

Pender County Planning and Community Development

Planning Division

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MEMORANDUM

To: Pender County Planning Board

From: Planning Staff

Date: June 7, 2016

RE: Work Session Discussion Items – Potential Text Amendments

As discussed at the May 3, 2016 Planning Board meeting, Planning Staff has been working to update the Unified Development Ordinance to further clarify and modernize the Ordinance. Staff will be seeking Planning Board input to assist in this process. Ordinance updates include:

1. Collector Street Plan Policies – Review of adopted policies within the Pender County Collector Street Plan and incorporation of development regulation based on policy.
2. Interconnectivity – Current standards should be updated to provide clarity as well as review of requirements regarding interconnectivity and improvement standards for substandard roadways.
3. Minor Non-Residential Zoning Approvals – Review submission and review procedures for zoning approvals for certain non-residential applications.
4. Notifications – Review notification policies to adjacent property owners for project mailers.
5. Access Easements – Provide clarity and organization for access easement standards as applied to subdivision regulations.
6. Administrative – Review the requirement for General Use Rezoning to be reviewed by the Technical Review Committee as there is no site plan specific to a request.
7. Parking – Review proposed standards to be applied to multi-family housing types.
8. Preliminary & Final Plat Requirements – In an effort to further clarify and streamline the subdivision review and approval processes, an amendment is proposed for both Preliminary and Final Plat (Section 6.4 and Section 6.5) of the UDO.
9. Permitted Uses – Address recent Court of Appeals cases for allowed uses throughout the jurisdiction in relation to uses not specifically listed in the Table of Permitted Uses.

Item One: Pender County Collector Street Policies

On March 21, 2016 the Board of County Commissioners adopted the Pender County Collector Street Plan. Several updates have been adopted at this time, specifically plan references and TIA generators. In order to add value to the Collector Street Plan, a number of additional policies need to be incorporated into the Unified Development Ordinance to make policies enforceable as regulation. These policies will need to be incorporated into Article 7, Design Standards, as this Section of the UDO contains regulations on streets, access and lot design.

Spacing Standards

The proposed collector roadways as identified in the Collector Street Plan were devised by identifying the density of zoning districts and future land use designations. What this map says is that in higher density areas of the county additional collector streets should be provided. Section 7.5.1.A states that the layout of streets as to arrangement, width, grade, character and location shall conform to the Collector Street Plan. If the applicant cannot meet the proposed collector roadways as identified on the plan, there must be an alternative, this was provided in Table 4 on page 63.

The idea is that the spacing standards for the collector roadways must be maintained based on the land use intensity, even if the alignment as proposed cannot be met for the specific site. The table below may be incorporated into the UDO to allow for alternative arrangement and location of collector roadways based on spacing standards below;

Type of Collector Street	Intensity	Access Function	Approximate Street Spacing
No Collector Streets (Environmental Conservation)	Little to no development	N/A	N/A
Lowest Intensity (Rural Agricultural)	Less than 2 dwelling units per acre	Highest	3,000 to 6,000 feet apart
Medium Intensity (General Business, General Industrial, Industrial Transition, Manufactured Housing Community, Residential Performance)	2-4 dwelling units per acre	High	1,500 to 3,000 feet apart
High Intensity (Residential Mixed, Office Institutional, Planned Development)	More than 4 dwelling units per acre/activity nodes	Medium	750 to 1,500 feet apart

This policy will be incorporated into Section 7.5.1 Public and Private Street Design.

Criteria for Alternative Layout

Also needed is recommended criteria for which a developer or applicant can design the required collector roadways given they cannot meet the standards, what Administrative approval can be given to vary from; Section 7.5.1.A States that the layout of streets as to arrangement, width, grade, character and location shall conform to the Collector Street Plan. Policy recommendations included in the plan on page 63 can be seen below, this is the recommended inclusion into the UDO to vary from 7.5.1.A;

Any site plan or master development plan requiring the implementation of a collector street as defined by the adopted Pender County Collector Street Plan or the WMPO non-federal classification shall meet minimum spacing standards as defined by the table below. If modification or waiver to the spacing standards are warranted for any reason, they must be based on objective criteria including:

