated with what we have right now yes they have. An additional review will be done before they issue the zoning permit and make sure there is nothing outstanding. The Planning Board will approve the use and add any conditions that will help support compliance with any issues that have come up within this discussion.

Motion 1 made by Ron Utley, seconded by Ken Byrd, SU #14-03 is complete as submitted. Motion unanimously carried.

Motion 2 made by Ron Utley, seconded by Tim Marcham, SU #14-03 satisfies Finding #1: will not endanger public health or safety. Motion unanimously carried.

Motion 3 made by Ken Byrd, seconded by Tim Marcham, SU #14-03 satisfies Finding #2: will not injure the value of adjoining or abutting property. Motion unanimously carries.

Motion 4 made by Tim Marcham, seconded by Janet Peele, SU #14-03 satisfies Finding #3: will be in harmony with the area in which it is located. Motion unanimously carries.

Motion 5 made by Ken Byrd, seconded by Janet Peele, SU #14-03 satisfies Finding #4: will be in conformity with the land-use plan, thoroughfare plan, or other plan (Hazard Mitigation, Pedestrian and Bicycle Plans) officially adopted by the Town Board. Motion unanimously carried.

Planning Director Graham stated she would like to make one amendment to condition number 1 in the second sentence to read, "Display areas for vehicles for sale shall be confined to the areas designated for this use on the approved site plan".

Sarah Ahmad also wanted to add something concerning notes and conditions. Planning Director Graham suggested adding it to the end of condition number 1 to say, "Zoning permit shall refer to restrictions on parking in setbacks".

Chairman Ransdell read over the remainder of the recommended conditions.

Motion 6 made by Ken Byrd, seconded by Janet Peele, based on the findings of fact and the evidence presented, the Planning Board approves SU #14-03 with conditions as amended. Motion unanimously carried.

6. Old Business

Planning Director Graham stated the concrete company is looking at another property very close to the one they came to the Planning Board on but this is going to be sometime down the road. Also the rezoning on Pee Dee road has been withdrawn. There are some water issues there and we may or may not see this one again.

Planning Director stated the retreat idea was very well received by the Town Board. They are looking at having a retreat with the Planning Board around September or October of 2014. The retreat will probably be a half day or a whole day.

Ken Byrd asked about the Watershed relief and going to the county for additional allocation. Planning Director Graham stated she does intend to ask for additional allocation but has not really had time to look at it.

7. Adjourn

A motion was made by Ron Utley, seconded by Ken Byrd, to adjourn the meeting. Motion unanimously carried.

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Amy Fulp, Permit Technician  
Minutes were completed in  
Draft form on June 9, 2014

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Johnny Ransdell, Chairperson  
Minutes were approved on  
August 21, 2014

**MINUTES**  
**Regular Meeting of the**  
**Aberdeen Planning Board**

May 15, 2014  
Thursday, 6:00 p.m.

Robert N. Page Municipal Building  
Aberdeen, North Carolina

The Aberdeen Planning Board met Thursday, May 15, 2014 at 6:00 p.m. for the Regular Board Meeting. Members present were Chairman Johnny Ransdell, Raymond Lee, Kelvin Watson, Sarah Ahmad, Tim Marcham, and Ken Byrd. Alternate Ron Utley was also called to serve in one of the vacant seats. Members not present were Janet Peele and alternate Peter Koch. Others in attendance were Planning Director Pam Graham, Planner Jae Kim, Permit Technician Amy Fulp, Sammy McPeake, Bonnie McPeake, Derrick Goddard, Bill Thomas, and Bob Ham.

1. Call to Order:

Chairman Ransdell called the meeting to order at 6:40 pm.

2. Approval of Agenda

A motion was made by Sarah Ahmad, seconded by Ken Byrd, to approve the agenda of the Regular Meeting for May 15, 2014. Motion unanimously carried.

3. Approval of Minutes

A motion was made by Ken Byrd, seconded by Sarah Ahmad, to approve the minutes of the Regular Meeting of March 20, 2014. Motion unanimously carried.

4. New Business

All parties who expected to give evidence or testimony were sworn in before doing so.

a. Conditional Zoning CZ #14-01 Submitted by Crossway Church of Worship, Inc.

Planning Director Graham stated basically what we are asking for tonight on this item is a recommendation to the Board of Commissioners on the conditional zoning request for this project.

Chairman Ransdell asked for a clarification on condition #2 concerning the conditional use permit. Planning Director Graham stated in this case if the project was not proposing multi-family then we would not be looking at a conditional zoning; the project would be zoned for residential and a church

use would require a conditional use permit in that district. But what we are saying here is that the condition that allows the church use is going to be incorporated into this conditional zoning so they will not have to come back before either board for a conditional use permit.

Ron Utley asked on condition #8 what is the amount of acreage for the cemetery. Planning Director Graham stated it is probably not set in stone right now. Chairman Ransdell asked isn't that something that would probably be covered by the health department and other state rules. Planning Director Graham stated as far as the size of the cemetery use she doesn't know if the health department will look at that. The Planning Board does have very broad discretion in the approval of this to impose any conditions that they see would be appropriate for the project.

Ken Byrd asked to amend condition #8 to read "The corners shall be established for the cemetery and placed on record with Moore County Register of Deeds and meet all requirements as specified in condition #6".

Planning Director Graham read over the recommended conditions. She asked to amend #7 condition to read "A copy of all septic tank approvals must be submitted to the Planning Department prior to recordation of the sub-division plat".

