

**MINUTES
PLANNING BOARD
JUNE 3, 2015
REGULAR MEETING**

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MEMBERS PRESENT: Peter Hallenbeck (Chair), Cheeks Township Representative; Lydia Wegman-At-Large Chapel Hill Township (Vice Chair); Tony Blake, Bingham Township Representative; Paul Guthrie, At-Large Chapel Hill Township; Buddy Hartley, Little River Township Representative; Bryant Warren, Hillsborough Township Representative; Laura Nicholson, Eno Township Representative; Lisa Stuckey, Chapel Hill Township Representative; Maxecine Mitchell, At-Large Bingham Township; Herman Staats, At-Large, Cedar Grove Township; James Lea, Cedar Grove Township Representative; Andrea Rohrbacher, At-Large Chapel Hill Township;

MEMBERS ABSENT: None

STAFF PRESENT: Craig Benedict, Planning Director; Michael Harvey, Current Planning Supervisor; Ashley Moncado, Special Projects Planner; Rachel McCook, Planning Technician; Erica Gray Administrative Assistant II;

AGENDA ITEM 1: CALL TO ORDER

Craig Benedict: I would to introduce Erica Gray, Administrative Assistant II within the Planning Inspections Department. She will be the new secretary to the Planning Board. She will replace Tina Love.

AGENDA ITEM 2: INFORMATIONAL ITEMS

- a) Planning Calendar for June and July

AGENDA ITEM 3: APPROVAL OF MINUTES

- a) APRIL 1, 2015 REGULAR MEETING

Pete Hallenbeck: Motion to approve the minutes. The minutes weren't sent out electronically? Let's shelve that.

AGENDA ITEM 4: CONSIDERATION OF ADDITIONS TO AGENDA

No changes to the agenda.

AGENDA ITEM 5: PUBLIC CHARGE

Introduction to the Public Charge

The Board of County Commissioners, under the authority of North Carolina General Statute, appoints the Orange County Planning Board (OCPB) to uphold the written land development laws of the County. The general purpose of OCPB is to guide and accomplish coordinated and harmonious development. OCPB shall do so in a manner which considers the present and future needs of its residents and business through efficient and responsive process that contributes to and promotes the health, safety, and welfare of the overall County. The OCPB will make every effort to uphold a vision of responsive governance and quality public services during our deliberations, decision, and recommendations.

Public Charge

The Planning Board pledges to the residents of Orange County its respect. The Board asks its residents to conduct themselves in a respectful, courteous manner, both with the Board and with fellow residents. At any time, should any member of the Board or any resident fail to observe this public charge, the Chair will

51 ask the offending member to leave the meeting until that individual regains personal control. Should
52 decorum fail to be restored, the Chair will recess the meeting until such time that a genuine commitment to
53 this public charge is observed.

54

55 **AGENDA ITEM 6: CHAIR COMMENTS**

56

57 Pete Hallenbeck: I would like to thank everyone for attending the Quarterly Public Hearing.

58

59 **AGENDA ITEM 7: MAJOR SUBDIVISION CONCEPT PLAN:** To review and make a decision on a Major
60 Subdivision Concept Plan (using the Flexible Design Option) application
61 (Henderson Woods) seeking to subdivide a 48 acre parcel of property into 19
62 single family residential lots with 21.2 acres (44% of the site) held in common open
63 space. The proposed subdivision is located at the intersection on Erwin Road and
64 Whitefield Road in Chapel Hill Township.

65

66 **Presenter:** Michael Harvey, Current Planning Supervisor

67

68 Michael Harvey: Reviewed abstract.

69

70 Craig Benedict: To conceptualize the difference between a conventional subdivision and this flexible
71 conservation cluster. The conventional would give you 19 2.5 acre lots. The flexible with give you 19 1.2
72 acre lots and 21 acres of open space. Everyone living within the project would have a share of this
73 common open space. This is the tendency over the last 10 years for people to have a smaller lot to have
74 the extra space for common open space.

75

76 Tom Heffner: My name is Tom Heffner and I am the developer of Henderson Woods. I have done a
77 number of subdivisions in the area, Creekwood, Northfield, etc. I felt it was more desirable to have open
78 space rather than larger lots. We came in with a plan, got comments from staff and made modifications,
79 had the neighborhood information meeting, listened to their comments and input, made revisions to the
80 proposal based on those comments. Talked to NCDOT and made their modifications. We believe this
81 proposal captures most concerns and represents a reasonable project for the area.

82

83 Pete Hallenbeck: The existing road that comes through and Michael said you can't get rid of the right of
84 way but it would be limited to the occupants of technically the people in this subdivision couldn't use that
85 road to get out onto Erwin.

86

87 Tom Heffner: NCDOT has been explicit in saying they didn't want that to become a secondary entrance
88 because that road is so close to a signalized intersection. We would pave that road and put a gate on it so
89 the folks who have a right to use it could open the gate to use it.

