DOCKET #: F1430

PROPOSED ZONING:
Site Plan Amendment

EXISTING ZONING:
HB-S

PETITIONER:
Stephen K. Stultz and Sharon K. Stultz for property owned by Same

SCALE: 1" represents 400'
STAFF: Roberts
GMA: 3
ACRE(S): 3.80
MAP(S): 690870
April 20, 2005

Stephen K. Stultz and Sharon K. Stultz
P. O. Box 1475
Kernersville, NC  27284

RE:  SITE PLAN AMENDMENT F-1430

Dear Mr. & Mrs. Stultz:

The attached report of the Planning Board to the Forsyth County Board of Commissioners is sent to you at the request of the Commissioners.

When the rezoning is scheduled for public hearing, you will be notified by Jane Cole, Clerk to the County Commissioners, of the date on which the Commissioners will hear this petition.

Sincerely,

A. Paul Norby, AICP
Director of Planning

Attachment

pc:  Jane Cole, County Manager's Office
     Raymond D. Thomas, 116 S. Cherry Street, Kernersville, NC  27284
     Steve Causey, 4720 Kester Mill Road, Winston-Salem, NC  27103
     Jerry Leonard, 200 Tortoise Lane, Winston-Salem, NC  27127
     Clarence Walker, 1315 N. Main Street, Kernersville, NC  27284
     Tim Walker, 2432 Bethel Church Road, Kernersville, NC  27284
     Tony Walker, 2256 Bethel Church Road, Kernersville, NC  27284
     Clarence Rieson, 1220 N. Main Street, Kernersville, NC  27284
     Jane King, 1196 N. Main Street, Kernersville, NC  27284
MEETING DATE: ________________________ AGENDA ITEM NUMBER: _______

SUBJECT:-

A. Public Hearing on Site Plan Amendment of Stephen K. Stultz and Sharon K. Stultz for HB-S (Building Materials Supply; Nursery, Lawn and Garden Supply Store, Retail; and Services, Business B): property is located on the northwest side of North Main Street (NC 150) southwest of Bethel Church Road (Zoning Docket F-1430).

B. Ordinance amending the Forsyth County Zoning Ordinance and Official Zoning Map.

C. Approval of Special Use District Permit

D. Approval of Site Plan

COUNTY MANAGER’S RECOMMENDATION OR COMMENTS:-

SUMMARY OF INFORMATION:-

See attached staff report.

After consideration, the Planning Board recommended approval of the site plan amendment.

ATTACHMENTS:-   X  YES   ___ NO

SIGNATURE: ______________________________ DATE: ________________

County Manager
COUNTY ORDINANCE - SPECIAL USE

Site Plan Amendment of Stephen K. Stultz and Sharon K. Stultz, Docket F-1430

AN ORDINANCE AMENDING THE FORSYTH COUNTY ZONING ORDINANCE AND THE OFFICIAL ZONING MAP OF FORSYTH COUNTY, N.C.

_________________________________

BE IT ORDAINED by the City Council of the City of Winston-Salem as follows:

Section 1. The Forsyth County Zoning Ordinance and the Official Zoning Map of Forsyth County, N.C. are hereby amended by granting a Site Plan Amendment for property zoned HB-S (Building Materials Supply; Nursery, Lawn and Garden Supply Store, Retail; and Services, Business B - Site Plan Amendment) and described as follows:

Tax Block 5410, Tax Lots 20E & 20M

Section 2. This Ordinance is adopted after approval of the site plan entitled Stephen K. Stultz and Sharon K. Stultz and identified as Attachment "A" of the Special Use District Permit issued by the Forsyth County Board of Commissioners the ________ day of ________________, 20___ to Stephen K. Stultz and Sharon K. Stultz.

Section 3. The City Council hereby directs the issuance of a Special Use District Permit pursuant to the Zoning Ordinance of the Unified Development Ordinances for a development to be known as Stephen K. Stultz and Sharon K. Stultz. Said Special Use District Permit and site plan with associated documents are attached hereto and incorporated herein.

Section 4. This Ordinance shall be effective from and after its adoption.
COUNTY - SPECIAL USE DISTRICT PERMIT

Issued by the Board of Commissioners

of Forsyth County, North Carolina

The Board of Commissioners of Forsyth County, North Carolina issues a Special Use District Permit for the site shown on the site plan map included in this zoning petition of Stephen K. Stultz and Sharon K. Stultz, (Zoning Docket F-1430). The site shall be developed in accordance with the plan approved by the Board and bearing the inscription: "Attachment A, Special Use District Permit for HB-S (Building Materials Supply; Nursery, Lawn and Garden Supply Store, Retail; and Services, Business B - Site Plan Amendment), approved by the Winston-Salem City Council the _____ day of _____________________, 20____" and signed, provided the property is developed in accordance with requirements of the HB-S zoning district of the Zoning Ordinance of the Unified Development Ordinances, the Erosion Control Ordinance, and other applicable laws, and the following additional conditions be met:

- PRIOR TO THE ISSUANCE OF GRADING PERMITS
  a. Obtain driveway permit from the North Carolina Department of Transportation.

