

**Planning Board Meeting  
May 20, 2019  
Minutes**

**Members Present:**, Errol Briggerman, Victoria Curtis, Joe DeLoach, Lloyd Lancaster, Jonathan Olson, Terry Allen Swaim, and Ryan Zakany

**Members Absent:** All Present

**Staff Present:** Planning Director David Bergmark, Jeannine Ngwira, and Linda Barbour

**Guests Present:** Regina Harmon, Kathy Dara, Ruben Caren, Ronny Vale & Chris Rurkowski

**1. Meeting Called to Order**

Chairman Terry “Allen” Swaim called the meeting to order at 7:03 pm and recognized that a quorum (minimum of 5 members) was present.

**2. Welcome and Recognition of Guests**

Chairman Swaim welcomed guests in attendance.

**3. Chairman and Board Members’ Comments**

None

**4. Adjustment and Approval of Agenda**

Chairman Swaim asked if there were any adjustments to the agenda. Joe DeLoach made a motion to start with new business items C, D, and E, then proceed with items A and B that were tabled from last meeting on 4/15/2019. Chairman Swaim asked for a second and Jonathan Olson seconded this motion to approve this Agenda change, and it was approved unanimously.

**5. Public Comments**

Chairman Swaim asked that we wait until after the presentations to hear comments.

**6. Approval of Minutes**

Chairman Swaim referred the members of the Planning Board to the minutes that the staff had prepared and asked if there were any needed revisions. - **Ryan Zackany said that he was not listed on page 12 as asking Kathy Dara Which of the rules was most important to her, regarding game rooms. She replied that the most important rule to her was that a game room close at 10 pm. This error on the minutes will be corrected.** Chairman Swaim asked for a motion to approve the revised minutes. Lloyd Lancaster made a motion, Joe DeLoach seconded, and they were approved unanimously.

**7. Discussion, Consideration, and Action on the Following Items:**

**C. ZTA19-05 – Discussion and Action on a Zoning Text Amendment to Section 10.4 of the UDO as it relates to parking requirements.**

Mr. Bergmark, Planning Director, presented the following staff report and background information shown in *italics* below.

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**Specific Action Requested:**

- *That the Planning Board consider the proposed text amendment request and make a recommendation to the Board of Commissioners, to include a statement of comprehensive plan consistency and reasonableness.*

***Applicant:*** *Town of Wendell*

***Petition:***

*Staff is requesting to amend the UDO Section 10.4- General Parking Requirements as it relates to minimum parking spaces required for new development.*

***Item Summary:***

*The purpose of the proposed zoning text amendment is to adjust the Town’s parking standards to be in line with other municipalities and industry parking needs by use. Currently our UDO requires a minimum number of parking spaces by use category (i.e. Retail/Restaurant, Office/Service, Etc.). While the UDO does not contain Maximum parking space requirements, it does require that a portion of the parking spaces in excess of 150% of the minimum required be pervious. All parking spaces more than 200% of the minimum number required must be pervious.*

*Thus, parking minimums that are too low will unnecessarily cause some uses to have to provide pervious paving (which is costlier), where other municipalities allow for more impervious parking. Low minimum parking requirements can also lead to developments with insufficient parking to accommodate their use, which can cause spillover effects to adjacent businesses.*

*To avoid this, staff is proposing to raise the parking space minimums for select categories to be more in line with other municipalities’ requirements to not be unduly burdensome on developers.*

*A similar change was incorporated into the Wendell Falls PUD when it was approved. The PUD raised the parking minimums for 3 uses: Office/Service, Retail and Restaurants. Office/Service Uses went from 2 spaces/1,000 sf. to 2.5 spaces/1,000 sf. Retail Uses was raised from 2 to 3.5/1,000 sf and Restaurants from 1 per 4 seats to 1.5 per 4 seats. While staff is not*

*proposing to mirror these figures exactly, this change did indicate that the Town's Parking standards were not perfectly aligned with industry needs.*

*The following table shows the parking requirements of specific uses, as compared to other municipalities. Staff chose these uses because they are the most pertinent and in need of adjustment. The uses that are not represented in the table are either those in which Wendell's standards were comparable to those of other municipalities or uses where additional research and evaluation is needed. This change was spurred by a specific developer seeking to create a significant office development in Wendell, but the Town's low parking ratio for 'Office/Service' presented an obstacle to development.*

David referred to a table comparing our minimums with that of other municipalities.

*He surmised that Wendell's parking minimums are lower than any other municipality for Office/Service and Entertainment/Recreation and the second lowest for Retail. For Restaurants, we are on the lower end. Conversely, Wendell has the highest parking requirement for Theaters of those evaluated.*

### ***Proposed Amendments***

- 1. To amend Section 10.4 (General Parking Requirements) to modify the Town's minimum required parking spaces.*

**He used a table to show the modifications.**

#### *17.17 - Statement of Plan Consistency and Reasonableness*

- Any recommended change to the zoning text should be accompanied by a statement explaining how the change is consistent with the comprehensive plan and is reasonable in nature.*

*In staff's opinion, the requested zoning text amendment is consistent with Principle # 5 of the Wendell comprehensive plan and is reasonable to promote Wendell's attractiveness to business that provide jobs and increase the Town's tax base while still protecting the aesthetic beauty of the town and the environment in which it is located.*

*Principle # 5: Promote Wendell's attractiveness to business and people of all walks of life. Emphasize the strengths of the Town's diverse population*

Staff Recommendation:

*Staff recommends approval of the text amendment request. While staff included changes to the minimum parking requirements for 5 use categories, the 'Office/Service' use is the most time sensitive, as it is needed to accommodate a pending office development.*

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**Discussion following Mr. Bergmark's presentation:**

- Ryan asked if other municipalities had the previous rule.
- David answered yes.
- Chairman Swaim asked about shared or satellite parking.
- David said yes, we have language for shared parking in places like churches or businesses that have uses with opposite peak times.
- Chairman Swaim asked for a motion
- Jonathan made a motion to recommend approval and Victoria seconded the motion. The motion was approved unanimously.

