

Planning Board Meeting
May 17, 2021
Minutes

Members Present: Chairman Jonathan Olson, Terry Allen Swaim, Levin Jones, Deans Eatman, Jimmena Huffman-Hall, Cande Killian Wood and Michael Firstbrook.

Members Absent: Ryan Zakany

Staff Present: Niki Jones Planning Director, Bryan Coates, Assistant Planning Director, Jeannine Ngwira & Linda Barbour.

1. Meeting Called to Order

Chairman Olson called the meeting to order at 7:00 pm and recognized that a quorum (minimum of 5 members) was present.

Pledge of Allegiance was recited.

2. Adjustment and Approval of Agenda

Chairman Olson asked for a motion to approve the Agenda. Deans Eatman made the motion and Cande Killian Wood seconded the motion. The agenda was approved unanimously.

3. Approval of the Minutes

3a. Wendell Planning Board minutes from April 19, 2021. Chairman Olson asked if all had a chance to review these minutes. He stated that there was a revision made to the minutes that had been emailed to the board last week. The minutes in the current agenda include this revision. Mr. Swaim requested that the comment he had made on page 15 “What are we eating crayons” be stricken from the minutes. Linda Barbour will make that change.

Deans Eatman made a motion to approve & Michael Firstbrook seconded the motion; all were in favor and the revised minutes were approved unanimously.

4. Administrative Reports

None

5. New Business-

5a. ZTA21-04 – Text Amendment on Billboards

POTENTIAL ACTION: Recommendation to the Town Board.

5b. ZTA21-05 - Text Amendments for Chapter 160D of the NC General Statutes

POTENTIAL ACTION: Recommendation to the Town Board.

6. OLD BUSINESS

6a. Blueprint Wendell 2030 Update

Jeannine Ngwira, Planner, presented the following information shown in *italics* below.

Item Title:

Text Amendment (ZTA21-04) to the Unified Development Ordinance (UDO) to update the billboard sign language and requirements in the ordinance.

Specific Action Requested:

The Planning Board is asked to make a recommendation to the Board of Commissioners on the proposed text amendment request to the UDO to include a statement of Comprehensive Plan consistency.

Item Summary:

In 2017, Fairway Outdoor Advertising expressed an interest in constructing an electronic billboard along US 64. The company noted they constructed a similar electronic billboard in Rolesville near the new bypass. At that time, Chapter 12 of the UDO prohibited billboards of any type. As a result of these regulations, the applicant submitted a zoning text amendment request to allow electronic billboards and included specific standards related to their size, height, location, and operation.

At that time, the applicant proposed specific language as part of the amendment request. In general, the applicant's proposal allowed electronic billboards in the Community Center zoning district along US-64. Such signs would have a 3-mile separation requirement from other electronic billboards, would be from 12 to 50 feet in height, and have a sign face of up to 672 square feet.

The applicant, Aaron Guyton of Capital Outdoor, has requested that the UDO be amended to allow digital emergency, community, and business communication along Wendell Boulevard. The applicant proposes to amend Section 12.7.D.7 of the UDO to allow appropriately placed digital messaging centers while also limiting their use on certain roadways. Existing spacing requirements will need to be modified in order for this to occur.

As a "clean-up" staff is proposing to amend Section 12.9 of the UDO to delete Billboards from the list of prohibited signs.

Applicant's Proposed Amendments:

- 1. Amend Section 12.7 (Permitted Principal Use Signs) of the Town of Wendell Unified Development Ordinance to read as follows (Changes have been **highlighted**. Deletions are shown with strikethroughs. Additions are **bolded and underlined**).*

12.7 – Permitted Principal Use Signs

D. Temporary Signs Requiring a Permit

~~7.~~ **E.** Billboard signs are free-standing signs exceeding 12 feet in height, but not taller than 50 feet in height above road grade. Billboard signs are permitted with the following standards:

~~a.~~ **1.** Billboards are only permitted on private property within land zoned CC (Community Center), CH (Highway Commercial), **NC (Neighborhood Center)** or M&I (Manufacturing & Industrial) along and facing US 64 (a future interstate). **No billboard signs shall be permitted along and facing US 64 Business (Wendell Boulevard).**

~~b.~~ **2.** Electronic Billboard signs shall be placed a minimum of ~~15,840 feet~~ **10,560 feet** (~~three~~ **two** miles) apart, measured between the centers of Billboard sign poles facing the same street regardless of whether such sign is within the Town's planning jurisdiction.