- PRIOR TO THE ISSUANCE OF BUILDING PERMITS
  a. Developer shall either remove, relocate or obtain a variance from the County Board of Adjustment for the existing structure which is located within the 40 foot building setback area. If zoning docket F-1426 is approved, the building setback will be in compliance.

- OTHER REQUIREMENTS
  a. Bufferyard and streetyard trees shall be large variety trees as defined in UDO Section 3-4.10.
  b. Developer shall install all plantings shown on site plan within 90 days of approval by the County Commissioners.
  c. Signage shall be limited to a 6 foot high monument sign.
DOCKET # F-1430
STAFF: Gary Roberts

Petitioner(s): Stephen K. Stultz and Sharon K. Stultz
Ownership: Same

REQUEST
From: HB-S (Agricultural Production, Crops; Agricultural Production, Livestock; Animal Feeding Operation; Fish Hatchery; ABC Store; Building Materials Supply; Convenience Store; Food or Drug Store; Furniture and Home Furnishings Store; General Merchandise Store; Hardware Store; Nursery, Lawn and Garden Supply Store, Retail; Retail Store, Specialty or Miscellaneous; Services, Business A; Services, Business B; Services, Personal; Building Contractors, General; Building Contractors, Heavy; and Storage and Salvage Yard)
To: Site Plan Amendment

Both general and special use district zoning were discussed with the applicant(s) who decided to pursue the zoning as requested.

Acreage: 3.8

LOCATION:
Street: Northwest side of North Main Street southwest of Bethel Church Road.
Jurisdiction: Forsyth County.

SITE PLAN
Proposed Use: Landscaping supply operation.
Square Footage: 2,855 sf plus a machinery storage building of approximately 1,925 sf
Parking: Required: 21 spaces; Proposed: 21 spaces.
Bufferyard Requirements: 15 and 30 foot type III bufferyard adjacent to RS-20

PROPERTY SITE/IMMEDIATE AREA
Existing Structures on Site: One small accessory building to be removed.
Adjacent Uses:
    North- Undeveloped property and single family homes zoned RS-20.
    East- Undeveloped property and the Kernersville Community Church zoned RS-20.
    Southeast- Single family homes zoned RS-20.
    Southwest- Single family home zoned RS-20.
GENERAL AREA

Character/Maintenance: Neighborhood scale church, landscaping supply operation and well maintained single family homes on large lots along a major thoroughfare.
Development Pace: Slow.

HISTORY

Relevant Zoning Cases:

1. F-1426; RS-20 to HB-S (Building Materials Supply; Nursery, Lawn and Garden Supply Store, Retail; Offices, Miscellaneous; and Services, Business B); continued to April 14, 2005 Planning Board meeting; north side of North Main Street (NC 150) southwest of Bethel Church Road, directly adjoins subject property; 1.59 acres; Planning staff recommends denial.

2. F-1004; R-5 to B-3-S (Agriculture or farming; Stores or shops, retail; Services; and Storage yards); approved August 12, 1991; north side of North Main Street (NC 150) southwest of Bethel Church Road (subject property); 3.76 acres; Planning Board and staff recommended denial.

3. F-333; from R-5 and R-6 to B-3; withdrawn December 3, 1973; northwest corner of North Main Street (NC 150) and Bethel Church Road (includes current site); 18.5 acres; the County Attorney expressed the opinion that this could be interpreted by the courts as illegal spot zoning and both the Planning Board and staff recommended denial.

PHYSICAL FEATURES/ENVIRONMENTAL REVIEW

Impact on Existing Features: Minimal impact to existing features is proposed.
Topography: Gentle slope from the southeastern portion of the site to the western portion.
Vegetation/habitat: Site is essentially cleared with the exception of bufferyard plantings along the side and rear property lines.
Water Supply Watershed: The subject property is not within a water supply watershed.

