



DOCKET #: F1407

PROPOSED ZONING:
Site Plan Amendment

EXISTING ZONING:
LB-S

PETITIONER:
Bobby R. Church and
Wilma S. Church for
property owned by Same

SCALE: 1" represents 400'

STAFF: Roberts

GMA: 5

ACRE(S): 5.24

MAP(S): 582870



April 21, 2004

Bobby R. Church and Wilma S. Church
6295 Yadkinville Road
Pfafftown, NC 27040

RE: ZONING MAP AMENDMENT F-1407

Dear Mr. Church and Ms. Church:

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
Steve Calaway, 1330 Ashley Square, Winston-Salem, NC 27103
Charles Evans, 6265 Yadkinville Road, Pfafftown, NC 27040
Lisa Evans, 6265 Yadkinville Road, Pfafftown, NC 27040

CITY ORDINANCE - SPECIAL USE

Site Plan Amendment of Bobby R. Church
and Wilma S. Church, Docket F-1407

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

BE IT ORDAINED by the Board of Commissioners of Forsyth County, N.C. 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 LB-S [Nursery, Lawn and Garden Supply Store, Retail - Site Plan Amendment] and described as follows:

Tax Block 4617, Tax Lot 42A, 42C, and 46

Section 2. This Ordinance is adopted after approval of the site plan entitled Bobby R. Church and Wilma S. Church and identified as Attachment "A" of the Special Use District Permit issued by the Board of Commissioners the _____ day of _____, to Bobby R. Church and Wilma S. Church.

Section 3. The Board of Commissioners 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 Bobby R. Church and Wilma S. Church. 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.

CITY - SPECIAL USE DISTRICT PERMIT

SPECIAL USE DISTRICT PERMIT

Issued by the Board of Commissioners

of Forsyth County, N.C.

The Board of Commissioners of Forsyth County, N.C. issues a Special Use District Permit for the site shown on the site plan map included in this zoning petition of Bobby R. Church and Wilma S. Church, (Zoning Docket F-1407). 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 a Site Plan Amendment for property zoned LB-S [Nursery, Lawn and Garden Supply Store, Retail - Site Plan Amendment], approved by the Forsyth County Board of Commissioners the _____ day of _____, 20____" and signed, provided the property is developed in accordance with requirements of the LB-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. This property lies within the Yadkin River WS-IV State Regulated Watershed. Developer shall obtain a Watershed Permit from the Erosion Control Officer within ninety (90) days after approval of the rezoning petition by the Forsyth County Board of County Commissioners.
 - b. Contact NCDOT and, if necessary, obtain a driveway permit for the driveway on Vienna-Dozier Road within ninety (90) days after approval of the rezoning petition by the Forsyth County Board of Commissioners; additional improvements may be required prior to issuance of permit.

- **PRIOR TO THE ISSUANCE OF OCCUPANCY PERMITS**
 - a. All UDO requirements shall be complied with and all UDO violations shall be remedied.
 - b. Any signs on this property shall be issued sign permits from the Inspections Division within ninety (90) days after approval of the rezoning petition by the Forsyth County Board of Commissioners. No signs may be located within any public right-of-way.

- **OTHER REQUIREMENTS**

- a. Any outside storage or storage trailers located within any required parking spaces or bufferyard areas for this use shall be removed within ninety (90) days after approval of the rezoning petition by the Forsyth County Board of Commissioners.

ZONING STAFF REPORT

DOCKET # F-1407

STAFF: Gary Roberts

Petitioner(s): Bobby R. Church and Wilma S. Church

Ownership: Same

REQUEST

Site Plan Amendment for property zoned LB-S (Nursery, Lawn and Garden Supply Store, Retail)

Acreage: 5.24 acres

LOCATION:

Street: Northeast corner of Yadkinville Road and Vienna –Dozier Road.

Jurisdiction: Forsyth County.

SITE PLAN

Proposed Use: Nursery, Lawn and Garden Supply Store.

Square Footage: 6,078 sf principal structure, 2,040 sf covered display area plus 16 storage trailers.

Building Height: One story.

Parking: Required: 21 spaces; Proposed: 24 spaces.

Bufferyard Requirements: 15 foot and 30 foot type II adjacent to RS-30.

Vehicular Use Landscaping Standards Requirements: UDO standards apply.

PROPERTY SITE/IMMEDIATE AREA

Existing Structures on Site: Riverside Farm and Garden Supply.

Adjacent Uses:

North-	Vacant land zoned RS-30.
East-	Vacant land and single family homes zoned RS-30.
South-	Vienna Volunteer Fire Department zoned RS-30.
Southwest-	Former Vienna Volunteer Fire Department zoned IP.
West-	Single family homes zoned RS-30.

