



**STAFF REPORT  
PB 17-06 MILLER HOMES &  
BUILDING LLC  
BOARD OF COMMISSIONERS  
DECEMBER 4, 2017**

**APPLICATION SUMMARY**

|   |  |
|---|--|
| <b>Property Owner:</b><br>Miller Homes & Building LLC<br>111 Currituck Commercial Drive, Suite B<br>Moyock NC 27958 | <b>Applicant:</b><br>Miller Homes & Building LLC<br>111 Currituck Commercial Drive, Suite B<br>Moyock NC 27958 |
| <b>Case Number:</b> PB 17-06  | <b>Application Type:</b> Zoning Map Amendment  |
| <b>Parcel Identification Number:</b><br>0015-000-047B-0000  | <b>Existing Use:</b> Single-Family Dwelling and Outbuilding  |
| <b>Land Use Plan Classification:</b> Full Service   | <b>Parcel Size (Acres):</b> 1.05   |
| <b>Moyock SAP Classification:</b> Full Service  |  |
| <b>Zoning History:</b> A-40 (1974); AG (1989)   | <b>Plan Request:</b> N/A – Straight Rezoning   |
| <b>Current Zoning:</b> AG   | <b>Proposed Zoning:</b> MXR  |

**SURROUNDING PARCELS**

|       | Land Use                                       | Zoning             |
|-------|--|--------------------|
| North | Cultivated Farmland and Single-Family Dwelling | AG                 |
| South | Golf Course                                    | AG                 |
| East  | Cultivated Farmland                            | GB                 |
| West  | Residential Subdivision (Lakeview)             | SFM w/ PUD Overlay |

**STAFF ANALYSIS**

That applicant is requesting a conventional-rezoning from AG (Agricultural) to MXR (Mixed Residential). Since this is a rezoning to a standard zoning district and not a conditional district, no conditions can legally be placed on the property. The property could potentially be used for all the uses and densities allowed in the MXR district. This conventional zoning map amendment (rezoning) is a legislative decision of the Board of Commissioners and is not controlled by any one factor. While not a condition of the rezoning, the applicant states that the rezoning is for a small bakery and possible residential use.

There is a legitimate concern that if approved, this rezoning could be considered illegal spot zoning. Based on information from the School of Government and General Statutes, below are concerns regarding the request:

- A zoning ordinance, or amendment, which singles out and reclassifies a relatively small tract owned by a single person and surrounded by a much larger area uniformly zoned, so as to

impose upon the smaller tract greater restrictions than those imposed upon the larger area, or so as to relieve the small tract from restrictions to which the rest of the area is subjected, is called "illegal spot zoning." *Id.* at 549, 187 S.E.2d at 45

- Illegal spot zoning can be involved when the proposed new zoning requirements for the small area are either more or less strict than those for the surrounding area. The key element is that the proposed zoning is different from the other zoning, "thus projecting an inharmonious land use pattern." *Chrismon v. Guilford County*, 322 N.C. 611, 626, 370 S.E.2d 579, 588 (1988). See also *Dale v. Town of Columbus*, 101 N.C. App. 335, 399 S.E.2d 350 (1991).
- There are several uses allowed in a conventional MXR district that are not allowed in the existing AG district that may be incompatible with the neighborhood, including the commercial use lots approved for neighborhood serving commercial uses across the street at Lakeview Subdivision:

**Uses Allowed in Conventional MXR that are not allowed in Conventional AG UDO - Table 4.1.1: Summary Use Table**

**Potentially Incompatible Uses - based on size and intensity are *highlighted***

Duplex  
Live/Work Dwelling  
Upper Story Dwelling  
*Dormitory*  
Family Care Home  
Rooming or Boarding House  
Community Center  
*Cultural Facility*  
*Library*  
*Museum*  
Senior Center  
Youth Club Facility  
*Adult Day Care Center*  
*Child Care Center*  
*High School*  
Cemetery, Columbaria, Mausoleum  
*Restaurant with Indoor or Outdoor Seating*  
Specialty Eating Establishment  
*Business and Sales Office*  
Professional Services Office  
*Fitness Center*  
*Indoor Recreation*  
*Theater*  
*Athletic Facility*  
*Golf Course*  
*Golf Driving Range*  
*Outdoor Recreation*  
*Convenience Store*  
*Drug Store/Pharmacy*  
*Entertainment Establishment*  
*Financial Institution*  
*Laundromat*  
*Personal Services Establishment*  
*Bed and Breakfast Inn*