~~c.~~ **3.** Where the structural support is visible from any street, the display shall be constructed on a single steel pole.

~~d.~~ **4.** The immediate premises shall be kept free from debris or undergrowth. Where the base of the pole is visible from any public street (as determined by the administrator), landscaping shall be installed and maintained as follows:

a. A minimum of 12 shrubs planted in a landscape area no less than 100 square feet. **Lesser plantings may be permitted by the administrator, if appropriate.**

~~e.~~ **5.** All displays shall be maintained in a state of good repair. The backs and supporting structures of all billboard signs shall be kept painted in a neutral color to blend with the natural environment.

~~f.~~ **6.** While minor repairs, maintenance and the posting of new messages on billboard signs made nonconforming by this UDO are permitted, no changes in size shall be permitted except to make the sign comply with the requirements.

~~g.~~ **7.** Billboard signs may be placed back-to-back or in a v-type construction. Not more than one face is allowed on each side of the display.

~~h.~~ **8.** All Billboard signs must be Digital Billboards or Smartboards. Digital Billboards or Smartboards are defined as a type of Billboard sign utilizing digital technology, capable of changing the static message or copy on the sign electronically. A digital billboard may be internally or externally illuminated. Digital Billboards shall contain static messages only and shall not have animation, movement, or the appearance or optical illusion of movement, of any part of the sign structure. Each static message shall not include flashing, scintillating lighting or the varying of light intensity.

~~i.~~ **9.** The digital message of a Digital Billboard shall not change more than once every eight seconds.

10. Size, height, and setback requirements are as follows:

Dimensional Standards	
Maximum surface area	672 square feet
Minimum side & rear setback	10 feet
Maximum height (measured above road surface)	50 feet

1. Amend Section 12.9 (Prohibited Signs) of the Town of Wendell Unified Development Ordinance to read as follows (Changes have been highlighted. Deletions are shown with strikethroughs).

12.9 – Prohibited Signs

E. Billboards

Statement of Plan Consistency:

Any recommended change to the zoning text should be accompanied by a statement explaining how the change is consistent with the comprehensive plan.

- The requested zoning text amendment is consistent with Principle # 4 of the Wendell comprehensive plan: “Diversify and increase the per capita tax base. Provide for a diverse workforce with a broad range of skills, making Wendell a more self-sustaining community.”

Staff Comment:

Staff recommends the following modifications:

- “Billboards are only permitted on private property within land zoned CC (Community Center), CH (Highway Commercial), ~~NC (Neighborhood Center)~~ or M&I (Manufacturing and Industrial) ~~along and facing US 64 (a future interstate). No billboard signs shall be permitted along and facing US 64 Business (Wendell Boulevard) east of Selma Road, and along Morphus Bridge Road, Lions Club Road, Poole Road, Selma Road, Martin Pond Road, Wendell Falls Parkway, Eagle Rock Road, Lake Glad Road and Old Quarry Road.~~
- Item 4. be modified as follows:
 - a. A minimum of ~~12~~ **18** shrubs planted in a landscape area no less than 100 square feet ~~and maintained to the standards of Section 8.12 of the UDO. An approved Landscape Plan required. Lesser plantings may be permitted by the administrator, if appropriate.~~
- The following item be added:

10. The required setbacks must comply with the UDO and are measured from the street's future cross-section.

- Modify the table to include dimensions for other roads.

Dimensional Standards	
Maximum surface area (Interstate)	672 square feet
Maximum surface area (Other)	400 square feet
Minimum side & rear setback (Interstate)	10 feet
Minimum front, side & rear setback (Other)	Comply with Zoning District Dimensional Standards
Maximum height (measured above road surface) (Interstate)	50 feet
Maximum height (measured above road surface) (Other)	30 feet

Option #3:

- Do not add NC Zoning District to list of zoning districts that allow billboards.
- Only allow billboards on I-87 and US 64 Business (Wendell Boulevard) west of Selma Road.
- Use a **Linear Spacing** with a separation of **1.5 miles** on both sides of the road.
- Modify landscape requirements to a minimum of 18 shrubs planted in a landscape area no less than 100 square feet and maintained to the standards of Section 8.12 of the UDO. **An approved Landscape Plan required with submission.**
- Setbacks to be **consistent with zoning district** dimensional standards and front setbacks measured from **future right-of-way**. (CH Zoning District: Front- 10 ft, Side & Rear- 4 ft)
- Surface area to be **300 sf**
- Height to be a maximum of **30 ft**.