90

91 Laura Rohrbacher: What about delivery trucks?

92

93 Tom Heffner: FedEx will be encouraged to use the subdivision streets rather than the private road.

94

95 Pete Hallenbeck: Is that road going to be taken off the GIS system as a road that segment there? If you
96 don't it would show up for emergency responders as a valid route they could take.

97

98 Craig Benedict: Probably addressing off that road and emergency services has a point on Erwin Road
99 where they expect to see that road. They will have an asterisk on it because of what has happened around

100 it but my thought process is that if the address is off that road indicate the point of entry for those lots, it will
101 remain on the GIS system.

102
103 Pete Hallenbeck: They are currently switching to a system of closely dispatch that looks for all possible
104 roads and routes and there is no mechanism to show if the road is full access or not.

105
106 Michael Harvey: You will probably see that occur if the project is approved and recorded. This will remain
107 as an easement (Mr. Harvey was pointing to a map of the identified easement area) but the road name will
108 be removed.

109
110 Paul Guthrie: On the open space buffering outside the lot, what is going to be the legal long-term
111 ownership and legal responsibility for that property?

112
113 Tom Heffner: It would be owned by a homeowner's association as incorporated body. Their legal
114 documents would require their ownership and their maintenance of the property and then in turn there
115 would be homeowner's dues paid by the people living in the subdivision that would fund that work on an
116 ongoing basis.

117
118 Michael Harvey: If this is approved with a flexible development layout, there will be provisions in the
119 resolution of approval as there are in all major subdivision based on the flexibility and design guidelines to
120 preclude the clearing of the trees within the dedicated open space except for any activity recognized by the
121 board such as the installation of a trail or recreation area.

122
123 Paul Guthrie: My question was about long term liability and things that take place on that and the ability or
124 not of that being removed from open space.

125
126 Michael Harvey: This area could not be removed from open space unless the applicant came back to the
127 county to request a modification of the major subdivision. I will state that we would probably object to it
128 being removed because that is how it was originally approved and we are not interested in seeing
129 dedicated open space turned into developed area.

130
131 James Lea: Does Lot 9 actually take up part of the pond?

132
133 Tom Heffner: Yes. The pond size will be modified. Since it is not a spring fed pond, in the summer when
134 we have less rain, it drops significantly so my goal is that we will reduce the physical area of the pond to try
135 to have a more stable water level. The line is showing the maximum size of the pond.

136
137 James Lea: What happens when you have flooding with the pond?

138
139 Tom Heffner: Earth Centric engineering is doing storm water plan we have had several meetings on how to
140 handle that. We can increase the storm water flow downstream to the properties over to the right. We are
141 trying to utilize the pond as a storm water retention device so in maximum flow areas, the pond will serve to
142 retain storm water so it will be release more gradually after the storm event is over.

143
144 Pete Hallenbeck: It looks like the drainage to the pond is out the center. Is that through a drain pipe?

145
146 Tom Heffner: I don't know.

147
148 Pete Hallenbeck: If it is, you should still have a cut away for hurricane events.

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Tom Heffner: That will be part of the design.

Michael Harvey: I would like to remind the board that on pages 34 and 35, we have provide the board with an email exchange from David Sykes and Jason Shepard of Orange County Emergency Services as well as Mike Tapp who is the deputy chief of the local volunteer fire department indicating there are two existing water sites that would support fire suppression activity. The question was asked, does this pond need to be turned into a water source. Mr. Tapp has indicated it does need to be there as there are existing water sources they will take advantage of. We did not require a stand pipe for this pond.

Lydia Wegman: How many properties currently use Shakori Trail as an access point?

Tom Heffner: There are two properties. One property has two houses and the other has one building.

Lydia Wegman: There is no expectation of expansion?

Tom Heffner: Those people probably do have subdivision rights there.

Lydia Wegman: They would have rights?

Tom Heffner: Exactly.

Maxecine Mitchell: I take it the threshold for not having some type of recreational, are we going to be faced with someone saying I want to put a pool but I don't have enough impervious surface to do anything?

Michael Harvey: This parcel of property is not located in a protected or critical watershed overlay district so there is no impervious limit. There are open space requirements on the lots but nothing that would preclude them from putting in a pool. The applicant is providing walkways but they are electing to do a payment-in-lieu to the County allowing for regional park development. In other words the applicant will give the county money that will go to developing parks in the area.

James Lea: You said there would be walkways, does that mean sidewalks and if so, who maintains those sidewalks?

Tom Heffner: The homeowners association. I do a meandering concrete sidewalk behind the DOT street right of way. I am going to do sidewalk on both sides and then another section of sidewalk will come down toward the pond. The combination of sidewalks on both sides will give about a mile of walking trail.

Unidentified Female: Are these houses essentially like the ones in Creekwood?

Tom Heffner: Based on the probable lot size will be.

Unidentified Male: And the size of those houses will be?

Tom Heffner: I would guess will be between 4,000 to 6,000 feet. On restricted covenants, I tend to put a pretty low restrictive covenant number in. The minimum square footage will be 2,500 feet.