**Item D**

**CD19-02 – Introduction to an R-4 Conditional District request for properties located at 0 Lake Glad Road and 1005 Lake Glad Road, respectively.**

**Mr. Bergmark, Planning Director, presented the information shown in italics below.**

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**Specific Action Requested:**

- *That the Planning Board receive information on a proposed R-4 conditional district request and provide feedback to the applicant..*
- *No action beyond initial feedback is requested by the Planning Board. This item will return to the Planning board at their June meeting, seeking a recommendation. This will permit the applicant to make corrections identified by the TRC, as well as any necessary adjustments based on Planning Board comments.*

**Applicant:**

*John M. Spurrell for True Homes*

**Petition:**

*The applicant has requested to create a R4 conditional district for approximately 126.67 acres of property along Lake Glad road (within the parcels identified by PIN #1783420133 and PIN #1783410646). The proposed conditional district consists 273 single family dwellings, with associated open space, amenities, and infrastructure.*

**Item Summary:**

*Although the applicant has requested an R4 Conditional District, one of their conditions is to limit their overall density to no more than 2.4 dwelling units per acre (less than what the R3 district would typically permit). The R4 district permits lots that are at least 50 feet wide and 6000 square feet or more in size. In order to create a more gradual transition from the developed lots to the north of this proposed development, the applicant has included a condition that lots 75-108 (backing up to Combs Court and Wythe Lane) be a minimum of 10,000 square feet in size. This property is impacted by floodplain, wetlands, and riparian buffers.*

**David went over the purpose of a Conditional District for the Board.**

**Location and History:**

*This property is currently located outside in Wake County's jurisdiction and is zoned Residential-30 (R-30). Annexation must be approved by the Wendell Board of Commissioners prior to the conditional district taking effect for the applicant to pursue the proposed project,*

*Current property owners are Gayle H. Edwards & William H. Edwards of 8605 Murray Hill Rd in Raleigh, NC.*

**David referred to the current Zoning Map**

*Proposed Conditional District Conditions:*

*The applicant is proposing 7 conditions for the proposed R4-CD, as follows:*

- 1. Limit use to single-family residential, including any allowed accessory uses.*
- 2. Limit single family density to 2.4 dwelling units/acre.*
- 3. All single-family lots adjoining residential lots on Comb Court and Wythe Lane shall be 10,000 sf. minimum. (to the north of the project)*
- 4. Request waiver to block length (chapter 9-7-c).*
- 5. Request waiver to stub street requirement (chapter 9-7-d).*
- 6. Provide an additional 2 acres of park space.*

7. *Add one section of one-way streets to create a central open space and improve accessibility.*
8. **Staff recommended condition 8** – *apply a rear yard planting requirement along the northern border of lots 22-27 and lots 101-108 (to result in rear yard planting along entire northern border of proposed subdivision).*

**Applicant's Justification:**

*We respectfully request a conditional use district for the following reasons:*

1. *Several of the conditions (items 4 and 5) are driven by the fact that these 2 parcels of land are encumbered by an abundance of wetlands, riparian buffers, and a published flood plain.*
2. *Another factor is the limited ability to provide street access to the northern property line due to developed residential lots.*
3. *The location of buffers and wetlands has given us an opportunity to be creative with one-way streets, additional park space, and over 60% of lots backing up to open space or buffers.*

**Parking:**

*Off-street parking will be required for the applicant's Park Space and Active Open Space.*

**Open Space:**

*Per the submitted plan, the applicant is providing the following amount of open space:*

*Passive Open Space: 35.41 acres provided (8.23 acres required)*

*Park Space: 4.9 acres provided (2.75 acres required)*

*Fully Active: 0.91 acres Required (amount provided is not specified).*

*The applicant's stated intention is to have their fully active open space on the west side of Lake Glad Road, with Park Space on the east side of Lake Glad road between Street A and Street E. The applicant will need to provide amenity details for staff to confirm that the park space and fully active open space calculations are correct.*

**Public Utilities:**

*Public water and sewer will require extensions to serve this site. The applicant is dealing with the City of Raleigh Public Utilities Department (CORPUD) to work out these details.*

**Streets:**

*Lake Glad road will be required to be widened to a 3-lane cross-section. The applicant is proposing the use of local streets (52' wide), Residential Main Streets (67' wide with room for parking on both sides), and a 1-way street cross-section where their Park Space is located in the middle.*

**Landscaping:**

*All landscaping shall meet the requirements as set forth in the UDO at the time of the Final Development Plan and building permits.*

*A street yard shall be required for those lots that back up to Lake Glad Rd. Abutting rear yards require landscaping as well, including between lots 75-91 and the adjacent subdivision to the north.*

**Phasing:**

*The applicant has not yet identified phasing for this project.*

**Comprehensive Plan:**

*The Wendell Comprehensive Plan defines the subject properties as being completely within the S-3 "Restricted Growth Sector".*

*The Comprehensive Plan states that "although not a formal open space sector, S-3 is intended for very limited development under tightly controlled conditions." This sector is generally classified as lands that are not proximate to thoroughfares and that are not projected to be high growth areas due to limited access to the transportation network and utilities. Generally, the S-3 areas are outside of the short-range urban service area for water and sewer service and are close to S-1 and S-2 areas."*