Chairman Olson asked if the callers on the phone were on the line.

Mr. Guyton and Mr. Sykes were both present on the phone.

Comments/Questions following this presentation:

- **Chairman Olson asks if there were questions for Mr. Guyton.**
- **Deans asked is option one what was originally requested and is this the one that no one wants?**
- **Mr. Guyton replied yes.**
- **Mr. Robert Sykes, President of Capitol Outdoor, said he has been in the business since the 1970's and he believes this medium is very effective for**

growing businesses. It provides an alternate form of advertising; it is a clean and productive form of advertising. He also said they are a North Carolina based business.

- Chairman Olson asked does the proposed sign have two faces?
- The applicant replied yes.
- Deans said that option 3 was not in the staff report.
- Chairman Olson asked if the zoning was Highway Commercial to the East?
- Bryan said it is Rural Agriculture.

- Chairman Olson said he wonders if once the area is developed will this billboard still be a good fit, 3-5 years or even 10 years from now? He said he looked over the area and thinks that 300 ft was a good size, and that 400 ft would be too large. having the billboards 1.5 mile apart was good.
- Michael said billboards show that the town is pro-business, and it might draw more businesses. He said he likes option 3 also.
- Mr. Swaim asked why do we have #9, that the billboard can't flash more than every 8 seconds- why is that and is it our choice?
- Jeannine responded so it does not distract drivers and that it was in the applicant's proposal.
- Mr. Guyton said it is required by NC DOT State Legislation.

- There was discussion by board members about locations east of S. Selma Rd.
- Mr. Guyton said back in 2017 the intention for this ordinance was to prevent the Town from having too many billboards. He said he agrees with them and that less is better as one is good but too many will hurt businesses.
- Mr. Swaim said the Town has a compelling interest of not having billboards east of Selma Rd is this correct?
- Niki said Option 3 is the best scenario for now, we do not want a plethora of billboards.
- Chairman Olson said he understands the 1.5 mile linear spacing but why are we eliminating locations when we will have to go back and update again when someone wants to put up another billboard?
- Niki said if the Board can change the language to open up 64 business and allow more billboards on 87 and US 64 if they wanted to.
- Chairman Olson said so there will be a maximum of 2 billboards on Wendell Blvd with that spacing.
- Mr. Swaim clarified is it our intention to limit billboards east of S. Selma Rd?
- Niki replied yes at this time.
- Deans asked on the 5th point setbacks, does that mean that the zoning for the sign depends on the zoning for the location district?
- Niki said the setbacks for each district will be enforced.
- Deans said that not being able to see the language of the proposed ordinance of option # 3, made him hesitant to approve it. He was wondering if that was something staff could do.
- Jeannine said it might take time to change the language.

- Deans likes option 3 and wants to clarify that now we are not using a radial measurement but a linear measurement and that billboards are only allowed on I-87 and Business 64 and be 1.5 miles apart.
- Chairman Olson said the sign near Kioti is 672 ft. and asked will any other sign be allowed within 1.5 miles of that?
- Niki said not today but in the future there would be potential.
- Chairman Olson asked Mr. Guyton if 300 sq. ft. would be enough?
- Mr. Guyton said that 672 sq ft. on the interstate was good but in commercial community arterial areas and small roads 300 sq. ft. is adequate.
- Michael asked if the Kioti billboard is an ad for Kioti?
- Chairman Olson replied to no, it's a commercial sign. He also said he likes option 3 but will not recommend something to the Town Board without seeing it, what are we recommending?

Chairman Olson asked for the pleasure of the Board, are we comfortable with making a recommendation of option 3?

Deans said he likes that staff came up with option 3, he did not like option 1 or 2 and he does not want to make the applicant wait another month and it should go to the Town Board.

Michael said he agrees with Deans.

Deans Eatman made a motion to approve Option 3, Michael Firstbrook seconded the motion. All were in favor and the motion carried.

Jeannine Ngwira presented the following information in *italics* below.