GENERAL AREA

Character/Maintenance: Well maintained single family homes and a volunteer fire department.

Development Pace: Slow.

HISTORY

Relevant Zoning Cases:

1. F-1232; RS-30 and LB-S to LB-S (Nursery, Lawn and Garden Supply Store, Retail); approved June 22, 1998; northeast corner of Yadkinville Road and Vienna-Dozier Road, current site; 5.24 acres; Planning Board and staff recommended approval.
2. F-983; R-6 to B-3-S (Agriculture or farming; Stores or shops, retail; Services; and Storage yards); approved January 28, 1991; northeast corner of Yadkinville Road and Vienna-Dozier Road including a portion of current site; 2.97 acres; Planning Board and staff recommended denial.
3. F-457; R-6 to B-3; denied November 21, 1977; northeast corner of Yadkinville Road and Vienna-Dozier Road including a portion of current site; 2.97 acres; Planning Board and staff recommended denial.

TRANSPORTATION

Direct Access to Site: Yadkinville Road; Vienna-Dozier Road.

Street Classification: Yadkinville Road – Major Thoroughfare; Vienna-Dozier Road – Minor Thoroughfare.

Average Daily Traffic Count/Estimated Capacity at Level of Service D (Vehicles per Day):
Yadkinville Road between Vienna-Dozier Road and Lewisville-Clemmons Road = 5,400/11,100

Vienna-Dozier Road between Yadkinville Road and River Ridge Road = 2,600/11,100

Trip Generation Existing/Proposed Zoning: No Trip Generation Rates available for “trailers” as a proposed use.

Bicycle Route: Route 21, Stokes County Connector, along Yadkinville and Vienna-Dozier Roads.

INCORPORATED AREA COMMENTS

Incorporated Jurisdiction: Subject property is scheduled to be annexed by the Town of Lewisville in July, 2004.

Expressed Concern: The Lewisville Town Council has chosen not to take a position on this case.

ANALYSIS

The subject request is a Site Plan Amendment for a 5.24 acre tract of LB-S property located at the northeast corner of Yadkinville Road and Vienna-Dozier Road. Currently located on the property is the Riverside Farm and Garden Supply store. Single family homes zoned RS-30 adjoin the site to the east and west with undeveloped property zoned RS-30 located to the north. The new and the former Vienna-Dozier Volunteer Fire Department buildings, zoned RS-30 and IP respectively, are located across Yadkinville Road.

The front portion of the site was rezoned from RS-30 to LB-S (Nursery Lawn and Garden Supply Store, Retail) in 1991. The balance of the site (2.27 acres) was rezoned to LB-S in 1998. Staff recommended against the initial 1991 rezoning case because the County Attorney was of the opinion that if challenged, the rezoning would constitute an illegal spot zone. In addition, staff believed it would set a precedent for more commercial zoning in the area. The Planning Board also recommended denial.

Once the rezoning had taken place however, staff recommended approval of the 1998 request (F-1232) to expand the site to the north. Staff viewed the 1998 request, which proposed no additional building square footage, as a minor expansion, which would not generate any significant impacts. The major changes included a new driveway connection onto Vienna-Dozier Road and a mulch storage and loading area in the non-wooded rear portion of the site. The majority of the new lot was labeled: "Wooded area to remain" and the following site plan condition was part of the County Commissioners approval of the rezoning:

"The new rezoning area to the north shall only be used for the outside storage of mulch. There shall be no outside storage of pallets, trailers or any other material in this area."

In 2003, the property owner was cited by the Inspections Division as being in violation of said approved site plan and conditions. Specifically, much of the wooded area shown "as to remain" had been removed and converted into an illegal Land Clearing and Inert Debris Landfill (LCID). Multiple storage trailers and assorted landscape materials have also been moved onto the site including within the area where the required street yard should have been planted. In connection with said tree removal and grading activity, the owner was also cited as being in violation of the Erosion Control Ordinance. In particular, the owner had failed to submit an erosion control plan and watershed application; obtain a grading permit and install the required devices.

The subject request would essentially legitimize the above mentioned violations by expanding the "landscape material" area into the previously wooded area and allow the permanent placement of 16 storage trailers most of which have already been moved onto the site. It is staff's opinion that the subject request is contradictory to the approved site plan and inconsistent with the otherwise rural residential character of the surrounding area. Staff therefore recommends denial of the request.

