



**CITY OF LINCOLNTON
PLANNING BOARD
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BOARD MEMBERS: Änd Lynn, Chair, andmyynn@gmail.com; Worth Roberts, Vice-Chair, worth.roberts@charter.net; Gene Poinsette, poinsetteg@charter.net; Kathryn Yarbrow, kyarbro206@gmail.com; Jamel Farley, afarley2351@gmail.com; Becky Burke, beckyburke940@gmail.com; Jerry Hoffman, jlskhoffman@charter.net; Rebecca Abernethy, rabernethy21@bellsouth.net

Tuesday, October 17, 2017 Meeting

PRESENT: Änd Lynn, Becky Burke, Kathryn Yarbrow, Worth Roberts, Jerry Hoffman, Gene Poinsette, Jamel Farley, Rebecca Abernethy

ABSENT: None

Call to Order

Chairman Änd Lynn called the meeting to order and recognized that all members were present.

Approval of Minutes

Chairman Lynn asked the Board if there were any corrections or additions to the minutes of the August 15, 2017 meeting.

Motion: Worth Roberts made a motion to accept the minutes as written and distributed. Gene Poinsette seconded. Motion carried unanimously.

ZTA-5-2017

Application from the Lincolnton Planning Department requesting an amendment to Section 153.315 of the Unified Development Ordinance to text and map to modify the provision regarding consistency with the comprehensive plan to conform to recently adopted state legislation.

Laura Elam addressed the Board and presented the following:

In 2005, the State enabling legislation related to planning was amended to require that governing boards approve a statement that describes consistency with their adopted comprehensive plan when they consider and decide upon requests for rezonings and zoning ordinance text changes.

STATE REGULATORY REFORM ACT

During the 2017 legislative session, the State adopted the 2016 - 17 Regulatory Reform Act. The Act amends the state statutes to add more specificity to the legislation governing zoning amendments and requirements for consideration of consistency with the comprehensive plan.

The new statute now requires approval of a statement that describes plan consistency specifically in one of three forms:

1. A statement approving the proposed zoning amendment and describing its consistency with the comprehensive plan;
2. A statement rejecting the proposed zoning amendment and describing its inconsistency with the comprehensive plan; or
3. A statement approving the proposed amendment and declaring that this also amends the comprehensive plan along with an explanation of the change in conditions to meet the development needs of the community that were taken into account in the zoning amendment.

With each of these alternatives, the statement is also to include an explanation of why the governing board deems the action reasonable and in the public interest.

PROPOSED AMENDMENT

The proposed amendment adds the above requirements to the existing section of the zoning regulations regarding City Council's consideration of the comprehensive plan with decisions on zoning amendments in accordance with recent state legislation.

STAFF RECOMMENDATION

Staff recommends approval of the amendment as outlined above in order to comply with recently adopted state legislation.

Motion: Worth Roberts made a motion to approve the text amendment. Jerry Hoffman seconded. Motion carried unanimously.

ZTA-6-2017

Application from the Lincolnton Planning Department requesting an amendment to Section 153.031 of the Unified Development Ordinance to amend the definitions of the terms "Subdivision" and "Minor Subdivision" to comply with recently adopted state legislation.

Laura Elam addressed the Board and presented the following:

The North Carolina General Statutes outline local authority to regulate the subdivision of land. As part of the State enabling legislation for subdivision authority, four types of divisions of land are specifically exempted from local subdivision regulation including:

- Recombination of lots when the total number of lots is not increased and the resultant lots meet standards;
- Divisions creating lots greater than 10 acres where no street right-of-way is involved,
- Public acquisition for widening or opening of streets, and
- Division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots where no street right-of-way is involved and where the resultant lots meet standards.

The City of Lincoln, like most jurisdictions, has regulations and standards for new streets, infrastructure, open space, etc along with requirements for recording of a plat of the subdivision with the register of deeds. Large subdivisions involving the creation of new roads, more than 10 acres or more than 10 lots are reviewed and approved as “Major Subdivisions” which require submittal of a sketch plan, preliminary plan and final plat approval. Small subdivisions are reviewed and approved through the “Minor Subdivision” process which involves only the submittal, approval and recording of a final plat.