Item Title:

ZTA21-05 Zoning text amendments to comply with Chapter 160D of the NC General Statutes

Specific Action Requested:

The Planning Board is being asked to consider the proposed text amendment request and make a recommendation to the Board of Commissioners to include a statement of Comprehensive Plan consistency.

Item Summary:

Chapter 160D of the North Carolina General Statutes is a new chapter that consolidates current city- and county-enabling legislation for development regulations into a single, unified chapter. Chapter 160D creates a more logical organization of the regulations. The new law does not make major policy changes or shifts in the scope of authority granted to local governments. The changes do provide many clarifying amendments and consensus reforms that are required to be incorporated into the Town's UDO and Code of Ordinances. Chapter 160D is effective now but local governments have until July 1, 2021 for adoption of text amendments to comply with State law.

This fifth round of proposed text amendments deal with Legislative Decisions and Quasi-Judicial Decisions.

Jeannine said that staff already follows these procedures, but the UDO does not contain all of the current language for these processes, and we are adding it.

The following items are included in the proposed amendments:

- ***Must** follow applicable procedures for legislative decisions under any development regulation authorized under Chapter 160D, not just zoning; must adopt any development regulation by ordinance, not by resolution. (G.S. 160D-601.)*
- *For zoning map amendments, **must** provide notice not only to immediate neighbors but also to properties separated from the subject property by street, railroad, or other transportation corridor. (G.S. 160D-602.)*
- ***Must** provide posted notice during the time period running from twenty-five days prior to the hearing until ten days prior to the hearing. (G.S. 160D-602(c).)*
- ***Must** prohibit third-party down-zonings; may process down-zonings initiated by the local government or landowner (G.S. 160D-601; S.L. 2019-111, Pt. I.)*
- ***Must** obtain applicant's/landowner's written consent to conditions related to a conditional zoning approval to ensure enforceability. (G.S. 160D-703(b); S.L. 2019-111, Pt. I.)*
- ***Must** follow statutory procedures for all quasi-judicial development decisions, including variances, special use permits, certificates of appropriateness, and appeals of administrative determinations. (G.S. 160D-102(28).)*
- ***Must** allow parties withstanding to participate fully in the evidentiary hearing, including presenting evidence, cross-examining witnesses, objecting to evidence, and making legal arguments; may allow non-parties to present competent, material, and substantial evidence that is not repetitive. (G.S. 160D-406(d).)*
- ***Must** set a thirty-day period to file an appeal of any administrative determination under a development regulation; must presume that if notice of determination is sent by mail, it is received on the third business day after it is sent. (G.S. 160D-405(c).)*

There are some “clean-up” items in these sections that staff is recommending to be addressed. The use of Protest Petitions was abolished in 2015 but the section remains in our UDO. Staff is recommending the removal of Section 15.19 C. Protest Petitions and all references to it. Also, Section 15.19 D failed to mention that if the Planning Board has recommended against an amendment, the Town Board will need a supermajority vote to pass it. Staff is recommending adding language to clarify this requirement.

Proposed Amendments:

*To comply with Chapter 160D of the North Carolina General Statutes, staff recommends amending the following sections of the Town of Wendell Code of Ordinances and Unified Development Ordinance to read as follows (Changes have been **highlighted**. Deletions are shown with strikethroughs. Additions are **bolded and underlined**).*

- **Must follow applicable procedures for legislative decisions under any development regulation authorized under Chapter 160D, not just zoning; must adopt any development regulation by ordinance, not by resolution. (G.S. 160D-601.)**
- **For zoning map amendments, must provide notice not only to immediate neighbors but also to properties separated from the subject property by street, railroad, or other transportation corridor. (G.S. 160D-602.)**
- **Must provide posted notice during the time period running from twenty-five days prior to the hearing until ten days prior to the hearing. (G.S. 160D-602(c).)**
- **Must prohibit third-party down-zonings; may process down-zonings initiated by the local government or landowner (G.S. 160D-601; S.L. 2019-111, Pt. I.)**

Town of Wendell Unified Development Ordinance

Chapter 15 – ADMINISTRATION

15.19 - Legislative Procedures—General Provisions

- A. Purpose: The purpose of this Section is to establish uniform procedures for processing matters requiring a legislative approval process.
- B. Required Compliance with Comprehensive Plans:
 - 1. Text and Zoning Map amendments shall be made in accordance with the *Town Plan of Wendell* or other adopted comprehensive or related plan. Prior to adopting or rejecting any zoning amendment, the Board of Commissioners shall adopt a statement describing whether its action is consistent with the adopted comprehensive plan and explaining why the Board of Commissioners considers the action taken to be reasonable and in the public interest. That statement is not subject to judicial review.
 - 2. The Planning Board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable. The Planning Board shall provide, within 30 calendar days of its decision, a written recommendation to the governing board that addresses plan consistency and other matters as deemed appropriate by the Planning Board.