FINDINGS

1. The petition is from LB-S (Nursery Lawn and Garden Supply Store, Retail) to Site Plan Amendment.
2. The subject property is currently in violation of the conditions of the current special use zoning and is in violation of the Erosion Control Ordinance.
3. The subject request would sanction said unauthorized site plan deviations which are out of character with the approved site plan and the rural residential character of the surrounding area.

STAFF RECOMMENDATION

Zoning: **DENIAL**.

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. This property lies within the Yadkin River WS-IV State Regulated Watershed. Developer shall obtain a Watershed Permit from the Erosion Control Officer within ninety (90) days after approval of the rezoning petition by the Forsyth County Board of County Commissioners.
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- **PRIOR TO THE ISSUANCE OF OCCUPANCY PERMITS**
 - a. All UDO requirements shall be complied with and all UDO violations shall be remedied.
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- **OTHER REQUIREMENTS**
 - a. Any outside storage or storage trailers located within any required parking spaces or bufferyard areas for this use shall be removed within ninety (90) days after approval of the rezoning petition by the Forsyth County Board of Commissioners.

Gary Roberts presented the staff report.

Public Hearing

FOR:

Steve Calaway, 1330 Ashley Square, Winston-Salem, NC 27103

I represent Mr. & Mrs. Church. Steve Causey and Dick Bennett from Allied Survey are here to answer any questions you may have.

This is not a big box; it's a Mom & Pop operation. They've been successful. They started out with a dream and hard work and they've been wildly successful. They work long hours.

They meet the needs of my community, our community, Old Town, Pfafftown and the yard, garden, and farm supply business.

They have the trailers like the big boxes for inventory on seasonal basis. They come and go during different times of the year.

Their success has probably been their biggest enemy. Their business is creepy crawly grown to the rear. They've had friends that were grading at places like Reynolda Manor that had dirt and debris and needed a place to put it. They put it in the back yard of this business. Most of the trees that we've referred to as substantial forest or heavy ground cover were pines and many were dying as most of the pines in the Pfafftown area are dying because of the beetle. Whatever the reason, they weren't supposed to be cut down and they were. For whatever reason, it wasn't supposed to be filled and it was. I don't think it's been mentioned, but not only was it filled, but some of it in the wet times slipped over the edge onto the adjoining property owner's property (Dr. & Mrs. Evans) which is residential and very nice.

Along with the success come the violations. They sought help by going to Allied Surveying and Engineering and to me and going back to Mr. Grubbs and the staff to find out what they can do to fix the problem.

Several things were suggested: Beef up the buffers, move any storage piles of mulch and whatever has crept over towards the line, modify the slope at the rear to the statutory slope, and replace the vegetation (and they showed us how to put it on the site plan) and the engineers did that and we refiled.

We're committed to make any improvements that you want made and to make any improvements that Dr. & Mrs. Evans want made to shore up their buffering, and we're committed to staying in business.

If all else fails, a fine or jail time or whatever comes out of the court actions, I don't think this business is going to go away.

So I think the best course of action is to honestly take a shot at fixing it as best we can. That's what they've proposed.

They meet our needs and our needs are substantial out there with the things that they sell (seed, fertilizer, mulch, all the things you use to fix your farm and garden with and the bug sprays and that kind of thing.)

They are trusted and well-liked in the neighborhood except when they slip off and don't do their site plan right. We're proposing to do that. This isn't a cop-out because they have to do some major renovations.

On their behalf, I'm sorry that all that happened, but it did happen and we can't take it back, but we can fix it given some direction.

AGAINST:

Charles Evans, 6265 Yadkinville Road, Pfafftown, NC 27040

I'm sorry to even have to be here.

I live next door to this site.

For Mr. Church and several residential neighbors it's a zoning violation issue as much as a rezoning issue.

Our property today isn't what it was 6 years ago. We bought an 80 year old farm house, spent 9 months renovating it and improving the property and now the property has completely changed significantly along our longest boundary line where we share a border with Mr. Church. Our house isn't worth nearly as much.

Apparently the dirt dumping which started in not a creepy-crawly fashion, dump truck loads of dirt, were backing up and pouring massive amounts of dirt, huge chunks of asphalt, concrete, old tires, you name it, it went down into the ravine between us. Three neighborly visits to Bobby have yielded no results. I was totally rebuffed each time. He told me he had the permits. He said he was almost done. This went on from the fall of 2002 for about nine months. I made several visits (about every three-four months) when I realized it wasn't almost done and it was continuing. Like I said, he failed to communicate to me. What Mr. Church did at Riverside Farm and Garden over those nine months until about the end of the summer 2003 was to try to turn the rear of his property into a parking lot for large trailers which I had come to find out he wasn't zoned for, had no permits, etc., and that was extremely disappointing that you told me that you did have the permits.

