

**PLANNING STAFF REPORT
ZONING TEXT AMENDMENT**

SUMMARY:

Hearing Date: August 1, 2017 Planning Board
September 18, 2017 Board of County Commissioners

Applicant: Pender County

Case Number: ZTA 385-2016

Text Amendment Proposal: Pender County, is requesting the approval of a Zoning Text Amendment to the Pender County Unified Development Ordinance. Specifically, the request is to amend the density calculation and provide clearer standards for how to obtain density bonuses for mixed-use development in the RM, Residential Mixed and PD, Planned Development zoning districts. Specifically, Section 4.8.1.C shall be moved to Section 4.6.7 with further clarification of superior design elements for additional densities.

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 two (2) goals and eleven (11) policies within the 2010 Pender County Comprehensive Land Use Plan. There are no known conflicts with any adopted plan.

Additional density bonuses are permissible in the existing Unified Development Ordinance text, however, the standards for applying the allowance is not clear. The applicant's submittal was aimed at clarifying how to achieve additional densities through superior design.

This recommendation for additional density bonuses is also accompanied by the potential impacts a specific project may have on the community. Any addition to density for a specific project must consider the impacts to traffic, schools, existing or potential water, wastewater and roadway capacity. All projects which may be applicable under this zoning text amendment are reviewed by the Planning Board, through Master Development Plan in the PD, Planned Development zoning district or Planning Board for recommendation and Board of County Commissioners for approval of Conditional Zoning Map Amendments.

HISTORY

This amendment originally came before the Planning Board in public hearing November 1, 2016. Following the Board hearing, it was deemed appropriate for the Zoning Text Amendment Subcommittee of the Planning Board to review and modify the proposal to ensure compliance with the 2010 Comprehensive Land Use Plan. The ZTA Subcommittee met routinely to discuss this item; November 9, 2016, November 18, 2016, December 6, 2016, January 19, 2017 and February 17, 2017. The Planning Board also heard updates regarding the proposed density text amendment at their meetings on; December 6, 2016, January 4, 2017, February 7, 2017, June 6, 2017 and July 5, 2017 at their work sessions.

The applicant withdrew the request for Zoning Text Amendment on April 6, 2017. The Zoning Text Amendment (ZTA) Subcommittee met on May 18, 2017 to address the applicant's withdrawal of the zoning text amendment regarding density. As the case was withdrawn by the applicant, the Planning Board has the decision as to proceed with the amendment in full or partially to the Unified Development Ordinance. The ZTA Subcommittee decided to proceed with the ZTA as previously discussed for the only for the portions which could be supported by the 2010 Comprehensive Land Use Plan.

On June 6, 2017 at their Work Session, the Planning Board recommended additional clarifications to the recommended Ordinance text and requested information regarding NOAA recorded storm events about resilient stormwater design. Staff met with officials from NOAA and included additional precipitation information to examine historic trends and occurrences.

Planning Board then discussed this item at their July 5, 2017 meeting. Further clarification regarding workforce housing was discussed and additional language regarding specific items to collect at Final Plat recordation was added to the Workforce Housing density bonus.

AMENDMENT DESCRIPTION

The Pender County Unified Development Ordinance specifies density standards for mixed-use zoning districts (PD, Planned Development, and RM, Residential Mixed zoning districts) in Section 4.8.1.C. as seen below;

C. Number of Dwelling Units (Density)

- 1) *Determination - The number of dwelling units in a project utilizing the PD development standards shall be a maximum of five (5) units per net density. The density is calculated as total tract acreage subtracting the following:*
 - a) *Areas reserved as non-residential development*
 - b) *Total wetland calculations*
 - c) *Rights of way and parking areas*
 - d) *Active and passive open space*
 - i) *Passive open space may be subtracted from the total wetland delineation in the Master Development Plan if it is calculated to be less than the total wetland area.*
- 2) *In effort to encourage quality urban design and environmentally sensitive development, an increase in density may be allowed by the Planning Board when such an increase can be justified by superior design or the provision of additional amenities such as public and/or private open space.*

Table 1 - Density Calculation

Calculation Amendment

The net density calculation currently is represented above in Table 1. Density is calculated first by subtracting out all elements included in a) – d) as listed from the total tract acreage to determine developable area. The calculated developable area is then divided by the number of units proposed to determine net density. The calculation, as written, may be further simplified in wording in the Unified Development Ordinance.