3. A comment by the Planning Board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the Board of Commissioners. However, a four-fifths majority vote by the Board of Commissioners shall be required to amend this Ordinance when the Planning Board recommends against such amendments. A simple majority of the Board shall be required to amend the Ordinance when recommendation by the Planning Board is favorable.

C. Protest Petitions

- ~~1. In the case of a protest against a rezoning (Zoning Map amendment) duly signed by the owners of 20 percent or more, either of the area of the lots included in the proposed change, or those immediately adjacent thereto, either in the rear thereof or on either side thereof, extending 100 feet from the street frontage of such opposite lots, the amendment shall not become effective except by favorable vote of three-fourths of all the members of the Board of Commissioners.~~
- ~~2. No protest against any proposed amendment shall be valid or effective unless it is on a form provided by the Town actually bearing the signatures of the required number of property owners and stating that the signers do protest the proposed change or amendment. All such petitions shall be filed in the office of the Town Clerk for validation at or before 12:00 noon not less than three working days prior to the date of the hearing.~~
- ~~3. A person filing a protest against a proposed zoning amendment may withdraw the protest any time prior to the meeting at which the rezoning will be considered. Withdrawal with a refund of required fees is permitted if requested prior to the printing of the advertisement in the newspaper.~~

C. Notice Requirements:

- Hearing with Published Notice. - Before adopting, amending, or repealing any ordinance or development regulation authorized by this Chapter, the Board of Commissioners shall hold a legislative hearing. A notice of the hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published the first time not less than 10 days nor more than 25 days before the date scheduled for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.**
- Ordinance Required. A development regulation adopted pursuant to this Chapter shall be adopted by ordinance.**
- Down-Zoning. - No amendment to zoning regulations or a zoning map that down-zones property shall be initiated nor is it enforceable without the written consent of all property owners whose property is the subject of the down-zoning amendment, unless the down-zoning amendment is initiated by the Town. For purposes of this section, "down-zoning" means a zoning ordinance that affects an area of land in one of the following ways:**
 - By decreasing the development density of the land to be less dense than was allowed under its previous usage.**
 - By reducing the permitted uses of the land that are specified in a zoning ordinance or land development regulation to fewer uses than were allowed under its previous usage.**
- Notice of hearing on proposed Zoning Map Amendments**
 - Mailed Notice. - The owners of affected parcels of land and the owners of all parcels of land abutting that parcel of land shall be mailed a notice of the hearing on a proposed zoning map amendment by first-class mail at the last addresses**

listed for such owners on the county tax abstracts. For the purpose of this section, properties are "abutting" even if separated by a street, railroad, or other transportation corridor. This notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the hearing. If the zoning map amendment is being proposed in conjunction with an expansion of municipal extraterritorial planning and development regulation jurisdiction under G.S. 160D-202, a single hearing on the zoning map amendment and the boundary amendment may be held. In this instance, the initial notice of the zoning map amendment hearing may be combined with the boundary hearing notice and the combined hearing notice mailed at least 30 days prior to the hearing.