TRANSPORTATION

Direct Access to Site: North Main Street (NC 150).
Street Classification: Major Thoroughfare.
Average Daily Traffic Count/Estimated Capacity at Level of Service D (Vehicles per Day):
NC 150 between Bethel Church and Forsyth Roads = 5,000/16,100
NC 150 between Bethel Church and County Line Roads = 10,000/16,100
Trip Generation/Existing Zoning: HB-S
2,855/1,000 x 4.97 (Nursery- Garden Center Trip Rate) = 14 Trips per Day
Trip Generation/Proposed Zoning: HB-S
2,855/1,000 x 4.97 (Nursery- Garden Center Trip Rate) = 14 Trips per Day
Planned Road Improvements/Thoroughfare Plan: The subject property is located in the immediate vicinity of the proposed Regional Airport Connector.

CONFORMITY TO PLANS

Growth Management Plan: (Legacy): The Rural Area, GMA 5.
Relevant Comprehensive Plan Recommendation(s): Legacy states that provisions will be made for the protection of farmland, natural areas, and rural character in GMP Area 5 (the Rural Area). Legacy also states that this area is intended to remain in very low density residential and agricultural uses for the Plan’s 15-year time horizon. Legacy also specifically discourages rezonings to more intense districts in the Rural Area.

Area Plan/Development Guide: The subject property is not within the boundaries of an area plan or development guide.

INCORPORATED AREA COMMENTS

Incorporated Jurisdiction: Kernersville.
Expressed Concern: The Town of Kernersville Planning Department concurs with the recommendation of the CCPB staff.

ANALYSIS

The subject request is a Site Plan Amendment for a 3.8 acre lot of HB-S zoned property located on the northwest side of North Main Street (NC 150). Currently located on the site is the Stultz Landscaping operation. The site is generally surrounded by single family homes and undeveloped property zoned RS-20. The Kernersville Community Church is located to the northeast at the intersection of North Main Street and Bethel Church Road.

The request would permit an on-site expansion of the existing landscape supply operation which was rezoned in 1991. This business deals with various landscaping materials such as large volumes of stone and mulch. The property owner has been cited by the Inspections Division with being in violation of said original special use rezoning in regard to: unapproved driveway widening; expansion of the approved materials storage area; and inadequate bufferyards. The proposed plan would expand the storage area which is located to the rear of the principle structure to be more reflective of what is actually taking place at the site. The site plan also illustrates the removal of the southernmost driveway and a doubling of the bufferyard from 15 to 30 feet in width along this property line which is in closest proximity to an adjoining single family residence.

Since the site is already being used for commercial purposes, Planning staff sees the current request as an opportunity to permit a reasonable yet controlled expansion of an existing business while not increasing the external boundaries of the HB-S property. The removal of said southernmost driveway and the expanded bufferyard width should mitigate any potential increase in off-site impacts resulting from the expanded materials storage area.
FINDINGS

1. The subject HB-S Site Plan Amendment would expand the materials storage area within the site; remove the southernmost driveway; and double the width of the bufferyard along the southern property line from 15 to 30 feet.

2. The removal of said southernmost driveway and the expanded bufferyard width should mitigate any potential increase in off site impacts resulting from the expanded materials storage area onto the adjacent single family residential property.

STAFF RECOMMENDATION

Zoning: **APPROVAL**.
Site Plan: Staff certifies that the site plan meets all code requirements, and recommends the following conditions:

- **PRIOR TO THE ISSUANCE OF GRADING PERMITS**
  a. Obtain driveway permit from the North Carolina Department of Transportation.

- **PRIOR TO THE ISSUANCE OF BUILDING PERMITS**
  a. Developer shall either remove, relocate or obtain a variance from the County Board of Adjustment for the existing structure which is located within the 40 foot building setback area. If zoning docket F-1426 is approved, the building setback will be in compliance.

- **OTHER REQUIREMENTS**
  a. Bufferyard and streetyard trees shall be large variety trees as defined in UDO Section 3-4.10.
  b. Developer shall install all plantings shown on site plan within 90 days of approval by the County Commissioners.
  c. Signage shall be limited to a 6 foot high monument sign.

**SUMMARY STATEMENT OF CONDITIONS BASED UPON SPECIAL USE DISTRICT DESIGNATION**

Planning staff has recommended the following condition which is beyond the minimum standards of the UDO: Signage shall be limited to a 6 foot high monument sign.
PUBLIC HEARING - April 14, 2005

Gary Roberts presented the staff reports for F-1426 and F-1430. The public hearings for the two cases were then combined to minimize confusion about the two requests.

Jimmy Norwood was excused from discussion and consideration of these requests.