*The Comprehensive Plan lists the following uses as appropriate land uses/development types within this sector: low density cluster developments or hamlets (a clustering of buildings around a rural crossroad), single family residential development, very limited convenience retail uses, civic uses (parks, schools, religious and government uses), and some industrial uses.*

*The proposed development on the site fits within the 'single family residential development' category.*

**Staff Comments:**

- *The overall density of the site is less than the R-3 Zoning district would require.*
- *This site has limited access in the event of an emergency.*
  - *Staff has reached out to DOT to get confirmation that they will permit 2 access points along Lake Glad Road.*
  - *Staff has also asked the applicant to demonstrate that they have made reasonable offers to two property owners on Wythe Ln, to connect the proposed subdivision to Wythe Lane to the north.*



**During David’s presentation the following inquiries were addressed:**

- Errol asked if the development was on the same side of the road as Blair Hills.
- David replied yes, Blair Hill is to the North.
- Chairman Swaim asked if it was near Buffalo Rd. and if everyone on the board was familiar with this location.
- David referred to the Zoning Map
- Ryan asked what block length was required and what the proposed charge is.
- David said the proposal was to eliminate the block length requirement entirely. He said he thought the typical block length requirement was a maximum of 600 ft, but he was not certain.

**After the presentation, David introduced True Homes representative Ronny Vale.**

- Mr. Vale said he enjoyed meeting with David concerning this proposed project and that he has been very helpful. He is currently working with Raleigh concerning the utilities. He is trying to get an access point on street F, there are two cul de sacs that they might need to keep because of the wetlands. He also spoke about the development’s plans for open space.
- Ryan asked about the developer’s one-way streets and about parking for the ballfield.
- Ronny showed where the ball field access would be, and said there would be associated parking.
- Jonathan asked if the home would be mostly one or two stories.



- Ronny said most home would be two-story.
- Ryan asked about having a walkway for crossing Lake Glad Road.
- Ronny said that would be difficult to get approved with DOT.
- Chairman Swaim asked how close the two access roads were.
- Ronny said they could shift them, but they did not want to sacrifice any of the open space. He said they were currently about 500 feet apart.
- Chairman Swaim said this would create lots of traffic on Lake Glad.
- Ronny replied there would be 3 lanes with turning lanes and this would curtail the traffic.
- Chairman Swaim said there is not much to work with on this parcel of land.
- Ronny agreed with Chairman Swaim and added that they were planning to have 7 storm water ponds as well.
- Errol asked how the proposed development would affect the wetlands.
- Ronny said they would minimize disturbance. He said there were a couple areas where roads impacted them, but not residential lots.
- David asked if anyone had more questions.
- **Chairman Swaim said no action required tonight and asked that they move on to Item E.**

Item # E

**Item Title:**

CD19-03 – Introduction to an R-7 Conditional District for properties located at 4501 Rolesville Rd, 0 Davistown Road and 1401 Davistown Road, respectively.

**Mr. Bergmark, Planning Director, presented the information shown in italics below.**

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**Specific Action Requested:**

- *That the Planning Board receive information on a proposed R-7 conditional district request and provide feedback to the applicant.*
  - *No action beyond initial feedback is requested by the Planning Board. This item will return to the Planning board at their June meeting, seeking a recommendation. This will permit the applicant to make corrections identified by the TRC, as well as any necessary adjustments based on Planning Board comments.*

**Applicant:**

*Chris Rurkowski of TMTLA Associates*

**Petition:**

*The applicant has requested to create a R7 conditional district for approximately 119.6 acres of property within the parcels identified by PIN #1765852510, PIN #1765962276 and PIN #1765856251. The proposed conditional district consists of 267 single family homes and 161 Townhomes (428 units total), with associated open space, amenities, and infrastructure.*

**Item Summary:**

*The applicant’s proposed conditional district has a mix of single-family homes and townhomes, with an overall density of 3.58 dwellings units per acre. This project is located just northwest of East Wake High School, along Rolesville Road.*

*The R-7 district was chosen as the base district because it is the only residential district which permits townhomes (outside of a Conditional District). However, the applicant’s single-family homes are not as small as the R-7 district would permit.*

*The R-7 district allows single family homes 3,500 square feet in size. For this reason, staff would recommend that the applicant either include a condition with a larger lot of size and lot width for single family homes or revise their request to be a R4-Conditional District, with a condition to permit Townhomes (not to exceed 40% of the total number of units).*

*Amenities include a clubhouse, Jr. Olympic pool, picnic and grill area, dog park, and a disc golf course.*

**Location and History:**

*This property is currently located outside in Wake County’s jurisdiction and is zoned Residential-40 (R-40). Annexation must be approved by the Wendell Board of Commissioners for the conditional district to take effect.*

**Project Profile:**

*PROPERTY LOCATIONS: 4501 Rolesville Rd, 0 Davistown Rd, 1401 Davistown Rd*

*WAKE COUNTY PINS: 1765852510, 1765962276, 1765856251*

*CURRENT ZONING DISTRICT: Wake County R-40*

*CROSS REFERENCES: N/A*

*PROPERTY OWNERS: Amy Weathers Nuttall & John J Nuttall III  
4501 Rolesville Rd  
Wendell, NC 27591*