- b. Optional Notice for Large-Scale Zoning Map Amendments. – The first-class mail notice required under subsection a. of this section shall not be required if the zoning map amendment proposes to change the zoning designation of more than 50 properties, owned by at least 50 different property owners, and the Town elects to use the expanded published notice provided for in this subsection. In this instance, the Town may elect to make the mailed notice provided for in subsection (a) of this section or, as an alternative, elect to publish notice of the hearing as required by G.S. 160D-601, provided that each advertisement shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper that publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified according to the provisions of subsection (a) of this section.**
- c. Posted Notice. – When a zoning map amendment is proposed, the Town shall prominently post a notice of the hearing on the site proposed for the amendment or on an adjacent public street or highway right-of-way. The notice shall be posted not less than 10 days nor more than 25 days before the date scheduled for the hearing. When multiple parcels a map amendment, a posting on each individual parcel is not required but the Town shall post sufficient notices to provide reasonable notice to interested persons.**
- d. Actual Notice. – Except for a government-initiated zoning map amendment, when an application is filed to request a zoning map amendment and that application is not made by the landowner or authorized agent, the applicant shall certify to the Town that the owner of the parcel of land as shown on the county tax listing has received actual notice of the proposed amendment and a copy of the notice of the hearing. Actual notice shall be provided in any manner permitted under G.S. 1A-1, Rule 4(j). If notice cannot with due diligence be achieved by personal delivery, certified mail, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2), notice may be given by publication consistent with G.S. 1A-1, Rule 4(j1). The person or persons required to provide notice shall certify to the Town that actual notice has been provided, and such certificate shall be deemed conclusive in the absence of fraud.**

- D. *Town Board Decision: Once the public hearing has been conducted the Town Board shall render a decision on the petition. All decisions shall be by simple majority vote unless a valid Protest Petition has been submitted in accordance with Section 15.19.C, **the Planning Board has recommended against the proposed amendment.***
1. *A decision concerning a petition for rezoning shall be as follows:*
 - a. *Grant the rezoning as requested; or,*
 - b. *Grant the rezoning with a reduction in the area requested; or,*
 - c. *Grant the rezoning to a more restrictive general zoning district; or,*
 - d. *Grant the rezoning with a combination of b and c above; or,*
 - e. *Deny the application.*
 2. *A decision concerning the petition to amend the text of this Ordinance shall be as follows:*
 - a. *Adoption of the amendment as written; or,*
 - b. *Adoption of the amendment as revised; or,*
 - c. *Rejection of the amendment.*

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- **Must obtain applicant's/landowner's written consent to conditions related to a conditional zoning approval to ensure enforceability. (G.S. 160D-703(b); S.L. 2019-111, Pt. I.)**

Town of Wendell Unified Development Ordinance

Chapter 15 – ADMINISTRATION

15.13 - Conditional Districts

B. General Requirements:

2. Standards of District to be Met: Within an approved Conditional District, no use shall be permitted except pursuant to the conditions imposed by the applicant on the Conditional District in the approval of the rezoning. The Board of Commissioners may impose additional reasonable and appropriate conditions or safeguards to serve the purpose and intent of this Section, and to preserve public welfare, and justice.

Only those conditions mutually approved by the Board of Commissioners and the applicant may be incorporated into the zoning regulations. The applicant or landowner must provide written consent to all conditions approved by the Board of Commissioners.

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- **Must follow statutory procedures for all quasi-judicial development decisions, including variances, special use permits, certificates of appropriateness, and appeals of administrative determinations. (G.S. 160D-102(28).)**
 - **Board chair must rule at the evidentiary hearing on objections to inclusion or exclusion of administrative material; such ruling may be appealed to the full board. (G.S. 160D-406(d).)**
 - **Must allow parties with standing to participate fully in the evidentiary hearing, including presenting evidence, cross-examining witnesses, objecting to evidence, and**

making legal arguments; may allow non-parties to present competent, material, and substantial evidence that is not repetitive. (G.S. 160D-406(d).)

- **Must set a thirty-day period to file an appeal of any administrative determination under a development regulation; must presume that if notice of determination is sent by mail, it is received on the third business day after it is sent. (G.S. 160D-405(c).)**

Town of Wendell Unified Development Ordinance

Chapter 15 – ADMINISTRATION

15.15 – Special Use Permits

C. Procedures:

1. The processing of a Special Use Permit shall be conducted by the Board of Commissioners. **The applicant, the Town, and any person who would have standing to appeal the decision under G.S. 160D-1402(c) shall have the right to participate as a party at the evidentiary hearing, including presenting evidence, cross-examining witnesses, objecting to evidence, and making legal arguments.** During the **evidentiary** public hearing, all parties presenting testimony and evidence shall be duly sworn. Testimony both in favor and against the Special Use Permit application shall be presented and will be considered in formulating the findings-of-fact required for a decision. **Objections regarding jurisdictional and evidentiary issues, including, but not limited to, the timeliness of an appeal or the standing of a party, may be made to the board. The Mayor shall rule on any objections, and the Mayor's rulings may be appealed to the full board. These rulings are also subject to judicial review pursuant to G.S. 160D-1402. Objections based on jurisdictional issues may be raised for the first time on judicial review.**
3. A notice of each **evidentiary** public hearing shall be published in a newspaper of general circulation in the town, at least one time a week for two consecutive weeks prior to the **evidentiary** public hearing.