In determining Net Density, Active and Passive Open Space is deducted from the total tract acreage. It is not clear as to whether the required amount of open space should be used or the provided open space for the overall project. Regularly, an applicant is providing more than required and should not be penalized for doing such in the density calculation. This may deter applicants from providing more than the minimum required and it is recommended that this portion of the overall calculation be amended to utilize required open spaces as the figure for Net Density.

Sample density tables (Table 2 & 3) illustrate calculation given amendments to the formula to calculate density. The first scenario demonstrates the difference in calculation with the required vs. provided density figures by keeping the unit yield the same and amending the developable land area only.

	Current	Proposed	Calculation
Total Tract Acreage	100	100	
Total Wetlands on Subject Tract(s)	10	10 (7)	Subtract from Total Tract Acreage (TTA)
Rights of Way Area	5	5	Subtract from TTA
Parking Area	1	1	Subtract from TTA
Non-Residential Areas (Commercial)	3	3	Subtract from TTA
Active and Passive Open Space (0.03 ac/unit)	15	6	
<i>Active Open Space</i>	3	3	Subtract from TTA
<i>Passive Open Space</i>	12	3	Take difference b/w wetlands and Passive Open Space, then subtract from TTA
Total Developable Land Area	75	81	
Residential Units Proposed	200	200	Divide the Developable Land Area by Residential Units Proposed
Density	2.67	2.47	

Table 2 Net Density Calculation to Amend Open Space and Keep Units the Same - *All figures depicted by acres

	Current	Proposed	Calculation
Total Tract Acreage	100	100	
Total Wetlands on Subject Tract(s)	10	10 (7)	Subtract from Total Tract Acreage (TTA)
Rights of Way Area	5	5	Subtract from TTA
Parking Area	1	1	Subtract from TTA
Non-Residential Areas (Commercial)	3	3	Subtract from TTA
Active and Passive Open Space (0.03 ac/unit)	15	6	
<i>Active Open Space</i>	3	3	Subtract from TTA
<i>Passive Open Space</i>	12	3	Take difference b/w wetlands and Passive Open Space, then subtract from TTA
Total Developable Land Area	75	81	
Residential Units Proposed	375	400	Divide the Developable Land Area by Residential Units Proposed
Density	5	4.92	

Table 3 Net Density Calculation to Amend Open Space and Amend Units Yielded from Property - *All figures depicted by acres

Superior Design Provision

The second part of the density Section 4.8.1.C.2 provides for additional density to be granted given the applicant provides *superior design or the provision of additional amenities such as public and/or private open space*. This is additional to the five (5) units per acre as allowable in the net density calculation. The Comprehensive Land Use Plan further refines the allowable densities per land use classification and shows acceptable densities of 8 units per acre in the Mixed-Use zoning districts (**Attachment 1**). The applicant’s submittal was aimed at clarifying how to achieve additional densities through superior design. Additional density bonuses are permissible in the existing Unified Development Ordinance text, however, the standards for applying the allowance is not clear.

The following criteria were examined and are recommended by the ZTA Subcommittee as part of the additional density credits because there are corresponding policies in the Comprehensive Land Use Plan in support:

1. Workforce Housing
2. Low Impact Development
3. Collector Street Provided
4. Open Space
5. Resilient Stormwater Design

Workforce Housing

Providing affordable housing throughout mixed-use developments is an inclusionary planning tool for all different income levels. As identified in the Comprehensive Land Use Plan;

Policy 5A.1.5 Pender County could provide incentives such as density bonuses to developers that offer established affordable/workforce housing programs through community land trusts such as the Cape Fear Housing Community Land Trust.

The following is recommended to be incorporated into Unified Development Ordinance text;

- A. *At least 15% of the units shall have payments affordable to persons and families with annual incomes at or below 60% of the Area Median Income, per the target income limits set by HUD for Pender County*
- B. *Workforce units shall be incorporated throughout the project, and shall not be distinguishable from market-rate units through location, grouping, design or other physical characteristics*
- C. *Affordability in for- sale units shall be required to be adhered to only in the initial sale.*
- D. *Compliance measures may be required at the time of approval, including but not limited to; restrictive covenants and deed restrictions.*

Utilizing the formula above for Pender County with the 2016 data from the Department of Housing and Urban Development (HUD)⁽¹⁾:

Area Median Income (AMI)	\$ 55,200
60% of Area Median Income (AMI)	\$ 33,120

(1) huduser.gov/portal/datasets

For example, to calculate, the Federal Housing Administration (FHA) uses more than 30% of annual gross income goes to housing is a cost burden to the owner. This would be \$9,936 annually or \$828 per month on a mortgage (not to include utilities, taxes or insurance).