STATE REGULATORY REFORM ACT

During the 2017 legislative session, the State adopted the 2016 - 17 Regulatory Reform Act. The Act makes the following two changes regarding subdivision regulation:

1. The subdivision of a tract in accordance with the terms of a probated will or in accordance with intestate succession is added to the list of exempt subdivisions and
2. A city may require only a plat for the recording of a subdivision that involves the division of a tract greater than five acres in single ownership that meets the following criteria:
 - The tract is not exempted under the “greater than 10 acres / no right-of-way” exemption,
 - The tract has not been subdivided as an exempt subdivision in the past 10 years,
 - The tract is greater than five acres,
 - No more than three lots will be created, and
 - All resulting lots will comply with the lot dimension size requirements of the zoning regulations; the use of the lots will conform with zoning requirements, and the lots will have a permanent means of ingress and egress.

PROPOSED AMENDMENT

The attached proposed text amendment makes the changes to the City's Subdivision Ordinance necessary to conform to the recently adopted legislation.

STAFF RECOMMENDATION

Staff recommends approval of the amendment of the subdivision regulations as outlined above in order to conform to recent state legislation.

Motion: Jerry Hoffman made a motion to approve the Conditional Use Permit. Jamel Farley seconded. Motion carried unanimously.

CUP-6-2017

Application from William McDaniel requesting a conditional use permit to operate a Tavern in the Planned Business (PB) District. The subject property is located within the Lincolnton Plaza Shopping Center at 1565 North Aspen Street (Parcel ID 57488).

Mark Carpenter addressed the Board and presented the following:

The applicant is requesting a conditional use permit to open a tavern/pub. The subject property is located in the Lincolnton Plaza Shopping Center. (See attached maps).

The property is zoned Planned Business (P-B) and the proposed use requires conditional use permit approval. Surrounding land uses are mostly retail and commercial.

The applicant proposes a tavern/pub and describes it as a place to relax, enjoy alcoholic beverages, with a DJ or Live Music as entertainment. Hours of operation will be from 8:00 pm – 2:00 am and no food will be served.

COMPLIANCE WITH CONDITIONAL USE PERMIT APPLICATION REQUIREMENTS

Section 153.236 of the Lincolnton Unified Development Ordinance requires that conditional use permit applications contain specific terms and meet specific conditions. The application meets all the requirements of that section.

OTHER CONDITIONAL USE PERMIT REQUIREMENTS

Section 153.237 of the Lincolnton Unified Development Ordinance requires that the City Council make the following findings:

1. The use will not materially endanger the public health or safety if located where proposed and developed according to plan, and
2. The use meets all required conditions and specifications, and

3. The use will not substantially injure the value of adjoining or abutting property unless the use is a public necessity, and
4. The location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and will be in general conformity with the Lincoln Land Use Plan and other plans for the physical development of the city as officially adopted by the City Council.

COMPLIANCE WITH SECTION 153.237

1. The applicant will need to provide evidence that the use will not endanger the public health or safety.
2. The proposed use meets all required conditions and specifications.
3. The applicant will need to provide evidence that the use will not have any negative impacts on the value of adjoining or abutting properties.
4. The use is in conformity with the Lincoln Land Use Plan in that the site is located within the Planned Business Planning Area.

STAFF REVIEW COMMITTEE COMMENTS

The Staff Review committee made the following comments:

- (1) Building permits for the upfit of the space will need to be obtained from Lincoln County Inspections.
- (2) A permit may be needed from Lincoln County Environmental Health.
- (3) All requirements of State ABC Commission must be met and all permits obtained.

STAFF RECOMMENDATION

Staff recommends approval of the conditional use permit subject to the applicant satisfactorily proving the findings of fact and subject to the Staff Review Committee comments.

Mr. McDaniel addressed the Board and stated his intentions.

There was a brief discussion between Staff and the Board.

Motion: Gene Poinsette made a motion to approve the text amendment. Rebecca Abernethy seconded. Motion carried unanimously.

CUP-7-2017

Application from HWP Realty, LLC requesting renewal of a conditional use permit, issued in 2015, to construct a pharmacy in the Planned Business (PB) and Special Highway Overlay (SHO) Districts. The subject property is located on the south side of East Main Street approximately 350 feet east of the intersection of East Main Street and U.S. Highway 321 (Parcel ID 91738).