1. Existing topographical constraints such as; drainage patterns, riparian areas, significant trees or vegetation, steep slopes, or are likely to cause unacceptable significant adverse environmental impacts the waiver would avoid such impacts;
2. An existing structure such as a substantial retaining wall makes widening a street or right-of-way or required placement of infrastructure impractical;
3. Building on an existing lot could not occur without the waiver or modification based on the specific Group and accelerated Cross Section given the defined spacing standards may be achieved by other means;
4. There is insufficient right-of-way to allow a full width street Cross Section and additional right-of-way cannot be provided, or the required street right-of-way would occupy an unreasonable percentage of the total land area of the tract;
5. The existing infrastructure (a) does not meet current standards, (b) is and will remain functionally equivalent to current standards, and (c) there is little likelihood that current standards will be met in the area; and/or
6. There is no existing or proposed street or street right-of-way adjacent to the property, and the street access has been obtained across private property.

Complete Streets

Table 6 on page 65 for policy recommendations lists the Complete Streets policies and supports them. We will incorporate this by explicitly stating in Section 7.5.1 that new streets will be designed to these complete street standards.

Tri-Party Agreement for Multi-Modal Facilities

Table 8 on page 66 describes procedures for a third party agreement. This is important because homeowner's associations are typically responsible for the maintenance of the streets and bicycle and pedestrian facilities. The County ultimately partners with the HOA in the agreement with NCDOT. Potentially this could go in a new section within Article 7 on streets. It may also need to be incorporated into the appendix that contains forms. These agreements are required in both commercial and residential settings.

The Tri-Party agreement is a framework for the construction and maintenance of new pedestrian and bicycle facilities along collector streets. While NCDOT would ultimately maintain the street, all maintenance and liability costs for the construction and maintenance of pedestrian and bicycle facilities would be borne by Pender County (or HOA) until the construction is complete. At that point, maintenance would be transferred to the Home Owner's Association or other qualified party, absolving both the NCDOT and Pender County from any liability or maintenance relating to the pedestrian and bicycle amenity. The

Tri-Party agreement is fundamental to constructing and maintaining pedestrian and bicycle amenities in the Collector Street Plan study area. Implementing and abiding by this agreement would be a requirement in situations where bicycle and pedestrian amenities are planned to be constructed.

Collector Roadways Connectivity

Table 9 in the Collector Street Plan describes general connectivity of collector roadways. This needs to be incorporated in sections describing connections. This requires notification be placed on roads that are stubbed out. No collector street should be discontinued without signage. At the March Planning Board Work session it was discussed making this policy law by including it into the UDO. To achieve this, the requirement of signage into the Ordinance stating; "NOTICE THIS RIGHT-OF-WAY MAY BE EXTENDED IN THE FUTURE TO OTHER DEVELOPMENT AND TO OTHER ROADWAYS. COUNTY OF PENDER."

Item Two: Retrofitting Substandard Roadways

The Unified Development Ordinance needs to be updated for clear requirements regarding interconnectivity and retrofitting improvements on substandard roadways. Staff attempted to seek guidance from outside resources on this issue including other municipalities, the Council of Governments and the UNC School of Government. Unfortunately, this appears to be an issue that is difficult for most Counties to deal with.

The end result we are looking for is to find a way to assess impacts when additional traffic is being placed on an already substandard roadway. Staff needs to transition Ordinance requirements from stating reasonable access is required towards actual measurable standards. With these updates, the Ordinance necessitates standards for maintenance of private access easements within new developments.

Item Three: Change of Use Permit Requirements

Currently, if an existing business or storefront exists and a new business, restaurant or any other change of use is proposed to take the place in an existing location the applicant must make application for a Minor Site Development Plan in accordance with Section 3.6.2 Activities requiring Minor Site Development Permits;

- A. Any project including building additions of less than a 10% increase to the floor area of the existing structure or;
- B. Any use proposing to occupy an existing building, structure, or unit or any new use proposing construction within an existing building, structure, or unit.
- C. Any new structure(s) up to 2,500 square feet in area.
- D. Any new structure that will not increase the impervious surface area to produce additional runoff creating the need for additional stormwater management practices or facilities.
- E. No subdivision of new parcels are proposed.

The issue that arises frequently when a new business wants to use an existing building is that existing site conditions may not warrant improvements as they relate to parking and landscaping standards. Minor Site Plans are required per Section 3.6.3.C to be reviewed for a five (5) day comment period by the Technical Review Committee, which Staff sends via email.

