



REQUEST FOR BOARD ACTION

ITEM NO. 20.

DATE OF MEETING: September 16, 2013

REQUESTED BY: Megan O'Hare Planner I, Planning & Community Development Department

SHORT TITLE: Resolution to amend 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 proposed amendments will update the Pender County Unified Development Ordinance to reflect the new statutory guidelines. Detailed information is included in the informational packet which has been distributed to accompany this report.

SPECIFIC ACTION REQUESTED: To hold a public hearing and consider a resolution to amend the Pender County Unified Development Ordinance, in accordance with North Carolina House Bill 276 specifically pertaining to the 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.

RESOLUTION

NOW, THEREFORE, BE IT RESOLVED by the Pender County Board of Commissioners that:

on September 16, 2013 the Pender County Board of Commissioners (approved, modified, denied) a zoning text amendment request, as described herein to become effective October 1, 2013. The Chairman/County Manager is authorized to execute any/all documents necessary to implement this resolution.

AMENDMENTS:

MOVED _____ SECONDED _____

APPROVED _____ DENIED _____ UNANIMOUS _____

YEA VOTES: Brown ___ McCoy ___ Tate ___ Ward ___ Williams ___

George R. Brown, Chairman

09/16/2013
Date

ATTEST
Delivered

09/16/2013
DATE

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 Planning Board, at their September 10, 2013 regular meeting unanimously recommended approval of the proposed text amendment.

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: McClammy Seconded: Williams

Approved: X Denied: Unanimous X

Boney: X Marshburn: X Baker: X Edens: McClammy: X Nalee: Williams: X

BOARD OF ADJUSTMENT

2.4.1 Establishment, Membership, and Rules of Procedure

- A. Establishment - A Board of Adjustment (BOA) is hereby created to hear appeals from decisions of the Administrator and to consider requests for variances from the terms of the Unified Development Ordinance. This Board may also be known as the Zoning Board of Adjustment or Zoning Board.
- B. Membership
- 1) The BOA shall consist of five (5) members who shall be residents of the County of Pender.
 - 2) The members shall be appointed by the Board of Commissioners for a regular term of office of three (3) years. Board members may be appointed for up to four terms so long as their length of service on the Board does not exceed ten (10) years. In appointing members to fill vacancies, the Board of Commissioners shall appoint persons to serve the remaining term of office rather than a full three (3) years.
 - 3) There will be two (2) alternate members of the Board of Adjustment.
 - 4) No member of the Board of Adjustment shall be permitted to sit concurrently on the Planning Board or the Board of Commissioners.
- C. Rules of Procedure
- 1) The Board of Adjustment is a quasi-judicial body.
 - 2) Meetings of the Board of Adjustment shall be held at the call of the chairman and at such other times as the majority of the Board may determine.
 - 3) All meetings of the Board of Adjustment shall be open to the public.
 - 4) The Board shall keep minutes of its procedures, showing the vote of each member upon each question, or, if absent or failing to vote, an indication of such fact; and final disposition of appeals shall be taken, all of which shall be on public record.
 - 5) A quorum is not obtained unless four voting members are present. In the event there is abstention for reason declared into the record by a voting member, then a particular matter cannot proceed unless and until four other voting members are present and vote.
 - 6) As required by N.C.G.S. 153A-345(e), no final action shall be taken on ~~any matter~~ a variance without the concurring vote of four-fifths (4/5's) of the members of the Board. All other quasi-judicial matters require a simple majority vote by members of the board.
 - 7) As early as possible in each new year of the Board, the voting members shall elect a chairman and vice-chairman. Either such party when in the chair shall have the authority to administer oaths to witnesses. The Board may elect such other officers as the Board deems best.
 - 8) All decisions of the Board of Adjustment run with the land, never the person or corporation. Special Exceptions may have time limits imposed on their validity.
 - 9) The minutes of the Zoning Board of Adjustment shall be kept in such detail as necessary, and do not reflect official action of the Board until adoption of same.
 - 10) Minutes shall be filed in the office of the Administrator, as a public record.
 - 11) The Board of Adjustment shall have the authority through the chair, or in the chair's absence anyone acting as the chair to subpoena witnesses and compel the production of evidence as specified in N.C.G.S. 153A-345(g).

2.1.1 Findings

In granting any variance, the Board of Adjustment shall make the following findings:

- A. That 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.~~
- 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.
- B. In making the findings above, the Board of Adjustment may give special weight to the number and percentage of nearby properties that share characteristics for which the variance is requested by the applicant. The Board of Adjustment may grant a variance to expand an existing structure, including the expansion of a nonconforming structure if the findings listed above can be made.