- There are five factors in validity in approving a potential spot zoning.
  1. There is an emphasis on a very limited number of property owners being involved, “usually triggered by efforts to secure special benefits for particular property owners, without regard for the rights of adjacent landowners.”
    - If this small parcel is rezoned to MXR and the developer employs sustainable development practices, the density could triple on this property from one single-family dwelling unit per acre to three single-family dwelling units per acre. If each of the three lots builds accessory dwelling units, there could potentially be six single-family dwellings on the 1.05 acre parcel.
    - The majority of the property adjoining this parcel is zoned GB which has a minimum lot area of 40,000 sf which is much greater than the minimum lot area required if rezoned to MXR (approximately 15,250 sf lots).
    - The AG zoned property adjoining the lot is limited to 30,000 sf lots.
    - The planned development across the street has a density of 1.967 units/ acre.
    - The increase in density will relieve the small tract from restrictions to which the rest of the area is subject.
  2. Size of tract.
    - This zoning map amendment is for a single 1.05 acre parcel owned by a single property owner.
    - Staff is concerned that the 1.05 acre parcel of land is an invalid size for legal spot zoning. There are a variety of parcel sizes of the adjacent and abutting properties, from 0.17 acres to 23.56 acres.
  3. Compatibility with adopted plans.
    - The request appears to be incompatible with the Land Use Plan and compatible with the Moyock Small Area Plan as outlined below.
    - The rezoning is inconsistent with the Moyock Mega-Site Plan’s emphasis to cluster moderate to high residential density development within or near the Moyock Mega-Site boundaries. The closest MXR zoning is the applicant’s Conditional-MXR zoned property approximately 2.5 miles to the north of this property at the entrance of Shingle Landing Subdivision and across the highway from the Moyock Mega-Site.
  4. The balance of benefits and detriments.
    - The benefits to the single property owner are a detriment to adjoining properties. This rezoning will allow for smaller lots than allowed in the neighboring districts if the property is subdivided.
  5. Relationship of uses.
    - A residential use is consistent with the residential uses in the area.
    - Several of the non-residential uses (listed above) allowed in the MXR could be considered incompatible with the neighborhood.
- There is no set specific minimum or maximum size of an area that constitutes illegal spot zoning. However, the smaller the tract, the more likely the rezoning will be held invalid. (David Owens, UNC School of Government, May 2014)

## REVIEW STANDARDS

In determining whether to adopt or deny a proposed map amendment, the Board of Commissioners may weigh the relevance of and consider whether and to the extent to which the proposed amendment:

1. Is consistent with the goals, objectives, and policies of the Land Use Plan, other applicable county-adopted plans, and the purposes of this ordinance;