Raymond Lee asked if they need to state on condition #2 why a conditional use permit for the uses on the property is not required. Planning Director Graham stated they can amend it to read "A conditional use permit for the uses on the property is not required as the proposed uses are approved by this conditional zoning approval". Those uses include a facility for worship, an on-site day care, single family and multi-family residential, and a private cemetery. A final site plan and all construction documents must be approved through the interdepartmental review process and shall be in general conformance with the preliminary site plan submitted with this request. Raymond Lee stated it will work for him.

Ron Utley asked if the daycare facility will cater to the public or to members only. Planning Director Graham stated it is her understanding that it will be for both. Ron Utley asked would it change the traffic pattern and Planning Director Graham stated it may but she doesn't expect it to increase over what they expect the church use to be with the proposed 700 seats in the church.

Chairman Ransdell stated there will be a requirement that they have a NCDOT driveway permit. Driveway permits are evaluated based on projected

traffic for the primary use. In this case you are looking at 700 trips based on information given on the primary use which would be the church.

Planning Director Graham stated the Town does require a traffic impact analysis for projects that are estimated to have greater than 600 trips per day but they are only anticipating 350 trips per day. The Planning Board can amend one of the conditions to say "If it is determined that proposed uses will exceed the 600 trips per day threshold designated by the UDO then a traffic impact analysis would be triggered".

Ron Utley stated it would be fine to add to condition #4 to read "A driveway access permit must be granted by NCDOT prior to construction". A requirement for a Traffic Impact Analysis will be determined by NCDOT, however, should traffic count projections be determined to exceed 600 trips per day threshold designated by the UDO the Town may also require a Traffic Impact analysis."

Motion 1 made by Ken Byrd, seconded by Tim Marcham, that Conditional Zoning CZ #14-01 is consistent with all adopted plans of the Town of Aberdeen. Motion unanimously carried.

Motion 2 made by Tim Marcham, seconded by Ken Byrd, that conditional zoning districts allow for the establishment of certain uses, which, because of their nature or scale, have particular impacts on both the immediate area and the community as a whole.

Based on information presented by the applicant, staff, and other interested parties, Conditional Zoning CZ #14-01 does have an acceptable level of impact on both the immediate area and the community as a whole. Motion unanimously carried.

Motion 3 made by Ken Byrd, seconded by Raymond Lee, that the Planning Board does recommend approval of Conditional Zoning CZ #14-01 to the Town of Aberdeen Board of Commissioners subject to the following conditions as amended:

1. The applicant must conduct a community meeting with mailed notice complying with the requirements of the Unified Development Ordinance prior to the Public Hearing by the Board of Commissioners.
2. A conditional use permit for the uses on the property is not required as the proposed uses are approved by this conditional zoning approval. Those uses include a facility for worship, an on-site day care, single family and multi-family residential, and a

private cemetery. A final site plan and all construction documents must be approved through the interdepartmental review process and shall be in general conformance with the preliminary site plan submitted with this request.

3. The project must be granted a Special Non-Residential Intensity Allocation by the Watershed Review Board before final approval of the site plan may be given or prior to recordation of the subdivision plat.
4. A driveway access permit must be granted by NCDOT prior to construction. A requirement for a Traffic Impact Analysis will be determined by NCDOT, however, should it be determined that the combined uses exceed the 600 vehicle trips per day standard in the Town's Unified Development Ordinance then the Town may also require a traffic impact analysis.
5. The applicant shall coordinate with Public Works regarding the extension of water.
6. Any and all approvals from other regulatory agencies must be obtained prior to a notice to proceed by the Planning Department.
7. A copy of all septic tank approvals must be submitted to the Planning Department prior to recordation of the sub-division plat.
8. The corners shall be established for the cemetery and placed on record with the Moore County Register of Deeds and meet all the requirements as specified in condition #6.
9. The applicant shall provide the department with a copy of permit approval from the Department of Health and Human Services for the day care facility.
10. The applicant shall meet all setbacks and building heights as indicated on the sketch plan.
11. The applicant shall retain existing vegetation in the buffer areas and elsewhere wherever possible and supplement with planted landscaping as needed to meet landscaping and screening requirements.
12. Final approval of Conditional Zoning CZ #14-01 is contingent upon approval of an interdepartmental site plan review following the CZ process.
13. Staff is directed to enter Conditional Zoning District R20-16-C for property identified by PID# 00050799 on the official zoning map and add a label for CZ #14-01 upon final approval.

Motion unanimously carried.

- b. Conditional Use Permit CU #14-03 Submitted by Sammy McPeake for a Hotel Use in the General Commercial (GC) District.

Planning Director Graham stated Bonnie McPeake and Sammy McPeake are here with us tonight. Conditional Use Permit CU #14-03 is for a proposal for Town Place Suites by Marriott. It is an extended stay facility for those who are going to stay for more than a couple of nights.

Planning Director Graham stated the location of the project will be at the intersection of South Hill Road and Columbus Drive. The 3.820 acre portion on the southeast corner of the intersection of the two streets is proposed for this project. The proposed use included a 51,755 square foot hotel accommodating ninety (90) guest rooms with related parking. The current zoning is General Commercial (GC), which requires a Conditional Use Permit for hotel uses.

Planning Director Graham stated the applicants are proposing to place the hotel structure in the southeastern corner of the parcel. They have the required parking along with two access points; one access point off of Columbus Drive and one off of South Hill Road.

Planning Director Graham stated this is a conditional use permit for the use of the hotel. We have a 51,755 square foot building; they are proposing four stories for the building and ninety rooms. Two occupied residential structures located to the south of the property are approximately 120' and 155' from the proposed building.