FOR:

Raymond D. Thomas, 116 S. Cherry Street, Kernersville, NC  27284

• Steve Stultz is here and would be happy to answer any questions if you have them.
• Steve Causey is here and would be happy to answer any questions about the site plan.
• This site has been home to this type of use since 1991.
• He does not grow any plants for sale.
• Generally what is on this property is landscaping materials such as mulch, pine straw, stone.
• We had "Offices, Miscellaneous" listed as a use. We removed that.
• All Mr. Stultz wants to do is to store stone on pallets.
• The only thing that would go on or off the property would be a forklift or something like that, picking the load up and carrying it to whatever means of transportation is available.
• You should also look at this with the adjoining property because it is all owned by the same people and he wants to use it in connection with the site that you're looking at for site plan amendment.
• One of the things you need to be aware of: The site plan amendment actually came about as a result of his wanting this rezoning because staff felt we should get the other site cleaned up and put into perspective in accordance with the UDO as it exists today.
• Mr. Stultz will be bringing this site up into compliance with the UDO as it exists today.
• We feel like this is just a little bit of an addition.
• The question of spot zoning. Within about 400 yards is a mobile home park. Next to that is a used car lot. Right across the street is an institutional use, a very, very large church. Then there are some residents between the church and this site. This area is not just residential.
• I submit to you that entire area is developing into residential. Part of what happens with residential construction is landscaping. It can provide a source of material and so forth to be used on any kind of residence anywhere.
• In regard to the neighborhood, obviously one of the things that is being done to this site and the adjoining site is buffering.
• The field will not perk, so the adjoining lot cannot be used until there is sewer provided to this area.
• Submitted signatures of people in area who are not opposed to this.
• If all that is granted is for this strip, which is going to be a part of the other, is allowed to be used for the storage of stone only, that's sufficient for us.
• In regard to the site plan, it was my understanding that a new site plan had been submitted.
Steve Causey, 4720 Kester Mill Road, Winston-Salem, NC  27103
• It was literally a ninth-hour decision when we got confirmation from zoning and inspections that they were agreeable to the building materials supply use.
• The changes were made this morning and delivered on the way into the meeting.
• We added a couple of parking spaces to meet the needs for the extra use.

AGAINST:

Jerry Leonard, 200 Tortoise Lane, Winston-Salem, NC  27127
• I'm an attorney representing several of the families opposed to both aspects on the docket.
• Distributed one-page brief about the site plan amendment and discussed the expansion plan.
• It has been said by those opposed to this request that this enterprise constitutes a nuisance in the community.
• Referred to the County Attorney's spot zoning opinion.
• Discussed legal definition of "nuisance" and the impact of this use on the neighborhood.
• These two requests today are not different: They are both part of the intensification of the use. We are opposed to both of them.

Clarence Walker, 1315 N. Main Street, Kernersville, NC  27284
• I've lived here for 40 years and I'm against the rezoning of this property. This is a residential neighborhood and it should be left that way.

Tim Walker, 2432 Bethel Church Road, Kernersville, NC  27284
• I'm opposed because the enlargement that's being sought is going to make this operation of such size and scope that it's simply out of place in a residential community.
• You've heard some specific concerns that we have and we appreciate your consideration of these concerns.

Tony Walker, 2256 Bethel Church Road, Kernersville, NC  27284
• Asked those in opposition to stand.
• The residents of this neighborhood object to this proposal by this business for an intrusive rezoning expansion plan.
• We ask nothing that you would not ask if your neighborhood were being assaulted.
• We're trying to protect and maintain an environment and quality of life that each of you expects for yourself and rightfully so.
• We ask nothing more. We deserve nothing less.
• We are not the offenders here. Our mission is honest and clear and our goal is simple. Allow us to enjoy our homes and environment in tranquility.
• Approval of these proposals would open a door and set a precedent.
• The current owner no longer lives in this community, having converted his home to business and moved away, escaping the unsavory environment left behind for the rest of us.
• This operation is anything but quiet and subdued.
• The nature of this business is forcefully active, energetic, unrestrained, boisterous. It's unsightly, dusty, smelly, noisy and disruptive. There are tractor trailers, dump trucks, loaders, pans, fork lifts, heavy equipment, hauling, handling, moving, loading and unloading.
• Your approval might benefit the self-interest of one but would surely harm many.
• Regarding the site plan amendment, we are opposed to further land use development and on-site expansion. We're trying to protect the health and well-being of the neighborhood and maintain the quality of our lives. This site plan amendment would allow one to modify and intensify the on-grounds utilization and create an on-site expansion of the existing operation.
• The original and current special use regulations incorporated specific visions and conditions that limited the way the property and land area could be used. Only the back could be used for material storage, heavy commercial activity, heavy equipment, and the like. This was no accident.
• The original owner assured the neighbors there would be a sedate, well-mannered, non-disruptive operation and he filed such regulated plan. The plan still applies today. The fact that this owner has chosen to circumvent it or ignore it doesn't render it invalid.
• The rules haven't changed, but with a different owner the operation has.
• Should we not expect this owner to abide by the same established regulations that we recognize and accept?
• When the present owner bought the business, he was fully aware of the special use zoning provision regarding this operation. We are not seeking more stringent requirements. We're not asking for new restrictions. It's not we who are asking for special treatment. We are asking for fair treatment.
• There's no way to successfully conceal, shield or temper the nature of this bustling operation from the neighborhood around it.
• Compliance has not been the watchword here. More than a few violations have been cited by the Inspections Division. But we are even more concerned with the inherent noisy, dusty, unsightly, smelly nature of this type of commercial operation.
• Approval of this amendment would be to legitimize non-compliance and reward bad behavior. Don't punish this community and inflict harm on dozens of citizens with a vote to accommodate the narrow self-interests of one.
• We understand that we're not going to make it better, but we don't have to make it worse.