The process of changing an existing business to another business may be onerous on applicants. Staff is recommending that the Board consider simplifying the process of approving a change of use permit. In

some cases the layers of requirements are discouraging, particularly when the business locating in the existing structure is similar to the previous use and additional requirements are not warranted.

Staff has consulted with a number of counties about how they handle this situation and have found that a Change of Use Permit as part of the zoning approval process could expedite the process.

Recommendations would provide that an application for change of use be assigned an internal review process only, incorporating building, fire, zoning, and health department.

This smaller core TRC allows the applicant and Staff to ensure the new use is compliant with each Department's regulations. In this case, the applicant could potentially receive approval in a reduced amount of time as long as the proposed use is allowed per the Table of Permitted Uses.

Item Four: Buffers for Adjacent Property Owner Notifications

Staff has researched amending notification policies to adjacent property owners. It has been suggested in several Planning Board public hearings that the requirements for mail notifications should be expanded further than the direct, adjacent property owners as outlined in NC GS § 153A-343.(a) Method of procedure. The Statute only requires notification for zoning map amendments, however Pender County follows the same process for Master Development Plan, Major Subdivisions, Variances and Special Use Permits. An excerpt from the Statute can be seen below;

*“The procedures adopted pursuant to this section shall provide that whenever there is a zoning map amendment, the owner of that parcel of land as shown on the county tax listing, **and the owners of all parcels of land abutting that parcel of land as shown on the county tax listing,** shall be mailed a notice of a public hearing on the proposed amendment by first class mail at the last addresses listed for such owners on the county tax abstracts. This notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the public hearing.”*

In researching recommended buffers, the UNC School of Government does not recommend a larger buffer than 1,000 feet. Staff research of other jurisdictions has found that typically the standard of 500-foot or 1,000 feet from all borders of the property for mail notifications.

One consideration is the cost of expanding notifications. All applications require that two sets of stamped envelopes be provided for each address in the buffer area. The additional postage required cost will be borne by the applicant.

As with many planning issues, each case is unique. 1,000 feet covers a high number of lots in densely developed areas, but in a rural setting may have little to no impact on additional mail notifications.

The following Ordinance Sections would need to be updated to reflect the notification requirements policy change if it is in the best interest of the County to do so:

- Rezoning (Article 3)
- Master Development Plans (Article 3)
- Major Subdivisions (Article 3)
- Special Use Permits (Article 3)
- Variance requests (Article 3)
- Conditional Rezoning (Article 4)

Staff also posts a sign on the subject property and runs a legal notification in the Pender-Topsail Post and Voice for two consecutive weeks prior to the scheduled public hearing.

Additionally, as by-right projects which meet Ordinance requirements were removed from the Planning Board public hearing in March of 2015. Staff has set policy to provide for consistent reporting and adequate information to the public, where mail notification of by-right development project proposals are required for adjacent property owners. Any update to buffer notification could be expanded to include by-right projects.

Item Five: Access Easements

The design criteria for access easements are contained in numerous sections of the Unified Development Ordinance. Specifications on easements are referenced in the subdivision regulations for Limited Subdivisions (Section 6.6 and Section 6.8), but not in Section 7, Design Standards. Staff proposes the text regarding access easements in the UDO become more defined and clear. The intent is to remove individual access easement requirements scattered throughout the subdivision regulations and organize the criteria and place them in Section 7, Design Standards.

In moving the access easement requirements to Section 7, there are some text changes recommended as well. The limited subdivision language for Three Lot Division on a Private Road or Access Easement (Section 6.8) allows for; no more than three parcels (excluding the remnant parcel, if the remnant parcel meets the requirements of the Ordinance)” to be created through limited subdivision. The intent is not to create numerous lots along access easements, which do not have a surfacing or maintenance standard for the access easement. There is no specific language which references only three parcels and the remnant may utilize one access easement. Staff continually sees proposed Limited Subdivisions, where property owners desire to subdivide property along access easements with no improvements to the physical access. This proliferates drainage issues, emergency access issues and numerous other safety concerns with subdividing property along substandard access easements.

Maintenance regulations are also recommended for private access easements to ensure that the travel way be passable to a certain standard.