We're dealing not only with dirt, debris, and an unsightly mess, but a bunch of dead and falling trees down by the creek that used to be there where my boys liked to play which is one of the reasons why we bought the property, completely wiping out any buffer between us. We basically didn't see the farm and garden when we bought the property six years ago. Stagnant water. Even with concrete in it (displayed pictures), he even allowed concrete trucks to back up and empty their contents into this creek. This picture shows standing concrete just floating on top of the water. An absolute mess. Standing, stagnant, mosquito infested water with an old tire that we have now. Here's how the buffer has disappeared, but the aerial photograph showed the huge trees all along our property. This is up front. There is a pile of dirt and mulch to the left there, but the trees are gone.

Mr. Church did agree to address the issue of dead and falling trees because I was worried about safety issues with my children and their friends.

(Read from certified letter.) Duke Power cut down the two trees.

Enough red flags went up and I was not getting any cooperation from Mr. Church at Riverside Farm and Garden so fortunately erosion control, zoning, some folks from Planning, mosquito control were very cooperative and sympathetic to our plight.

My wife and I reviewed the site plan amendment which Richard Bennett at Allied Surveying drew. We realized that even Mr. Bennett didn't understand the scope of this dirt-dumping and the debris and the water problem and the fallen tree problem.

Fortunately Mr. Bennett came to our house and reviewed the plan with us and amended it to provide a bit more protection.

We basically feel like we're a part of the farm and garden now.

We spent \$1,200 to have a survey done and verify the property line. That confirmed that much of the dirt and debris ended up on our property.

I believe this is a real public health issue with the mosquitos down there.

I hope that any rezoning would include and verify the cleanup of this dirt and debris as much as possible, as much as is reasonable just to put things back the way they were.

The site plan includes a type II buffer which, as I understand, is a row of Lelands. That's not nearly what we had before. We had enormous natural trees and they weren't pine trees. They were oaks, maples and the like. I would prefer a type III or IV buffer because that's what he destroyed.

Please keep in mind that we're dealing with 45 foot trailers and big, heavy loud noisy equipment. This isn't a consignment shop. I know this would be somewhat expensive, but to me it's the price of doing business in what is still a largely rural residential area. To me it's the story of a local business owner who simply hasn't cared about erosion, water, storm runoff, health and public safety issues, zoning requirements, and certainly his neighbor.

We would want Mr. Church to move forward and have a successful business. That does benefit us all. But if you're going to live the American dream, you've got to play by the rules. We do hope at some point he can get his zoning, but we sure would insist on him rectifying the problems he so willfully and wantonly created.

Lisa Evans, 6265 Yadkinville Road, Pfafftown, NC 27040

Displayed photo showing slabs of concrete in stream.

Now that Mr. Church has removed the buffer, I feel like I'm on display if I'm outside my house, sitting on the porch, playing with my children, or gardening. Last Saturday I listened to a front-end loader going back and forth.

Instead of beauty, now we see trailers, the leaning and dying trees, and the slabs of concrete that dominate the adjacent landscape.

I have no problem with the man earning a good living. We moved next to mulch piles and I have no problems with that. However, we could not hear or see the business. We didn't look at trailers. Now we feel like we are part of his business.

If he tries to tell us that he didn't know the rules, we can't believe him. We tried talking with him multiple times over the past year. Someone from the County came out well before the fall when we first saw the concrete being dumped out into the stream. They came over to our house and told us they had told Mr. Church to stop.

We do think that more than a type II buffer is appropriate. It has to be at the top of the hill or it does us no good.

The stream needs to be cleaned up and flowing well.

We would like to have someone keep in touch with us as this process proceeds.

Work Session

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

Clarence Lambe: How do you go about enforcing a situation where someone is in violation of a Special Use District permit? Gary Roberts: They are requesting this new site plan to basically sanction those violations. Ronnie Grubbs: Erosion Control issued a violation notice and when they do get proper permits, they'll be charged double-fees for those; and the notice of violation for zoning is a 10-day notice. Within 10 days you've got to start doing something to comply. In this case they started rezoning process. We'll hold off until that process is complete. After that, if the zoning is denied, Inspections would enforce these restrictions. Mr. Church would then have to revegetate the site and put it back the way it was. If compliance is not adhered to, Inspections can take the property owners to court where fines can be imposed, etc.