- The density of three units per acre is consistent with the Land Use Plan and the Moyock Small Area Plan.
  - It is inconsistent with the following policies in the Land Use Plan:
    - POLICY HN1: Currituck County shall encourage development to occur at densities appropriate for the location.
  - It is consistent with the following policies in the Moyock Small Area Plan:
    - POLICY IS1: The costs of infrastructure, facilities, and services related to new growth and development should be borne primarily by those creating the demand.
    - POLICY ST1: Promote the establishment of an area dedicated to community serving businesses that foster a small town, main street feel.
2. Is in conflict with any provision of this ordinance, or the County Code of Ordinances;
    - It is in conflict with the General Statute regulations regarding legal spot zoning.
  3. Is required by changed conditions;
    - Staff is not aware of conditions that changed to warrant the rezoning.
  4. Addresses a demonstrated community need;
    - Staff is not aware of a demonstrated community need for the rezoning.
  5. Is compatible with existing and proposed uses surrounding the land subject to the application, and is the appropriate zoning district and uses for the land;
    - Single-family residential use is compatible with surrounding single-family residential use.
    - A neighborhood serving commercial use is compatible with planned neighborhood serving commercial uses.
    - It is staff's opinion that this is not the appropriate zoning district for the land based on the illegal spot zoning and other concerns expressed above.
  6. Adversely impacts nearby lands.
    1. It is staff's opinion that this rezoning will adversely impact nearby lands because the increase in density will relieve the small tract from restrictions to which the rest of the area is subject (lot size/density).
  7. Would result in a logical and orderly development pattern;
    - An MXR zone would result in an illogical and disorderly development pattern as the MXR request is not remarkably similar to the C-PUD or the GB zoning in the area. The size of the requested zoning district (1.05 acres) is remarkably dissimilar to the C-PUD (74.34 acres) and GB zoned districts (64.79 acres) in the area. While the C-PUD has the most similar lot sizes, the zone's density (1.967 units per acre) and the inclusion of open space (35%), and amenities are also remarkably dissimilar to this MXR request.
  8. Would result in significant adverse impacts on the natural environment – including, but not limited to water, air, noise, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment;
    - Staff is not aware of any adverse impacts on the natural environment because of the proposed rezoning.
  9. Would result in development that is adequately served by public facilities;
    - There are adequate public facilities to serve this development.
  10. Would not result in significantly adverse impacts on the land values in the surround area; and,
    - There has been no evidence presented as to the impacts on land values in the surrounding area.
  11. Would not conflict with the public interest and is in harmony with the purposes and intent of this ordinance.

- It is staff's opinion that the rezoning will conflict with the public interest and is not in harmony with the purpose and intent of this ordinance.

## RECOMMENDATIONS

### STAFF

Staff recommends denial of this rezoning subject to the following inconsistencies:

1. It is in conflict with the General Statute regulations regarding legal spot zoning.
2. It is in conflict with the Land Use Plan. (Policy HN1)
3. It is not required by changed conditions.
4. It does not address a demonstrated community need.
5. It is not the appropriate zoning district and uses for the land.
6. It adversely impacts nearby lands.
7. It conflict with the public interest and lack of harmony with the purposes and intent of this ordinance.

Note: The applicant's engineer has provided an opinion (Mark Bissell- October 24, 2017) that this request is legal spot zoning. That letter is attached to this staff report for your reference.

If the board finds the applicant's request is valid spot zoning, staff recommends the following statement of consistency and reasonableness:

1. It is consistent with the 2006 LUP including the following policies:
  - POLICY HN3: Currituck County shall especially encourage two forms of residential development, each with the objective of avoiding traditional sprawl: 2) COMPACT, MIXED USE DEVELOPMENTS, OR DEVELOPMENTS NEAR A MIXTURE OF USES that promote a return to balanced, self-supporting community centers generally served by centralized water and sewer. These types of development are contemplated for the Full Service area.
  - POLICY CD1: NEIGHBORHOOD SERVING COMMERCIAL DISTRICTS should be encouraged to locate where a collector or secondary street intersects with a street of equal or greater size. Appropriately designed, small-scale businesses may also be near other neighborhood serving facilities such as schools and parks.
2. It is consistent with the following policies in the Moyock Small Area Plan:
  - POLICY IS1: The costs of infrastructure, facilities, and services related to new growth and development should be borne primarily by those creating the demand.
  - POLICY ST1: Promote the establishment of an area dedicated to community serving businesses that foster a small town, main street feel.
3. It is a reasonable request compared with the existing and proposed uses surrounding the land subject to the application and is the appropriate zoning district and use for the land because MXR doesn't allow many potentially incompatible uses. MXR is intended to be of a neighborhood serving district. This parcel fits that description since it is off the highway and within walking distance of school/houses.

## PLANNING BOARD

The Planning Board recommended denial of this rezoning subject to the following:

1. It is in conflict with the General Statute regulations regarding legal spot zoning.
2. It is in conflict with the Land Use Plan. (Policy HN1)
3. It is not required by changed conditions.
4. It does not address a demonstrated community need.
5. It is not the appropriate zoning district and uses for the land.

6. It adversely impacts nearby lands.
7. It conflict with the public interest and lack of harmony with the purposes and intent of this ordinance.