Laura Elam addressed the Board and presented the following:

On October 1, 2015, the Lincolnton City Council approved a conditional use permit to construct a new 4,000 square foot pharmacy on property located on the south side of East Main Street approximately 350 east of the intersection of East Main Street and U.S. Highway 321 (Parcel ID 91738). The permit expires this month and the applicant is asking for a 24 month extension.

Section 153.243 of the Lincolnton Unified Development Ordinance states that the applicant shall have a period of twenty-four (24) months from the date of issuance of the conditional use permit to secure a building permit for the project. If the applicant fails to obtain a building permit within the time allowed, the Zoning Administrator notifies the applicant of such finding, and within sixty (60) days of notification, the Planning Board is to make a recommendation concerning rescinding or extending the conditional use permit to the City Council. The City Council, after having conducted a public hearing to consider the matter, may extend the life of the conditional use permit for a specified period of time.

ACTIONS BY APPLICANT SINCE 2015

Since the renewal of the conditional use permit in 2015, no activity has taken place and no building permits have been issued. The owner has applied for an extension asking that the permit be renewed.

STAFF RECOMMENDATION

The applicant is not asking for any changes to the permit or the conditions attached to it by the City Council when it was approved originally in 2015. Staff recommends that the permit be extended for a period of two (2) years.

Mr. Patrick Fletcher represented HWP Realty, LLC at the meeting.

There were no questions from the Board.

Motion: Becky Burke made a motion to approve the renewal of the Conditional Use Permit. Jamel Farley seconded. Motion carried unanimously.

CUP-8-2017

Application from Concord Properties requesting approval of a conditional use permit to construct a Restaurant in the Planned Business (PB) and Special Highway Overlay (SHO) Districts. The subject property is located on the south side of East Main Street approximately 650 feet east of the intersection of East Main Street and U.S. Highway 321 (Parcel ID 22484).

Laura Elam addressed the Board and presented the following:

Concord Properties is requesting a conditional use permit to construct a new 4,988 square foot restaurant with a drive through on property located on the south side of East Main Street approximately 650 east of the intersection of East Main Street and U.S. Highway 321 (Parcel ID 22484).

The property is zoned Planned Business (P-B) and Special Highway Overlay (SHO) districts. Most of the nearby properties are zoned P-B.

The property is bounded by East Main Street to the north, Peoples Bank to the east, CSX Railroad to the south, a vacant parcel immediately to the west and an urgent care center further to the west.

SITE PLAN

The site plan proposes a new restaurant building of approximately 4,988 square feet. Access will be provided by two proposed driveway connections to East Main Street plus a connection to the existing urgent care center driveway. The site's western driveway will be channelized to prevent left turns out and the eastern driveway will be configured to serve as an exit with right turns out only. Forty two (42) parking spaces will be provided.

COMPLIANCE WITH WATER SUPPLY WATERSHED STANDARDS

The property is located in the WS-IV watershed protected area which allows up to 70% built upon area through the "10/70 Option". The site plan indicates that 63 % of the site will be impervious cover.

COMPLIANCE WITH CONDITIONAL USE PERMIT APPLICATION REQUIREMENTS

Section 153.236 of the UDO requires that a conditional use permit application contain specific terms and meet specific requirements. The site plan needs to include the following information:

A landscaping plan noting parking lot landscaping and street landscaping.

OTHER CONDITIONAL USE PERMIT REQUIREMENTS

Section 153.237 of the Unified Development Ordinance requires that four findings be determined by City Council. They are as follows:

1. The use will not materially endanger the public health or safety if located where proposed and developed according to plan, and
2. The use meets all required conditions and specifications, and
3. The use will not substantially injure the value of adjoining or abutting property unless the use is a public necessity, and
4. The location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and will be in general conformity with the Lincolnton Land Use Plan and other plans for the physical development of the City as officially adopted by the City Council.

COMPLIANCE WITH SECTION 153.237

1. It does not appear that the use will endanger the public health or safety.
2. The use meets all required conditions and specifications with the exception of the item listed above.
3. It does not appear that the use will substantially injure the value of adjoining or abutting property.
4. The use is in conformance with the land use plan.