MOTION made by Lydia Wegman to approve the flexible development concept plan. Tony Blake seconded.

198 **VOTE:** Unanimous

199

200 **AGENDA ITEM 8: UNIFIED DEVELOPMENT ORDINANCE (UDO) TEXT AMENDMENTS:** To make a
201 recommendation to the BOCC on government-initiated amendments that would
202 modify allowable impervious surfaced area within the county's zoning jurisdiction
203 through the installation of infiltration based storm water features. This item we
204 heard at the May 26, 2015 quarterly public hearing.

205

206 **Presenter:** Michael Harvey, Current Planning Supervisor

207

208 Michael Harvey: Reviewed abstract.

209

210 Herman Staats: You mentioned that if someone decides to use this plan that it is then the responsibility of
211 the property owner to maintain it? Is there some type of recommendation that when a person in the future
212 chooses to but the property, how will they be notified of that?

213

214 Michael Harvey: We require the recordation of an operations and maintenance agreement on the deed.
215 That requires disclosure and that is where a new property owner will be notified of their responsibilities.

216

217 Herman Staats: This issue has come up because the developer of a recent project assigned different
218 levels of impervious surface not equally across the whole project and not necessarily based on individual
219 property acreage so is there a regulation that has that developer disclose that information to the buyer?

220

221 Michael Harvey: Yes. It is memorialized on plats and declarations of restrictions we require to be recorded
222 with a subdivision project. The planning staff, as part of our continuing education efforts, produces site
223 assessments designed to identify environmental constraints and development limitations on property. This
224 includes a breakdown of the allowable impervious surfaces for a given parcel. Staff provides as much
225 detail as possible on recorded plats, declarations of restrictions, etc.

226

227 Herman Staats: Are real estate attorneys aware of this?

228

229 Michael Harvey: They ought to be.

230

231 Lisa Stuckey: By the time you get to the attorney....

232

233 Herman Staats: If the realtor has not done their job.....

234

235 Tony Blake: I would suggest you put a color coding or make it more obvious than it is.

236

237 Craig Benedict: We find out how much impervious is allowed on the entire parcel, deduct the road and say
238 this is how much you have left. Then leave it to the developer to apportion out that impervious.

239

240 Tony Blake: I would suggest a ratio, lot size to impervious surface.

241

242 Lydia Wegman: I would support doing something like Craig. I was at the BOCC where this was
243 considered, Dr. Sexton spoke and it's clear that she was hurt by the way the developer divided the
244 impervious surface. I wanted to flag that the Commission of the Environment has not yet offered its view.
245 I'm on the Commission for the Environment. We are very concerned about this change and will be putting
246 in a formal statement in before the BOCC hearing. The impudence seems to be the consequence of the

247 developer's not fairly dividing impervious surface and there doesn't seem to be, from an environmental
248 statement, any benefit to making this change. We discussed if this were to go forward, trying to make sure
249 there are hooks to ensure that the BMP is properly maintained and potentially asking for a bond or some
250 kind of certification on a yearly or bi-yearly basis that in fact it is being properly maintained and having
251 provisions for inspection.

252
253 Michael Harvey: There will have to be an operations and maintenance agreement recorded with this
254 modification process that will spell out how the stormwater feature will have to be maintained, yearly
255 certification requirements, bi-annual inspections completed by the staff. If they fail to abide by these
256 standards, we either compel the property owner to remove not only the feature but also the additional
257 impervious surface area or install a whole new BMP and go through the process again.

258
259 Paul Guthrie: Are existing properties grandfathered in as they are or are they vulnerable when they come
260 in for any modification on that property to these standards?

261
262 Michael Harvey: If you have platted lot and you either have an impervious surface allotment that was
263 assigned as part of the subdivision process or, if it wasn't, you have an impervious surface allotment based
264 on the provisions of Article 4 of the UDO.

265
266 Paul Guthrie: I was thinking about my own lot we bought in 2004 which was platted in the early 1980s and
267 I read those documents pretty closely and I don't remember in any of the transfer documents any
268 discussion about impervious surface.

269
270 Michael Harvey: When a property owner has to get building permits or zoning permits that is when they
271 typically find out what their impervious surface allowances area. Orange County adopted its first
272 impervious surface limitation standards in 1989 in the University Lake area and we have moved on since
273 then with the most recent revision being done within the Upper Eno Critical area and that was 2010 so
274 there has been tweaking of impervious regulations since the original adoption in 1989.

275
276 Paul Guthrie: In subdivisions like this and the one I live in, the homeowners owns the roadways. It is not
277 state road but a private road with sidewalks, etc. Is that use of an impervious surface allocated to each of
278 the property owners or each of the owners of the street?

279
280 Michael Harvey: We require developers to identify what is the cumulative amount of allowable impervious
281 surface for the property and then to identify the amount of roadway infrastructure to be installed. This area,
282 specifically the impervious surface area intended for the proposed roadways, is subtracted from the
283 cumulative allotment of the parcel. Remaining impervious surface area is then divided up between the rest
284 of the proposed individual lots so that no one lot is not encumbered by the impervious surface area in a
285 roadway. The flip side is instead of getting 6%, 12%, 24% on individual lots you are getting a reduction
286 because the developer has already backed out the roadway serving individual lots from the total allowable
287 impervious surface area for a given parcel.