15.16 – Administrative Appeals

Applicant with Standing: An appeal may be made by any aggrieved party or by any officer, department or board of Wendell who has received a ruling from the Administrator, or the Technical Review Committee, upon the submission of a completed application. An appeal to the

- B. Zoning Board of Adjustment and/or the Board of Commissioners shall be made within 30 calendar days from written notice of a final, binding administrative decision. **In the absence of evidence to the contrary, notice given pursuant to G.S. 160D-403(b) by first-class mail shall be deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service.** An appeal shall be placed on the Zoning Board of Adjustment and/or the Board of Commissioners agenda within 30 calendar days of filing. The filing of any application stays all proceedings unless the Administrator certifies that a stay in his opinion will cause imminent peril to life or property, or, that because the violation charged is transitory in nature a stay would seriously interfere with enforcement of the Ordinance. In that event, proceedings shall not be stayed except by a restraining order, which may be granted by the Zoning Board of Adjustment, the Board of Commissioners or by a judicial court of law.

- C. Board Powers and Responsibilities: The Zoning Board of Adjustment and/or the Board of Commissioners may, after having held an **evidentiary public** hearing **conducted in the nature of a quasi-judicial proceeding with all findings of fact supported by competent, material evidence as required by G.S. 160D-406** on the matter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed. The Zoning Board of Adjustment and/or the Board of Commissioners shall have all the powers of the Administrator in making any order, requirement, decision, interpretation or determination with reference to an appeal or petition. **Objections regarding jurisdictional and evidentiary issues, including, but not limited to, the timeliness of an appeal or the standing of a party, may be made to the board. The Board Chair/Mayor shall rule on any objections, and the Chair's/Mayor's rulings may be appealed to the full board. These rulings are also subject to judicial review pursuant to G.S. 160D-1402. Objections based on jurisdictional issues may be raised for the first time on judicial review.**
- D. Simple-Majority Required: The concurrent simple-majority vote of three-fifths of the voting members of the Zoning Board of Adjustment and/or the Board of Commissioners shall be necessary to make an interpretation of the Ordinance, reverse any order, requirement, or decision or determination of the Administrator. In all matters coming before the Zoning Board of Adjustment and/or the Board of Commissioners, the applicant shall have the burden of providing clear, competent and material evidence in support of the application. **The applicant, the Town, and any person who would have standing to appeal the decision under G.S. 160D-1402(c) shall have the right to participate as a party at the evidentiary hearing, including presenting evidence, cross-examining witnesses, objecting to evidence, and making legal arguments.** All decisions of the Zoning Board of Adjustment and/or the Board of Commissioners shall be in writing and filed with the Administrator. Every variance decision of the Board of Adjustment and/or the Board of Commissioners shall be subject to review by the Wake County Superior Court. Any appeal to the Wake County Superior Court shall be taken within 30 calendar days after the decision of the Board of Adjustment and/or the Board of Commissioners is filed in the office of the Administrator. The Administrator shall notify they applicant by registered mail within 30 calendar days of the Board of Adjustment's and/or the Board of Commissioners decision.
- E. Appeals
3. The Board of Adjustment shall fix a reasonable time, not to exceed 60 calendar days for an **evidentiary public** hearing on appeals of the decision of the Administrator. A notice of each **evidentiary public** hearing shall be published in a newspaper of general circulation in the town, at least one time a week for two consecutive weeks prior to the **evidentiary public** hearing.

15.17 - Variances

- C. Required Findings of Fact: The Zoning Board of Adjustment and/or the Board of Commissioners may only grant a variance having first held an **evidentiary public** hearing **conducted in the nature of a quasi-judicial proceeding with all findings of fact supported by competent, material evidence as required by G.S. 160D-406**, ~~on the matter~~ and having made the following determinations:
1. There are unnecessary hardships in the way of carrying out the strict letter of the Ordinance; and
 2. That the variance is in harmony with the general purpose and intent of this Ordinance and preserves its spirit; and
 3. That in the granting of the variance, the public safety and welfare have been assured and substantial justice has been done; and
 4. That the reasons set forth in the application justify the granting of a variance, and that the variance is a minimum one that will make possible the reasonable use of land or structure; and,
 5. The following are not cause for a variance:
 - a. The citing of other nonconforming or conforming uses of land or structures in the same or other districts.