STAFF REVIEW COMMITTEE

The Staff Review Committee made the following comments:

- (1) Erosion control plan must be submitted to and approved by Lincoln County.
- (2) Building plans must be approved by Lincoln County Inspections and the City Fire Marshal.
- (3) NCDOT driveway permit must be reviewed and approved by the NCDOT.
- (4) Utility plans must be coordinated with and approved by the Public Works and Utilities Department. A grease trap will be required.
- (5) The existing sidewalk along East Main Street must be preserved or replaced with new sidewalk meeting City and ADA requirements.

STAFF RECOMMENDATION

Staff recommends approval of the conditional use permit subject to the ordinance requirements and Staff Review Committee comments noted above.

There was a question as to what the proposed fast food restaurant would be. Jeff Irvin, who represented Concord Properties at the meeting, stated that it would be a Chick-Fil-A restaurant. Questions regarding the site plan arose from Patrick Fletcher, representing HWP Realty, LLC, whose property abuts the proposed site. There was a brief discussion between Mr. Irvin and Mr. Fletcher regarding a private driveway and a recorded easement agreement.

Motion: Jerry Hoffman made a motion to approve the Conditional Use Permit. Jamel Farley seconded. Motion carried unanimously.

CU-ZMA-3-2017

Application from Greg Houser requesting a conditional rezoning from R-25 to CU-NB District for the purpose of constructing a Dance Studio. The subject property is located on the east side of Startown Road approximately 750 feet north of the intersection of Startown Road and Reepsville Road (Parcel ID 21757).

Mark Carpenter addressed the Board and presented the following:

The subject property is a 1.45 acre site located on the east side of Startown Road, approximately 750 feet north of the intersection of Startown Road and Reepsville Road (Parcel ID 21757). The site is undeveloped. Land uses in the area are mostly single family residential. Nearby to the north, there is a parcel owned by Lincoln County which has most recently been used for the Parks and Grounds Department but the building is now vacant. There are other commercial uses at the intersection of Startown and Reepsville Roads. (See attached maps.)

The subject property and all surrounding properties are zoned R-25. Several properties located at the intersection of Startown and Reepsville Roads are zoned NB.

The property is currently one parcel with two owners but will be subdivided into two lots with two separate owners.

The existing R-25 zoning allows low density residential development and agricultural uses. Single family dwellings and Class A manufactured homes are allowed on lots ranging from minimums of 20,000 to 25,000 square feet depending on availability of public water and sewer services. Two family dwellings (duplexes) are allowed on lots ranging from minimums of 20,000 to 50,000 square feet depending on availability of public water and sewer services.

The applicant is requesting the site be rezoned from Residential-25 (R-25) to Conditional Use Neighborhood Business (CU-NB) in order to allow construction of a 5,000 square foot dance studio. Because the rezoning consists of two lots, the second lot, when developed, will require a conditional use permit prior to any development.

SITE PLAN

The applicant requests conditional use rezoning in order to construct a 5,000 square foot dance studio on the property. The parking lot will be gravel and there will be approximately seven (7) parking spaces. There will be one entrance onto Startown Road.

Street landscaping and parking lot landscaping will be provided. Screening will be required on the north and west sides of the property adjacent to residentially zoned land. (See attached Site Plan for details.)

The dance studio will consist of two instructors with up to 25 students there at one time. The use will operate Monday, Tuesday, Wednesday, and Thursday evenings from approximately 4:00 PM until 9:00 PM.

N-B NEIGHBORHOOD BUSINESS DISTRICT GENERAL REQUIREMENTS

This district is designed primarily for local business centers for retailing of merchandise such as groceries, drugs, and household items and for furnishing certain personal, business, and professional services. Unlike some of the other commercial zones, this district is established to serve local neighborhoods and other relatively small trading areas. The standards established for these business areas are designed to promote sound, permanent business development and also to protect abutting or surrounding residential areas from undesirable aspects of nearby business developments. These districts are located at accessible places with respect to traffic circulation in order to conveniently serve the trading population and to promote the grouping of several places of business at locations so designated. Since this district is established to provide for small neighborhood oriented businesses, limitations on gross floor areas are established for certain uses. A Neighborhood Business District is typically a relatively small area but shall consist of at least two lots in separate ownership or at least two acres regardless of ownership.

