

**PLANNING STAFF REPORT
ZONING TEXT AMENDMENT**

SUMMARY:

Hearing Date: September 7, 2016 Planning Board
September 19, 2016 Board of Commissioners
Applicant: Pender County
Case Number: ZTA 358-2015

Text Amendment Proposal: Pender County, applicant, is requesting a Zoning Text Amendment to the Pender County Unified Development Ordinance, Section 7.5.1 Street Design. Specifically, the proposal is to add objective criteria for administrative flexibility for the roadway design requirements.

Background: The Zoning Text Amendment proposal is the result of the implementation of the Pender County Collector Street Plan. The Collector Street Plan was adopted in March 2016; the policy recommendations included in the document must become Ordinance text in order to be enforceable. There have been a several meetings with the stakeholders regarding the proposed zoning text amendment. Specifically, the amendment proposed would allow for greater flexibility and administrative criteria for which Staff could work with applicants regarding the construction of collector streets within Pender County.

RECOMMENDATION

The Administrator respectfully recommends approval of the Zoning Text Amendment to the Unified Development Ordinance as described in this report, as it is consistent with the Unified Development Ordinance, the Pender County Collector Street Plan and three (3) goals and ten (10) policies within the 2010 Pender County Comprehensive Land Use Plan. There are no known conflicts with any adopted plan.

AMENDMENT DESCRIPTION

The Collector Street Plan was devised in order to preserve and support the existing roadway network. As development continues, the infrastructure must also expand to service the increased population. Collector streets provide alternative routes to travel rather than main arterial roadways, such as US 17 and NC 210.

The Collector Street Plan contains maps which designate locations of recommended collector streets within the planning bounds of the Wilmington Metropolitan Planning Organization (WMPO). These roadways are recommended based on specific spacing standards which are tied directly to future land use classifications in the Comprehensive Plan and underlying zoning districts. This methodology assures that areas of the county that promote maximum density contain a tighter roadway network to support the increase in traffic and can disperse the traffic amongst the arterial road network. For example, maximum density zoning districts of PD, Planned Development, and RM, Residential Mixed, contain a higher number of collector street designated roadways, this is illustrated in Table 1 below:

Zoning District	Intensity	Approximate Street Spacing
Environmental Conservation	Little to no development	N/A
Rural Agricultural	Less than 2 dwelling units per acre	3,000 to 6,000 feet apart
General Business, General Industrial, Industrial Transition, Manufactured Housing Community, Residential Performance	2-4 dwelling units per acre	1,500 to 3,000 feet apart
Residential Mixed, Office & Institutional, Planned Development	More than 4 dwelling units per acre/activity nodes	750 to 1,500 feet apart

Table 1: Spacing Standards for Collector Streets

Currently, Section 7.5.1 of the Pender County Unified Development Ordinance details public and private street design standards. Specifically stated in Section 7.5.1.A; Layout of streets as to arrangement, width, grade, character, and location shall conform to the following:

- 1) Pender County Collector Street Plan, Pender County Transportation Plan or other approved State or Federal Transportation Improvement Plan.

As recommended in the adopted Collector Street Plan, the first portion of the amendment is to allow for flexibility in moving the location of a collector street within the bounds of a development submittal. There is no flexibility or guidance within the Unified Development Ordinance in order to move a collector roadway from the designated location on the Collector Street Plan maps. By adding the aforementioned table (Table 1), applicants may then submit development plans with collector roadways deviating from the designated locations on the adopted plan and still maintain the spirit and intent of the Collector Street Plan.

Allowing applicants to deviate from the specific arrangement and location of the roadways in the plan is critical as there are conditions which may warrant moving a roadway. Conditions may include; avoidance of wetlands, flood zones, existing structures, significant topographical changes or preservation of significant trees. When the Collector Street Plan was devised, each individual parcel could not be site surveyed to identify potential factors influencing the location of the collector streets. Site surveying occurs when the applicant is performing due diligence on a specific tract or parcel and the identifying features to avoid become more apparent.

In order to achieve the goals of the Collector Street Plan, It is recommended that allowing adjustments of the collector streets within the spacing standards as identified in Table 1 will accommodate the implementation goals of the Collector Street Plan, specifically those outlined in *Table 4* of the document. By adding Table 1 to the Unified Development Ordinance applicants may adjust the arrangement and location of collector streets while still providing the necessary mobility of collector streets in Pender County to support future development.

The second portion of the zoning text amendment addresses items which could not be achieved by moving the roadway within the given spacing standards per Table 1. The criteria in which Staff makes an administrative approval of not building a collector roadway or modifying the type of collector street (group or otherwise) as identified in the Collector Street Plan. The criteria must be objective and provide clear guidance for applicants regarding the information necessary to make a decision. Maximization of the number of lots or parcels in a land division is not a reason to allow a waiver or modification.