Low Impact Development

When considering higher density developments, improved stormwater quantity regulations should be considered, due to the topography of Pender County and the soils which are being developed. The Low Impact Development Certification (LID) generally mimics a site's predevelopment hydrology by using design techniques that infiltrate, filter, store, evaporate, and detain runoff close to its source. The stormwater management should not be treated in large drainage areas rather, LID addresses stormwater through small, cost-effective landscape features located on a smaller area. LID certification is contained in the Unified Development Ordinance Section 7.14.

Low Impact Development (LID) is a certification comprised of technical and policy-oriented courses pertaining to low impact development. The curriculum is developed jointly by NC State University and NC Department of Environmental Quality, Division of Water Quality.

Current density incentives for LID are outlined in the Unified Development Ordinance Section 7.14. Incentives offered include variation in dimensional standards and buffering. For instance, reduced lot sizes are available in the RP, Residential Performance and RA, Rural Agricultural zoning districts. These incentives are rarely used by developers.

To award additional density credits based on a certified LID design, the following is contained in the Comprehensive Land Use Plan Section II-19; *In developing stormwater management goals and policies, the Business Alliance for a Sound Economy (BASE) and the North Carolina Coastal Federation jointly recommended that the County consider:*

1. *Developing policies and techniques that encourage the use of voluntary low impact development standards that can be applied to projects at the individual lot level or to major residential or commercial developments to mimic natural features and pre-development hydrology.*
2. *Developing policies and techniques that incorporate voluntary low impact development practices. The County should adhere to the guidance set forth from the Division of Water Quality for details on how to design, construct and maintain LID practices.*
3. *Implementing fee-based as well as land-based incentive packages for developers that utilize low-impact development (LID) techniques to manage the potential impacts of stormwater runoff within the County.*

Policies in support of additional LID criteria are below from the 2010 Comprehensive Land Use Plan;

Goal 3A.1 Develop a preferred growth pattern that includes traditional suburban communities but also allows for higher density residential development and for innovative mixed-use developments to encourage more compact, sustainable growth patterns

The following is recommended to be incorporated into Unified Development Ordinance text for LID criteria;

A. Documentation of certification from the appropriate professional form shall be submitted as part of the application package. An example form can be found in Appendix D- Typical Forms and Surveyor Notes.

B. The LID Project must comply with the requirements for stormwater management as set forth in 15A NCAC 02H.1005.

C. All provisions of Section 7.14, as applicable, must be met before LID certification can be granted for density bonus.

Major or Minor Collector Street Provided

As Pender County recently adopted a Collector Street Plan for the Wilmington Metropolitan Planning Organization (WMPO) area, development proposals may be required to provide roadways in accordance with the plan recommendations as outlined in Section 7.5.1.A *Layout of streets as to arrangement, width, grade, character, and location shall conform to the following: Pender County Collector Street Plan, Pender County Transportation Plan or other approved State or Federal Transportation Improvement Plan.*

If the project bounds include a major or minor collector street, then this area can be excluded from the density calculation. For instance, if the area for collector street right of way equals one (1) acre, this shall not be subtracted from the Total Developable Land Area using the Net Density Calculation.

The following Comprehensive Land Use Plan goals and policies support amending the density calculation given a major or minor collector street is identified within the project bounds;

<p>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 Pender County Collector Street Plan.</p>
<p>Policy 7B.1.1 The County should utilize and promote a hierarchical, functional transportation system, that prioritizes needs 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.</p>

Specific Unified Development Ordinance recommended language is below;

<p><i>A. Only applicable if the collector street identified within the project bounds is classified as a major or minor collector street per the Pender County Collector Street Plan, Pender County Transportation Plan or other approved State or Federal Transportation Improvement Plan.</i></p>
<p><i>B. The density calculation does not require the collector street to be removed from developable area</i></p>
<p><i>C. Any deviations or adjustments to the density calculation shall be approved by the Administrator based on the proposed collector streets,</i></p>

Open Space

Additional Open Space may be demonstrated as a criterion that could warrant additional density allowances. It is recommended that this strategy utilize the “conservation” or “cluster” subdivision approach which would require at minimum, half of the overall project area to be reserved as active or passive open space. This concept limits infrastructure needs and preserves important environmental features that may be impacted through a more traditional subdivision design.

Table 3 is a depiction from the 2010 Comprehensive Land Use Plan showing a conventional subdivision versus a conservation subdivision with additional open spaces.