### **Planning Board Recommendation – November 14, 2017**

Mr. McColley motioned to recommend denial as presented since it conflicts with NC General Statutes for legal zoning. Mr. Thomas seconded the motion and the motion carried with a 3-2 vote, Mr. Ballance and Mr. O'Brien with nay votes.

**RESULT: RECOMMENDED DENIAL [3 TO 2] Next: 12/4/2017 6:00 PM**

**AYES:** Carol Bell, Chairman, John McColley, Board Member, J. Timothy Thomas, Board Member

**NAYS:** C. Shay Ballance, Board Member, Jeff O'Brien, Board Member

**ABSENT:** Fred Whiteman, Vice Chairman, Steven Craddock, Board Member, Jane Overstreet

Senior Planner, Tammy Glave presented the staff report. The applicant is requesting a conventional-rezoning from AG (Agricultural) to MXR (Mixed Residential). Since this is a rezoning to a standard zoning district and not a conditional district, no conditions can legally be placed on the property. Staff is concerned this could potentially be considered as illegal pot zoning. Based on the School of Government and General Statues, Ms. Glave gave reasoning for the staff's concern. Ms. Glave reviewed the five factors in validity in approving a potential spot zoning as well as the review standards to consider when adopting or denying the proposed map amendment. Ms. Glave said staff recommends denial and gave several inconsistencies to support that decision.

Chairman Bell asked if the board members had any questions for Ms. Glave and there were none.

Applicant, Sam Miller from Moyock appeared before the board. He presented notes to the Planning Board and members of the staff which were prepared by him and his Engineer, Mark Bissell. Mr. Miller also passed out emails from the former Planning Director, Ben Woody, showing his support for the MXR zoning. Mr. Miller said no adjacent property owners showed up in opposition on two occasions of community meetings. Mr. Bissell spoke on behalf of Mr. Miller saying MXR is intended to be a neighborhood serving district and the neighborhood will support this business. Mr. Miller passed out another paper showing zoning in the area.

Chairman Bell said not having conditions is bothersome.

Ms. Glave referenced Mr. Miller's comment that 85% of bakeries fail and asked Mr. Miller if he would put houses on the parcel in that situation. Mr. Miller said he has not considered putting houses on the property, but if that were to happen, all other surrounding property is zoned General Business and can do anything they want.

Mr. McColley said you purchased this property with eyes wide open knowing what it was zoned. Mr. McColley asked Mr. Miller's reasoning to not zone GB (General Business). Mr. Miller said he needs the flexibility to build a house if the business fails and said he should not be restricted.

Mr. Ballance asked Mr. Miller if he would be willing to put a condition to only build two houses on the property. Mr. Miller said he would agree to that condition. Ms. Glave said Mr. Miller would have to resubmit his application to change to Conditional Zoning.

Mr. O'Brien said he had a problem with the density increase and asked Mr. Miller if he would eliminate multi-family. Mr. Miller said he wanted to use this time to get the Planning Board's feelings on what would be allowed and gave his word to resubmit as Conditional Zoning with the conditions that are discussed tonight.

Mr. Ballance said he didn't have a problem with the possibility of three residential lots on the parcel.

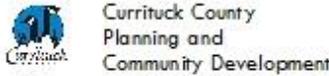
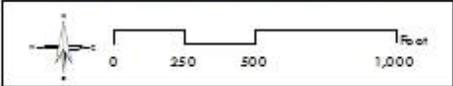
Chairman Bell closed the public hearing.