Planning Director Graham stated the exterior building materials include brick veneer and fiber cement panels and siding with a standing seam metal roof. No metal siding is proposed for the structure.

Planning Director Graham stated the proposal indicates a four story structure with a building height at its highest point of just under 57'. The maximum building height currently permitted in the GC district is 35'. A UDO Text Amendment is being proposed that would relax the building height standard only in the GC district and only for hotel uses.

Planning Director Graham stated parking for this use requires 135 parking spaces but only 103 spaces are indicated on the current plans. The Board of Commissioners may permit deviations from the presumptive requirements and may require more parking or allow less parking whenever it finds that such deviations are more likely to satisfy the requirements.

Planning Director Graham stated two primary factors influence Staff's recommendation for applying flexibility in the parking requirements to reduce the minimum required spaces for this project. One of these is the proximity of adjacent occupied residences and the potential visual impact of

excessive paved surfaces. Additionally, the Town is aware of stormwater runoff issues in the vicinity of the project that have worsened as additional development has occurred in the area. A reduction in impervious surfaces is recommended to avoid exacerbation the impacts of stormwater and erosion to nearby properties at lower elevations.

Planning Director Graham stated we do have a sidewalk requirement. We will be working with the applicant and recommending that a condition be added that there shall be a five foot concrete sidewalk along all road frontages of the project parcel.

Planning Director Graham stated water and sewer are both available to the site. As far as landscaping, the project will be required to comply with existing regulations for screening and landscaping.

Ron Utley asked if the Board is being asked to change the maximum building height without asking the opinion of the residents. Planning Director Graham stated for the conditional use approval, the use can be approved and it doesn't have any impact on the building height.

Derrick Goddard stated as they developed the site plan one of the things they were very careful to do was to try to abate any negative impacts on the neighbors to the south. With that the ordinances require a type A buffering, a landscape buffering to the south of the property, this will help with noise, light, and vision abatement in general between the two uses.

Derrick Goddard stated the McPeake's want to develop a nice project, an approximate 8 million dollar investment. There will be approximately 25 jobs coming into the community.

Bill Thomas stated he has lived in his house on Johnson Street for 50 years. He has a problem with putting another 4 story hotel looking into his back yard. He has children and grandchildren who use the pool in his back yard. He knows he can't stop change but he will be affected most if this hotel goes in.

Derrick Goddard stated he respects the neighbors. This property is zoned general commercial and eventually commercial will be developed on this property.

Ron Utley asked does the hotel have to be 4 stories. Bob Ham, the architect, stated the Marriott and the Hilton have the highest level standards. They are planning a 4 story building and he feels like that is the proper setting

as a transition to the highway commercial. He feels like this would be an asset to the community and they intend to meet the community standards.

Ron Utley stated his concerns are for the impacts on the neighbors and what type buffers will be used. Bob Ham stated there are several types of landscape buffers. There are different ways of supplementing and making it work for both parties. Ron Utley asked could they go three levels instead of 4 and Bob Ham stated you can't get the number of guest rooms to meet the operational level that you have to have with 3 stories. Bonnie McPeake stated this is a Marriott prototype and cannot be changed.

Bonnie McPeake stated she owns the land now. To be able to build a Marriott is a dream come true. We don't want to harm anyone but this land is commercial.

Sarah Ahmad asked about parking requirements for hotels. Bob Ham stated as a rule of thumb 1 parking space per hotel room. If you have 90 guest rooms you would typically have 90 parking spaces. Bonnie McPeake stated there are only 16 rooms with 2 bedrooms and the others are a one bedroom. Planning Director Graham stated our requirement is for 1 ½ parking spaces per sleeping room. She thinks 103 spaces would be adequate for this use.

Raymond Lee asked about parking and is 103 the total number of parking spaces. Planning Director Graham stated yes and that number would include employees parking. Bonnie McPeake stated they would not want to cut their parking short and have customer complaints. They will make sure everyone has a parking space. Marriott approved these plans and they think there are enough parking spaces.

Ken Byrd asked if the site plan can be shifted and move the parking down to the bottom to give more distance between the hotel and Mr. Thomas's back yard. Bob Ham stated that can be done. Planning Director Graham stated the hotel is approx. 150' from Mr. Thomas's house. Chairperson Ransdell stated we are not approving the site plan tonight. The task tonight is to look at whether or not we can recommend approval of the conditional zoning.

Planning Director Graham asked are we going to form shifting the plans as a condition. Ken Byrd stated his recommendation is that the property be re-sited to push the hotel as far north as possible, flip the parking down to the south, and not lose any parking spaces. Planning Director Graham stated it would be condition #15 and would read, "The siting of the

proposed structures shall be as far North on the property as is feasible and still be in compliance with building setbacks standards for the district”.

Planning Director Graham read over the recommended conditions.

