

Planning Board Meeting
June 17, 2013
Meeting

Members Present: Bob Mancuso, Brenda Lambert, Betsy Rountree, Joseph Sparacia, Lawrence Vaughan, and Ruth Van Der Grinten

Members Absent: John Underhill, Charles Cannon, and Miles Dean.

Staff Present: Planning Director Zunilda Rodriguez, Planner David Bergmark, and Planner Patrick Reidy

1. Meeting Called to Order

Mr. Mancuso called the meeting to order.

2. Welcome and Recognition of Guests

Mr. Mancuso welcomed guests.

3. Chairman and Board Members' Comments

Brenda Lambert said she was being deployed overseas as part of her job. She said she apologized for leaving the Planning Board with vacancies. Several Planning Board members wished Mrs. Lambert good luck.

4. Adjustment and Approval of Agenda.

Mr. Sparacia made a motion to approve the agenda. The vote was unanimous.

5. Public Comments

None.

6. Approval of Minutes

Ms. Rountree made a motion to approve the minutes of the March 18, 2013 Planning Board meeting. Mr. Sparacia seconded the motion. The vote was unanimous.

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

A: Introduction of the Town's New Planner – Patrick Reidy.

Mr. Reidy said he started work in the Planning Department on May 10th. He said he received his degree in Planning from Virginia Tech in 2008. He said he spent the last four years working for the Maryland National Capital Park Planning Commission as a Planning Technician and Planner. Mr. Reidy said he came down to North Carolina to be closer to family. Several Planning Board members welcomed Patrick to the Town of Wendell.

B: Update on State Legislative Bills Potentially Impacting Municipalities Architectural Standards as outlined in UDO.

David Bergmark said staff wanted to give the Planning Board an update on House Bill 150. He said this bill was intended to clarify and regulate when a county or municipality in North Carolina may enact zoning ordinances related to design and aesthetic controls. He said this bill, if ratified by the governor, would affect all counties and municipalities in North Carolina in regards to their ability to require certain architectural standards be met for new one and two-family dwellings. Mr. Bergmark said the bill would not impact non-residential projects or apartment buildings.

Mr. Bergmark said if House Bill 150 passes, the Town of Wendell would lose its ability to control exterior siding materials used for one and two-family dwellings. He said this change would mean the town could no longer prohibit metal siding. He said it would also mean the town could not limit the use of vinyl siding on new homes which are within 30 feet of another building and would not be able to limit the use of Exterior insulation finishing systems. Mr. Bergmark said HB 150 would prevent the town from requiring crawlspaces of buildings to be enclosed with brick stone, or stucco, as currently called for in Section 5.9,E,4 of the UDO.

Mr. Bergmark said the Town would also lose its ability to control through design requirements for roof pitch and roof material. He said currently new homes were required to have a roof pitch of between 6:12 and 12:12 for the main roof of the house. He said monopitch roofs were allowed only if they were attached to the wall of the main building. Mr. Bergmark said if HB 150 passes, all the standards in section 5.8,A,2 and Section 5.8,B,1 would have to be removed from the UDO and builders could create houses with any pitch roof, including flat roof homes.

Mr. Bergmark said the passage of HB 150 would take away Wendell's ability to control garage door location and orientation. He said currently garage doors were not permitted on the front elevation of any house on a lot less than 50 feet wide. He said for houses on lots that are less than 50 feet wide, garages or off-street parking areas were required to be accessed from an alley leading to a detached garage or parking area behind the front façade of the house. He said attached garages with front-loading bays were required to be recessed at least 5 feet from the front façade of the house and visually designed to form a secondary building volume. Mr. Bergmark said current standards required that no garage door be any closer than 20 feet from the

right-of-way. He said all garages with more than two bays must be turned such that no more than two bays were visible from the street. He said the width of an attached garage was not allowed to exceed 40 percent of the total building façade. Mr. Bergmark said if HB 150 passes, all of the standards in Section 5.9,E,5 of the UDO would likely have to be removed. He said it was possible that the Town could still require attached garages to not exceed 40 percent of the total building façade without violating HB 150.