Clarence Rierson, 1220 N. Main Street, Kernersville, NC 27284
• I'm also representing my mother who lives next door.
• We are here to protect our quality of life, our homes, as well as protect our residential investments.
• Please keep in mind that our homes are in the midst of open farm territory and are not shielded by trees or other barriers. Thus, the neighborhood is vulnerable to noise pollution, airborne pollution, and visible pollutants.
• There are many retired persons in this immediate area, so there are many people who are at home during normal business hours.
• If this is granted, there will be more businesses established. There will be no end in sight.
• In the early 90’s, the previous owner established residence at this same property. He started a landscaping supply business in his back yard. The property was illegally used as a business for a couple of years.
• When this was considered for rezoning, the previous owner met with each of us in the community and explained that he applying for special case rezoning. He would keep all materials at a distance from the front and screen the back property well, and keep the surrounding area very clean. He pleaded with us not to protest his request. He just wanted to keep a small business to support his family. That's why many of us didn't show up at the hearing. At that time his request seemed reasonable.
• If I knew then what I know now, I would have strongly opposed the first zoning request.
• I feel the community has been taken advantage of from the beginning. We tolerated an inch and since then a mile after mile has been taken.
• If this rezoning is allowed, the doors will be opened for other properties in the area to be rezoned business.
• A new family moved into the house in front of me and I realized a couple of weeks ago that there are already a wrecker, two flat-bed car haulers, and five disabled cars. What is to prevent this property from being rezoned if either of today's requests are passed?
• Please do not allow the rezoning of this or any other property in this area.
• To address comments made earlier:
  • The car lot has been there since before I moved to this area in 1986. It is half a dozen cars for sale and a few motorcycles.
  • The church serves a community purpose and should not be included in consideration for business rezoning, plus the traffic is usually at night and on Sundays.
  • Landscaping materials can be trucked across town and don't need to be used in the neighborhood where they are sold.

Jane King, 1196 N. Main Street, Kernersville, NC 27284
• I came from the church this morning where there was a funeral. There was a long-bed truck pulling out in front of me at this site and I had to stop. If someone was coming up the road at normal speed, there would have been an accident.
• We are opposed to the expansion efforts of Stultz Landscaping Supplies.
• An increase in the levels of noise, dust, diesel fumes, and the smell of mulch are offensive and unacceptable to those of us living in this community.
• Further growth and development of the business can only add to the problem of traffic and congestion in the area.
• This is a residential neighborhood.
• An expanding commercial business adds nothing of value here but it certainly contributes to the discomfort and concerns of many people in this community.
• Help us preserve our way of life.

WORK SESSION

During discussion by the Planning Board, the following points were made:

1. Paul Mullican: All we're doing is making what he's doing now legal.
2. Dara Folan: He wasn't in compliance originally, so it seems like we'd be changing the site plan to allow him to be in compliance when he was out of compliance in the first place. I feel like we'd be giving a free pass and will have to vote no on this one.

MOTION: Paul Mullican moved approval of the site plan amendment, certified that the site plan meets all code requirements and recommends staff conditions.
SECOND: Jerry Clark
VOTE:
    FOR: Clark, Glenn, King, Mullican
    AGAINST: Folan
    EXCUSED: Norwood

According to information furnished by the Office of the Tax Assessor on March 14, 2005, the subject property was in the name of Stephen K. Stultz and Sharon K. Stultz.

________________________
A. Paul Norby, AICP
Director of Planning