Figure II-1 Conventional vs. Conservation Subdivision
 from “Conservation Design for Subdivisions” by Randall G. Arendt



Additionally, a study was completed in 2010 demonstrating the multiple benefits of designing and constructing a conservation subdivision with additional open spaces to the County, developer and environmental benefit. This can be seen in Attachment 2.

The 2010 Comprehensive Land Use Plan policies to support the provision of more than half of the parcel being dedicated as open spaces can be seen below;

Table 4: Conventional versus conservation subdivisions

<p>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.</p>
<p>Policy 2B.2.1 Incorporate cluster development standards in the Unified Development Ordinance.</p>
<p>Policy 2B.2.2 Consider providing incentives to encourage use of the cluster development option to preserve environmentally sensitive areas and upland sites as open space to protect community character.</p>
<p>Policy 7B.1.6 Ensure UDO regulations include clearly defined open space standards, which include reasonable and quantifiable areas of open space to be provided outside of wetlands, stormwater ponds, and clustered or community sewage disposal areas.</p>

The 2010 Comprehensive Land Use Plan outlines Smart Growth principles specifically focused on the provision of additional open spaces and conservation subdivisions;

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| 2. Take advantage of compact building design |
| 3. Create a range of housing opportunities and choices |
| 6. Preserve open space, farmland, natural beauty, and critical environmental areas. |

If more than half of the parcel is provided as open space provided, then the additional density credit shall be allocated, per the recommendation of the ZTA Subcommittee. Applicants should not be penalized if they provide additional open space beyond the County's requirement of 0.03 acres of open space per unit (per Section 7.6.1.C). This provision would be applicable if the applicant provided more than half of the property as open space.

Specific Unified Development Ordinance recommended language is below;

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| A. Only applicable if the open space provided is more than half of the total tract acreage. |
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Resilient Stormwater Design

The final item for additional density bonus as proposed by the applicant and recommended by the ZTA Subcommittee is the design of resilient stormwater facilities beyond the County’s current quantity standard for a 10-year storm event as outlined in Section 7.9.1.B for pre-development and post-development conditions.

The County can recommend a greater storm event be submitted for Stormwater design, beyond the 10-year quantity currently enforced for new development in Section 7.9.1 of the Unified Development Ordinance. The Zoning Ordinance (1988) included a certification form for Licensed Professional Certification for Drainage, Commercial Sites with Less than One Acre Developed or Disturbed to a ten-year frequency event. Major Subdivisions included a 10-year storm event water discharge certification as well. The 10-year storm provision has been included in the zoning regulations of Pender County as part of the Zoning Ordinance (amended).

A 10-year storm event equates to a specific amount of rain over a 24-hour period (in inches) without creating any significant ponding or overflow of drainage facility banks. NOAA is the resource for these figures which change periodically and through geographic locations. Addressing future growth and weather patterns, consideration should be given to address higher rain amounts and frequency of events. Attachment 3, is produced by NOAA and demonstrates the relationship between average recurrence interval (in years) throughout a specific duration to determine point precipitation frequency estimates.

The following policies from the 2010 Comprehensive Land Use Plan support amending the resiliency of stormwater planning in higher density projects;

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| <p>Policy 3G.1.3 Pender County will consider developing policies and techniques that encourage the use of voluntary low impact development standards that can be applied to projects at the individual lot level or to major residential or commercial developments to mimic natural features and predevelopment hydrology.</p> |
| <p>Policy 1A.1.4 The County should develop and utilize innovative and flexible land planning techniques that encourage developments to efficiently use land resources that result in more compact urban areas, infill development, redevelopment , and the adaptive re-use of existing buildings.</p> |
| <p>Policy 2G.1.5 Consider implementing fee-based as well as land-based incentive packages for developers that utilize low impact development (LID) techniques to manage the potential impacts of stormwater runoff.</p> |

Potential Unified Development Ordinance text can be seen below;

<p>Project is designed and certified beyond the next average recurrence interval above current Unified Development Ordinance standards for quantity for stormwater design.</p>
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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.

Utilities

Public water and wastewater services must be available for projects with a density over 5, per Section 7.8.1.B;

- 1) *In the Planned Development (PD) District and Residential Mixed (RM) District, lots ranging from 12,000 square feet to 14,999 square feet must provide at least one of the following:*
 - a) *Community or Public waste water disposal or,*
 - b) *Community or Public water service.*
- 2) *All dimensional lots under 12,000 square feet shall require community or public waste water disposal and water service.*

Any property which would utilize a density bonus must comply with the Unified Development Ordinance requirements. Any final zoning approvals are contingent upon review and approval by Pender County Utilities, Environmental Health, and appropriate local and state agencies.