DESCRIPTION OF CONDITIONAL USE DISTRICT REZONING PROCESS

Conditional use rezoning is a process whereby a conditional use permit and a rezoning are acted upon simultaneously. The use that is proposed in the conditional use permit portion of the process must be the use constructed on the property after it is rezoned. Unlike a standard zoning in which all the uses permitted in the district are potentially allowed on the rezoned site, a conditional use rezoning limits the potential use of the property. In this case, the applicant wishes to limit the use of the property to a Dance Studio.

Because the rezoning consists of two lots, the second lot, when developed, will require a conditional use permit prior to any development.

COMPLIANCE WITH CONDITIONAL USE PERMIT APPLICATION REQUIREMENTS

The UDO requires that a conditional use permit application contain specific terms and meet specific requirements. The site plan meets the requirements of this section with the following exception:

Additional parking will be required once maximum capacity is determined. The ordinance requirement is one space for every three persons that the facilities are designed to accommodate when fully utilized.

COMPLIANCE WITH WATER SUPPLY WATERSHED

The applicant will be disturbing less than one acre of land. Therefore, compliance with the Water Supply Watershed Standards is not required.

LAND USE PLAN

The Lincolnton Land Use Plan shows this property in the Residential Suburban Planning Area. These planning areas are primarily single family in character and where the primary development pattern should continue to be single family dwellings.

In Staff's opinion, the rezoning request does not comply with the Land Use Plan. For the use to be consistent with the Plan, it would need to be amended to include the property in the Neighborhood Business Planning Area.

The Neighborhood Business Planning Area states that "these planning areas are for small business clusters that cater to the needs of a small trading area. They are appropriate for smaller sized stores and establishments."

Staff feels that there is some merit to amending the land use plan in this case. The property is located along a minor thoroughfare between commercially developed areas. However, any amendment of the land use plan should be contingent on a determination that the proposed dance studio would be a compatible use in the area.

STAFF REVIEW COMMITTEE

The Staff Review Committee met on October 10, 2017 and had the following comments:

- (1) Building plans must be approved by Lincoln County and the City Fire Marshal prior to issuance of building permits.
- (2) NCDOT will require a driveway permit for access to Startown Road. Paving will be required from the street to the NCDOT Right of Way Boundary.
- (3) Erosion control permit will be required from Lincoln County Natural Resources.

- (4) Additional parking will be required once maximum capacity is determined. The ordinance requirement is one space for every three persons that the facilities are designed to accommodate when fully utilized.

FINDINGS OF FACT

Section 153.237 of the UDO requires that four findings be determined by City Council as follows:

- (1) The use will not materially endanger the public health or safety if located where proposed and developed according to plan, and
- (2) The use meets all required conditions and specifications, and
- (3) The use will not substantially injure the value of adjoining or abutting property unless the use is a public necessity, and
- (4) The location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and will be in general conformity with the Lincolnnton Land Use Plan and other plans for the physical development of the City as officially adopted by the City Council.

COMPLIANCE WITH FINDINGS OF FACT

- (1) The applicant will need to provide evidence that the use will not endanger the public health or safety.
- (2) The proposed use meets all required conditions and specifications with the exception of parking spaces.
- (3) The applicant will need to provide evidence that the use will not have any negative impacts on the value of adjoining or abutting properties.
- (4) The use is not in compliance with the Lincolnnton Land Development Plan.

STAFF RECOMMENDATION

Staff recommends the following three actions:

- (1) If the applicant satisfactorily proves the findings of fact, recommend approval of rezoning of the property from R-25 to CU-NB.

- (2) If the applicant satisfactorily proves the findings of fact, recommend approval of the Conditional Use Permit for a 5,000 square foot dance studio use subject to Ordinance requirements and the Staff Review Committee conditions.
- (3) If request is recommended for approval, also recommend amendment of the Land Use Plan to show the two parcels in the Neighborhood Business Planning Area.

There were brief discussion between the Board, Staff, and the applicant, Mr. Greg Houser.

Motion: Worth Roberts made a motion to approve the Conditional Use Permit. Kathryn Yarbrow seconded. Motion carried unanimously.

CU-ZMA-4-2017

Application from Carl Jenkins requesting a conditional use rezoning from R-8 to CU-RO District for the purpose of operating a Funeral Home. The subject property is located at 406 Battleground Road (Parcel ID 17847).