1. Conditional Use Permits (CUP) run with the land and as such this Conditional Use Permit applies to the entirety of the property reflected in PID# 00057192, except that it may be limited to the 3.82 acre portion at the southeastern corner of South Hill Road and Columbus Drive if the property is subdivided as such. An amendment to the CUP is needed to remove property from the CUP or to make changes to the CUP. If an activity is a use by right, it is not subject to the CUP.
2. The proposed use is authorized through this permit, but all construction detail must be approved by Planning, Public Works, and Fire Departments before a Zoning Compliance Permit or Building Permits may be issued.
3. Approval of the Conditional Use Permit is contingent on approval of the full construction document set by staff that satisfies all UDO requirements.
4. Any and all required permits from other regulatory agencies must be in place prior to a notice to proceed provided by the Planning Department.
5. Final site plan must include a detailed landscaping plan to address landscaping and screening requirements. The project will be expected to comply with all landscaping and screening requirements of the UDO, including shade tree requirements for parking areas.
6. Tree removal and mass grading are not authorized by approval of the CUP. The Plan Review construction document set will be required to comply with Article XIX, §152-317 – Tree Conservation of the Town of Aberdeen UDO.
7. A five (5) foot concrete sidewalk along all road frontages of the project parcel shall be indicated on plans submitted for Site and Building Plan review and must be installed prior to receiving a Certificate of Occupancy for the project.
8. Approval of the CUP shall not imply approval of signage as depicted on plans. Sign permit application consistent with the requirements of the UDO shall be reviewed and approved by the department prior to installation.
9. A photometric plan shall be reviewed and approved by staff that demonstrates that adequate measures are in place to prevent light trespass onto adjacent properties. The plan shall use as its guide

- lighting standards as defined by the Illuminating Engineering Society of North America (IESNA).
10. Parking is proposed at 103 spaces. Due to the proximity of residential uses and the desire to minimize impervious surfaces the project shall not be required to meet the UDO standard of 1.5 spaces per room. Parking may not be reduced below 100 spaces.
  11. The Fire Department must sign off on the drawings as well as available capacity of treating fires. Hydrants are required consistent with their spacing requirements. Adequate turning radius must be provided for the fire trucks currently in use.
  12. The applicant shall verify with the US Fish and Wildlife Agency that there are no red cockaded woodpeckers on the property prior to site disturbance.
  13. Final plans shall be prepared in accordance with Article XVI Part 2, Drainage, Erosion Control and Stormwater Management of the Town of Aberdeen UDO, and shall ensure that stormwater measures are adequate to control runoff for the ten (10) year storm event.
  14. The maximum allowable building height of 35' is exceeded by the proposal. Approval of the CUP does not grant relief from this standard and it shall not imply approval of the building height as indicated on preliminary plans and elevation drawings. A UDO Text Amendment is proposed to amend the standard to allow for hotel use buildings of up to sixty (60) feet in height in the GC district and will be considered as a separate item for recommendation by the Planning Board.
  15. The siting of the proposed structures shall be as far North on the property as is feasible and still be in compliance with building setbacks standards for the district.

Raymond Lee asked would it be better to switch conditions 14 and 15 so that the height issue is the last condition. Planning Director Graham stated they could put 15 ahead of 14 and switch the numbers.

Derrick Goddard asked about sidewalks and there not being an existing sidewalk on Johnson Street. If they put sidewalks along the entire property there then it would really be a sidewalk to nowhere. He asked can they please take out the sidewalk requirement. Planning Director Graham stated there is a small segment of Johnson that does have a sidewalk but sidewalks come out of the UDO and are a sensitive topic. Johnson Street is supported by the UDO and the Pedestrian Plan which calls for sidewalks to go all the way down Johnson from Poplar Street to the middle school. Chairman Ransdell suggested that they make their request to the Town Council because they are the ones that are going to make a final decision.

Sarah Ahmad asked are we requiring a bike rack. Planning Director Graham stated we are not but we can add it as a #16 condition. She suggested adding a #16 condition to say “the project shall comply with all the recommendations of the Comprehensive Pedestrian and Bicycle Plans and including installation of bike racks as determined by Staff”. Sarah Ahmad agreed with adding the #16 condition.

Motion 1 made by Raymond Lee, seconded by Ron Utley, that CU #14-03 is complete as amended. Motion unanimously carried.

Motion 2 made by Ken Byrd, seconded by Tim Marcham, that CU #14-03 satisfies Finding #1: will not endanger public health or safety. Motion unanimously carried.

Motion 3 made by Ron Utley, seconded by Ken Byrd, that CU #14-03 satisfies Finding #2: will not injure the value of adjoining or abutting property. Motion unanimously carried.

Motion 4 made by Tim Marcham, seconded by Ken Byrd, that CU #14-03 satisfies Finding #3: will be in harmony with the area in which it is located. Motion carries by a vote of 5 to 1, Ron Utley opposed.

Motion 5 made by Ken Byrd, seconded by Ron Utley, that CU #14-03 does not satisfy Finding #4: will be in conformity with the land-use plan, thoroughfare plan, or other plan officially adopted by the Town Board. Ken Byrd stated it does not satisfy the Town Plan per the information that was provided by the Staff. Motion unanimously carried.

Motion 6 made by Raymond Lee, seconded by Ron Utley, based on the findings of fact and the evidence presented, the Planning Board Recommends approval of CU #14-03 with conditions as previously read and amended. Motion unanimously carried.

- c. UDO Text Amendment UDO #14-04 Regarding Maximum Building Height in the General Commercial (GC) Zoning District.

Planning Director Graham stated the current standard is 35’ maximum building height for all districts except the C-I and I-H Districts, where buildings up to 50’ in height are permitted. At this time, Staff is proposing an amendment that would increase the allowable building heights for hotel uses only within the GC District. The proposed new standard would limit such buildings to no more than sixty feet in height.

Chairman Ransdell asked would this text change be in general or would it be specific for this one project. Planning Director Graham stated it would apply to any other property that is located in the General Commercial District.