*Eva Weathers Herring  
1800 Eastwood Rd, Apt 219  
Wilmington, NC 28403*

*APPLICANT: Chris Rurkowski  
5011 Southpark Dr, Ste 200  
Durham, NC 27713*

*PROPERTY SIZE: 119.6 acres*

*CURRENT LAND USE: Vacant*

*PROPOSED LAND USE: Residential*

**David referred to the current Zoning Map that shows surrounding districts and land uses.**

**Proposed Conditional District Conditions:**

*The applicant is proposing 5 conditions for the proposed CD, as follows:*

- 1. UDO Section 2.7.B.2- The maximum number of townhomes shall not exceed 40% of the total number of units.*
- 2. UDO Section 8.7.B.3- Where there are abutting rear yards, one tree and one shrub shall be planted on each lot for every 40 feet of rear property line. Existing vegetation may be used towards satisfying this requirement.*

3. UDO Section 9.3.C- Sidewalks shall only be required on one side of the street adjacent to the Single Family ' House ' building.
4. UDO Section 9.7.A- The connectivity index requirement for the proposed R7-CD district shall be a minimum of 1.3.
5. Right of Way shall be dedicated for ½ of the 110' ultimate cross section for Weathers Rd.
6. Staff recommended condition #6 – Add a 15' maximum front setback for Townhome units
7. Staff recommended condition #7 – List a larger minimum lot of width and minimum square footage for single family homes (If R7 is retained as the base zoning for the CD).
8. Staff recommended condition #8 – Provide a Street Yard along Rolesville Road.

**Applicant's Justification:**

4501 Rolesville Rd, 1401 Davistown Rd, and 0 Davistown Rd, commonly referred to as Weather's Property, is requesting rezoning to R7-CD as well as annexation into the Town of Wendell's ETJ. We are seeking a rezoning to R7-CD to allow flexibility for the development of this property which would allow appropriate lot sizes, slight variations to the street cross sections, and a modification that would allow the maximum number of townhomes to increase from 30% as permitted by the UDO to 40%, as requested in the conditions above. The conditional district allows the design to take into account environmental barriers, wetlands, topography, and the parcel shape and allow for design flexibility to appropriately accommodate and utilize these features as amenities to the residents. Any conditions not herein modified or expressly stated shall defer to the Town of Wendell UDO standards for the R7 zoning district.

Included in this submittal is a Master Plan document which will define the general layout, configuration and quantity of lots, amenities, open space, park space, preliminary utility locations, and street cross sections. All elements of the Master Plan are subject to minor changes, as deemed so by the Town of Wendell Planning Department. The town framework plan indicates these parcels as S5, Intended Growth Area [**STAFF NOTE: Parcels are actually located in S3 Restricted Growth Area**]. The development of this project is limited by the sewer capacity of the proposed offsite sewer extension to the nearest sewer location located at East Wake High School.

This project will have no negative impacts on surrounding properties. The property will be buffered appropriately from all developed or vacant surrounding parcels and recommended road improvements per the Traffic Impact Analysis (TIA) shall be constructed or a payment in lieu shall be made to the Town of Wendell until such time as it is appropriate to make the road improvements.

The Comprehensive Land Use Plan does not include the parcels that are to be rezoned so consistency with the Comprehensive Land Use Plan cannot be assessed. Impacts on all other public and governmental services have been analyzed with the guidance of Town of Wendell Staff or the appropriate governing body to verify that there are no negative impacts and no capacities are exceeded.

**Parking:**

*Off-street parking shall be required for any active open space areas. The applicant is planning on having on-street parking on some of the proposed internal road cross-sections.*

**Open Space:**

*The applicant is required to provide 14.35 acres of passive open space and 3.6 acres of park space (with 1.19 acres of the park space being fully active). The applicant is providing well above the total amount of open space required (47.8 acres of open space is being provided). Staff will require detailed information on the Park and Active Spaces to calculate how much of the open space meets the standards of these categories.*

**Public Utilities:**

*Development of this site will require extension of utilities along Rolesville Road from the High School site.*

**Streets:**

*The Town's Arterial and Collector Street Plan calls for widening and improvements to Rolesville Rd (4-lane divided), Davistown Road (2-lane undivided), and Weathers Road (4-lane divided). Currently weathers road is not paved, so the applicant would only be responsible for creating a 2-lane cross-section.*

*The project will require one additional stub-street than shown to connect to neighboring property.*

**Landscaping:**

*All landscaping shall meet the requirements as set forth in the UDO at the time of the Final Development Plan and building permits.*

**Phasing:**

*The applicant has identified 3 phases of development. The clubhouse & pool are included in Phase 1.*

**Comprehensive Plan:**

*The Wendell Comprehensive Plan defines the subject properties as being completely within the S-3 "Restricted Growth Sector".*

*The Comprehensive Plan states that “although not a formal open space sector, S-3 is intended for very limited development under tightly controlled conditions.” This sector is generally classified as lands that are not proximate to thoroughfares and that are not projected to be high growth areas due to limited access to the transportation network and utilities. Generally, the S-3 areas are outside of the short-range urban service area for water and sewer service and are close to S-1 and S-2 areas.”*

*The Comprehensive Plan lists the following uses as appropriate land uses/development types within this sector: low density cluster developments or hamlets (a clustering of buildings around a rural crossroad), single family residential development, very limited convenience retail uses, civic uses (parks, schools, religious and government uses), and some industrial uses.*

*The proposed development on the site consists of single-family detached home and townhomes, with an overall density of 3.58 DUA. The S-2 sector to the east is buffered from the proposed development with the inclusion of the disc golf course. The densest portion of the development (Townhomes) are clustered close to Rolesville Road, which is to be widened to a 4-lane road.*

**David referred to the framework map from the comprehensive plan.**

Staff Comments:

- *Staff has included 3 additional proposed conditions*
- *Although staff needs more details on amenities, the applicant is offering a range of recreational amenities and significantly more total open space than is required.*

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**Discussion following staff report:**

- David said one of the applicant’s conditions, to add a sidewalk on Weathers Rd, but otherwise make no improvements, was not permissible as a Conditional District condition. He said different cross-sections could be requested, but that to make no improvements the applicant would need to either pay a fee in lieu of improvements, or make the request within a development agreement.
- David introduced Chris Rurkowski
- Chris summarized what their plans and access points were. There would be townhomes in the front of the development and single-family homes in the rear where the lots would be set up with good sized backyards.
- Chairman Swaim asked about the current residents that were residing there now and asked if they have been approached.