Brenda Smith: The petitioners were first cited for violations last fall (September 12, 2003). Have those particular violations been corrected yet? Steve Calaway: It's questionable what should happen. You can't do serious grading in the middle of the wintertime on a slope like that. Brenda Smith: I know. I'm asking specifically about the erosion issues. Is there any erosion control on the site yet after it was cited in September? Ronnie Grubbs: The problem is that the violations they have done are zoning violations so they can't get an erosion control permit because it's not in compliance with the special use zoning. Right now we haven't enforced anything because they are going through a process. Nor could we permit it or make them do anything under the erosion control act. It's not in conformance with the special use zoning that was approved previously so they have to go through a process and if they don't succeed, we will take them to court and take whatever action we have to take to make them comply with the old site plan. They could voluntarily do something like put up a sediment fence, but Inspections can't put it on a permit. Jimmy Norwood: Did they voluntarily do it? Ronnie Grubbs: I don't know. Ronnie Grubbs: The whole site is under violation and we couldn't permit it. We couldn't inspect it because it's not in accordance with the previous site plan.

Arnold King: What has the petitioner done out there since the citation was issued in September? Steve Calaway: Every effort has been made to seed the bank, to get it under grass. No silt fence or hay or straw has been added at this point.

Brenda Smith: I'm concerned that we've let something go environmentally that there could have been a simple solution to protect the stream and the silt problem. It seems out of sync to me.

Steve Calaway: It seems an oversimplification, but near this site they built a big water impoundment thing for the City of Winston-Salem and they graded 500-800 acres. It seemed to me that it stayed graded forever before there was grass there. This is a largely agricultural area and just down the road in two or three directions are fields that are plowed in the fall and stay fallow over the winter. Nothing is done there. This is a similar type of situation even though this is a business development. I don't think it's quite the problem it might be in Ardmore or somewhere else.

Brenda Smith: I would disagree with you on that, but my question was whether anything was done to stop the on-going erosion from the time the violation was done and you've answered that for me. Was anything ever suggested?

Steve Calaway: To my knowledge we've done what they suggested.

Jimmy Norwood: To my understanding, this is an illegal LCID. Staff verified that comment.

Jimmy Norwood: For the petitioner, it's my understanding that you can't have concrete or debris unless it's an LCID. Can the petitioner answer the question about putting the concrete and dirt back in the area on the site because you're still illegal. On the site plan.

Steve Calaway: I'm not sure I understand your question. All exposed concrete will be removed.

Jimmy Norwood: On this site plan it says, "Dirt, concrete placed in this area to be removed and relocated back inside on the site."

Ronnie Grubbs: There's something called a beneficial landfill which doesn't require many permits. It's an area where you can fill up to 10,000 sf and fill with solid materials that you can do to level a site out. That's what they've done here.

Jimmy Norwood: When was that permitted? Ronnie Grubbs: That was not permitted either.

Jimmy Norwood: Was it legal to do? Ronnie Grubbs: No, because it violated the site plan by taking the trees out and filling in.

Arnold King: It could have been legal if he'd gone through the proper procedure.

The approved site plan includes a 15' buffer and natural areas to remain. The Board discussed the buffers as shown on the approved site plan and the proposed site plan. The proposed site plan would grant significant storage in trailers, none of which are allowed under the approved site plan. If we approve this we are rewarding the petitioner for violations.

Arnold King: I don't want to penalize Mr. Church. His business has been successful. I want to scold him for not doing what he should have been doing all along. I'd like to see us go overboard on the buffers, not only a type IV, but more than 15'. Maybe we should go 25'. If we could buffer this thing well enough, I think it would be okay.

Paul Norby: Clearly you want at the end of the day the situation to be restored or improved as much as possible, but I am just very concerned about the signal that this sends to people across the county, that you can nibble away in violation of things and then end up getting rewarded with some additional land area. I'm really concerned when this goes to the County Commissioners. I think there's going to be some angry Commissioners when they hear this story.

Carol Eickmeyer: Do we have some sort of middle ground? Can we get a mediation and get some of the erosion and reforestation taken care of without approving this zoning?

Paul Norby: I think what would have been the wiser course for the petitioner to do is to not even have filed this rezoning and gone back and tried to restore the site as much as they could before coming back and asking for some more stuff. I realize part of what they're asking for is the solution to it, but I just think this is not a good way to handle public policy.

Carol Eickmeyer: So the answer is there's no mediation component we have which would allow the petitioner to show good faith because at this point the petitioner has not proved any good faith on anything we have done so far.

Paul Norby: I think the mediation needs to start with the petitioner showing the effort to correct the situation.

Ronnie Grubbs: If this case has to go to court, it will be a criminal case, heard by a judge who would sentence, fine, and make the property owner do something to bring the property back into compliance. If he doesn't do it then, he could be put in jail over it.