Mark Carpenter addressed the Board and presented the following:

The subject property is located on a 1.49 acre site at 406 Battleground Road (Parcel ID 17847). The site is developed with an approximately 4,800 square foot historic home built around 1890. Properties surrounding the site are a mixture of R-8 and RO. Land uses in the area are single family dwellings, a church, and a medical office. (See attached maps.)

The existing R-8 zoning district allows single-family dwellings on lots with a minimum of 6,000 square feet and two-family dwellings (duplexes) on lots with a minimum of 12,000 square feet. Additional forms of residential development could also be permitted subject to review and approval by the City Council.

The applicant is requesting the site be rezoned from Residential-8 (R-8) to Conditional Use Residential Office (CU-RO) to allow use of the existing dwelling as a funeral home.

SITE PLAN

The site plan proposes use of the existing 4,800 square foot dwelling as a funeral home plus addition of an accessory building of 625 square feet that will be used for a private garage for unloading and preparation. A new paved parking lot will be constructed consisting of 28 parking spaces. The two existing access points onto Battleground Road will be kept but will have to be widened to meet commercial driveway widths.

The applicant indicates the funeral home will be operating an office on site daily from 9:00 a.m. until 5:00 p.m. There will be two rooms for viewing only. Hours for viewing services are typically in the evening. There will be no chapel on site for any service to be held. No cremations will be done on site.

DESCRIPTION OF CONDITIONAL USE DISTRICT REZONING PROCESS

Conditional use rezoning is a process whereby a conditional use permit and a rezoning are acted upon simultaneously. The use that is proposed in the conditional use permit portion of the process must be the use constructed on the property after it is rezoned. Unlike a standard rezoning in which all the uses permitted in the district are potentially allowed on the rezoned site, a conditional use rezoning limits the potential use of the property. In this case, the applicant wishes to limit the use of the property to a funeral home.

COMPLIANCE WITH CONDITIONAL USE PERMIT APPLICATION REQUIREMENTS

The UDO requires that a conditional use permit application contain specific terms and meet specific requirements. The site plan is missing the following items:

1. Detailed Landscaping Plan including street trees and parking lot landscaping. Existing trees may count toward these numbers.
2. Additional parking may need to be provided on site based on maximum occupancy.

COMPLIANCE WITH WATER SUPPLY WATERSHED

The applicant will be disturbing less than one acre of land. Therefore, compliance with the Water Supply Watershed Standards is not required.

LAND USE PLAN

The Lincolnton Land Use Plan shows this property in the Traditional Single Family Planning area. The purpose of the planning area is for single family dwellings to be maintained in older established portions of the community. As these areas are primarily residential in character, they should be protected from encroachment of incompatible business and industrial development.

Adjacent properties located to the east and south are located in the Mixed Use/Residential/Commercial Planning Area. This planning area is in select, older portions of the City where true, “urban villages” consisting of high density residential uses (both single family and multifamily) and associated small-scale and pedestrian oriented office and retail uses may be located.

In Staff's opinion, the rezoning request is not consistent with the Land Use Plan. For the proposed use to be consistent with the Land Use Plan, the Plan would need to be amended to include the property in the Mixed Use/Residential/Commercial Planning Area.

Staff feels that there is some merit to amending the land use plan in this case. The property is located on a somewhat heavily-traveled minor thoroughfare in a transitional area with a mixture of land uses. However, any amendment of the land use plan should be contingent on a determination that the proposed funeral home would be a compatible use in the neighborhood.

STAFF REVIEW COMMITTEE

The Staff Review Committee met on October 10, 2017 and had the following comments:

- (1) Building plans must be approved by Lincoln County Inspections prior to issuance of building permits.
- (2) The owner/operator is responsible for storm water leaving the site. Storm water must be configured so as to have no more harmful effect on streets and adjacent properties than the current situation. A storm water management plan is to be reviewed and approved by the Public Works Department prior to issuance of a certificate of occupancy.
- (3) The applicant will need to contact Chris Wilson, Electrical Superintendant, about electrical upgrade issues that may be needed for the new use.
- (4) Use of the site is limited to a funeral home only through re- use of the existing structure and grounds. New development is limited to the accessory garage noted on the site plan.
- (5) There will be no chapel on site for any services to be held and no cremations will be done on site.
- (6) Any outdoor lighting to be added is to be downwardly directed so as not to cast glare on adjoining properties.
- (7) Hours of operation to be limited to between 7:00 am and 9 pm.
- (8) No changes to be made to the building's exterior other than for routine maintenance.