Motion 1 made by Ken Byrd, seconded by Sarah Ahmad, UDO #14-04 is not inconsistent with all adopted plans of the Town of Aberdeen including the 2030 Land Development Plan, the Hazard Mitigation Plan, the Pedestrian Plan and the Bicycle Plan and the Green Growth Tool Box. Motion unanimously carried.

Motion 2 made by Tim Marcham, seconded by Sarah Ahmad, that the Planning Board does recommend the following amendments to the Town of Aberdeen Board of Commissioners to:

-Amend "Table of Density and Dimensional Regulations" §152-181 as indicated in the draft text amendment.

Motion carried by a vote of 5 to 1, Ron Utley opposed.

6. Old Business

a. General Updates

Planning Director Graham stated we have made a conditional offer for a Community Development Planner and hope to have him soon. Spring Spree is this Saturday and we will be having approximately 40 vendors and hope to see everyone there.

7. Adjourn

A motion was made by Raymond Lee, seconded by Sarah Ahmad, to adjourn the meeting. Motion unanimously carried.

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Amy Fulp, Permit Technician  
Minutes were completed in  
Draft form on August 8, 2014

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Johnny Ransdell, Chairperson  
Minutes were approved on  
August 21, 2014

**MINUTES**  
**Special Called Meeting of the**  
**Aberdeen Watershed Review Board**

May 15, 2014  
Thursday, 6:00 p.m.

Robert N. Page Municipal Building  
Aberdeen, North Carolina

The Watershed Review Board met Thursday, May 15, 2014 at 6:00 p.m. for a Special Called Meeting. Members present were Chairman Johnny Ransdell, Raymond Lee, Kelvin Watson, Sarah Ahmad, Tim Marcham, and Ken Byrd. Alternate Ron Utley was called in to serve in one of the vacant seats. Members not present were Janet Peele and alternate Peter Koch. Others in attendance were Planning Director Pam Graham, Planner Jae Kim, and Permit Technician Amy Fulp,

1. Call to Order:

Chairman Ransdell called the meeting to order at 6:02 p.m.

2. New Business

All parties who expected to give evidence or testimony were sworn in before doing so.

a. Consideration of Watershed Authorization for SNIA #14-01 and Watershed Subdivision Approval for Crossway Church of Worship

Planning Director Graham stated we have a project of a little over 25 acres total and it is currently vacant. The entire acreage is located in our WS-II protected Watershed District. The current zoning of the property is R20-16.

Planning Director Graham stated we have a project that is 2 phases and being broken up into 2 tracts. The 25 acres will be sub-divided into two for the purposes of the project. Phase 1 is going to occur on tract 1 and will include the church facility, associated parking, and an on-site daycare. Phase 2 adds to the church facility, adds parking, some accessory uses, and residences.

Planning Director Graham stated the Planning Board will be looking at two things for the watershed. First thing is tract 1 which will be the 8 acre parcel that is going to be pulled out and they are asking tonight for a Special Non-Residential Intensity Allocation. The remaining acreage, which is about 18 ½ acres, the Planning Board will just want to consider that for general compliance with the Watershed Overlay District requirements.

Planning Director Graham stated what we have in the UDO are overlay districts. In this case we have a Watershed Overlay District that says everything in the UDO applies but there may have some higher standards that they are required to meet.

Planning Director Graham stated basically what our Overlay District does for the watershed is it adds restrictions that would maintain a lower intensity land use pattern. It does this by requiring single family uses to be limited to one dwelling unit per acre. For other residential, meaning other than single family, you have a maximum built upon area of 12%.

Planning Director Graham stated there is another special category that will allow for a project to have up to 70% built upon area if you have enough allocation to allow that in your municipality. Aberdeen has around 25 acres of what could be allowed for up to 70% impervious cover and our applicants are asking for 8 of the approximately 25 acres for this project. The consideration that you are going to have tonight for the 8 acres requested is called a Special Non Residential Intensity Allocation.

Planning Director Graham stated Tract 1 consists of eight acres. The Town has calculated the remaining allocation at approximately 25 acres, providing more than adequate allocation to permit the proposal for Tract 1. Tract 1 also proposes 42.6 impervious cover, and therefore does not exceed the 70% impervious coverage maximum allowed by the UDO for SNIA approval by the Watershed Review Board.

Planning Director Graham stated Tract 1 includes the church facility and associated parking as required by the UDO. Full build-out of the church will accommodate 700 parishioners. The UDO requires one parking space for every four seats in the main worship area, or 175 spaces for this project. The plan includes 176 parking spaces with an additional eight accessible parking spaces to meet ADA requirements. Additional impervious areas will be created with a drop-off loop at the main entry of the church, pedestrian walkways, a two-lane private drive to access the property, and the church building. Pedestrian walkways are proposed for one side of the private access road for this project.

Planning Director Graham stated Tract 1 plans include multiple devices and best management practices for handling stormwater onsite in a manner that is consistent with the objectives of the Watershed Overlay District. These include bio-retention areas within the parking lots that will prevent stormwater runoff from leaving the site, preservation of existing perimeter buffers and other vegetation on site to prevent erosion, and a pond on the adjacent tract designed to collect stormwater for the full project build-out.

These methods are among those recommended by NCDENR's BMP Manual and are intended to minimize off-site impacts and reduce negative contributions to water quality such as sedimentation and other forms of pollution.