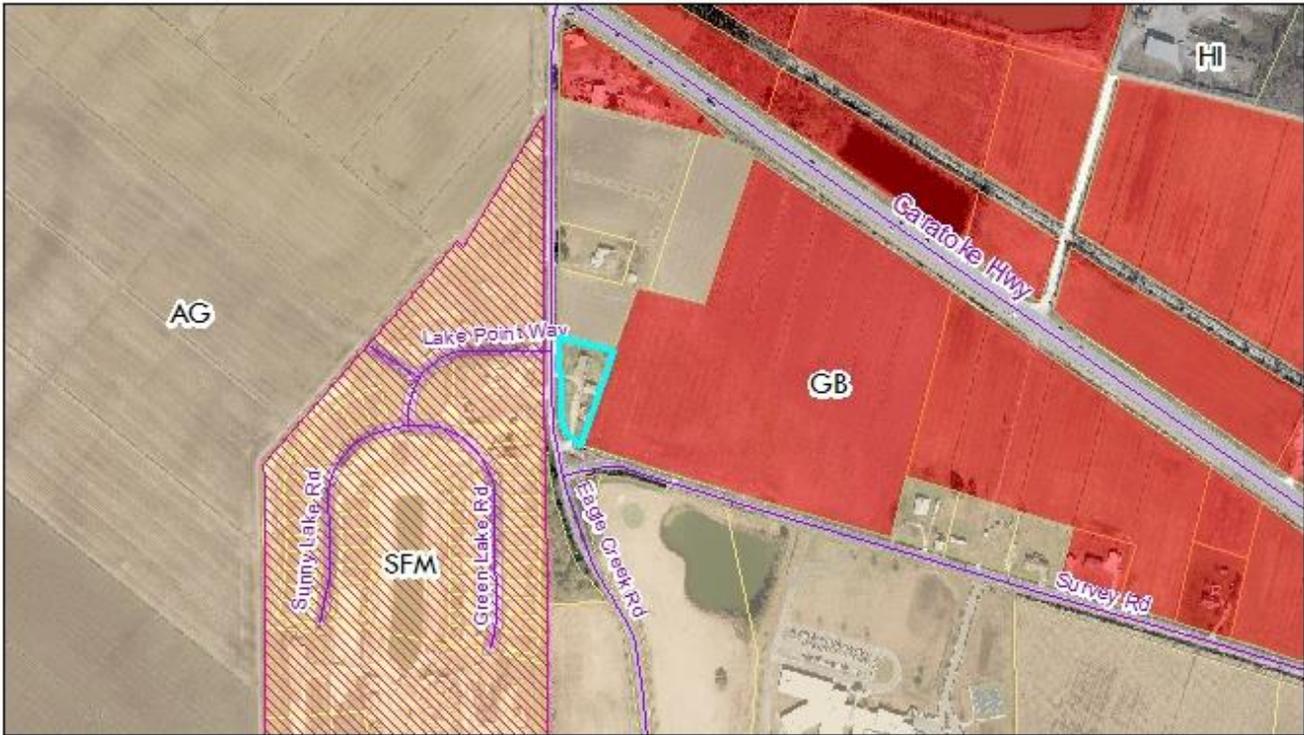
Mr. McColley motioned to recommend denial as presented since it conflicts with General Statutes for legal zoning. Mr. Thomas seconded the motion and the motion carried with a 3-2 vote, Mr. Ballance and Mr. O'Brien with nay votes.

THE APPLICATION AND RELATED MATERIALS ARE AVAILABLE ON THE COUNTY'S WEBSITE  
Planning Board: [www.co.currituck.nc.us/board-of-commissioners-minutes-current.cfm](http://www.co.currituck.nc.us/board-of-commissioners-minutes-current.cfm)

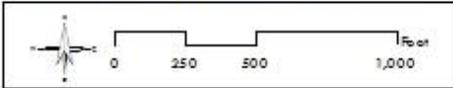


PB 17-06 Miller Homes & Building LLC  
Zoning Map Amendment  
Aerial Photography





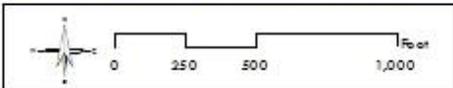
PB 17-06 Miller Homes & Building LLC  
Zoning Map Amendment  
Zoning



Currituck County  
Planning and  
Community Development



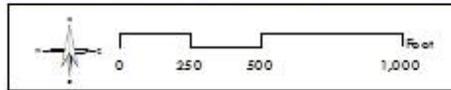
PB 17-06 Miller Homes & Building LLC  
Zoning Map Amendment  
LUP Classification



Currituck County  
Planning and  
Community Development



PB 17-06 Miller Homes & Building LLC  
Zoning Map Amendment  
Moyock SAP Classification



Currituck County  
Planning and  
Community Development