



# Chatham County, NC

## Legislation Text

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**File #:** 17-2210, **Version:** 2

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Vote on a rezoning request by Morgan Property Group for Parcels 2719, 2720, 2721, 69884, 60612, 2508, from R-1 Residential to CD-CB Conditional District Community Business for a retail shopping center with specific uses prohibited on approximately 27.53 acres

### **Action Requested:**

A rezoning request by Morgan Property Group for Parcels 2719, 2720, 2721, 69884, 60612, 2508, from R-1 Residential to CD-CB Conditional District Community Business for a retail shopping center with specific uses prohibited on approximately 27.53 acres

### **Introduction & Background:**

A legislative public hearing was held on the request June 19, 2017. Planning staff presented the request. Also present were Mack Paul with the Morningstar Law Group, Jeff Surrency with the Morgan Property Group, and other representatives for the applicant. Also in attendance were approximately 30 residents of the Polk's Landing subdivision and surrounding neighborhoods who spoke in opposition of the request. Mr. Paul presented a PowerPoint presentation a copy is available on the Planning Department website.

Numerous emails and petitions have been provided to the Planning Department and have also been placed on the website for review (Attachment No 1). The following findings are based on the application and the supporting documentation provided, as well as the comments and concerns that have been provided in response to the application.

### **Discussion & Analysis:**

The property under consideration for rezoning is currently zoned R-1, Residential and the uses allowed are primarily residential with a minimum lot size of one dwelling unit per 40,000 square feet. The requested zoning of Conditional District - Community Business is "similar to the Neighborhood Business District, but at a slightly larger scale, roughly equivalent to a 80,000 square foot grocery store and ancillary services. No building within this district shall exceed 80,000 square feet and the cumulative building square footage shall not exceed 320,000 square feet."

The properties under consideration for rezoning are located at or near the intersection of Polks Landing Road and US 15-501 North. Polks Landing Road is a two lane road that serves several residential developments and is the only access for these developments. US 15-501 North is a 4 lane divided median road that is a major transportation route within the county and region. Immediately south of Polks Landing Road and on the east side of US-15-501 North is Lystra Road.

The zoning on the properties to the west and south are currently zoned R-1, Residential, and

properties on the other three corners of US 15-501 North, Polks Landing Road, and Lystra Road are zoned CU-B-1, Conditional Use Business. The intersection of Polks Landing and Lystra Roads are offset, but the approved developments on the three corners span north and south of both roads (see gis map included online). The following is a breakdown of the non-residential rezonings that have been approved near the properties under consideration for rezoning:

- Polks Village (north of Polks Landing Road) - 125,000 square feet and currently under development
- Chatham Downs (southeast corner of Lystra Road and 15-501 N) - 117,000 square feet and largely built out with an addition to the grocery store currently submitted for permitting
- Williams Corner (northeast corner of Lystra Road and 15-501N) -348,500 square feet and no development has occurred.

There are also other projects that have been rezoned for mixed use commercial developments in the surrounding area that are under construction and include:

- Briar Chapel (approximately 1.5 miles south) - 510,000 square feet with development of approximately 50,000 square feet completed and grading occurring on the remainder of the commercial space
- Fearrington Place (approximately 2.5 miles south) - 81,000 square feet and no development has occurred.

The rezoning application indicates that this development is intended to be anchored by a grocery store and there are three grocery stores within two miles of this location. Several of the other commercially zoned projects that are under development or have not started construction are approved for a grocery store.

The parcels are located in a WS-IV Protected Area watershed district and also within the Jordan Lake drainage. The Watershed Protection Ordinance limits built upon area for non-residential projects to 24% if curb and gutter drainage is used in parking areas or 36% if it is not used.

Conditional Zoning districts are zoning districts in which the development and use of the property is subject to predetermined ordinance standards and the rules, regulations, and conditions imposed as part of a legislative decision creating the district and applying it to the particular property.

Some land uses are of such a nature or scale that they have significant impacts on both the immediate surrounding area and on the entire community, which cannot be predetermined and controlled by general district standards. The review process established in this Ordinance provides for accommodation of such uses by a reclassification of property into a conditional zoning district, subject to specific conditions, which ensure compatibility of the use with neighboring properties. A conditional zoning district is not intended for securing early zoning for a proposal, except when that

proposal is consistent with an approved land use plan or the proposal can demonstrate that public infrastructure needed to serve the development will be made available within a reasonable time period.