288
289 Lisa Stuckey: If there are 20 lots, and the roads are part of the impervious surface, does each lot carry the
290 weight of 1/20th of the road?

291
292 Michael Harvey: Theoretically but that is technically up to the developer as there is no existing County
293 regulation mandating same. From my standpoint what happened at Triple Crown was an abomination and
294 did not represent the standard operating procedure we currently recognize within the Department in
295 addressing this issue. Because the developer wanted to allow and allot additional impervious area to

296 support a huge roadway and an oversized traffic circle then also give additional impervious to some of
297 the smaller lots to make them more marketable for his specific development proposal we have the problem
298 we now have. From my standpoint most of the issues in Triple Crown were created to address
299 marketability and profit margin concerns of the developer.

300

301 Lisa Stuckey: Would that happen today?

302

303 Michael Harvey: No not from my standpoint. The staff is looking at the viability of requiring lots within a
304 given subdivision to have a set percentage of impervious but that will be difficult in all cases.

305

306 Lisa Stuckey: Going forward what is the rule?

307

308 Michael Harvey: There is no mandatory requirement in the UDO.

309

310 Craig Benedict: This is a negotiation staff is having with a developer. That occurs at the developer review.

311

312 Lisa Stuckey: I'm so skeptical that after I put down my pervious driveway and let it become impervious I
313 am very skeptical the county will dig up my swimming pool.

314

315 Craig Benedict: There is a balance. Some people have no restrictions of impervious in the county and
316 some people have 6% which is very low. Should people have the right to have normal accessory
317 structures on their property for personal enjoyment if there is no degradation to a standard that is accepted
318 by the state? In this case, we are allowing some leeway and allowing them to enjoy their land without
319 degradation to some very strict requirements we had.

320

321 Pete Hallenbeck: You are saying as a member of the planning board that you support the concept of the
322 performance bond.

323

324 Lisa Stuckey: Yes I am. Is the state developing other BMPs besides the impervious surface?

325

326 Michael Harvey: One of the reasons we changed the language to the proposed ordinance is to make it an
327 infiltration based storm water feature was an attempt to allow so something other than just permeable
328 concrete. Having said that the proposed feature required to take advantage of this allowance has to be a
329 infiltration based stormwater feature. The simple act of digging of a pond does not create a proper feature
330 in my mind as all the pond does is capture runoff. It is not necessarily treated before it is introduced into
331 either a second conveyance system or it absorbs into the ground. Requiring an engineered designed
332 stormwater feature that is based on an infiltration model, our hope is that the state would recognize the
333 system as being reasonable as it captures and allows the water to treated prior to its infiltration. The state
334 is revising the entire BMP manual but it is based on the notion that an engineer can design an innovate
335 infiltration based system that as long as it complies with state minimum standards it can still qualify for
336 additional allotment of impervious. I didn't want to allow any storm water feature which I don't think is
337 supported by the state's BMP manual.

338

339 Lydia Wegman: It seems to me the county needs to protect its most resources and the problem is the
340 developer who mistreated the people who were buying the lot from the standpoint of impervious surface
341 allotment and that we are revising a rule that has been in place for some time. I don't see that as a good
342 reason to revise this rule which has worked very effectively in the county. It seems if the problem is with
343 the developer then revising the UDO to put in place a rule that makes it clear what a developer establishing

344 what a developer can and cannot do would be a better solution than potentially allowing more run off into
345 the most protected areas of the county.

346
347 Tony Blake: I completely agree. The developer did not disclose what the ramifications are and it would
348 have affected his lot prices. I tend to think to put the onus back on the developer to disclose this impervious
349 surface ratio or what have you to the homeowner...

350
351 Michael Harvey: Respectfully you don't know that what you are suggesting didn't occur. This is a project
352 platted almost 10 years ago and none of us, including staff, was involved in any discussion between the
353 developer and potential property owners.

354
355 Tony Blake: I am focusing on the loop hole that this project took advantage of. If it is a matter of record, in
356 the closing, that this is disclosed, problem solved in my mind.

357
358 Herman Staats: I agree. I would be in favor of proper and effective disclosure and communication but if,
359 for these impervious surface exceptions, if they are engineering correctly, why would they be a deterrent
360 to the environment.

361
362 Lisa Stuckey: I am concerned about what the state will call a BMP. I don't have enormous confidence in
363 our state's ability to protect the environment. I haven't heard of other instances with the rules as they are
364 currently and I don't know why that should be a basis of changing the rules.

365
366 Paul Guthrie: Let me tell you why I stirred it up. If you read the teacher tenure reading ruling in the state's
367 courts, they are taking notice of issues of contract. It seems to be that someone that didn't receive notice
368 of limitation that they eventually wanted to change could not go into court against the whole rule as a taking
369 without due process so I think we need to be very careful how the administration and the language that is
370 used as setup this system on limits on property knowing that down the road, it may or may not be
371 transferred in a way the next buyer understands what the limits on the property are. We need to be as
372 clear as we can. Is our system providing due process?