- Chris said he had not spoken to them yet but planned to do so.
- Chairman Swaim said they should be prepared to give the current residents a comp or offer to buy them out.
- Chris said he did not plan to approach them until the plan has been cleared.
- Victoria suggested that they talk to them sooner rather than later.
- Lloyd said he agrees and that he does not want to see these existing lots turned into park space.
- Joe asked to hear about the builders and the cost of the homes
- Chris said the townhomes would sell for about \$200,000 and the single-family homes would start in the \$220's and up price range. He also said that the homes would be on 50 ft. Lots.
- Joe asked if the same builder would be used for both the townhomes and single-family homes. The applicant responded yes.
- Victoria asked if current residents did not want to leave their property, what kind of buffer would they have in place.
- David said a requirement of 1 tree every 40 feet was part of the plan as proposed, but that buffer could be increased to provide more density and allow for privacy.
- Jon asked about improvements to Rolesville road.
- Chris stated Rolesville road would require sidewalks, a planting yard, and widened pavement.
- Chairman Swain said that the Planning Board would request that the current residents would be treated fairly.
- David closed Item E, as no action was being requested.

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Chairman Swaim asked Joe to select the next agenda item. Joe choose Item A.

**Item # 7A**

Chairman Swaim read the **Item Title**:

**ZTA19-03 – Discussion and Action on a Zoning Text Amendment to Sections 2.3, 3.3 and 19.3 of the UDO as it relates to Indoor Amusements, Game Rooms and Pool Halls.**

David went over the Item Summary and the proposed amendments to the UDO:

**Item Summary**:

This item was brought before the Planning Board on April 15<sup>th</sup> and the following motions were passed:

- Billiard/Pool Hall to be defined as a place where more than two billiard or pool tables are operated or maintained.
- Billiard/Pool Hall to be combined with Indoor Amusements.

Currently, Game Rooms and Pool Halls are permitted in the UDO within select districts, but there are requirements in the Code of Ordinances that cannot be complied with since there no longer exists a means of carrying them out. Previously the Town required businesses to obtain a Privilege License, but now according to GS 106-65.40 a city may not levy a privilege license tax on persons engaged in business, therefore the Town of Wendell no longer issues the licenses. Since much of the language in the ordinance regarding game rooms and pool halls pertains to the requirements of obtaining a privilege license, staff is requesting to delete Article III- Game Rooms and Pool Halls from Chapter 6 of the Code of Ordinances and to add any relevant language to the UDO for these uses.

Under the UDO, Game Rooms would be classified as a type of Indoor Amusements, which is defined as “establishments that provide commercial recreation activities completely within an enclosed structure such as video arcades, skating rinks, roller rinks, and bowling alleys.” Currently, the only use standard for Indoor Amusement is that no audio system may be permitted that can be heard beyond the property. Staff’s proposal adds additional supplemental use standards to the Indoor Amusement use, based on the language currently located in Article III for game rooms and pool halls.

**Key Questions**:

1. Where should Indoor Amusements be permitted to operate?
2. What supplemental use standards should apply to them?



**Districts Where Indoor Amusements are Currently Allowed:**

**Indoor Amusements** – Permitted with Additional Standards (PS) in the CMX, CC, DMX, and CH zoning districts.

**Proposed Amendments to the UDO:**

The following proposed text amendment will be added to Section 19.3 (Definitions), Section 3.3 (Additional Standards by Use) and Section 2.3 (Use Categories and Tables of Permitted Uses). Per the Planning Board's direction, the Pool Hall use was incorporated into the 'Indoor Amusement' use category.

**19.3 – Definitions**

**Amusements, Indoor** means establishments that provide commercial recreation activities completely within an enclosed structure such as video arcades, skating rinks, roller rinks, and bowling alleys, **and billiard/pool halls.**

**Billiard/Pool Hall** generally means any place where more than two billiard or pool tables are operated or maintained, except for private family use, whether such place is a social club, or a business enterprise operated for profit.

**3.3 - Additional Standards by Use**

**D. Amusements, Indoor (CMX, CC, DMX, CH).**

1. No outdoor public address or audio system shall be permitted which can be heard beyond the boundaries of the property.
2. Shall be closed from 12:00 midnight 11:00 PM until 6:00 8:00 a.m. Monday through Saturday Sunday.
3. Transparency shall be maintained for windows along the front façade of the business so that a clear view of the interior may be had from the street.
4. No loud noises shall be allowed to emanate beyond the premises.

(Item that was tabled from last meeting on 4/15/2019)

## **Discussion and Speakers**

- David said he consulted the town attorney concerning the standards that were originally listed and that those standards pertaining to the owner and employees are not permitted to be included within the UDO.
- David said the Indoor Amusement Use could be required to obtain a Special Use Permit only in the DMX district if the Board wished.
- Chairman Swaim introduced Ms. Regina Harmon, she asked if the applicant could speak first. Ruben Caren was introduced and Chairman Swaim said he had 5 minutes to speak.
- Ruben said that he purchased the building and would like to open a game room in it. He plans on syncing the hours of operation with the hours of Bravo Pizza.
- He wants to bring more people to Wendell, he also said he would like to tint the windows because of the brightness at certain times of the day.
- He said there will be noise with the machines, he is going to have a DDR machine that is loud, but it will be mostly loud inside the building not outside the building.
- Lloyd asked what the average age of his customers would be.
- Ruben replied that he would like to have a pinball machine to help bring in customer of all ages.
- Lloyd said he does not like tinted windows, but shades will be ok
- Ruben said he would be that would work.
- Joe asked what a DDR machine was.
- Ruben said it is used to play a game called “Dance, Dance Revolution”
- Ruben said he was done speaking.
- Chairman Swaim told him he still had 2 minutes left and he could use them later when he spoke again.