Arnold King: I think the County's better served with him having mulch out there for the neighbors than having to reforest and that. If we can do the buffers to protect the neighbors, to enhance what's proposed here. We talk about reforesting, but... He's done wrong, okay? But he's had a successful business. There's not a room full of neighbors here opposing it. We haven't had a lot of calls or anything. I think everyone wants to work with him. I don't know that the County is better served by reforesting an acre or two of land out there and shrinking the size of his business. I'm not sure that serves the public. I want to see him do more than what he's proposed here to protect the Evans. That's some form of penalty I'm asking for because it's a lot more than the ordinance would require.

Jimmy Norwood: I think my concern is this: He did it. I don't think we should penalize him, but I don't think we should just accept the extra storage as it is, either.

Jerry Clark: I think if we just let this pass and make all these concessions quickly, then we aren't serving what we're supposed to be doing here. I think we're really not doing what we're mandated to do on this board. I have a real problem with someone that would do this and you have to know with all the information out there today that he shouldn't be doing anything like that anyway. I'm really concerned. I don't want to see this just be an easy thing for him. I really don't want to see that because I believe he knew what he was doing when he went back there and cut those trees down.

Jimmy Norwood: It's my understanding that the letter stated that he should have started erosion control measures immediately. Mr. Grubbs, is that correct? Ronnie Grubbs: Yes, immediately. Jimmy Norwood: That hasn't been done so that's where I'm having the problem as well. Clarence Lambe: And that is a letter that was sent to him, not just a letter in your file? Ronnie Grubbs: Yes, that was served to him by Jay Sapp in our office back in September.

Arnold King: But did you not say that the reseeding was a way to correct that? Ronnie Grubbs: Well, he was told to put in the devices which is going to control erosion going down into the creek and things like that. The rest of the site we're in limbo about because it's subject to rezoning.

Clarence Lambe: Okay, the petitioner did say that you guys had gotten together and this was the plan that you'd come up with recognizing the facts that you've got right now. Is that an accurate representation of what's occurred? That this is the plan that you've come up with right now.

Ronnie Grubbs: We had two inspectors, one zoning and one erosion control, and they wrote him up both ways. One of those recommendations was to stabilize the erosion problem immediately. Generally that's silt fences and some other devices like that.

Paul Norby: Planning staff never gave any indication that we would support this plan.

Carol Eickmeyer: That was six or seven months ago that he had a chance to control the erosion, so ...

Jimmy Norwood: Can he withdraw, put the measures in, and come back with something else?

Paul Norby: Withdrawal would mean the penalties start immediately.

Paul Mullican: What happens if we continue this for 30 days? Ronnie Grubbs: As long as it's pending zoning action, he doesn't have any enforcement.

Paul Mullican: Even more than the buffer, what I'm most concerned about is what has been dumped off into the creek. He needs to get that cleaned out and then seed the bank.

Jerry Clark: Personally, I think he needs an environmental engineer out there, somebody that's certified and can verify that what he's doing is the proper thing to do.

Brenda Smith: We're all saying we want to see more of a buffer which isn't reflected in this plan. A delay doesn't help us there.

Steve Calaway: It's perfectly obvious to me that we need at least a 30' type IV for anything to happen good for Mr. Church. A lot of grading needs to be done to correct those problems. I'm not sure if 30 days is long enough. Of course you can check the progress in 30 days to see if a new plan is on file showing new buffers. Certainly some work is going to have to be done with the doctors who live next door to coordinate efforts from their side of the line. I believe what Dr. Evans was suggesting was that someone other than employees of Riverside doing the grading with a farm tractor on that bank. I think maybe that's a good suggestion and get the best advice he can from the engineers in terms of the slope and how to preserve that and then take the risk on having to reforest the remainder on what you decide to do and take the risk on whether or not to keep proposing to have storage trailers. Those are decisions that are beyond me to make and ultimately would be yours to make in the event he stays in the process. I suspect it might be better to keep an active zoning case with the staff following progress than it would be to withdraw and have him in limbo.

MOTION: Clarence Lambe moved that we continue the matter for 60 days.

SECOND: Jimmy Norwood.

Gary Roberts: During that 60 day period, which site plan is he working towards?

Ronnie Grubbs: The problem we have here is that he's brought fill in there and changed the elevation of the land from the previous site plan. We can't condone that. We can't permit it; we can't work with it.

Arnold King: He needs to clean everything out that he's brought in. He needs to clean up all of that. He needs to bring another site plan and we're going to accept the 30' type IV buffer as a minimum on that site plan and whatever else he wants to put on that site plan, with or without trailers is his risk, I guess.