The applicant held the community meeting, as required by the zoning ordinance, on April 27, 2017. A listed of issues discussed was attached with the application and include concerns such as noise, stormwater retention, view from neighboring residential subdivision and competition with nearby grocery stores.

An on-site meeting with the applicant, planning staff, planning board members, Commissioner Hales, and residents of the Polk's Landing subdivision was held on June 8, 2017. Photos are included as attachment No. 3 as well as photos from the June 2, 2017 posting of the property.

The applicant met with the Chatham County Appearance Commission (CCAC) on April 26, 2017. The CCAC recommended preserving as many of the existing mature cypress and hardwoods as possible along the perimeter of the parcels fronting 15-50, especially where no buildings or parking areas will be located. The applicant was reluctant to commit to what they could preserve due to concerns about the proposed grading plans they were just starting to develop. The CCAC thought the existing vegetation could remain instead of having to replant it a later date once construction was complete. The applicant submitted a revised landscape plan (provided on the website) on June 19, 2017 where it is stated there is to be perimeter buffer landscape that will be met with a combination of existing vegetation and newly planted trees and shrubs. It is still unclear the extent in which the developer will leave existing vegetation.

There was also discussion in detail about the requirements to ensure parking lot canopy trees shall survive. This would be provided by removing two parking spaces at each tree island to allow more pervious area for root growth and spread of the tree. The revised landscape plan does not show the reduction in the number of parking spaces and shows more parking than is required. The CCAC felt that if they would remove the extra spaces, the areas around the canopy trees could be made larger to help ensure the trees flourish. On July 25, 2017, planning staff received a parking island design that does show an increase in the perimeter areas around the trees to be planted in an effort to ensure survivability of the plantings.

There are five standard items listed in the Zoning Ordinance that must be addressed by an applicant when submitting a rezoning application. The applicant has addressed those items in the application materials or in supplemental material and they are also discussed below.

**Item #1: The alleged error in this Ordinance, if any, which would be remedied by the proposed amendment with a detailed description of such error in the Ordinance and detailed reasons how the proposed amendment will correct the same.** While there is no purported error in the Ordinance being addressed by this request, the Applicant notes that the County is undergoing an update to the Comprehensive Plan. The update includes a recommendation to designate the area where this project is proposed as a Community Center. As noted, the current draft of the

comprehensive plan has not been adopted by the Board of Commissioners and any decision should be based on the currently adopted Land Conservation and Development Plan.

- **It is planning staff opinion this standard is met.**

**Item #2: The changed or changing conditions, if any, of the area or in the County generally, which make the proposed amendment reasonably necessary to the promotion of the public health, safety, and general welfare.** Development along this section of the 15-501 corridor has been shifting to non-residential uses, specifically commercial, and where side roads intersect. Residential uses fronting onto 15-501 in this corridor are interspersed between the commercial nodes. Additionally, the need for goods and services in this area are growing as more residential neighborhoods are being built in the vicinity. For example, per the application, a study conducted by the County regarding the US 15-501 Corridor reveals that since 2000, there has been rapid population growth along the corridor and that residential growth has outpaced non-residential in that same period. The requested rezoning meets these changing conditions by offering more goods and services for nearby residential uses.

The other three corners of the intersection have been approved for commercial, office, and medical uses. Although Williams Corner, which is located diagonal from this proposed location, hasn't been developed, this applicant has stated they are appealing to the "going home" traffic heading south on US 15-501. All other major grocers are located on the northbound side of the highway.

There is also still commercial space in Briar Chapel's commercial nodes to be developed as well as a commercially approved site on the south direction of 15-501 at Morris Road known as Fearington Place. That location has an approved site plan with outparcel and was expected to be a grocery as well.

- **It is planning staff opinion this standard is met.**

**Item #3: The manner in which the proposed amendment will carry out the intent and purpose of any adopted plans or part thereof by encouraging the expansion and support of current business located within the county.** Part X., Goal 3 of the Land Use Strategic Plan recognizes Chatham County as a desirable site for commercial development. The proposed amendment is in line with this stated goal since a commercial district is being requested. The County also has a stated goal of establishing transit service in this area. The Applicant submits that the proposed amendment would help justify transit services in this area by proving a destination for such transit other than merely residential areas.