Planning Director Graham stated Tract 2 proposes six single family and twelve multi-generational, multi-family units on an 18.53 acre tract. Overall impervious cover is proposed at 11.23%. And in addition to maintaining a percentage below the 12% threshold, Tract 2 proposes permeable paving for parking areas, drive aisles, and sidewalks, calls for significant areas of undisturbed existing vegetation including perimeter buffers, supports sheet flow of stormwater by minimizing alterations to the existing topography, and directs excess stormwater to an on-site pond designed to prevent off-site impacts for both tracts. These practices will eliminate the need for underground piping that would create negative water quality impacts in this sensitive watershed.

Planning Director Graham stated the Planning Board is going to be asked to conditionally rezone the entire 25 acre parcel to R20-16-C. This rezoning will be to accommodate the multi-family units that are proposed for the site. The conditional rezoning will create a new district that is specific to that parcel. It also applies to both tracts, all 25 acres.

Planning Director Graham stated the items that are proposed for this project are a church, parking, onsite daycare, garden shed, barn, single family dwellings, and multifamily dwellings. Multi-family uses are typically restricted to just a couple of zoning districts that we have now. With the conditional zoning the Planning Board can allow that as a condition for this R20-16-C District you are creating.

Planning Director Graham stated the Board of Commissioners will be making the final decision on this conditional zoning, the Planning Board is only making a recommendation to them tonight.

Planning Director Graham stated there is no sewer at this time and they will require septic systems. Water is available to them and they will work with Public Works on that.

Planning Director Graham stated, as far as sidewalks and drainage, there will be no curb and gutter and they will try and handle the water onsite. There will only be sidewalks on one side of the road.

Raymond Lee asked how this proposal is different from the first one; other than it is broken into two parts. Planning Director Graham stated they

will use 8 of the Town's 25 watershed allocation. The other 18 acres will use none because they are below the 12% impervious surface.

Planning Director Graham read over the recommended conditions.

Motion 1 made by Ken Byrd, seconded by Kelvin Watson, to approve the SNIA #14-01 for tract one for 8 acres as presented. Motion unanimously carried.

Motion 2 made by Ken Byrd, seconded by Tim Marcham, that the Watershed Review Board approves the project as proposed for tract two with recommended conditions:

1. A drainage system shall be designed that diverts stormwater away from surface waters and incorporates best management practices to minimize water quality impacts. As such sidewalks should only be installed on one side of the street and curb and gutter is not recommended for use. Low impact stormwater design shall be used as recommended by the UDO and indicated on preliminary plans.
2. A copy of an NCDENR approved Sedimentation and Erosion Control Plan shall be provided to the Planning Department prior to site disturbance.
3. The unbuilt portions of the tract shall remain in a vegetated or natural state, excepting those areas needed to manage stormwater, as well as septic and cemetery uses.
4. The final plat must be signed by the Chairman of the Watershed Review Board before recordation.

Motion unanimously carried.

## 7. Adjourn

A motion was made by Ron Utley, seconded by Ken Byrd, to adjourn the meeting. Motion unanimously carried.

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Amy Fulp, Permit Technician  
Minutes were completed in  
Draft form on August 4, 2014

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Johnny Ransdell, Chairperson  
Minutes were approved  
August 21, 2014

**MINUTES**  
**Joint Meeting of the**  
**Aberdeen Planning Board and**  
**Aberdeen Board of Commissioners**

June 19, 2014  
Thursday, 5:30 p.m.

Robert N. Page Municipal Building  
Aberdeen, North Carolina

The Aberdeen Planning Board met Thursday, June 19, 2014 at 5:30 p.m. in a Joint Meeting with the Aberdeen Board of Commissioners. Members present were Chairman Johnny Ransdell, Raymond Lee, Sarah Ahmad, Tim Marcham, Kelvin Watson, and Ken Byrd. Alternates Ron Utley and Peter Koch were also present. Member not present was alternate Janet Peele. Others in attendance were Planning Director Pam Graham and Permit Technician Amy Fulp, Planner Jae Kim, and Community Development Planner Daniel Martin.

1. Call to Order:

Mayor Robbie Farrell called the meeting to order at 5:35 p.m.

2. Presentation of the 2040 Comprehensive Land Use Plan draft

Kathy Liles gave her presentation on the 2040 Comprehensive Land Use Plan.

3. Adjourn

Mayor Robbie Farrell adjourned the meeting at 6:45 p.m.

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Amy Fulp, Permit Technician  
Minutes were completed in  
Draft form on 8/11/2014.

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Johnny Ransdell, Chairperson  
Minutes were approved on  
8/21/2014.

**MEMORANDUM TO THE PLANNING BOARD**

**From:** Pamela Graham, Planning Director  
**Date:** August 21, 2014  
**Subject:** Rezoning RZ#14-03

**REQUEST**

RZ #14-03 is a rezoning request to rezone properties totaling 17.61 acres located at the intersection of NC Highway 5 and Turning Leaf Way, identified by PID #s 20020625, 20060626, 20060627, 20060628, 20060629, 20060630, 20060631, 20060632, 20060633, 20060634, 20060635, 20060636, 20060637, 20060638, 20060639, 20060640, 20060641, 20060642, and 20020643, from HC (Highway Commercial) to the R18-14 Residential District.

**BACKGROUND**

Mr. Allan Cassavant requests a rezoning of undeveloped property originally intended for development as a commercial/industrial park to be known as Aberdeen Business Park. Two additional parcels set aside for the park adjoin the property and front Highway 5 and are not included in this rezoning request. Those properties are intended to maintain their Highway Commercial zoning and may be developed for uses consistent with that district.