Carol Eickmeyer: Can you shut his business down on erosion control? Ronnie Grubbs: We can't shut him down, but we can take him to court and ask a judge to do that. That takes quite a while. The only thing he could do right now is to try to dig out what he's put in there which is a substantial amount of fill and revegetate the site.

Jerry Clark: When you're saying substantial, what depth are you talking about?

Ronnie Grubbs: It's probably more 15-20 feet.

Steve Causey, Allied Design, 4720 Kester Mill Road, Winston-Salem, NC 27103
Part of the issue to get the erosion control devices in place will require removal of the dirt.

Ronnie Grubbs: They could probably get a plan approved to try to stabilize what's going on. That's something we could enforce. They're going to be double-feed, they might owe some penalties from the September date till now, but they could probably get something to keep it stabilized. They're going to have to do some slope work. They're going to have to dig out.

Steve Causey: Hopefully we could get a survey in a week, put a plan together within another two weeks. Hopefully within three weeks we could get at least an erosion control plan and permit submitted for approval. Ronnie's guys turn them around pretty fast, so I think within another week or so we could probably have a permit. Things like silt fences and attempts at diversion berms could be done more quickly than sediment basins.

Arnold King: We have a motion to continue this for 60 days, but I'd like to have a report in 30 days and certainly would expect to see some silt fences up and something being done.

Clarence Lambe: Does this weaken your enforcement action from a reliance kind of argument?

Ronnie Grubbs: It's hard for us to tell him to do work that isn't in accordance with the site plan.

Brenda Smith: If we recommend denial, that's not going to get a better buffer, etc.

Jimmy Norwood: The problem I'm having is that isn't not a big box. It is a Mom & Pop's and I appreciate that. The concern I have is rewarding someone for doing something that's going to give them more if we vote to approve this. We resolve one issue and that's the erosion control, but that's still only a small piece of what my concern is for the overall

notion of planning. We don't know what plan we're dealing with, so how do we get someone to enforce that?

Arnold King: He'll bring a new plan showing at least a 30' type IV buffer for one thing. That's all I've said I want to see on there. I don't know what he's going to do about the trailers.

Jimmy Norwood: I don't want him to come in expecting approval just because he's put a 30' buffer on the plan.

Arnold King: He understood that's the risk he's taking.

Carol Eickmeyer: I think it would be a lot cleaner to just deny it flat out because then what we do is we send a message that whether you're a big guy or a little guy, the rules are the same, there's good corporate business customers that are big, there's good ones that are small. There's bad ones that are small and bad ones that are big, so I think we're being consistent. As I have listened to this discussion, we have bent over three different kind of ways and we still don't have anything that is going to guarantee that the stream is fixed, that the people next door have anything like what they used to have, and at the same time if we keep bending over three or four different ways, we're going to let the other people out there like Mr. Church who think they can just go on and sorta ignore it and let business get big and wild and crazy and that we will forgive them. I think it's time for us to require permission and then forgiveness. If Mr. Church had taken any erosion control measure back in September when he was served, and that was a pretty clear message, then I might feel differently. But you skated along for six, seven months now and it's not getting better and you're asking us to say, "Okay, you're forgiven" and I don't think we can afford to do that. I really don't think as a Planning Board that's appropriate.

Arnold King: I think what we're proposing as far as the buffer is concerned gives the Evans more protection than putting it back the way it was. You might end up with about as much square footage of forested areas by widening that buffer all the way around as to what you had on this plan. I'm not trying to put Mr. Church out of business. We can try to do that if that's what we want to do.

Lavastian Glenn: For me it's a question of weakening the process. It's already hard to adhere to the process and you want to be fair, but I think if he had the opportunity to do what he needed to do once he was informed that he needed to do it, and he did not show good faith, it's like making exceptions and going out of your way to help someone who didn't take enough time to help themselves and help the community. So I think I'm just dealing with process here.

Arnold King: But he did take action. I think he thought if he submitted a Site Plan Amendment that was starting the process. I don't know what we accomplish by denying it. I want to fix the problem.

Jimmy Norwood: I think it's the erosion control that kind of bothers me as well. He had six months. Thirty more days might make a difference since he's been down here. It's like

the cases we talk about where we don't want to set a precedent. This could set a precedent.

Brenda Smith: I don't think we're saying don't enforce the sediment/erosion control that he's already been issued in citations, then this is not stopping enforcement of that.

Arnold King: We have a motion to continue for 60 days. Do we want to vote on that or withdraw the motion?

Jerry Clark: Let me withdraw my second. After listening to Carol, she's right. It's about the process. If we start doing this, how are we going to remember what we did down the road a year from now or two years from now.