Mr. Bergmark said HB 150 would eliminate the Town's ability to control design requirements for the style or material of porches. He said currently section 5.9,E,1,a of the UDO states that on lots 49 feet or less in width, ground level front porches shall be at least 8 feet deep and extend more than 40 percent of the façade. He said HB 150 would require this standard to be removed.

Mr. Bergmark said HB 150 would also strip away the Town's ability to regulate exterior nonstructural architectural ornamentation. He said all of the additional design requirements for houses on narrow lots would have to be removed if this bill passes. He said the additional design requirements called for such things as dormers, gables, and bay windows.

Mr. Bergmark said the bill would prohibit the Town from requiring a variety of Architectural design exteriors with development. He said section 5.9,E,2,a of the UDO required that new developments have at least three different architectural design materials.

Mr. Bergmark said the proposed House Bill did not impact the town's ability to regulate the height, bulk, orientation, or location of a structure on a lot, or the use of buffering or screening on a lot. He said, based on the current language included in HB 150, there did not appear to be any language that would expressly prohibit the Town from requiring the presence of a porch or a raised entrance. He said language in the bill was subject to change.

Mr. Bergmark said Planning Department staff contacted the North Carolina League of Municipalities to inquire about the status of HB 150. He said the League of Municipalities expected HB 150 to pass before adjournment during the last few weeks of session. He said planning staff would keep Wendell's municipal boards abreast of the final action taken on this bill and any future significant bills that would impact planning, development or the town's UDO.

Mr. Sparacia asked staff what the purpose of the Bill was to begin with. Mr. Bergmark said that the purpose was to limit counties and municipalities' ability to regulate architectural design standards. He said groups such as the Homebuilders Associations wanted these regulations removed so that people could build what they wanted to build without being restricted by these standards. He said representatives of the different municipalities potentially affected by this Bill had come forward to talk about how the regulations which would be removed by HB 150 would potentially negatively impact their communities. He said the regulations which would be removed helped property owners feel assured that development occurring around them had to

meet a certain standard. Mr. Bergmark said there were some areas, such as historic districts, which would still have the ability to regulate architectural design regardless of HB 150.

Mr. Sparacia said he assumed Planners across North Carolina were against this bill. Mr. Bergmark said most Planners were indeed against HB 150. Mr. Sparacia asked what the Planning Board could do to let people know the Town of Wendell did not want the changes proposed in HB 150.

Ms. Rodriguez said there was a large effort by Planners and municipal representatives to oppose this bill. She said resolutions in opposition of this bill were created. She said municipal representatives also met with those legislative representatives in support of the bill to try to convince them that House Bill 150 was not in the best interest of North Carolina communities. She said the NC league of municipalities got the mayors of North Carolina to adopt a resolution opposing the bill. Ms. Rodriguez said the bill still moved forward in committee despite this opposition. She said new bills often come up when new administrations come in. She said the bill was almost approved in April, but there was a last minute committee rule implemented that prevented it from being approved in April.

Mr. Sparacia said he did not see a public benefit from the bill. He said local government was the best government. Ms. Rodriguez said she thought there were better ways for the Home Builders to have addressed their concerns with municipalities, rather than push HB 150. Ms. Rodriguez said there would likely be legal challenges if House Bill was adopted.

Mr. Sparacia asked if the Town of Wendell had explored taking legal action if House Bill 150 passes. Ms. Rodriguez said the town attorney was aware of the bill. Mr. Sparacia asked if the Town would take such action. Ms. Rodriguez said she was not sure. She said she thought a collaborative legal challenge between multiple municipalities would be the best approach. She said the bill could change even more prior to it passing.

Mr. Vaughan said he thought HB 150 was one of the dumbest things he had ever seen. Mr. Sparacia said the bill did not make sense to him.

