



REQUEST FOR BOARD ACTION

ITEM NO. 18.

DATE OF MEETING: April 22, 2014

REQUESTED BY: Kyle M. Breuer, Director, Planning & Community Development

SHORT TITLE: Resolution to amend the Pender County Unified Development Ordinance, Section 3.15.2 Administrative Adjustment, and Section(s) 5.2.3 and 5.3.3, Table of Permitted Uses and Design Standards to allow for Public Safety Telecommunications Towers.

BACKGROUND: The request consists of amending the Pender County Unified Development Ordinance, specifically amending Section 3.15.2 Administrative Adjustment by allowing up to twenty (20) percent reduction of the required front, side or rear yard setbacks for certain circumstances; and Section(s) 5.2.3. and 5.3.3. Table of Permitted Uses and Design Standards to allow for Public Safety Telecommunication Towers meeting specific parameters. The Planning Board unanimously voted to recommend approval of the rezoning request on March 4, 2014.

SPECIFIC ACTION REQUESTED: To hold a public hearing and consider a resolution amending the Pender County Unified Development Ordinance, Section 3.15.2, and Section(s) 5.2.3 and 5.3.3. and further described within the Staff Report and Attachments.

RESOLUTION

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

on April 22, 2014 the Pender County Board of Commissioners (approved, modified, denied) a Zoning Text Amendment request, as described herein. The Chairman/County Manager is authorized to execute any/all documents necessary to implement this resolution.

AMENDMENTS:

MOVED _____ SECONDED _____

APPROVED _____ DENIED _____ UNANIMOUS _____

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

J. David Williams, Jr., Chairman 4/22/2014
Date

ATTEST 4/22/2014
Delivered DATE

PLANNING STAFF REPORT
Zoning Text Amendment

SUMMARY:

Hearing Date: Planning Board – April 1, 2014
Board of County Commissioners – April 22, 2014

Applicant: Administrator, Division of Planning
Application Number: ZTA 11143 Pender County

Text Amendment Proposal: The request consists of amending the Pender County Unified Development Ordinance, specifically amending Section 3.15.2 Administrative Adjustment by allowing up to twenty (20) percent reduction of the required front, side or rear yard setbacks for certain circumstances; and Section 5.2.3. through 5.3.3. Table of Permitted Uses and Design Standards to allow for Public Safety Telecommunication Towers meeting specific parameters.

Background: The following text amendment is the result of various circumstances that have been brought to Planning Staff's attention since the effective date of the Pender County Unified Development Ordinance. These amendments would allow for greater flexibility in the Administrator's role for enforcing the Pender County Unified Development Ordinance in outstanding circumstances.

Administrator/Planning Board Recommendation: Administrator respectfully recommends amending the Unified Development Ordinance as described in the staff report. The Planning Board, after holding a public hearing on April 7, 2014, unanimously recommended approval of the request.

The following outline describes the proposed amendments by topic. The proposed amendments clarify recent issues that have been brought to staff's attention regarding administrative adjustments and allowable uses within the Table of Permitted Uses. Detailed information of all the changes are included in the informational packet which has been distributed to accompany this report.

Administrative Adjustment: Section 3.15

An Administrative Adjustment is a mechanism in which the Administrator is authorized to approve minor deviations from the Pender County Unified Development Ordinance as they relate to setback standards for all zoning districts (Attachment 1). There is deviation allowed for select criteria, very similarly to how the Board of Adjustment grants a variance to fitting applicants. (Attachment 1)

According to Section 3.15.2 the Administrator shall have the authority to authorize the following administrative adjustments:

A. A reduction of up to ten percent of the required front, side or rear yard setback for any encroachments into required setback as of July 1, 2010;

B. Any request for deviation from the provisions of this Ordinance not listed above shall be reviewed by the Board of Adjustment as provided in the Section on Variances.

In certain circumstances, such as, administrative error or unnecessary hardship on the applicant, Administrative Adjustments are necessary. The criterion in which the Administrator evaluates a request is based on the following:

To approve an administrative adjustment, the Administrator shall make an affirmative finding that all of the following criteria are met:

- A. *That granting the administrative adjustment will not have an adverse impact on land use compatibility;*
- B. *That the circumstances creating the need for the administrative adjustment are not the result of the property owner's own actions;*
- C. *That granting the administrative adjustment will not materially and adversely affect adjoining land uses and the physical character of uses in the immediate vicinity of the proposed development because of inadequate buffering, screening, setbacks and other land use considerations;*
- D. *That granting the administrative adjustment shall be consistent with the purposes and intent of this Ordinance; and*
- E. *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.*

Administrative adjustments are not warranted, nor granted in every situation. Since the adoption of the Pender County Unified Development Ordinance, there have been seventeen (17) Administrative Adjustments granted (average of 4.25/year). Planning Staff has noticed that by increasing the percentage of reduction for the required front, side or rear yard setback for any encroachments into required setback, increases flexibility from the administrative level.