- b. The request for a particular use expressly, or by inference, prohibited in the district involved.
 - c. Economic hardship or the fact that property may be utilized more profitably with a variance.
- E. Supermajority Required for Decision: The concurrent, supermajority vote of four-fifths of the voting members of the Zoning Board of Adjustment and/or the Board of Commissioners shall be necessary to grant a variance. In all matters coming before the Zoning Board of Adjustment and/or the Board of Commissioners, the applicant shall have the burden of providing clear, competent and material evidence in support of the application. **The applicant, the Town, and any person who would have standing to appeal the decision under G.S. 160D-1402(c) shall have the right to participate as a party at the evidentiary hearing, including presenting evidence, cross-examining witnesses, objecting to evidence, and making legal arguments. Objections regarding jurisdictional and evidentiary issues, including, but not limited to, the timeliness of an appeal or the standing of a party, may be made to the board. The Board Chair/Mayor shall rule on any objections, and the Chair's/Mayor's rulings may be appealed to the full board. These rulings are also subject to judicial review pursuant to G.S. 160D-1402. Objections based on jurisdictional issues may be raised for the first time on judicial review.** All decisions of the Zoning Board of Adjustment and/or the Board of Commissioners shall be in writing and filed with the Administrator.
- F. Time for Decision: Except for minor variances noted in Section 15.18.G.1, the Zoning Board of Adjustment and/or the Board of Commissioners shall hold an **evidentiary public** hearing on an application no later than 60 calendar days after a complete application has been filed with the Administrator. The Zoning Board of Adjustment and/or the Board of Commissioners shall decide on the matter which was presented at the **evidentiary public** hearing within 30 calendar days of the close of the **evidentiary public** hearing. If the Board of Adjustment and/or the Board of Commissioners fails to render a decision within the allotted time, the variance request is deemed to be not approved.

Statement of Plan Consistency:

Any recommended change to the zoning text should be accompanied by a statement explaining how the change is consistent with the comprehensive plan.

- o *The proposed ordinance amendment is consistent with the Comprehensive Plan since it supports **Key Principle # 9: Make development decisions predictable, fair, and cost effective.***

Staff Recommendation:

Staff recommends approval of the proposed 160D text amendments.

Comments/Questions following this presentation:

- **Chairman Olson asked about down-zoning, if a parcel is zoned “X” you cannot zone it down but someone else can?**
- **Jeannine replied that the owner can down-zone it but a 3rd party can’t.**
- **Deans Eatman asked about the placement of down-zoning in our UDO being near notice requirements.**
- **Jeannine replied they she left it in the original order.**
- **Deans said he does not want to make it seem less serious, and asked could we move it?**
- **Jeannine replied yes.**
- **Dean’s asked about Protest Petitions.**

- Jeannine said it is no longer allowed, that is why we are changing it.
- Deans asked if the Planning Board does not recommend approval, then the Town Board would need to have a super majority, is this true?
- Jennine replied yes, it is written throughout the UDO.
- Mr. Swaim asked about the cost of running a ½ page ad? He said he must be costly.
- Jeannine said you can take out an ad in place of doing a mailing.
- Mr. Swaim said Judges do not like that.
- Chairman Olson wanted to know when we might do that.
- Bryan said it is just an option.
- Niki said it has been carried on for generations.
- Chairman Olson clarified that the ½ page ad is just an option.
- Jeannine replied yes.

Chairman Olson asked for the pleasure of the Board.

**Deans made a motion to approve.
Jimmena seconded the motion.**

All voted in favor and the motion was passed.

Bryan Coates gave a brief update on Blueprint 2030.

- He said the committee met 2 weeks ago to go over land use maps.
- He also said there is an upcoming meeting at the Community Center and there will be more public surveys.

**John encouraged everyone to check out the event at the Community Center and asked if the event will be advertised?
Bryan said yes it will be.**

Levin Jones made a motion to adjourn, Michael Firstbrook seconded the motion.

All were in favor.

The meeting was adjourned at 8 PM