**ANALYSIS**

The attached zoning map illustrates the current zoning in the vicinity of the subject tract. The land use patterns, where development has occurred, has been consistent with the zoning indicated on the map. Properties immediately west and north of the subject property are located in Pinehurst's ETJ and remain mostly undeveloped. South of the property are HC (fronting Highway 5) and R20-16 zoning and across Highway 5 to the east is property zoned R10-10. The R20-16 zoned property is currently being developed as the Meadow Ridge subdivision approved in 2013 and the R10-10 parcel is an undeveloped +/- 276 acre property that adjoins The Country Club of North Carolina development along much of its northern border and The Pit Golf Links to the south.

An aerial image of the property and immediate vicinity is also enclosed for reference. An existing road configuration is evident on this image; this road network is expected to remain unchanged for future development. The proposal does not create a greater number of lots than what has previously been platted, but a recombination is proposed involving the shifting of lot lines to reconfigure lot sizes and accommodate open space requirements.

Among the uses permitted in the R18-14 district are:

- Single family Detached Dwellings
- Group Homes
- Neighborhood Utility Facilities
- Subdivisions
- Worship Facilities (with a Conditional Use Permit)
- Libraries, Museums, Art Galleries (with a Special Use Permit)
- Social Fraternal Clubs and Lodges (with a Special Use Permit)

Uses not permitted in the R18-14 district include:

- Multi-Family Residences
- Hotels and Restaurants
- Retail Sales and/or Services
- Offices
- Manufacturing
- Educational Facilities
- Recreation, Amusement, Entertainment uses
- Hospitals
- Motor Vehicle Sales, Rentals, or Repair

Zoning considerations must address the potential for the decision to be classified as “spot zoning”. While not illegal in North Carolina, spot zoning must be clearly supported by a reasonable basis in order to withstand a legal challenge. There is one property in Aberdeen’s jurisdiction that is currently zoned R18-14. This property is located +/- 1.25 miles “as the crow flies” from the subject property and has commonly been referred to as the Martin Property. The parcel contains 121 acres and is currently undeveloped. Other residentially zoned parcels exist to the southwest (R20-16) and to the east across Highway 5 (R10-10). R18-14 zoning differs from these two zoning districts primarily in its dimensional requirements, detailed in the table below:

Zoning District	Min. Lot Area (in square ft. or acres)	Min. Area per D.U. (in square ft.)	Min. Lot Width (in feet)	Min. Front Yard Setback (in feet)	Min. Side Yard Setback (in feet)	Min. Rear Yard Setback (in feet)	Maximum Bldg. Height (in feet)
R20-16	20,000	1,600	100	35	15	30	35
R18-14	20,000	1,400	75	35	15	30	35
R10-10	10,000	1,000	75	35	15	30	35

As indicated in the table, the dimensional standards in the R18-14 district are in the midrange in a comparison of the three residential districts represented in the vicinity of the Highway 5 corridor, and differs from the R20-16 district only in the minimum lot width, which is reduced from 100’ to 75’. At least five lots in the preliminary drawings have widths between ninety and one hundred feet.

In the 1972 *Blades v. City of Raleigh* spot zoning case, the following definition offered some clarification to what constitutes spot zoning:

*A zoning ordinance, or amendment, which singles out and reclassifies a relatively small tract owned by a single person and surrounded by a much larger area uniformly zoned, so as to impose upon the smaller tract greater restrictions than those imposed upon the larger area, or so as to relieve the small tract from restrictions to which the rest of the area is subjected, is called "spot zoning."*

First among the Board’s decisions is if this rezoning request could be considered spot zoning according to the definition in the previous paragraph. If the answer is yes, or potentially yes, then the justification of a favorable decision on the rezoning must be considered. Professor and Attorney David Owens, considered a foremost authority on land use law in North Carolina,

addresses spot zoning in depth in two articles/blog posts. A summary of relevant information is provided below.

*A local government adopting a "spot" zone has an affirmative obligation to establish that there is a reasonable public policy basis for doing so. Thus the public hearing record should reflect consideration of legitimate factors for differential zoning treatment of the property involved. Does the property have different physical characteristics that make it especially suitable for the proposed zoning, such as peculiar topography or unique access to roads or utilities? Are there land uses on or in close proximity to the site that are different from most of the surrounding property? Would the proposed range of newly permissible development be in harmony with the legitimate expectations of the neighbors?*

*If there is a reasonable basis for treating particular property differently from nearby or similar property, that should be enough to support the validity of the zoning. In cases where rezonings were not upheld by the courts, the rezoning was determined to have minimal benefit to the public and substantial detriment to neighbors.*

*In sum, the heightened scrutiny of spot zoning applies when there is the appearance of possible discriminatory treatment (either favorable or negative) for a few, rather than a decision based on the larger public interest.*

Professor Owens outlines the following points for the purpose of deliberating a rezoning proposal to reduce the likelihood that it may be considered spot zoning:

**1. The size of the tract in question:** The first factor to be considered in determining whether spot zoning is reasonable is the size of the tract. The general rule is that the smaller the tract, the more likely the rezoning will be held invalid. However, it is very important to consider the size of the tract in context: a 1-acre parcel may be considered large in an urban area developed in the 1920s, but very small in the midst of an undeveloped rural area.