- Regina Harmon was the next speaker. She asked what the hours were specifically.

She said that she found out that there was a game room in Wendell a while back and it brought in lots of trouble to the town. She wants people to come to town for the arcade but want rules to fall back on in case there are problems.

Regina said she checked with other districts for special use rules and regulations. (She referenced Sec. 3 DMX) a special use for extra criteria to protect other businesses in town. Also, she wants the hours in writing, she wants to create an environment of community spirit. If other businesses like his follow requirements, then he must as well.

She is not saying she does not want Ruben to open this business but wants him to make it safe. Maybe he can open it on a trial basis.

- Errol asked when we did we have a game room in Wendell.
- Regina replied that Kathy could better answer that question.
- Kathy Dara was the next speaker. She said that pool and game rooms should require a special use permit. She defined special use and she wants that safety net in case things don't stay safe. She spoke about a game room that was in town 20 years ago and how much trouble it caused. We need this to be a special use permit. They wanted it to be known that they are not trying to take anything from Ruben, they just want a safety net in place.
- Chairman Swaim asked what she would do if she had a magic wand.
- She said she would make this a special use and that she would sell him blinds at cost because she does not want tinted windows in this establishment.
- Chairman Swaim reintroduced Ruben and told him he had 7 minutes since he only used 3 last time he spoke.
- Ruben said he does not want kids being left alone in his game room who are under high school age. Anyone younger needs to be accompanied by an adult.
- Ryan asked what his hours were going to be.

- Ruben said Closed Mondays, Tuesdays & Wednesdays 11am-9 pm  
Thursday, Friday & Saturday 11am-10 pm and Sunday 12 pm -9 pm  
He also said that during the hours he was closed he would rent out the space for parties.

Ruben said he checked with other vendors in the area and they are ok with a game room in Wendell.

- Chairman Swaim wanted to know who he asked.
- Ruben said he asked Beer & Wine 101 and The Hemp Source..
- Chairman Swaim said all businesses should work together.
- Chairman Swaim said a nuisance could turn into a criminal issue. Kids are more likely to get crazy and you will have to have precautions in place.
- Ryan asked if we could combine rules #3 & #4.
- David said we could combine them but keep all of the language.
- Lloyd said keep #1 in accordance with town Ordinance. He also said that to any audio system inside was ok but not outside. He would also like tinted windows to be prohibited.
- David said there needs to be a time allotment for blinds but only during bright hours of the day.
- Lloyd said no blinds during evening hours.
- Jonathan asked what is standard for a special use permit. Will all businesses have to go through these same procedures?
- David said each is a case by case basis considering, parking, noise and traffic. He said he would make this a special use, but it could be difficult to deny others in future.
- Lloyd said he does not like special use as it creates rules and then they have to be enforced.
- Joe mentioned other special use permits were issued and this case might need to have a special use as well.

- David asked for a special use vote.
- Joe said move amusements in DMX as special use with added standards.

Chairman Swaim made a motion for special use in DMX for this amusement center to be permitted with standards.

Ryan made a motion, Joe seconded the motion-vote was **4-Yes**: Victoria Curtis, Errol Briggerman, Ryan Zackany, and Joe DeLoach. **2-No**: Lloyd Lancaster and Jonathan Olson. Chairman Swaim voted **yes (by absentia)**

Motion was passed.

**Chairman Swaim introduced Item #7B**

Item # 7B

**Item Title:**

ZTA19-04 – Discussion and Action on a Zoning Text Amendment to Chapters 2, 3 and 19 of the UDO as it relates to Short Term Rentals, specifically Bed and Breakfast Inns, Homestays and Whole-house Lodging.

David Bergmark

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

\*\*\*\*\*

**Specific Action Requested:**

- *That the Planning Board consider the proposed text amendment request and make a recommendation to the Board of Commissioners, to include a statement of comprehensive plan consistency and reasonableness.*

**Applicant:**

*Town of Wendell*

**Petition:**

*Staff is requesting to amend the UDO Section 2.3- Use Categories and Tables of Permitted Uses, Section 3.3- Additional Standards by Use and Section 19.3- Definitions, as it pertains to the*

*following Short-Term Lodging uses: Bed and Breakfast Inns, Homestays and Whole-house Lodging.*

**Key Questions to Consider:**

- *How do short-term rentals differ from typical single-family dwellings in terms of impact and use?*
- *Should the Town permit Whole-house lodging (where the owner doesn't have to live there)*
- *In which zoning districts should short-term lodging uses be permitted?*
- *What enforcement issues could short-term rentals and their associated regulations create?*

**Item Summary:**

*In response to a citizen inquiry and per the direction of the Town Board, staff is proposing to revise the existing Bed and Breakfast Inn use in the UDO and create two new types of short-term rental uses: Homestay and Whole-house Lodging. Since online short-term lodging services such as Airbnb and HomeAway are rapidly gaining popularity, and there is no current use in the Town's UDO that sufficiently captures the Airbnb model, it has become necessary to update the existing Bed and Breakfast Inn use in the UDO and implement new regulations that will allow for these lodging alternatives without adversely affecting surrounding residential uses or businesses.*