Staff has been working with several stakeholder groups to identify objective criteria in which could be used to make a determination regarding the removal or re-design of a recommended collector roadway on a subject property. Stakeholder groups include the Homebuilders Association and the Army Corps of Engineers. As criteria were vetted between stakeholders, staff and the Planning Board zoning text amendment committee discussed the potential language updates to the Ordinance. The amendment proposal for the requirement of collector streets is the result of balance between transportation planning and environmental preservation.

Wetlands

One of the largest concerns regarding the building of collector streets is wetlands and the practicality of developing streets where wetlands could potentially exist. As the Army Corps of Engineers is the only agency in which can determine the wetlands, working with the Corps proved valuable. Essentially, there are two types of wetlands impacts permits. One is a nationwide general permit (GP), which gives allowance for impacts up to 0.5 acres. For larger projects (over 0.5 acres) impacting wetlands an individual permit (IP) is required. The GP timeframe is typically only 45 days for review, whereas the IP could be upwards of 120 days with a public notice. The IP provides a more in depth and lengthy process involving other agencies for NEPA concurrence in permitting. The concern from the development community was that by the County requiring collector streets on a particular site, this could increase the wetlands permitting into an IP for a project; which in turn, increases the timeline for permitting, scope of work and environmental impacts. With wetlands, the first and desired approach is to move the roadway which could be taken care of with the first portion of the amendment. If there is no way to avoid the wetlands, essentially the question is: how much impact is too much wetlands impact?

The exception to avoid wetlands as originally considered:

1. *401 or 404 Wetlands as depicted by USACE wetland verification or as presented in written or map form by a wetlands consultant or professional wetlands scientist that identifies wetlands present within the project area and alternative locations of collector streets cannot be achieved. Evidence shall be presented that the written or map form verification has been submitted to USACE for wetland concurrence at the time of permitting;*
 - a. *Wetlands impacted in excess of 0.5 acres on site that are directly caused by the required collector road shall warrant administrative review for an exception when no other alignment can be made on site without equal or greater wetland impacts.*
 - b. *Off-site wetland impacts in excess of 0.5 acres based on a desktop review/assessment (by wetland consultant or professional wetlands scientist) that are directly caused by the County's required collector road shall warrant administrative review for an exception when no other alignment can be made on site without equal or greater wetland impacts.*

Upon further vetting this criteria, it is deemed inappropriate to include 1b regarding the wetland impact on an adjacent property as there is no way that a professional could make this determination using a desktop assessment with any sort of certainty. Desktop assessments of wetlands take into consideration; soil types, vegetation and LIDAR data. As the professional cannot go to the site and make a wetlands determination on a

property which they may not have permission for, the desktop survey is a best estimate using the available data. The information considered for a project proposal must be specific to the subject property and cannot be speculative regarding an adjacent property and the potential for wetlands present. Therefore, the following is recommended regarding the impacts to wetlands based on collector street spacing;

401 or 404 Wetlands as depicted by USACE wetland verification or as presented in written or map form by a wetlands consultant or professional wetlands scientist that identifies wetlands present within the project area and alternative locations of collector streets cannot be achieved. Evidence shall be presented that the written or map form verification has been submitted to USACE for wetland concurrence at the time of permitting;

Wetlands impacted in excess of 0.5 acres on site that are directly caused by the required collector road shall warrant administrative review for an exception when no other alignment can be made on site without equal or greater wetland impacts.

This exemption includes consideration for the type of permitting through the Army Corps of Engineers based on acreage, permits an independent analysis of the property rather than waiting for an official wetlands delineation from the Army Corps of Engineers and also provides the administrative flexibility to design the collector street and value the environmental conservation.

Areas of Environmental Concern

The second objective criteria devised is related to Areas of Environmental Concern (AECs). Areas of Environmental Concern are governed by the Division of Coastal Management, through the CAMA legislation. This includes development in relation to all navigable natural water bodies and the lands underneath, to the normal high watermark on shore. In continuing to preserve natural features of Pender County there should be no impact proposed to AECs and therefore, this exception is warranted and proposed as;

Identified Areas of Environmental Concern (AEC) that lie within the identified path of the collector street;

Slopes

Existing topography is a consideration for how a site is developed, and the feasibility of design and construction of a collector street. A 4:1 or greater slope is recommended as the exception language, allowing no collector street to be built or a modification of collector streets based on the NCDOT guidance. This existing condition may not be necessary, as typically when site work is done on the parcel there is grading of the land in preparation for infrastructure and structures. This grading may reduce the slopes existing on the site and should be taken into consideration. It should be noted that roadways can be built in the most mountainous of terrains. As Pender County is a low lying area, there are not a lot of topographic changes which may warrant this exception;