Ms. Lambert asked if the Planning Board would have to vote on the changes made to the UDO as a result of House Bill 150, if it passed. Mr. Bergmark said the changes would have to go before the Planning Board, but the Board would not really have the option of saying no, since the town's regulations could not contradict the House Bill. He said if the bill passed and was later challenged, staff might end up bringing the same items back to the Planning Board to change again.

Ms. Van Der Grinten asked if the Planning Board needed to go on record that if House Bill 150 passed, they would like the Town of Wendell to challenge the bill. Mr. Bergmark said the

Planning Board could voice their opposition, but ultimately it would be up to the Town Board to decide whether to take legal action.

Mr. Vaughan asked Planning Department staff to remark on how HB 150 would impact covenants. Mr. Bergmark said a home owners association set up by a developer could still set restrictive covenants to regulate architectural design, even with HB 150 in place. He said there was no guarantee neighborhoods would do so. Mr. Mancuso asked if it was typical for the homeowners association and restrictive covenants to be set up at the initial time of development, rather than after the fact. Mr. Bergmark said that was typical.

C: Update on Open Space Dedication Requirements for Commercial Development.

Mr. Bergmark said that in February of 2013, Walmart Real Estate Business Trust submitted a text amendment to change the Town of Wendell's open space dedication requirement for commercial development. He said the change involved raising the threshold for when open space dedication was required for non-residential development from projects consisting of 10,000 square feet or more to projects consisting of 50,000 square feet or more. He said all other standards for open space, such as accessibility and location requirements, were unaffected by this request.

Mr. Bergmark said that during its review, Planning Department staff examined the open space dedication requirements of neighboring jurisdictions and found none with standards matching those in Wendell's UDO. He said no nearby jurisdictions were found to have open space dedication requirements for commercial development, with the exception of those areas identified on an adopted plan, such as greenways.

Mr. Bergmark said on March 18, 2013 the Planning Board reviewed the text amendment and voted 5 to 0 in favor of recommending the request, as proposed by the applicant. He said Planning Board members expressed some concern over changing the UDO due to one developer's request. He said the Planning Board also questioned how the original dedication standard was created and how much open space the applicant could conceivably provide on-site. Mr. Bergmark said Planning Board members had a broader concern of putting the Town of Wendell at a competitive disadvantage if the town's open space dedication requirements exceeded those of Wake County or other nearby municipalities.

Mr. Bergmark said that on April 22, 2013 the Town Board held a public hearing on this text amendment request. On May 13, 2013 the Town Board voted 4 to 1 in favor of approving the zoning text amendment request, as proposed by the applicant.

Mr. Sparacia said he missed the March Planning Board meeting. He said he read the article about Walmart's case. He said he remembered discussing Walmart's request at an earlier Planning Board meeting. He said he thought the paper was misrepresenting the Planning Board's recommendation. He said the change the Planning Board proposed was for everyone moving forward, not specifically for Walmart. Mr. Mancuso said he voted as he did because the existing rule did not make sense to him; not because it was Walmart asking for the change. Mr. Sparacia said he would like to write a rebuttal article to the paper.

Mr. Mancuso said the language of the UDO seemed to focus on residential development. He said the inclusion of dedication requirements for commercial development seemed like an afterthought. He said the UDO did not give examples of how the open space on a commercial lot would be used. He said he did not believe it was fair to use fee in lieu for commercial lots.

Mr. Mancuso said he wanted to see the amount of fees the town had received in lieu of open space and know where those fees were used over the past 10 years. Mr. Bergmark said the Town had no fees in lieu of open space come in for commercial development. He said the Walmart project would have been the first project that would have qualified since the rules came into effect.

Ms. Van der Grinten said some people were opposed to changing the UDO at all, in any way.

8: Adjourn to Next Regularly Scheduled Meeting

Mr. Sparacia made a motion to adjourn. Mr. Vaughan seconded the motion.