Traffic & Roadways

Per various Sections of the Pender County Unified Development Ordinance, any proposal that generates more than 100 trips during the peak morning or evening hours, or 1,000 trips per day requires a Traffic Impact Analysis (TIA). Trip estimates must be based on the latest version of the Institute of Transportation Engineers Trip Generation Manual. A Traffic Impact Analysis provides the recommendations which NCDOT enforces through a Driveway Permit(s) for the proposed project. TIA improvements are specific roadway improvements such as; turning lanes, traffic signals, striping changes in direct relation to the impacts of the proposed development. All requirements are approved through coordination with NCDOT, the WMPO and Pender County staff.

Finally, the level of service of specific intersections can be part of the analysis when the development proposal is submitted. Specifically, level of service details how specific intersections are performing. The relationship of travel demand compared to the roadway capacity determines the level of service (LOS) of a roadway. Six levels of service identify the range of possible conditions. Designations range from LOS A, which represents the best operating conditions, to LOS F, which represents the worst operating conditions. Tools such as level of service analysis could allow the applicable Board to make a

more informed decision regarding the land use proposal. Information regarding level of service can be seen in Attachment 4.

Schools

The analysis of school capacity could be obtained by working with the Pender County Schools representative on the Technical Review Committee, TRC. Staff coordinates with the School district representative in review of the layout of the development plan, as well as, forecasting for capital investments. When new development plans are reviewed, reservation of lands could occur for new school sites. Any reservation would require the review and approval of the Pender County Board of Commissioners and Board of Education. A tool that can be utilized by counties is for land reservation through a development project in which the Board of Education can purchase property within 18-months of the reservation (NCGS 153A-331(f)). Again, it's important that coordination takes place so that entities are prepared for this potential action.

2010 Comprehensive Land Use Plan Compliance

This Zoning Text Amendment request is consistent with three (3) goals and eight (8) policies of the 2010 Comprehensive Land Use Plan. There are numerous policies within the Comprehensive Land Use Plan which encourage clustering development and higher density as incorporated throughout this report. Many of the density incentives recommended in the plan include innovative and compact mixed-use design, bonuses for public facilities, bonuses for workforce housing and the encouragement of clustering in neighborhoods. The density recommendation is to include higher density projects in the Scotts Hill area and the southeastern portion of Pender County, as well as, growth in and around the I-40 / US 117 and NC 210 intersections in Rocky Point.

The 2010 Comprehensive Land Use Plan chart which identifies 8 as a maximum density may be seen in Attachment 1. The allowable density in the Unified Development Ordinance can be increased to 8, otherwise re-certification through the Coastal Resources Commission is required to achieve compliance.

The request is consistent two (2) goals and eleven (11) policies within the 2010 Pender County Comprehensive Land Use Plan;

Policy 5A.1.5 Pender County could provide incentives such as density bonuses to developers that offer established affordable/workforce housing programs through community land trusts such as the Cape Fear Housing Community Land Trust.

Policy 2G.1.3 Pender County will consider developing policies and techniques that encourage the use of voluntary low impact development standards that can be applied to projects at the individual lot level or to major residential or commercial developments to mimic natural features and predevelopment hydrology.

Policy 2G.1.4 When considering developing policies and techniques that incorporate low impact development practices Pender County should adhere to the guidance set forth from the Division of Water Quality for details on how to design, construct and maintain LID practices.

Policy 2G.1.5 Consider implementing fee-based as well as land-based incentive packages for developers that utilize low-impact development (LID) techniques to manage the potential impacts of stormwater runoff.

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 Pender County Collector Street Plan.

Policy 7B.1.1 The County should utilize and promote a hierarchical, functional transportation system, that prioritizes needs 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.

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 2B.2.1 Incorporate cluster development standards in the Unified Development Ordinance.

Policy 2B.2.2 Consider providing incentives to encourage use of the cluster development option to preserve environmentally sensitive areas and upland sites as open space to protect community character.

Policy 7B.1.6 Ensure UDO regulations include clearly defined open space standards, which include reasonable and quantifiable areas of open space to be provided outside of wetlands, stormwater ponds, and clustered or community sewage disposal areas.

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BOARD ACTION FOR ZONING TEXT AMENDMENT

Motion: _____ **Seconded:** _____

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

Williams: ___ Fullerton: ___ Baker: ___ Jordan: ___ McClammy: ___ Nalee: ___