An adjacent property connection cannot be made due to existing conditions that would create a street slope greater than a 4:1 ratio;

Existing Structures or Corridors

The collector street plan alignments were not intended to stub or interfere with existing structures, railroad crossings, conservation easements or other barriers which may impede the development. In some cases there may not be another arrangement of the roadways possible based on these features. If there is a barrier within the intended alignment of the collector street and no other arrangement can be made, evidence must be presented regarding the impossibility of aligning the roadway in that manner. The exception as proposed is;

Existing railroad crossings, structures, conservation easements or buildings that are not part of the development plan located on the subject property or adjacent property that create a barrier in the identified path of the Collector Street and no other arrangement can be made. Evidence shall be presented from the appropriate agency showing that the crossing(s) cannot be made;

Significant Trees

As written the Ordinance gives a definition to significant trees in Section 8.1.3.A.2; *For purposes of this Ordinance, a significant tree shall be defined as follows:*

- a) *An American holly with a trunk caliper measurement of 6" or greater measured at 4.5 feet above ground;*
- b) *A flowering dogwood with a trunk caliper measurement of 4" or greater measured at 4.5 feet above ground;*
- c) *A water oak with a trunk caliper measurement of 8" or greater measured at 4.5 feet above ground;*
- d) *A live oak with a trunk caliper measurement of 8" or greater measured at 4.5 feet above ground; and*
- e) *Any tree species included in the planting table, except a "loblolly pine" (see Appendix C) with a trunk caliper measurement of 12" or greater measured at 4.5 feet above ground.*

It is important to preserve the natural landscape and flora of the subject parcel. Significant trees, as defined, located on the subject property should be avoided in the design of the collector street. In the case where the tree may line the entire property bounds or other factors the following exception is recommended;

Significant Trees, as defined (Section 8.1.3.A.2), are located on the subject property and alternative location for collector street construction cannot be made. A significant tree survey shall be submitted demonstrating the general location, species and size.

Existing Roadway Network

The final exception proposed is necessary to consider when implementing the roadways as proposed in the Collector Street Plan is how these new roadways will fit into the existing roadway network. Roadways cannot transition in a lineal manner from one type (collector street for example) to another (local road for example) without an intersection or other transition point. In the case where perhaps one type of roadway is existing, the flexibility to design the collector street to connect in must be possible to make the roadway system work as a whole. If staff is given this administrative criteria, it works closely with the hierarchy of classification of the collector streets in the Collector Street Plan. The recommended exception is;

The identified Collector Street will lineally connect into an existing roadway network that is, an existing private street, was not constructed to NCDOT standards, or would create conditions inconsistent with the collector street classification. Alternative roadway design shall be submitted to make connections with the existing or planned roadway network to the Administrator for review and approval.

The second half of the zoning text amendment is proposed to include the deviation of the spacing standards given objective criteria. Below is the amendment to Ordinance Section 7.5.1.A as detailed previously;

Any deviation from the required spacing standards, width, grade, or character of the streets may be granted based on the approval of the Administrator. Maximization of the number of lots or parcels in a land division is not a reason to allow a waiver or modification. Criteria for approval may include;

1. *401 or 404 Wetlands as depicted by USACE wetland verification or as presented in written or map form by a wetlands consultant or professional wetlands scientist that identifies wetlands present within the project area and alternative locations of collector streets cannot be achieved. Evidence shall be presented that the written or map form verification has been submitted to USACE for wetland concurrence at the time of permitting;*

Wetlands impacted in excess of 0.5 acres on site that are directly caused by the required collector road shall warrant administrative review for an exception when no other alignment can be made on site without equal or greater wetland impacts.

2. *Identified Areas of Environmental Concern (AEC) that lie within the identified path of the collector street;*
3. *An adjacent property connection cannot be made due to existing conditions that would create a street slope greater than a 4:1 ratio.*
4. *Existing railroad crossings, structures, conservation easements or buildings that are not part of the development plan located on the subject property or adjacent property that create a barrier in the identified path of the Collector Street and no other arrangement can be made. Evidence shall be presented from the appropriate agency showing that the crossing(s) cannot be made;*
5. *Significant Trees, as defined (Section 8.1.3.A.2), are located on the subject property and alternative location for collector street construction cannot be made. A significant tree survey shall be submitted demonstrating the general location, species and size.*
6. *The identified Collector Street will lineally connect into an existing roadway network that is, an existing private street, was not constructed to NCDOT standards, or would create conditions inconsistent with the collector street classification. Alternative roadway design shall be submitted to make connections with the existing or planned roadway network to the Administrator for review and approval.*

By providing Administrative criteria for alternate spacing standards, this would assist to focus land development in suitable areas and promote conservation of natural areas. Additionally, it would not require an applicant or land owner to obtain a variance for the specific spacing standards or collector street proposal.