Clarence Lambe: I withdraw my motion.

Brenda Smith: I think the process just because it's the process, we wouldn't need any of us if you had a checklist and it is or isn't there. I want to see everything brought back the way it should be and the most expedient way to do that. I don't know if that's working out a more minimal plan that gets more of a buffer in than we're going to get just by denying it.

Jimmy Norwood: That comes back to my question, "Can you just withdraw it and bring it back?"

Clarence Lambe: He can't withdraw it. He's going to get immediate enforcement. He does have until the elected body meets to do something for erosion control and at least show a good faith effort.

The Board discussed the benefits of withdrawing or continuing the petition.

David Reed: I think if he were to withdraw, he would go back to honor the 1998 plan that he agreed to. Then, if he made that right, he might come back and say, "I want to expand my business." If you want to keep it alive, you probably want to continue it.

Arnold King: I don't see the point of reforesting that and then him coming back in six months and asking to undo it.

Arnold King: I think more buffers around the whole perimeter serves the community better than reforesting the back.

Carol Eickmeyer: I think we should deny it and then let the City Council have the discussion about how to make it better.

Arnold King: I don't think that's the best choice. I'm going to vote against the motion. I'd rather try to work here rather than just dumping it in the laps of the elected body. I'd like for us to try to mitigate the problem and come up with a solution. I'm not trying to condone what he did, but I'm not sure denying it is the right action.

Carol Eickmeyer: It's their job. I feel this is a Zoning Board of Adjustment issue way more than a planning issue or a site plan amendment because it's very judicial, what we're doing here and I don't feel comfortable with that at all. We are not a mediation board unfortunately, so I think it needs to be someplace else.

MOTION: Carol Eickmeyer moved denial of the special use permit.

SECOND: Jimmy Norwood

VOTE:

FOR: Clark, Eickmeyer, Glenn, Lambe, Norwood

AGAINST: King, Mullican, Smith

Written Comments by Planning Board Members

Carol Eickmeyer: Mr. Church has been cited for his lack of compliance with erosion back in September - he did not take any action - therefore he should not be given permission to continue to act in bad faith.

Arnold King: I voted against the motion to deny the Site Plan Amendment requested by Mr. Bobby Church. I would like to explain my position.

I do not condone the activities that Mr. Church has conducted on his property without proper authority. I believe that Mr. Church should clean up the mess he has created, should restore the adjacent property of Dr. Evans to its original state and should provide an adequate buffer on his property. We were close to working out a suitable arrangement at the Planning Board when a couple of the members became frustrated and decided to just deny the request and send this forward to the County Commissioners. I think this was the wrong approach. By denying, we are merely requesting Mr. Church to restore the property to its original state - which includes "reforesting" an area at the rear of the property. We had received a better compromise from Mr. Church in this regards that has been lost unless the County Commissioners can get the offer back on the table.

Mr. Church, through his attorney, agreed to a 30-foot type IV buffer around the perimeter of the property. Current requirements are for only a 15-foot type II buffer. The neighbors most affected by this, Dr. and Mrs. Evans, would prefer the 30-foot type IV buffer. There was some discussion that we were somehow benefiting Mr. Church by not requiring him to reforest the rear of his property. My contention is that a 30-foot type IV buffer around the entire perimeter of the property will probably cost Mr. Church more than simply reforesting the rear of his property and would be extremely more beneficial to the neighbors.

I voted against the motion to deny the Site Plan Amendment because I thought we could have resolved the problem with conditions that Mr. Church was willing to submit with a revised site plan. I would have preferred to continue the case before the Planning Board with conditions that he revise the Site Plan Amendment to show the 30' type IV buffer and come back to the Planning Board for more review.

Again, I am not condoning the activities that Mr. Church has conducted on his property. I wanted to send to the County Commissioners a revised site plan that would have satisfied the neighbors instead of just "passing the buck." I believe we could have done that. It's unfortunate that this case came before the Planning Board late in the evening following the long debate regarding Wal-Mart. I would like for the County Commissioners to know that Mr. Church agreed to installing the 30' type IV buffer and the County Commissioners should ask him again to do that. It would better serve the community than the proposed Site Plan Amendment that is being presented.

Mr. Church's request for storage trailers and a storage yard for landscape material is not a concern of the neighbors - if it is properly screened. The 30' type IV buffer is more than twice the minimum requirement and would address these issues.

According to information furnished on March 3, 2004 by the Office of the Tax Assessor, the subject property was in the name of Bobby Ray Church and Wilma S. Church.

A. Paul Norby, AICP
Director of Planning