*The total acreage included in this rezoning request is 17.61 acres, with individual parcels ranging from .48 acres to 6.52 acres. Parcels within ½ mile of the proposed development range in size from .34 acres to 276 acres. **Staff does not consider the proposed rezoning to constitute spot zoning based on the size of the properties to be rezoned.***

**2. Compatibility with the Land Development Plan:** The second factor in a spot zoning analysis is compatibility with the existing comprehensive zoning plan. This involves an inquiry into whether the rezoning fits into a larger context involving rational planning for the community. Whether set forth in a formal comprehensive land-use plan or reflected in an overall zoning scheme, zoning regulations must be based on an analysis of the suitability of the land for development (e.g., topography, soil types, wetland locations, and flood areas), the availability of needed services (e.g., water, sewers, roads, and rail lines), and existing and needed land uses. To the extent that a small-area rezoning fits into a logical preexisting plan that is clearly based on this type of analysis, it is much more likely to be upheld.

*Consistency with the adopted plans are addressed further in the following section; however, staff recognizes that a 152 lot residential development is currently being constructed on property immediately to the southwest of the subject property and residential uses either currently exist or are anticipated on the majority of properties within a ½ mile radius. Commercial properties in the region are primarily concentrated*

*along the Highway 5 corridor. The two parcels associated with the development that front Highway 5 are not proposed for rezoning and will remain Highway Commercial (HC). These properties are expected to be developed at a later time. Though not reflected in the Future Land Use Map, the zoning configuration proposed is consistent with the existing pattern in this vicinity of town. The Future Land Use Map included in the 2040 Plan draft also indicates commercial uses for the subject parcels, with a transition to residential for adjacent parcels to the west. **Staff has determined that the proposed rezoning is inconsistent with the Future Land Use Map while recognizing that current and future residential uses are the predominant condition for the general vicinity of the subject properties.***

**3. Benefits and Detriments:** The third factor in spot zoning analysis is who benefits and who is harmed by the rezoning and what the relative magnitude of each consequence is. If the rezoning is granted, will it greatly benefit the owner? Will he or she be seriously harmed if it is denied? The same questions must be asked for the neighbors and the community at large, and then the effects on all three must be balanced. In a spot zoning challenge the courts, rather than the governing board alone, review and weigh the balance of harm and benefit created by the rezoning. Although the court may be sympathetic to a situation in which there is considerable benefit to the owner and only modest harm to others, even a substantial benefit for the owner will not offset substantial harm to others.

*No substantial harm to adjoining property owners or the community at large is anticipated as a result of the proposed rezoning. A rezoning from commercial to residential is often referred to as a “down-zoning” because it changes the zoning classification to one that is less intensive or dense. The current rezoning request is made on behalf of the present owner of the property, so it is reasonable to assume that a benefit is expected as a result of the rezoning. However, proposed development with the objective to provide retail services to nearby residents would just as likely benefit should the property remain in a commercially zoned district. **Barring any objections from the public to the rezoning request, staff has no evidence that the rezoning would result in harm to adjacent property owners or the community at large.***

**4. Relationship of Uses:** The fourth factor in spot zoning analysis is the relationship between the proposed uses and the current uses of adjacent properties. The greater the disparity, the more likely the rezoning is to be held illegal.

*Current uses on immediately adjoining properties are largely low density residential in character, or are vacant. **The disparity between the proposed use for the subject properties and the current uses of adjacent properties is moderate and largely consists of higher development density for the subject properties.***

#### **CONSISTENCY WITH FUTURE LAND USE MAP AND LAND DEVELOPMENT PLAN**

The Future Land Use Map identifies these parcels for commercial use, consistent with the current zoning. Inconsistency with the Land Use Plan does not prevent approval of the rezoning, but it should be acknowledged and discussed by the Planning Board. The move from Commercial zoning to Residential can be supported by population growth in Aberdeen of nearly 6% since 2010, more than twice the overall growth rate for the state in the same period. A need for additional residential units to support this growth can be justified.

## **IMPACT ON WATER, SEWER AND TRAFFIC**

Aberdeen currently makes water service available to this area, though sewer is currently not available. On-site septic will be required for development, regardless of the property's zoning.

The UDO requires a traffic impact analysis (TIA) for new uses generating more than 600 vehicle trips per day. The standard source for estimating trip generation is the American Association of State Highway and Transportation Officials (AASHTO), who provides an average of 9.57 trips per day per single family residential unit. The subject property is expected to support a total of eighteen (18) single family units, placing the estimated trips per day at 172.26, well below the threshold for the town to require a TIA. Turning Leaf Way, which dead ends into the Moore County Landfill, is currently considered a Minor Street, defined by the UDO as: "A street whose sole function is to provide access to abutting properties. It serves or is designed to serve not more than nine (9) dwelling units and is expected to or does handle less than seventy-five (75) trips per day." With the development of Meadow Ridge, the expected increase in traffic will place Turning Leaf Way in the Collector Street category, expecting to serve between 100 and 400 dwelling units and designed to carry more than 800 trips per day. The decision for requiring a TIA for Meadow Ridge was deferred to NCDOT, as both Highway 5 and Turning Leaf Way are state roads. NCDOT did not require that a TIA be conducted. Staff will insure that NCDOT be notified of the change of use for this property and that the applicant comply with any requirements resulting from that notification.

## **STAFF RECOMMENDATION**

Staff recommends that the Planning Board consider Rezoning RZ #14-03 and make a recommendation to the Board of Commissioners, using the following motion format:

Motion 1:

- RZ #14-03 (is or is not) consistent with the 2030 Land Development Plan;

Motion 2:

- The Planning Board recommends approval of RZ #14-03 to the Board of Commissioners,  
or,
- The Planning Board recommends denial of RZ #14-03 to the Board of Commissioners

Enclosures: Vicinity Zoning Map  
Vicinity Aerial Map