Staff is requesting the administrative ability to increase flexibility in approving Administrative Adjustments up to twenty (20) percent for the required front, rear, and side yard setback and for any encroachment into the required setback. It is this flexibility that reduces the need to bring cases directly to the Board of Adjustment. By allowing the Administrator to correct errors with this increased flexibility the Board of Adjustment will no longer hear cases which were a result of staff error.

Existing (Figure shown in red includes the existing ten percent reductions):

Dimensional Standards ⁽⁹⁾	RA	RP	RM	MH	GB	OI	IT	GI	PD	EC
Min. Front Yd.-Ft.	30 ⁽⁸⁾ 27	30 27	(1)	(7)	25 ⁽⁸⁾	25	40	50	(1)	50
Min. Side Yard-Ft	15 ⁽⁸⁾ 13.5	10 9	(1)	(7)	10 ⁽⁸⁾	10	25	25	(1)	25
Min. Corner Yard Ft (10)	15 13.5	15 13.5	(1)	(7)	12	12	20	25	(1)	25
Min. Rear Yard-Ft	30 ⁽⁸⁾ 27	25 22.5	(1)	(7)	10 ⁽⁸⁾	10	25	25	(1)	25

Proposed (Figure shown in red includes the proposed twenty percent reductions):

Dimensional Standards ⁽⁹⁾	RA	RP	RM	MH	GB	OI	IT	GI	PD	EC
Min. Front Yd.-Ft.	30 ⁽⁸⁾ 24	30 24	(1)	(7)	25 ⁽⁸⁾ 22.5	25 22.5	40 36	50 45	(1)	50 45
Min. Side Yard-Ft	15 ⁽⁸⁾ 12	10 8	(1)	(7)	10 ⁽⁸⁾	10	25	25	(1)	25
Min. Corner Yard Ft (10)	15 12	15 13.5	(1)	(7)	12	12	20	25	(1)	25
Min. Rear Yard-Ft	30 ⁽⁸⁾ 24	25 22.5	(1)	(7)	10 ⁽⁸⁾	10	25	25	(1)	25

Public Safety Telecommunication Towers: Section 5.3.3:

Currently, the UDO does not provide for a separate use for public safety telecommunication towers (Attachment 2). A tower dedicated for public safety purposes is categorized as a telecommunication tower and the development standards found within Section 5.3.3., Uses with Standards. In locating new public safety towers, a specific criteria for enhanced or optimal coverage is necessary. To ensure the public safety of the tower, this text amendment requests to amend the current setback standards for telecommunication towers be able to be waived by the Pender County Board of Commissioners as long as sufficient evidence be presented to demonstrate that public safety is being upheld. In order to achieve this it is proposed, a ‘fall zone’ easement must be provided as evidence to show that beyond a property line, the safety will be upheld in case a public safety telecommunication tower were to fall.

Evaluation:

As prescribed in the Pender County Unified Development Ordinance (UDO) 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 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.

Comprehensive Land Use Plan Compliance:

There are no conflicting policies within any adopted land use documents for either of the proposed text amendments.

Staff Recommendation:

The proposed text amendment is consistent with the Pender County Unified Development Ordinance and the 2010 Comprehensive Land Use Plan. The following text amendments would allow for greater flexibility in the Administrator’s role for enforcing the Pender County Unified Development Ordinance in outstanding circumstances and ensuring public safety for telecommunication towers. Therefore, staff is respectfully recommending approval of the zoning text amendments as presented.

Planning Board

Motion: Edens **Seconded:** Marshburn

Approved: X **Denied:** **Unanimous** X

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

3.15 ADMINISTRATIVE ADJUSTMENT

3.15.1 Applicability

The Administrator shall be authorized to approve minor specified deviations as specified in paragraph a. below where, owing to special conditions, strict enforcement of the provisions of this Ordinance would be physically impractical.

3.15.2 Action by Administrator

The Administrator shall have the authority to authorize the following administrative adjustments:

- A. A reduction of up to ~~ten~~ twenty percent of the required front, side or rear yard setback for any encroachments into required setback as of July 1, 2010;
- B. Any request for deviation from the provisions of this Ordinance not listed above shall be reviewed by the Board of Adjustment as provided in the Section on Variances.