*A Bed and Breakfast Inn is currently defined as a short-term lodging in a private home where breakfast is included as part of the room rate. Under the existing regulations, Bed and Breakfasts have no associated standards and could essentially be created in any home in Wendell without any regulations. As a result, staff is proposing to incorporate language from the 2018 Residential Building Code into our definition of Bed and Breakfast Inn and to adopt additional standards that will better regulate this use.*

*Homestay and Whole-house Lodging uses are being proposed as new short-term lodging uses with definitions, permitted districts and additional standards. The proposed lodging types are uses that are associated with online short-term rental services such as Airbnb, VRBO and HomeAway. These temporary single room and whole house rentals, that generally do not provide any services or amenities, are an affordable alternative to traditional hotels, motels and inns.*

*According to GS 160A-424, a city may not adopt or enforce any ordinance that would require any owner or manager of rental property to obtain any permit or permission from the city to lease or rent residential real property or to register the rental property with the city or to levy a special fee or tax on residential rental property that is not also levied against other commercial and residential properties. Staff has taken this General Statute into consideration when drafting the additional standards for these uses. As a result, the Town may require a zoning compliance form (since this is applied to all commercial uses) but may not require rental registration.*

**Jeannine referred to a table showing how various municipalities in North Carolina regulate short-term lodging.**

*All of the municipalities have varying occupancy limits for Homestays ranging from 4 adults, including residents, to 5 overnight guests but some do not limit the occupancy for Whole-house lodging and Bed and Breakfasts. Greensboro and Wilmington both have separation requirements of 400 feet. In Greensboro, the separation requirement is from any tourist home to any other tourist home, which encompasses Bed and Breakfast and Homestay uses since Whole-house lodging is not permitted. In Wilmington, the separation requirement only applies to Whole-house lodgings in residential districts and where there are existing Whole-house lodgings within 400 feet of each other. The idea is to not allow a concentration of these short-term lodging uses in one area.*

*Staff is proposing a 500 ft. separation requirement only in the residential districts that will apply to Homestays and Whole-house Lodging. This standard would prevent neighborhoods from having a concentration of short-term rental units, while allowing more flexibility in commercial districts.*

*All of the municipalities evaluated specify which type of lodging is permitted in which zoning districts and many have additional standards as well. Asheville, Raleigh and Wilmington require annual registration for Homestays and Whole-house lodging units, but since GS 160A-424 clearly prohibits a city from requiring the registration of any rental property, staff discourages the adoption of this requirement. Instead, staff recommends that the Town require all Homestays and Whole-house Lodging units to submit a Commercial Zoning Compliance form since it is already a requirement of all other lodging types in Wendell. If the owner of a Homestay or Whole-house Lodging unit does not submit a Commercial Zoning Compliance form, then they will be considered in violation of the zoning code and be issued a notice of violation.*

**Proposed Amendments:**

1. To amend Section 19.3 (Definitions) to alter the definition for Bed and Breakfast Inn (see underlined additions) and to include new definitions for ‘Homestay’ and ‘Whole-house Lodging’

### **19.3 – Definitions**

**Bed and Breakfast Inn** means establishments primarily engaged in providing short-term lodging in facilities known as bed-and-breakfast inns. These establishments provide short-term lodging in private homes or small buildings of not more than eight guest rooms, converted for this purpose. Bed-and-breakfast inns are characterized by a highly personalized service and inclusion of a full breakfast in a room rate for a period of less than one week.

**Homestay** means a private, resident-occupied dwelling unit, with up to two guest rooms where overnight lodging accommodations are provided to transients for compensation and where the use is subordinate and incidental to the main residential use of the building. A homestay is considered a "lodging" use under this UDO.

**Whole-house Lodging** means a business engaged in the rental of an entire dwelling unit that provides lodging for pay, for a maximum continuous period of twenty-nine (29) days and does not include the serving of food.

2. To amend the lodging category under Section 2.3 to permit bed and breakfasts, homestays, and Whole-house lodging within the zoning districts shown below, with additional standards. In general, whole-house lodging would be limited to the Residential Agricultural and Commercial zoning districts. Bed and Breakfast Inns and Homestays would have further location limitations specified in their additional standards.

**Jeannine presented the table of currently permitted uses from the UDO and proposed changes to the lodging uses.**

*To Amend Section 3.3 (Additional Standards by Use to include standards for ‘Bed and Breakfast Inn’, ‘Homestay’, and ‘Whole House Lodging’ uses, as follows:*

#### **3.3 - Additional Standards by Use**

##### **I. Bed and Breakfast Inn (OSC, RA, RR, R2, R3, R4, R7, NC, CMX, CC, DMX, CH, TND).**

1. All Bed and Breakfast Inns within a primarily residential zoning district (OSC, RA, RR, R2, R3, R4, R7) must be located in one of the following:



- a. *A Local Historic District;*
  - b. *A property designated as a Historic Landmark;*
  - c. *A property listed on the National Register of Historic Places; or*
  - d. *A property located within a National Register Historic District.*
2. *The stay within any given Bed and Breakfast Inn shall be for a period of less than one week.*
  3. *A Bed and Breakfast Inn may not have more than eight guest rooms.*
  4. *A Bed and Breakfast Inn may not serve food or drink to the general public for pay.*
  5. *On-site staff must be present during the stay and shall serve the breakfast meal to overnight guests.*
  6. *The price of the breakfast shall be included in the room rate.*