The County is undergoing an update to its Comprehensive Plan. Though not yet adopted, the Applicant found various items related to the update informative for this project. The scope of work included an analysis of the 15-501 corridor north of the Town of Pittsboro. Among other things, the analysis identifies US 15-501 as being the appropriate location for the expansion of non-residential uses that could provide goods, services, and employment opportunities. However, additional design standards may be needed as part of the implementation of the comprehensive plan once it is

adopted.

- **It is planning staff opinion this standard is met.**

**Item #4: The requested amendment is either essential or desirable for the public convenience or welfare.** The applicant states the request expands the ability for retailers to locate conveniently within Chatham County. As expressed in its study of the US 15-501 Corridor, the County has recognized that there is a lack of retail uses on the ground in this corridor. Additionally, the study makes clear that the tax base is unbalanced, with an undue portion of the tax burden falling on residential property owners.

There were numerous letters and emails in opposition from the surrounding residential property owners. One major concern is that although competitive business is legal and good in most respects, there could be a damaging effect by having too much one type of business in such close proximity to each. Specifically, the Harris Teeter on the opposite side of 15-501, the Lowes grocery less than one mile to the north and the Walmart grocery less than two miles to the north. The applicant provided some marketing information that includes support for all business in this area would be needed even with the completion still to be done with Briar Chapel as well as the other currently filled subdivisions. Per the study an estimate of about 35,000+ people reside in about an 8 mile radius which supports multiple grocery businesses. The approved development in Pittsboro known as Chatham Park may also play a critical part in business expansion in Chatham County.

The Land Conservation and Development Plan states on Page 4 that one of the major rec needs of surrounding rural areas. This has been upheld with the rezoning of the other three corners of this intersection.

- **It is planning staff opinion this standard is met.**

**Item #5: All other circumstances, factors, and reasons which the applicant offers in support of the proposed amendment include** a report provided by Ramey Kemp and Associates following the public hearing dated July 13, 2017 regarding the street capacity and configurations being recommended to NCDOT for approval. This new report is on the planning website. The report basically states there will be some needed improvements but that based on the new 10 year projection, should be acceptable. The county has not received the final review from NCDOT on this new report.

The property will be served by county water and will maintain their own septic system on the southern portion of the development parcel.

The applicant states they set out to find a suitable location for a retail development in Chatham County in response to the community's growing needs. The subject site was selected due to its ideal location on the "going-home" (southbound) side of US 15-501. US 15-501 has had significant road improvements which also factored into the selection of the site. There is a traffic signal at the intersection of Lystra Road and 15-501 N which would be accessed by this site. These factors, paired

with the relatively flat topography and lack of sensitive environmental features on the site ultimately led Morgan Property Group to select the site for the proposed retail development.

- **It is planning staff opinion this standard is not met**

**The Planning Board met at their regularly scheduled meeting on August 1, 2017 due to staff exercising the option to hold the review for one month following the public hearing. This allowed staff time to review additional documentation that was submitted during the public hearing and also after the meeting.**

**There were several citizens who were present during the Planning Board meeting and provided additional comment. Some concerns expressed were general opposition to the rezoning from residents in Polks Village subdivision; that there are currently a number of vacant store fronts in the area and that several businesses have migrated between commercial centers; clarification that a community center as defined in the Land Conservation and Development Plan does not necessitate the development of all four corners of an intersection, traffic concerns and lack of clarification about improvements on Polks Landing Road and US 15-501; and the continued support of the already approved and operating retail establishments.**

**One adjacent landowner who stated he was approximately 38 feet from the property line was in favor of the development.**

**Mack Paul, agent for the applicant, reviewed information from the public hearing including and planning staff reviewed the agenda notes.**

**Planning Board discussion included that the traffic impact study showed levels of service at a grade F; that a specific grocery store has been mentioned for the site, but that is irrelevant for discussion; that there are three grocery stores in close proximity to this location; that Polks Landing subdivision is an established neighborhood and the project would be disruptive; and that there are other properties already zoned for a grocery store in the area that are vacant. The voted 10-0 to recommend denial of the rezoning.**

**Recommendation:**

**The Planning Board recommends, by unanimous vote 10-0, denial of this request to the Board of Commissioners citing that there is no current need for additional square footage of retail when approximately 900,000 square feet is already approved and no desirable plan has been submitted to mitigate traffic concerns.**