373
374 Herman Staats: In this example of what we are not supposed to be focusing on but we are, the owner was
375 the developer and he did so he knew what he was doing so it wasn't something taken away from him, he is
376 the one who did it, he was the owner.

377
378 Lisa Stuckey: What is being recommending is giving not a taking.

379
380 Paul Guthrie: In the specific case you are talking about is that offended buyer could go after both the
381 owner and the legal authority that is running it. I was concerned how we can document that people can,
382 with due diligence, what the property is limited too or not limited to.

383
384 Craig Benedict: The County has a recorded document that lists the development restrictions in that lot in
385 writing. The plat has it and the declaration of restrictions has it as well.

386
387 Pete Hallenbeck: We have all these exceptions, etc. and for a normal person buying a house, they will not
388 wrap their head around those details unless they have been bitten in the past.

389
390 Lisa Stuckey: How big a problem is it?

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392 Pete Hallenbeck: It is unlikely this is the first person who has run into this.

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Craig Benedict: We don't know how many people get to planning. We have a very strict limit in Orange County. We are suggesting minor flexibility that 6% may be difficult. Our standards are very tight. We are still 25% below what the state allows us to do.

Maxecine Mitchell: When you talk about purchasing a home and being a realtor myself, I guarantee you that lady didn't say, at some point I am going to add a swimming pool. If you do that a realtor may be able to direct you. The staff did inform Commissioner Barry Jacobs was concerned about the critical watershed. Is this place falling into that area?

Michael Harvey: Yes ma'am, we did not amend the proposal to exclude this option.

Buddy Hartley: I do like what staff has done with this giving flexibility and still has guidelines that will have to be enforced with this. They are consistent with the UDO and I like the package they have put together.

Herman Staats: I agree with that and following Craig's comment that Orange County does have strict definitions on these things.

Pete Hallenbeck: It's easy to look at that and say if you approve this, all you have to do is put down this spongy concrete and you are good to go but to exceed the limits you have to have an engineered solution that is a BMP.

Michael Harvey: Obviously, there is the hope for some people who have talked to staff about this, you have to show us this will not result in a negligible increase in runoff or basically water quality issues. That was a selling point to OWASA.

Pete Hallenbeck: It is an engineered solution. It is an option available.

Lisa Stuckey: People let stuff go.

Tony Blake: I agree with that. I wonder if this is a problem in search of a solution. When people see what this is really going to cost them, do we really want to add an artificial complexation in reaction to this one instance? I wouldn't vote against this but I think there is an easier solution elsewhere.

Pete Hallenbeck: I think its clear people want to see a performance bond, inspections, I want everyone to understand that it is an engineered solution you don't just put things down. We have a statement of consistency. There is a document called the Comprehensive Plan and the UDO and the two are often in conflict that we shouldn't be changing structure and detail unless in aligns with the general Comprehensive Plan. The statement of consistency is that it is consistency with the Comprehensive Plan and the proposed amendment package.

MOTION made by Buddy Hartley that this is consistent with the Compressive Plan. Seconded by Bryant Warren.

Lisa Stuckey: I would be much more comfortable with this if putting up a bond were required?

Michael Harvey: You will be adding that in a motion to approve, you will be including that.

VOTE: 11 to 1 no (Lydia Wegman)

442
443 Lydia Wegman: I don't think it is environmentally responsible to make this change. I think the staff has
444 done an excellent job. This is a broad solution to solve a very limited problem and there should be limited
445 solution to that limited problem.

446
447 MOTION made by Lisa Stuckey to approve with amendments on page 60. Seconded by Laura
448 Rohrbacher.

449 VOTE: 10 to 2 no (Lydia Wegman/Paul Guthrie)

450
451 Lydia Wegman: The same as before but I will note if this does move forward and the BOCC does want to
452 approve this I support the amendment that is offered on a performance bond and I think that would be a
453 significant improvement to the proposed change.

454
455 Paul Guthrie: I would echo that. I am not satisfied we have gone to the depth we should have gone to on
456 both of these issues because they go a lot further than this committee. How do you measure impervious
457 surface?

458
459 Michael Harvey: We are going out as staff with a measuring wheel and tape measure or a surveyor does it
460 and we are making the surveyors notes are accurate.

461
462 Paul Guthrie: How do you know the surface you are measuring is impervious?

463
464 Michael Harvey: If it is gravel, covered by building a roof, if it is structure it is impervious. Impervious
465 surface area is defined within the UDO as a surface composed of any material that impedes/prevents the
466 natural infiltration of water into the soil. Such surfaces include concrete, asphalt and gravel surfaces.
467 These include but are not limited to streets and parking areas, sidewalks, patios and structures that cover
468 the land. It does not by state definition include the deck or the water in the swimming pool.