The goal of the Collector Street Plan is to guide investment in new collector streets with the ultimate intention of improving connectivity, focusing land development in suitable areas, encouraging all modes of transportation, maintaining level of service on existing roadways, promoting safety, ensuring that significant natural areas are conserved and providing a safe and high-quality transportation system for existing and future residents, businesses and visitors.

EVALUATION

As prescribed in the Pender County Unified Development Ordinance Section 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 and County Commissioners 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.

2010 Comprehensive Land Use Plan Compliance

This Zoning Text Amendment request is consistent with three (3) goals and ten (10) policies of the 2010 Comprehensive Land Use Plan and conflicts with none. The following goals and policies within the plan may be relevant to the proposed Zoning Text Amendment:

Growth Management Goal 1A.1: Manage the physical growth and development of Pender County by promoting more intensive land uses in key locations identified for such growth while preserving and protecting the unique physical character and social assets of the predominant rural lifestyle and coastal environment that makes the County a unique place to live.

Policy 1A.1.2: Encourage development in areas where the necessary infrastructure – roads, water, sewer, and schools - are available, planned or can be most cost effectively provided and extended to serve existing and future development.

Policy 1A.1.3: The County shall actively direct growth towards suitable land areas and away from fragile natural resources areas, conservation areas, and hazardous areas.

Policy 1A.1.5: The County supports a pro-business/pro-growth attitude, balanced by a concern for preserving the natural assets and quality of life factors that make the area attractive to visitors and permanent residents alike.

Policy 1B.1.1: Continue participation in the Wilmington MPO and Cape Fear RPO.

Policy 1B.1.2: Create regular forums for local government officials to promote intergovernmental cooperation within Pender County and with surrounding counties on topics of mutual interest.

Transportation Goal 2B.1: Manage the timing, location, and intensity of growth by coordinating transportation improvements in accordance with the Comprehensive Land Use Plan and the Coastal Pender Collector Street Plan.

Policy 2B.1.3: The County should utilize and promote a hierarchical, functional transportation system, that prioritizes needed improvements, and promotes the proper arrangement of land use patterns to ensure and determine the proper levels of service (LOS) to reduce any associated negative impacts to the overall transportation network.

Policy 2B.1.4: Adopt regulations that require new developments and individual sites through the County to provide vehicular and pedestrian interconnectivity to existing or planned adjacent sites and adjoining developments.

Policy 2B.1.9: As recommended in the Coastal Pender Collector Street Plan, all new streets that have the potential to connect to adjacent developments should be constructed to NCDOT secondary road standards and accepted for public maintenance to ensure future connectivity.

Policy 2B.1.10: Allow and encourage flexible road design standards, incorporating low impact development and smart growth principles.

Emergency Services Goal 2E.1: Ensure adequate response times and capabilities of Sheriff, Police, Fire and Emergency Medical Services.

Policy 3C.1.2: Require existing significant vegetation (mature hardwood tree species) to remain undisturbed, where possible and encourage development to incorporate significant tree preservation.

Collector Street Plan Compliance

There are no conflicting policies within the Collector Street Plan regarding this zoning text amendment. Specifically, the Plan has four (4) overall guiding principles and objectives for which this amendment addresses;

1. Develop a realistic and feasible network of collector streets that support the local street and arterial system;
2. Work with the development community to ensure proper connectivity and collector street design;
3. Be sensitive to environmental issues and build in context sensitive design approaches where applicable;
4. Integrate multimodal design features into the street design that support walkability and bikability.

Section 6 of the Plan is the recommended Policy Strategies for implementation. Specifically, this zoning text amendment is in compliance with Table 4: Street Spacing and Access Standards. This policy creates street spacing standards for collector streets to ensure adequate cross access between land uses. The benefits of establishing a maximum distance between collector streets include; traffic relief on major roadways, equitable distribution of traffic, improving emergency response access/ reliability, increasing bicycling/ walking propensity in an area by shortening the distance between destinations and creating efficiencies for service vehicles to do their jobs in less time.

RECOMMENDATION

The Administrator respectfully recommends approval of the Zoning Text Amendment to the Unified Development Ordinance as described in this report, as it is consistent with the Unified Development Ordinance, the Pender County Collector Street Plan and three (3) goals and ten (10) policies within the 2010 Pender County Comprehensive Land Use Plan. There are no known conflicts with any adopted plan.

BOARD ACTION FOR ZONING TEXT AMENDMENT

Motion: _____ **Seconded:** _____

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

Williams: ___ McClammy: ___ Baker: ___ Carter:___ Fullerton: ___ Edens: ___ Nalee: ___