

**Planning Board Meeting –
April 21, 2014
Minutes**

Members Present: John Underhill, Bob Mancuso, Larry Vaughan, Errol Briggerman, Judy Silver, Charles Kramer

Members Absent: Betsy Rountree, Ruth Van Der Grinten, Joe Sparacia

Others Present: Commissioner Ginna Gray

Staff Present: Interim Planning Director David Bergmark

1. Meeting Called to Order

Mr. Underhill called the meeting to order.

2. Welcome and Recognition of Guests

Mr. Underhill welcomed all guests.

3. Chairman and Board Members' Comments

Mr. Underhill reminded board members whose terms were expiring of the application to be turned in if they would like to remain on the board.

Mr. Mancuso stated that the tour of Wendell Falls was very enlightening, and that the property is picturesque, beautiful falls and lake, and that he really enjoyed it.

4. Adjustment and Approval of Agenda.

Bob Mancuso made a motion to approve the agenda. Charles Kramer seconded the motion. The motion passed unanimously.

5. Public Comments

None.

6. Approval of Minutes

Charles Kramer made a motion to approve the minutes. Bob Mancuso seconded the motion. The motion passed unanimously.

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

Item #7A – Discussion and action on proposed amendments to the UDO regarding the Board of Adjustment and Quasi-Judicial Procedures.

Mr. Bergmark said during the end of the 2013 Legislative session, a number of changes were passed regarding the Board of Adjustment and quasi-judicial proceedings. He said the changes more specifically dealt with zoning appeals and variance procedures. Mr. Bergmark said the “practical difficulty” standard for deciding variance cases was removed by the legislature, as well as the requirement that the applicant show there would be no reasonable use of the land without the variance granted. He said in order to bring the town’s Unified Development Ordinance (UDO) into compliance with these recent legislative changes, the following text amendments were required.

1. **Required Text Amendment (1):**

Section 15.16,B of the UDO currently requires appeals to be filed within 30 days from the “decision, order, determination, or interpretation made by the administrator”. In order to align with the legislative change, the language in this section should be changed to say “*within 30 days from written notice of a final, binding administrative decision*”

2. **Required Text Amendment (2):**

Section 15.16,E,4 of the UDO includes language clarifying that an appeal stays all proceedings in furtherance of the action appealed from, unless the Administrator certifies, based on the records of the case, that a stay would cause damage to life or property. In order to align with the legislative change, an additional sentence should be added to the end of 15.16,E,4 stating, “*In those instances where enforcement is not stayed, the appellant may request an expedited hearing. If that request is made, the board must meet within fifteen days to hear the appeal.*”

3. **Required Text Amendment (3):**

Section 15.16,D of the UDO currently contains the old language which called for a four-fifths vote in order to overturn a staff decision or rule in favor of an appellant on an appeal. *The heading and text of this section needs to be amended to state that only a simple-majority (3/5) vote is required.*

4. **Required Text Amendment (4):**

Section 15.17,C of the UDO currently contains language which references the “practical difficulty” and “no reasonable use” requirements. *Section 15.17,C,1 needs to be modified to say “There are ~~practical difficulties~~ or unnecessary hardships in the way of carrying out the strict letter of the Ordinance; and”. Additionally, Section 15.17,C,5 needs to be deleted entirely, as it references the “no reasonable use” requirement.*

Mr. Mancuso asked about the unnecessary hardship stating that the State Law was very vague. He said there was a lot of interpretation in federal and state laws. Mr. Bergmark said there were court past court cases which established what could and could not be considered an unnecessary hardship.

Mr. Vaughan stated that he wanted to discuss this. He said at one time the process for determining variance cases, in his opinion, was very lax in the way it was handled. He said the board of adjustment decisions were discussed as needed in a manner similar to the planning board. Mr. Vaughan said then came a period with tight codification, making it very expensive to go through the process and making it hard for a variance case to be granted. He said the legislative changes were very good as they take out of the equation some of the problems. Mr. Vaughan said this would be a better situation all the way around.

Mr. Bergmark said the new process was freer than before, but there were still parameters which must be met.

Bob Mancuso made a motion to recommend approval of the zoning text amendment, to include a statement of comprehensive plan consistency. Larry Vaughan seconded the motion. The motion passed unanimously.