FINDINGS OF FACT

Section 153.237 of the UDO requires that four findings be determined by City Council as follows:

1. The use will not materially endanger the public health or safety if located where proposed and developed according to plan, and
2. The use meets all required conditions and specifications, and
3. The use will not substantially injure the value of adjoining or abutting property unless the use is a public necessity, and
4. The location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and will be in general conformity with the Lincolnton Land Use Plan and other plans for the physical development of the City as officially adopted by the City Council.

COMPLIANCE WITH FINDINGS OF FACT

1. The applicant will need to provide evidence that the use will not endanger the public health or safety.
2. The proposed use meets all required conditions and specifications.
3. The applicant will need to provide evidence that the use will not have any negative impacts on the value of adjoining or abutting properties
4. The use is not in compliance with the Lincolnton Land Use Plan.

STAFF RECOMMENDATION

Staff recommends the following three actions:

1. If the applicant satisfactorily proves the findings of fact, recommend approval of rezoning the property from R-8 to CU-RO.
2. If the applicant satisfactorily proves the findings of fact, recommend approval of the Conditional Use Permit for the funeral home use subject to Ordinance requirements and the Staff Review Committee conditions.
3. If request is recommended for approval, also recommend amendment of the Land Use Plan to show the property in the Mixed Use/ Residential/Commercial Planning Area.

The applicant, Mr. Carl Jenkins was called to the front to answer several questions for the Board. He then made a short presentation addressing the concerns of traffic, the services they would provide and which facility would provide the individual services, and his research on the tax value of neighboring properties at the Newton facility. He spoke to the type of neighbor he believes the funeral home would be and provided alternative parking options and ideas, should a particular service or viewing need additional parking.

Mr. Lee Haynes spoke in opposition of the permit, citing traffic concerns during schools times, the width of Battleground Road, and the potential impact a funeral home may have on nearby property values.

Ms. Vickie Yount addressed the Board, speaking on behalf of the historical aspect of the home and stating that her main concern is that the integrity and historical aspect of the home remain. She expressed concern that if this project was not allowed, current zoning could allow for demolition of the home or re-purpose of the home to create apartments, etc.

Marty Pizzoli spoke in opposition stating that she is concerned about increased traffic, water runoff with the proposed widening of the driveway at 406 Battleground, and the psychological impact of having a funeral home across the street.

There was a brief discussion to clarify the zoning of the property and neighboring properties between Mr. James Burback, the real estate agent for Mr. Jenkins, and Planning Staff.

Mr. Solomon, the owner of 406 Battleground, addressed the Board, stating that the home was a labor of love and that his main concern was in doing what is best for the home. He spoke regarding the length of time the home had been on the market and the difficulty they have had in generating reasonable offers due to the home's grandeur. He would like to see the home preserved, and feels that by allowing the Funeral Home, it will be preserved properly. He also noted that the current zoning could allow the home to be turned into multi-family units or something similar.

Samantha Gunter-Beam addressed the Board regarding her family's home across the street. She grew up in the home and expressed concerns regarding traffic, how the small-town community feel may be affected, and the psychological impact of having a funeral home across the street.

Mr. Jenkins spoke again regarding the intention of using the proposed site for mainly viewing and office purposes and presented his thoughts regarding the traffic concerns and the type of neighbor he believes the funeral home would be.

Mr. Ben Jenkins, the applicant's son and business partner, presented to the Board and audience information regarding the number of families served at their facility in Newton (including

families from the Lincolnton area), the number of families served at the three existing funeral service facilities already in Lincolnton, and their expected number of families that they would be able to serve if the proposed facility were allowed.

There was discussion among the Board. With no further comments, Chairman And Lynn asked the Board if there was a recommendation and motion.

Motion: Gene Poinsette made a motion to approve the conditional use rezoning, provided that the applicant address the Staff Committee Comments. Rebecca Abernethy seconded. Motion carried with two votes nay by And Lynn and Worth Roberts.

Chairman And Lynn asked the Board if there was any other business to be addressed, to which there was none.

Adjournment

Motion: Gene Poinsette made a motion to adjourn the meeting. Kathryn Yarbro seconded. Motion carried unanimously.