469
470 Paul Guthrie: It doesn't include natural features.

471
472 Michael Harvey: Right.

473
474 **AGENDA ITEM 9: UNIFIED DEVELOPMENT ORDINANCE (UDO) TEXT\ AMENDMENTS:** To make a
475 recommendation to the BOCC on government-initiated amendments regarding the
476 review and permitting of temporary health care structures. This item was heard at
477 the May 26, 2015 quarterly public hearing.

478
479 **Presenter:** Ashley Moncado, Special Projects Planner

480
481 Ashley Moncado: Reviewed abstract.

482
483 Herman Staats: The building and efficiency or some other addition to a structure. I could do that anyway
484 as long as my lot size allows me so nothing in what we discussed about this temporary health care
485 structure prevented someone from using those if they wanted to?

486
487 Ashley Moncado: Correct. There are other options provided in the UDO.

488
489 Herman Staats: I didn't understand why it's so restrictive.

490

491 Craig Benedict: When you bring it back to the BOCC, we will explain that more.
492
493 Lisa Stuckey: If I go to page 73, 5-48 under 5.9 (a) 1, if I wanted to do one of these things and hire this
494 company that would put one up, at that point, does it have to be a first or second degree relative?
495
496 Ashley Moncado: Yes. All those options, a relationship by marriage or a legal guardian.
497
498 Lisa Stuckey: If I want to use one of these things, then I am restructured.
499
500 Pete Hallenbeck: This is a state issue.
501
502 Michael Harvey: We are doing this amendment because the state recognizes this specific unit. Previously,
503 our ordinance allowed for a mobile home to be on a property every year. We had to recognize it because
504 the state said we had to allow this and it was a compromise to what was really and unreasonable process
505 to allow for a temporary custodial mobile home that imposes an additional cost.
506
507 Ashley Moncado: We have had previous staff discussion about aging in place, having an accessory
508 dwelling unit to live together in a dwelling unit, etc.
509
510 Pete Hallenbeck: You are putting this in because there is a person with healthcare issues that you want to
511 take care of on your property.
512
513 Lisa Stuckey: Could we recommend losing that limitation?
514
515 Ashley Moncado: I would feel that if you are not more restrictive statute we could recommend it tonight and
516 present it to the BOCC.
517
518 Laura Rohrbacher: I have an issue regarding aging in place and if you have two aging parents, the
519 temporary health care structure does not address that.
520
521 Pete Hallenbeck: If we are going to get rid of the relationship thing. I would like to put something in there
522 that says you care for the people without charging them.
523
524 Tony Blake: How does this differ from a trailer? This sounds like a high end solution for people. This
525 sounds to be a specific company to corner the market on a high end solution and exclude everything else.
526
527 Pete Hallenbeck: The state's going to do it. Did you want to take the funny thing being rammed down our
528 throat or take the rest of the UDO and try to solve the problem? If we are getting rid of the family thing, put
529 something in there that says don't charge.
530
531 Ashley Moncado: Reconstructed NC State building codes, a manufactured or mobile home would not
532 qualify as a temporary health care structure.
533
534 Tony Blake: So there's a different building code for a temporary health care structure?
535
536 Ashley Moncado: Temporary health care structures are to be built to NC State building code as the same
537 as a modular unit so there are standards that are similar to a modular unit.
538
539 Tony Blake: Trying to prevent people from putting mobile in?

540
541 Ashley: Possibly, but we still have the option of that. You can go through the option of having a temporary
542 mobile home brought on a piece of property.
543
544 Tony Blake: this seems to be almost legislation for a specific company to try and corner the market on a
545 high end solution and exclude everything else. That's what worries me and I think that's what worries
546 commissioner Dorosin as well.
547
548 Pete Hallenbeck: All that's true, the states going to do it, they've been quietly whacking away at everything.
549 The only think I would say on amending this is do you want to take this one funny thing being rammed
550 down our throats and try and solve a problem or do you want to take the rest of the UDO and really really
551 solve a problem. I don't have a strong feeling about it, the only thing I would say is if you're taking out the
552 family thing don't charge them.
553
554 James Lea: Does this amendment require a special use permit?
555
556 Michael Harvey: No, because state law says you have to allow it.
557
558 James Lea: You have to allow this?
559
560 Michael Harvey: Yes.
561
562 Paul Guthrie: That's why it's really touchy if we take this and say oh here's this problem and get rid of
563 something and now's there's this thing that we have to allow and what's that going to bring to it.
564
565 Tony Blake: General standards aids submittal requirements 1 a & b are really there to do what you are
566 talking about which is say it's harder to judge a family than someone else.
567
568 Pete Hallenbeck: That's a good point it's harder and charge is also nebulous right
569
570 Tony Blake: Right.
571
572 Pete Hallenbeck: Grandma you can live here I got this little thing you need to sign in regards to your estate
573 first.
574
575 Paul Guthrie: If the state requires this to why do we have to put it in the UDO?
576
577 Tony Blake: Because the state has to come in and inspect them and do all of that right
578
579 Paul: The 2nd thing is if it is possible to basically do this under existing UDO provisions why get us into this
580 business of degree of relationship?
581
582 Ashley: Currently this type of use has no way to permit it under the UDO because it is specific to new use.
583 There's nothing that qualifies for it to be permitted to the UDO and we are going through this process to be
584 consistent with state regulations to identify new UDO. Now that you're looking at doing all these types of
585 amendments if we weren't going through this process then it would be permitted as state statue. Currently it
586 is allowed to be permitted and we are trumping the state statue if you're removing this regulation regarding
587 the relationship. If someone came in without this in the UDO we would have to require that relationship.
588