Item #7B – Discussion on the Town’s site plan review process (old code vs. UDO)

David Bergmark said with the adoption of the Unified Development Ordinance (UDO) in 2010, the Town’s development review process changed significantly. He said under the old zoning code, the Planning Board reviewed and made recommendations on sketch plans and preliminary plans for all major subdivisions. He said final plats were not reviewed by the Planning Board. Mr. Bergmark said the Town Board approved the Final Plat once it was determined that it was in substantial agreement with the preliminary plan. He said major subdivisions generally included all commercial development and all residential development which involved the subdivision of more than five lots.

Mr. Bergmark said the adoption of the UDO added numerous new development standards, compared to what the Town had under the old zoning code. He said it also changed the development review process to make it more technical in nature. He said under the UDO, neither the Planning Board nor the Town Board was directly involved in the approval of major subdivisions, unless the subdivision was associated with a Special Use application or a Conditional District rezoning application. Mr. Bergmark said he did not want the Planning Board to have the impression that only they were removed from the review process. He said the Town Board removed themselves as well.

Mr. Bergmark said under the UDO development submittals were reviewed by staff and the Technical Review Committee (TRC). He said sketch plans were reviewed administratively. He said preliminary plans were reviewed and approved by the TRC, which included representatives of the Planning Department, Police Department, Fire Department, Public Works, the Town Attorney, the Town Engineer, the City of Raleigh Public Utilities Department (CORPUD), Wake County (stormwater and erosion control), NCDOT, and other state and federal agencies as required. Mr. Bergmark said the TRC also included one Planning Board and one Town Board representative as ex-officio members. He said final plats were reviewed administratively to confirm that they were in substantial agreement with the Preliminary Plan.

Mr. Bergmark said in creating this new development review structure, the idea was that developers would have a more streamlined review process to compensate for the many additional standards and requirements implemented by the UDO. Mr. Bergmark said the UDO incorporated more stringent requirements for such items as open space, parking, design, floodplain management, stormwater, tree protection and landscaping, connectivity, and parking. He said under the old zoning code, it would typically take three months to receive preliminary plat approval, with no complications. Mr. Bergmark said by using the TRC review process, the review time was cut down to two months and was focused on objective standards which were less likely to create delays. He said a copy of the 2014 Town of Wendell Residential Development Review Procedures Policy was included as Attachment A of the report.

Mr. Bergmark said the Planning Board's responsibilities now include reviewing and making recommendation on Text Amendments and Rezoning, including Conditional Districts. He said the Planning Board was also responsible for making recommendations on all issues and petitions related to the Ordinance and other land use plans which may be adopted by the Board of Commissioners. He said these other plans could include such things as a new Comprehensive Plan or a Future Land Use map. Mr. Bergmark said since the Planned Unit Development (PUD) document governing Wendell Falls was adopted under the old zoning code, any new sketch or preliminary plans for this subdivision were still reviewed by the Planning Board. He said a development review table identifying the review authority for different types of submittals was included as Attachment B of the report.

Mr. Bergmark said at the March 17, 2014 meeting, staff was directed to assemble information on the Planning Board's role in the development review process. He said following that meeting, Mr. Mancuso submitted a proposed change to Section 14.2 of the UDO, which governs the authority of the Planning Board. He said Mr. Mancuso's proposal was included as Attachment C of the report. He said Mr. Mancuso proposed to add a third standard to bring back review authority to the Planning Board as an advisory role to the Technical Review Committee.

Mr. Bergmark said he did include under staff comments one idea that staff had that could provide an opportunity for the Planning Board to be more involved in the development review process without moving away from the current process. He said one method for having

additional Planning Board input under the existing regulations would be to have interested Planning Board members review submittals prior to the TRC meeting and send their comments to staff and the ex-officio Planning Board representative on the TRC. He said the ex-officio Planning Board representative could then share their comments at the TRC meeting. Mr. Bergmark said the TRC meetings were open to the public, but the public was only an observer at the meetings.

Mr. Mancuso said the meeting was open to the public, but it was not open for him to come in and say anything. Mr. Bergmark said that was why he recommended giving your comments to the ex-officio representative of the Planning Board. Mr. Mancuso asked who that representative was. Mr. Bergmark said the chairman was the representative.

Mr. Underhill said they had only had one TRC meetings in the recent past, which he missed because his mother passed away.

Mr. Mancuso said he had been on the Planning board off and on for many years. He said when Wendell Falls was bringing in plans, the Planning Board did have some good comments. He said one member of the Planning Board was particularly concerned about ADA requirements. Mr. Mancuso said his background was in accounting. He said Mr. Vaughan's background was in landscaping. Mr. Mancuso said the Town wanted citizen input and that is what the Planning board was supposed to do. He said he thought you could really get some good comments from a group of people like this. He said Newland Communities was happy to be here, before the Planning Board.