3.15.3 Administrative Adjustment Criteria

To approve an administrative adjustment, the Administrator shall make an affirmative finding that all of the following criteria are met:

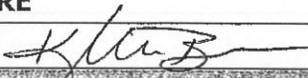
- A. That granting the administrative adjustment will not have an adverse impact on land use compatibility;
- B. That the circumstances creating the need for the administrative adjustment are not the result of the property owner's own actions;
- C. That granting the administrative adjustment will not materially and adversely affect adjoining land uses and the physical character of uses in the immediate vicinity of the proposed development because of inadequate buffering, screening, setbacks and other land use considerations;
- D. That granting the administrative adjustment shall be consistent with the purposes and intent of this Ordinance; and
- E. 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.

Use Type	Ref NAICS	Zoning Districts									
		RA	RP	RM	MH	PD	GB	OI	IT	GI	EC
MISCELLANEOUS USES											
Industrial Park											SD
Marina (Commercial)		S	PM			PM					
Storage of Merchandise, Materials or Equipment On Site Inside or Outside An Enclosed Building, Excluding Salvage		S							P	P	
Portable Storage Containers		D	D	D	D	D	D	D	D	D	
Private Cemetery less than 6,000 sq. ft.		D	D				D	D	D		
Private Cemetery 6,000 sq. ft. and larger		S	S				S	S	S		
Public Parks		P	P	P	P	P	P	P	P	P	
Private Residential Boating Facility		D	D	D	D	D					
Salvage Operations		S									D
Sweepstakes Center							SD		SD	SD	
Swine Farming		SD									
Telecommunication Facilities		SD	SD			SD	SD	SD	SD	SD	
Telecommunication Facilities – Public Safety		SD	SD			SD	SD	SD	SD	SD	
Temporary Manufactured Homes		P	P			P					
Temporary Modular/Manufactured Offices						P	P	P	P	P	
Temporary Fruit & Vegetable Stands		P	P								
Temporary Buildings for Construction or Development		D	D	D	D	D	D	D	D	D	
Temporary Events		D					D	D	D	D	

R. Telecommunication Facilities – Public Safety

- a) Public Safety Telecommunication Facilities must meet the development standards for Telecommunication Facilities as outlined in Section 5.3.12.Q. Through the Special Use Permit process, the Board of Commissioners shall have the authority to waive setback requirements provided that a survey prepared by a licensed professional showing that the designated fall zone associated with the tower is sufficient to accommodate the designed fall radius of the proposed tower.

APPLICATION FOR TEXT AMENDMENT

THIS SECTION FOR OFFICE USE			
Application No.	ZTA 11143	Date	2/14/2014
Application Fee	\$ —	Receipt No.	—
Pre-Application Conference	10/30/2013	Hearing Date	4/1 PB - 4/22 BOCC
SECTION 1: APPLICANT INFORMATION			
Applicant's Name:	Pender County		
Applicant's Address:	805 S. Walker Street		
City, State, & Zip	Burgaw, NC 28425		
Phone Number:	910-259-1202		
SECTION 2: UDO TEXT TO BE AMENDED			
Current Text to be Amended (Please site accurate Article number referenced):			
Section 5.2.3, Table of Permitted Uses; Section 5.3, Uses with Standards; Section 3.15 Administrative Adjustment			
Proposed Text to be added:			
Add Public Safety Telecommunication Towers as a permitted use via Special Use Permit as well as establishing development standards. Amend Section 3.15 Administrative Adjustment.			
SECTION 3: SIGNATURE			
Applicant's Signature			Date: 2/14/2014
NOTICE TO APPLICANT			
If the applicant makes significant changes to the application for a text amendment after the Planning Board has made its recommendation, the Administrator may refer the modified request back to the Planning Board for an additional public hearing.			
TEXT AMENDMENT CHECKLIST			
<input checked="" type="checkbox"/>	Signed application form		
<input checked="" type="checkbox"/>	Application fee		
<input checked="" type="checkbox"/>	A letter describing, in detail the intent and purpose of the amendment presented, meeting the approval criteria set forth in Section 3.18.5 of the Pender County UDO (shown on page 1 of this application)		
Office Use Only			
<input checked="" type="checkbox"/> ZTA Fees: \$250		Total Fee Calculation: —	
Payment Method:	Cash: <input type="checkbox"/> \$ _____	Credit Card: <input type="checkbox"/> Master Card <input type="checkbox"/> Visa	Check: <input type="checkbox"/> Check # _____
Application Received By:			Date: 2/14/14
Application completeness approved by:			Date:
Dates Scheduled for Public Hearings:	<input type="checkbox"/> Planning Board: 4/1	<input checked="" type="checkbox"/> BOCC: 4/22	

Print Form