

PLANNING STAFF REPORT

Zoning Text Amendment

SUMMARY:

Hearing Date: Planning Board – September 10, 2013
Board of County Commissioners – September 16, 2013
Applicant: Administrator, Division of Planning
Application Number: ZTA 11004 Pender County

Text Amendment Proposal: The request consists of amending the Pender County Unified Development Ordinance in accordance with North Carolina House Bill 276: An Act to Clarify and Modernize Statutes Regarding Zoning Boards of Adjustment. Specific modifications include amending Board of Adjustment procedures in Section 2.4.1 for voting and Section 2.4.7 further clarifying the definition of unnecessary hardship for a variance.

Background: The following text amendment is the result of recent legislative changes in an effort to modernize Board of Adjustment Statutes effective October 1, 2013.

Administrator/Planning Board Recommendation: Administrator respectfully recommends **amending** the Unified Development Ordinance as described in the staff report.

The following outline describes the proposed amendments by Section of the Pender County Unified Development Ordinance. The proposed amendments are in accordance with North Carolina House Bill 276: An Act to Clarify and Modernize Statutes Regarding Zoning Boards of Adjustment effective October 1, 2013. Amendments would allow for greater uniformity in the variance process aligning Pender County's criteria with other jurisdiction Statewide.

Section 2.4.1 Boards of Adjustment: Establishment, Membership and Rules of Procedure

Section 2.4.1.C. 6. Voting

A concurring vote of four-fifths (4/5's) of the Board of Adjustment is necessary for any final action on any matter according to the current Unified Development Ordinance. H.B. 276 details final action on variances must pass with a four-fifths (4/5's) concurrence of the Board while all other quasi-judicial cases may only require simple majority vote of the Board.

Only members who are excused from voting (conflict of interest or vacant positions) on a quasi-judicial matter do not count towards the four-fifths (4/5's) or simple majority required for final action. Absenteeism does not excuse members from voting and therefore these members are counted toward the total, and counted as a 'nay vote'. For example, one Board member absent from the meeting due to illness, is counted as a 'nay vote' towards a simple majority or four-fifths (4/5's) requirement.

Variance 3.14

Section 3.14.7 Findings

At present to grant a variance the Pender County Ordinance identifies *seven special or unique circumstances or conditions or practical difficulties exist which apply to the land, buildings or uses involved which are not generally applicable to other land, buildings, structures, or uses in the same zoning districts;*

- 1) That the special conditions or circumstances or practical difficulties do not result from the actions of the property owner or applicant, their agent, employee, or contractor. Errors made by such persons in the development, construction, siting or marketing process shall not be grounds for a variance except in cases where a foundation survey submitted to the Building Official before a contractor proceeds beyond the foundation stage has not revealed an error which is discovered later;*
- 2) That the strict enforcement of this Ordinance would deprive the owner or applicant of reasonable use of the property that is substantially consistent with the intent of this Ordinance;*
- 3) That the granting of a variance will not result in advantages or special privileges to the applicant or property owner that this Ordinance denies to other land, structures, or uses in the same district, and it is the minimum variance necessary to provide relief;*
- 4) That the variance shall not be materially detrimental to the health, safety or welfare of persons residing or working in the neighborhood. Consideration of the effects of the variance shall include but not be limited to, increases in activity, noise, or traffic resulting from any expansion of uses allowed by the variance;*
- 5) That the proposed use and the appearance of any proposed addition or alteration will be compatible with, and not negatively impact, nearby properties; and*
- 6) That the variance will not result in the expansion of a nonconforming use.*
- 7) In the case of expansions to nonconforming structures, the variance granted shall be the smallest that is reasonably necessary.*

To create consistency across North Carolina, H.B. 276 identified four criteria which will replace current text in the Pender County Unified Development Ordinance;

- 1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.*
- 2) The hardship results from conditions that are peculiar to the property, such as location, size, topography. Hardships resulting from personal circumstances, as well as hardships*

resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

- 3) *The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify granting of a variance shall not be regarded as a self-created hardship.*
- 4) *The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured and substantial justice is achieved.*

Evaluation:

As prescribed in the Pender County Unified Development Ordinance (UDO) Article 3.18.5 in evaluating any proposed ordinance text amendment, the Planning Board and the County Commissioners shall consider the following:

- 1) The extent to which the proposed text amendment is consistent with the remainder of the Ordinance, including, specifically, any purpose and intent statements;
- 2) The extent to which the proposed text amendment represents a new idea not considered in the existing Ordinance, or represents a revision necessitated by changing circumstances over time;
- 3) Whether or not the proposed text amendment corrects an error in the Ordinance; and
- 4) Whether or not the proposed text amendment revises the Ordinance to comply with state or federal statutes or case law.

In deciding whether to adopt a proposed Ordinance text amendment, the central issue before the Planning Board is whether the proposed amendment advances the public health, safety or welfare and is consistent with any adopted County Land Use Plan documents and the specific intent of this Ordinance.

Comprehensive Land Use Plan Compliance:

There are no conflicting policies within any adopted land use documents. The proposed text amendment revises the Pender County Unified Development Ordinance to comply with State statutes.

Staff Recommendation:

The proposed text amendment is consistent with the Unified Development Ordinance and North Carolina State Statutes. Therefore, staff is recommending approval of the amendments as presented.

Planning Board

Motion: _____ **Seconded:** _____

Approved: _____ **Denied:** _____ **Unanimous** _____

Boney: __ Marshburn: __ Baker: __ Edens: __ McClammy: __ Nalee: _____ Williams: __