589 Paul Guthrie: The state doesn't require a facility to be built but does the state specify who can use it?
590
591 Ashley Moncado: Yes
592
593 Paul Guthrie: Anybody?
594
595 Ashley Moncado: Well do they specify it has to be a physically or mentally impaired individual NC resident.
596
597 Lydia Wegman: And a relative
598
599 Ashley Moncado: Yes
600
601 Paul Guthrie: And a NC resident on top of that?
602
603 Pete Hallenbeck: That's where your submittal requirements came from the state law?
604
605 Ashley Moncado: Yes, all of this is the state law. We cannot change it if it's not identical it's very similar.
606
607 Paul Guthrie: The owner of the property has to be a NC resident and the recipient of the housing has to be
608 a NC resident.
609
610 Ashley Moncado: Yes
611
612 Paul Guthrie: The lawyers are going to have a field day with this one.
613
614 Pete Hallenbeck: And it's going to cost you about \$100,000.
615
616 Craig Benedict: When you get a mandate from the state and you start trying to tweak it it's a slippery slope.
617 So we can resolve some of the options about having people not related by blood living in these accessory
618 structures. I would suggest let's get this statute, preemption of a lot of our other rules, put in and address
619 the other issues about being more flexible and not having the relationship stuff addressed by other portions
620 of the code. Right now how many people do we allow unrelated by blood in the house?
621
622 Ashley Moncado: 3
623
624 Craig Benedict: Some places allow more than that so I mean there could be a case where you want to go
625 up to 4 or 5 so we would be suggesting other amendments to the code to allow housing opportunities that's
626 the new trend. I think we could make an amendment to this and the state says are you adhering to us and
627 we say yes and made it even better and they are like Orange County did something again to our
628 minimums. That's just an idea I think we can address other sections of the code and since the state is
629 asking for this almost verbatim it would be better to let this fly.
630
631 Pete Hallenbeck: I don't want to take a bad idea and say we combed it's hair and put lipstick on it and now
632 it's good.
633
634 Lydia Wegman: Craig, when you say address it in the code you would have to develop new amendments to
635 the code
636
637 Craig Benedict: Yes

638
639 Lydia Wegman: Added to the long list already
640
641 Lisa Stuckey: You could do a completely identical parallel amendment to the code and just change the
642 things we like. We could have 2 of them sitting there.
643
644 Pete Hallenbeck: I'll remind everybody that we have this dinner with the commissioners every year and
645 that's an opportunity to say here are areas that we think would be interesting to look at this might be a very
646 good thing to look at and now you're going to go through the right process instead of tweaking it and if this
647 goes away, we could still have our solution.
648
649 Laura Nicholson: I withdraw my amendment request however this is a solution without a problem. It's a
650 unaffordable ridiculous thing but I am all for complying with state regulations.
651
652 Tony: 1 question for Mike, this temporary structure does this count against your impervious surface?
653
654 Michael Harvey: Everything counts against your impervious surface if it meets the definition.
655
656 Paul Guthrie: Between the septic laws and the impervious surface, I think there can be lots of decisions
657 made on the process.
658
659 Lydia Wegman: Craig & Michael you mentioned co-housing and it sounds like some discussion is going on,
660 is that something this could include addressing this problem that we're talking about?
661
662 Craig Benedict: Yes. I think this could go true we have new initiatives about affordable housing about small
663 housing but we've been trying to describe these new housing opportunities out there. Are they mobile
664 homes, are they RVs, are they micro houses, we will be presenting to the commissioners probably in
665 September of this year. These other type of housing options would address bringing the parents back in the
666 house. We're into that process, we would expect getting a green light to address some of those issues in
667 September or October and bringing forward later this year.
668
669 Lydia Wegman: And would that kind of thing come to the planning board fi the commissioners said go?
670
671 Craig Benedict: Yes, definitely.
672
673 Lydia Wegman: Thank you.
674
675 Pete Hallenbeck: We have a statement of consistency to vote on and it says this isn't against what's in the
676 comprehensive plan. It addresses a .25% improvement on that plan. We'll need a motion to vote on that
677 and then vote on the specific amendment items here. We'll make a recommendation to the BOCC on the
678 statement of consistency that yes we think it is consistent.
679
680 MOTION made by: Buddy Hartley. Seconded by: Bryant Warren
681
682 Lydia Wegman: Housing goal #2 – Housing that is useable by as many people as possible regardless of
683 age, ability or circumstances but this is only useable by one person
684
685 Tony Blake: 1 income
686

687 Laura Nicholson: it also says affordable housing earlier in that.

688

689 Lydia Wegman: I don't think it's consistent so I am going to vote No.

690

691 Pete Hallenbeck: The comprehensive plan and the UDO are often in conflict with each other.

692

693 Lydia Wegman: I know that.

694

695 Pete Hallenbeck: We want affordable housing and we want sidewalks.

696

697 Lydia Wegman: I realize that I will just note this requirement to vote on consistency is an empty
698 requirement because as you say Pete, there's always a lot of inconsistent things in the comprehensive plan
699 and you could find something to support almost any position in the plan.