**X. Homestay (OSC, RA, RR, R2, R3, R4, R7, NC, CMX, CC, DMX, CH, TND).**

1. *No displays or other advertising shall be visible from outside of the dwelling.*
2. *Homestay units located within residential districts shall be a minimum distance of 500 ft. from any other lodging use.*
3. *The homestay operation shall be managed by a person who:*
  - a. *is a full-time resident of the property; and*
  - b. *is present during the homestay term for the entire time lodgers are staying at the property. To be a "full-time resident," the person must reside on the property on a permanent basis, and it must be the person's primary home. For purposes of this regulation, a person can only have one primary, full time residence, and the homestay must be operated from that primary, full time residence. In order to be "present during the homestay term," the full-time resident shall be at the property overnight and not away on vacation, visiting friends or family, travelling out of town for business or personal reasons, etc. during the homestay term. However, the full-time resident may be temporarily absent from the property for purposes related to normal residential activities such as shopping, working, attending class, etc. A minimum of two documents establishing proof of residency shall be supplied prior to operation of the use.*
4. *A property owner operating a Homestay use shall:*
  - a. *Submit a Commercial Zoning Compliance form to the Town prior to operation;*

- b. *Be responsible for ensuring compliance with all federal, state, and local laws, including, but not limited to tax code, building code, fire code, and environmental health regulations for the level of occupancy of the short-term lodging; and*
  - c. *Not allow any event, classes, weddings, receptions, or other large gatherings on the premises, unless otherwise permitted as an indoor or outdoor event venue use.*
5. *No additional off-street parking is required for a homestay.*
  6. *Only one homestay shall be permitted per lot/parcel.*
  7. *The length of stay of guests shall not exceed 30 days.*
  8. *The number of guests is limited to two adults per guest room and no more than two guestrooms may be rented out.*
  9. *The homestay owner or operator shall maintain liability insurance on the property, which covers the homestay use and homestay guests.*

**UU. Whole-house Lodging (RA, NC, CMX, CC, DMX, CH, TND).**

1. *A property owner, as well as any host/operator, shall:*
  - a. *Submit a Commercial Zoning Compliance form to the Town;*
  - b. *Be responsible for ensuring compliance with all federal, state, and local laws, including, but not limited to tax code, building code, fire code, and environmental health regulations for the level of occupancy of the short-term lodging; and*
  - c. *Not allow any event, classes, weddings, receptions, or other large gatherings on the premises, unless otherwise permitted as an Indoor or Outdoor event venue.*
2. *Property owners shall be responsible for keeping in full force and effect during all times the unit is used as a whole-house lodging commercial general liability insurance with a total limit of not less than five hundred thousand dollars (\$500,000.00) each occurrence for bodily injury and property damage.*
3. *Preparation and service of food by host/operators for guests shall be prohibited. No cooking shall be permitted in individual bedrooms.*
4. *Whole-house lodging uses shall be prohibited on the ground floor of any street-facing multi-tenant structure established for non-residential use. Any new residential attached unit shall be subject to those standards and regulations specified within the Wendell Unified Development Ordinance for multifamily dwellings.*

### **Statement of Plan Consistency and Reasonableness**

- *Any recommended change to the zoning text should be accompanied by a statement explaining how the change is consistent with the comprehensive plan and is reasonable in nature.*
  - *In staff's opinion, the requested zoning text amendment is consistent with Principle # 1 of the Wendell comprehensive plan and is reasonable in order to preserve the small-town feel and historic character of the community while allowing property owners the ability to create revenue from their homes.*
    - *Principle # 1: Preserve the small-town feel and historic character of the community.*

### **Staff Recommendation:**

*Staff recommends approval of the text amendment request.*

### **Discussion following staff report:**

- Lloyd asked how certain supplemental standards support a “small-town feel”
- Jeannine replied that not every supplemental standard applies directly to the comprehensive plan principle.
- David explained that any use not listed in our use table is considered prohibited unless it's close enough to one of our already permitted uses.
- Jonathan asked why government is regulating who can have a homestay and why do they have to have the insurance and other rules applied.
- Lloyd asked why these rules need to be enforced
- Ryan asked what constitutes an event referring to one of the standards that prohibits events at any of the short-term rental properties.
- David explained what would be considered an event.

- Victoria asked about the ETJ and people renting out their houses.
- David said that a homeowner renting out their house to a permanent tenant is not the same as a short-term rental.
- Chairman Swaim asked why people can't just rent out their house.
- David said occasional use would be ok it is frequency that we are trying to avoid.
- Joe asked about what happens when we have sports teams coming to town and there is not place for them to stay as we have not hotels in town.
- Jon said this is not a good practice it's backwards.
- David said he would simplify the additional standards.
- Jon said neighborhoods here are full of rentals that are run down, and we seem to be looking for a problem to use a solution.
- Lloyd said this is prior restraint.
- Lloyd made a motion to strike this down and withdraw the item.
- David explained that if you remove this than it won't be allowed because what is not listed in the UDO is not permitted.
- Errol asked if this rule is in any other towns.
- David replied yes.

Lloyd made a motion to allow all bed & breakfast, homestays and whole house rentals in every district without any regulations. Chairman Swaim seconded the motion it was approved unanimously.

*Errol stated that this was going to be his last Planning Board Meeting. Chairman Swaim said that he will miss his presence, guidance, leadership and having his hands on the ships wheel was always appreciated. He will be welcome back to sit on the board if he ever chooses to do so.*

## **8. Adjourn to Next Regularly Scheduled Meeting**

Chairman Swaim asked for a motion to adjourn. Lloyd Lancaster made a motion to adjourn the meeting, Jonathan Olsen seconded the motion. The motion was passed unanimously, and the meeting was adjourned at approximately 9:25 PM.