Mr. Mancuso said he thought the developers would be willing to wait an extra month. He asked if other municipalities had removed Planning Boards from the review process. Mr. Bergmark said Knightdale's review process was basically the same as Wendell's. He said one other municipality he looked at had the Planning Board only reviewed residential development, but not commercial development. He said he looked at a handful of other municipalities and most of them still had the Planning Board involved in the review process. Mr. Mancuso said the other municipalities saw some value in having input from the Planning Board.

Mr. Bergmark said he did not think there was any question that there was some value to it, but that adding the Planning Board to the review process was a trade-off. He said it was a trade-off of time. Mr. Mancuso said he could understand the developer's concern, but what is another month in the scheme of things. Mr. Mancuso said he did not remember any time that they stopped progress.

Mr. Underhill said he agreed that the Planning Board needed some kind of input. He said the Planning Board members needed to be informed of what was being planned in the community. He said if the Planning Board made comments based on digital plans, he would rather have those comments passed to staff to bring to the TRC, rather than the ex-officio Planning Board member. Mr. Bergmark said staff could provide that service if that is what the Planning Board wanted.

Mr. Vaughan said the current situation in which neither the Planning board nor the Town Board reviewed plans concerned him because there was no representative oversight other than the staff. He said he was sure the TRC did an excellent job, but the Planning Board in the past had been able to ask the developer to do things so long as they were reasonable. He said ninety percent of the time the developer would agree to the change. He said he was worried that ability had been lost in the current development review process. Mr. Vaughan said when the economy picked back up, he would hope that the Planning Board could review plans again, rather than just amend the text.

Mr. Underhill asked if the change proposed by Mr. Mancuso would add a month to the review process. Mr. Bergmark said it would depend on how the review was structured. He said the length of review would depend on whether the Planning Board wanted to only see preliminary plans, or also sketch plans. Mr. Bergmark said it would also depend on whether only the Planning Board was being added to the review process, or whether it was both the Planning Board and Town Board. Mr. Mancuso said he did not want to hold the Town Board's hands. He said he was only looking at adding the Planning Board back into the process.

Mr. Bergmark said if you only added Preliminary Plan review by the Planning Board, it would probably add a month, unless complications arose.

Mr. Mancuso said he could remember a time when Mr. Vaughan asked for a berm to be installed along a development near the cemetery. He said that was common sense. Mr. Kramer said he remembered interacting with the developer on one case in which he brought up the idea of bamboo shingles.

Mr. Bergmark said he understood that some of the text amendments were boring. He said to keep in mind that when TRC was reviewing their checklist of standards, they were using the standards recommended by the Planning Board. He said new development wanting to have parking in the front yard within the Gateway Overlay district would have to put in a pedestrian connection because of the Planning Board. He said he did not want the Planning Board to think that what they were doing was not impacting how development was created.

Mr. Underhill said this board would never see the final result of the changes it made.

Mr. Mancuso asked if Commissioner Gray had seen the falls at Wendell Falls. Commissioner Gray said she had not seen the falls, but she had been out on the site in general.

Mr. Mancuso made a motion to accept the change to 14.2 of the UDO, including the statement to say "To render opinions and recommendations on all master plans and major subdivisions and to provide such opinions and recommendations to the Administrator and Technical Review Committee."

Mr. Bergmark said this recommendation would go to the Town Board to alert them of the Planning Board's desire for a change. He said the Town Board would then have to decide whether to initiate the text amendment on behalf of the Town. He said if the Town Board made that decision, it would then come back to the Planning Board for an official recommendation, prior to Town Board adoption. He said there were also other sections of the UDO, such as charts identifying review authorities, which would have to change as well.

Judy Silver seconded the motion. Mr. Underhill asked if there was any discussion on the motion. Mr. Vaughan said he would like the Town Board to consider involving themselves in the review process as well in some manner. Mr. Bergmark said one of the reasons that he did not think there was as much concern by the Town Board about oversight was that all the additional standards imposed on developers left little reason to turn down a development proposal if they met all the standards. He said that was not to say that creative input could not be provided, but he thought that point spoke to the concern about oversight.

Mr. Underhill asked for all in favor of the motion to say 'aye'. The motion passed unanimously.

Mr. Mancuso made a motion to adjourn. Mr. Vaughan seconded the motion. The motion passed unanimously. The meeting was adjourned at 8:00 pm.