700

701 Paul Guthrie: Are you going to call the vote.

702

703 Vote 10 to 2 (Paul Guthrie/Lydia Wegman*)

704

705 Paul Guthrie: I didn't like it.

706

707 Pete Hallenbeck: Motion to approve the amendment as in the packet UDO amendments.

708

709 James Lea: What page is that on?

710

711 Pete Hallenbeck: 73 attachment 3.

712

713 Motion by Buddy Hartley. Seconded by Bryant Warren.

714

715 Pete Hallenbeck: This is the section in red we discussed where it says the submittal requirements and so
716 forth. This document is very much driven by the state law.

717

718 Ashley Moncado: Yes

719

720 Vote: 9 to 3 (Lydia Wegman, Lisa Stuckey and Paul Guthrie)

721

722 Pete Hallenbeck: Paul would you like to say anything.

723

724 Paul Guthrie: Bad law, we can deal with the issue without it.

725

726 Lisa Stuckey: I'm voting no simply because I don't think we have all the facts. This is something worth
727 asking the attorney whether it could be made less restrictive to include nonrelatives to be in compliance
728 with other areas of our UDO to allow husband and wife to be in there together so I just feel like I would
729 rather let the attorney guide us, something for county commissioners to ask the attorney.

730

731 Lydia Wegman: I agree with Lisa. I'm concerned about approving just this piece without having the other
732 pieces. We've talked about going forward with it so it's clear that we are presenting a whole package of
733 options to people who are facing this situation. We may need to follow up on Lisa's suggestion and we
734 many need to approve this but I would like to see if there is a way at the same time to approve something
735 that is broader and meets the needs of many more people in the county.

736

737 **AGENDA ITEM 11: ADJOURNMENT**

738

739 Pete Hallenbeck: Ok. Very good. That was the last item on our agenda. I'll entertain a motion to adjourn.

740

741 Motion to adjourn made by Bryant Warren. Seconded by Laura Nicholson

Pete Hallenbeck, Chair

** Red text was added to the June 3, 2015 minutes to accurately present the vote regarding this item on July 2, 2015 following Planning Board adoption.*

From: [Tony](#)
To: [Perdita Holtz](#); ["Andrea Rohrbacher"](#); ["Bryant Warren "](#); ["Buddy Hartley"](#); [Deputy Chief Pete Hallenbeck](#); ["Herman Staats"](#); ["James Lea "](#); ["Laura Nicholson"](#); ["Lisa Stuckey"](#); ["Lydia Wegman"](#); ["Maxecine Mitchell"](#); ["Paul Guthrie"](#)
Cc: [Erica L. Gray](#); [Debra Graham](#); [Craig Benedict](#); [Michael Harvey](#); [Ashley E. Moncado](#)
Subject: RE: Additional Item for July 1 Planning Board Meeting
Date: Monday, June 29, 2015 6:53:41 PM

Not sure this came through in the minutes. While I tend to agree with the UDO amendment relieving slightly the regulation on impervious surface, I think the case used to make the impervious surface change was not a defect in the UDO, but a problem of disclosure on the part of the developer and a legitimate oversight on the part of the real estate agent.

I argue that changing the UDO alone addresses the symptom, but does not address the root cause of the issue. I argue further that real estate agents and buyers must be alerted if/when the impervious surface limit on a subdivided piece of property under development falls below a certain ratio. Since it is up to the developer to parcel that restriction the burden of disclosure is on the developer.

-Tony

From: Perdita Holtz [mailto:pholtz@orangecountync.gov]
Sent: Monday, June 29, 2015 3:13 PM
To: Andrea Rohrbacher; Bryant Warren ; Buddy Hartley; Deputy Chief Pete Hallenbeck; Herman Staats; James Lea ; Laura Nicholson; Lisa Stuckey; Lydia Wegman; Maxecine Mitchell; Paul Guthrie; Tony Blake
Cc: Erica L. Gray; Debra Graham; Craig Benedict; Michael Harvey; Ashley E. Moncado
Subject: Additional Item for July 1 Planning Board Meeting

Hello Planning Board Members,

We discovered that we need to add an additional item to the Planning Board agenda: Approval of April 1, 2015 ORC Summary Notes. The file with the notes is attached for your use and information.

Thanks and please let me know if you have any questions.

Perdita Holtz, AICP
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