Staff proposes that language be inserted into Section 7.2.1 to state specifically that no more than four lots may be accessed by a single easement, to address existing parcels that are along the recorded access easement.

Item Six: General Use Rezoning

Section 3.3 outlines the general use rezoning procedures; Section 3.3.5, Action by the Administrator, lists in Section B that the request is reviewed by the Technical Review Committee. While this step is logical for Conditional Use Rezoning, General Use Rezoning typically do not contain a level of detail to warrant review by the TRC. When a property is rezoned, and development of that tract(s) ensues, the applicant must submit a site plan for their project, whether that is a Master Development Plan, Major Site Plan or other development the TRC reviews the project when there are items for review.

Staff is recommending the following amendment to remove the General Use Rezoning from Technical Review Committee as the applicant would require TRC review and approval if the intent is to develop the property at a future date.

3.3.5 Action by Administrator

- F. The Administrator shall prepare a staff report that reviews the rezoning request in light of any applicable plans and the general requirements of this Ordinance. The staff report shall consider the entire range of permitted uses in the requested classification regardless of any representations made that the use will be limited.
- ~~G. The Administrator will forward the rezoning request to the Technical Review Committee for review. The TRC shall make recommendations concerning whether the plan meets the requirements and or plans of their particular state agency, county department or utility authority.~~
- H. Following completion of the review by staff, the Administrator shall forward the completed request, staff recommendation, and any related materials to the Planning Board for a hearing and recommendation in accordance with the adopted meeting schedule.
- I. Following Planning Board review and recommendation, the Administrator shall forward the completed rezoning request and any related materials, including the Planning Board recommendation, to the County Commissioners for hearing and final action.

Item Seven: Multi-family Parking Requirements

In anticipation of multi-family development projects being reviewed in the future, the County may want to consider adopting parking regulations for this type of development. For discussion purposes, multi-family housing includes apartments, and condominiums and could also be used for townhomes. Any potential requirements could be incorporated into Section 7.10 Off-Street Parking and Loading/Parking Requirements.

There is no requirement that the County adopts multi-family parking standards, it is permissible to leave the parking spaces provided up to the developer. That being said, many jurisdictions elect to regulate total spaces. Below is a chart derived from other jurisdiction requirements per bedroom for multi-family parking.

Jurisdiction	1 Bedroom	2 Bedroom	3+ Bedrooms
New Hanover Co.	2	2	2
Wilmington	1.5	2	2.25
Elizabeth City	1.5	1.75	2
Mebane	1.5	1.75	2 +.5 per BR over 3
Garner	1.5	2	2.5
Johnston Co.	1.5	1.5	2
Onslow Co.	1.5	2	2.5
Harnett Co.	1.5 per bedroom plus 1 for each bedroom over 2		
Currituck Co.	1.8	1.8	1.8
Wake Co.	1.5	1.5	1.5
Durham Co.	2	2	2
Mecklenburg Co.	1.5	1.5	1.5

In consultation with Staff at New Hanover County, they are also reviewing multi-family parking at this time. Their staff is recommending 1.5 spaces for one bedroom, 2 for 2 bedrooms and 2 for 3 or more bedrooms.

Item Eight: Preliminary and Final Plat Requirements

In an effort to increase efficiencies and clarify subdivision regulations, an examination and re-organization of the submission and review requirements is needed. The text will be re-ordered for Preliminary Plat (Section 6.4) and Final Plat (Section 6.5). There may be additional changes to Master Development Plan based on Staff findings. Minor changes may be included in the recommended text to further clarify requirements. Staff is processing these changes to improve coordination with County Departments and applicants alike.

Item Nine: Uses not specifically listed in the UDO Section 5.2.1

Zoning Ordinances must be clear in the land use regulations including what uses are permitted within which zoning district. The UDO outlines all uses in Section 5. According to 5.2.1.A, any use that is not specifically listed in the Article is expressly prohibited unless the Administrator determines through written interpretation (Section 3.17) that the use is similar to a permitted use or permitted group of uses listed in the Table of Permitted Uses. At this time with recent court of appeal cases, and in consultation with the Attorney, it is recommended that the language of Section 5.2.1.A be updated to reflect that unlisted uses shall be treated similarly to another use most similar, and that the uses not listed must be included in the Ordinance as part of another use. This is more in harmony of current practice.