

Minutes

PLANNING BOARD AND BOARD OF COMMISSIONERS

Joint public hearing

7 p.m. April 18, 2024

Town Hall Annex Board Meeting Room, 105 E. Corbin St.



Present

Town board: Mayor Mark Bell and commissioners Meaghun Darab, Robb English, Kathleen Ferguson, Matt Hughes and Evelyn Lloyd

Planning Board: Chair Frank Casadonte, Vice Chair Hooper Schultz, and members Jeanette Benjey, Cassandra Chandler, John Giglia, Sherra Lawrence, Saru Salvi, and Christian Schmidt

Absent: Planning Board: Robert Iglesias

Staff: Planning and Economic Development Manager Shannan Campbell, Senior Planner Tom King, Planner II Molly Boyle, and Town Attorney Bob Hornik

1. Call to order and confirmation of quorum

Mayor Mark Bell called the meeting to order at 7:00 p.m.

2. Agenda changes and approval

Motion: Commissioner Kathleen Ferguson moved to approve the agenda as presented. Commissioner Evelyn Lloyd seconded.

Vote: 13-0

3. Minutes review and approval

March 21, 2024, Planning Board minutes

Motion: Vice Chair Hooper Schultz moved to approve the minutes as presented. Member Sherra Lawrence seconded.

Vote: 8-0 (Planning Board vote only)

4. Open the public hearing

Motion: Ferguson moved to open the public hearing. Member John Giglia seconded.

Vote: 13-0.

5. Public hearing items

A. UDO text amendment on accessory dwelling units, home occupations, and short-term rentals

Planner II Molly Boyle explained the amendment is meant to create more opportunities for reasonably sized accessory dwelling units (ADUs) and to align regulations on ADUs, home occupations, and short-term rentals, since these uses are often linked: people often want to do a home occupation in an ADU, and town staff have been requiring home occupation permits for short-term rentals. The revisions are also meant to codify the current policy of requiring a home occupation permit for a short-term rental and to correct a scrivener's error in the planned development section of the UDO.

Boyle said one major change proposed is to increase the maximum size for ADUs. Staff is proposing to change the limit to 50% of the gross floor area, or 1,000 square feet, whichever is greater. However, in no case can an ADU exceed the gross floor area of the primary dwelling. She said while gross floor area is more restrictive than heated area, it's easier for staff to enforce. Since home occupations are allowed in ADUs, staff is recommending the size limits for home occupations and ADUs be the same. The proposed amendment also includes a clear definition of short-term rental and stipulates that a home occupation permit is required. Boyle said the scrivener's error concerns the residential density maximum of 13 persons per acre for planned development districts. This requirement was not part of the amendment approved by the Board of Commissioners, so it is being removed from the UDO.

Hughes suggested that requiring a home occupation permit for short-term rentals might be a burden for owners and, since rentals can be done offline, for staff as well. Boyle said she thought the requirement of a home occupation permit was meant to discourage non-residents from running short-term rentals and thereby depleting housing stock. She acknowledged it might be difficult to enforce. Hughes said because some additional permitting may be soon legislated by the state, the board might consider waiting until the short legislative session concludes.

Chandler asked for clarification: if a home is 1100 square feet, can an ADU be 1,000 square feet? Boyle said yes. Boyle explained the revisions followed recommendations from the AARP and the American Planning Association, but if the proposed revision feels too open-ended, the boards could discuss setting a more definitive maximum. Asked if other home occupations require permits, Boyle said yes. Bell asked if the town has problems with short-term rentals flying under the radar and not paying the occupancy tax. Campbell said yes, owners who are not using a platform may be evading the tax. She explained the Tourism Development Authority had asked for clarification about the rules for short-term rentals, noting the information is hard to find in the current UDO. The proposed amendment makes requirements for short-term rentals much clearer. Hughes said the TDA had done a study of short-term rentals a few years ago and found the numbers lined up with expected tax revenues.

Boyle opened the floor for comment from the public. Resident Natalie Dolgireff explained she and her husband had recently bought a house on Daphne Drive and planned to build an ADU. They discovered that currently freestanding ADUs are allowed only on properties that have direct access to a public street, not those served by a private street. She said adding an attached ADU to their new home was not practical and would be a financial burden. They would like to see the ordinance equalize regulations for properties served by public streets and those served by private streets.

Dani Black, who runs an Airbnb and serves on the Tourism Development Authority, also spoke. She said she found current regulations of short-term rentals murky and hard to find in the UDO. She said she'd like to see the text amendment for short-term rentals separated from the ADU regulations and recommended the boards take time to seek input from short-term rental owners and the public and explore ways to share information with the community. She said she runs a home-based business in addition to running a short-term rental and wondered if she needed a second home occupation permit for the latter. She was also unsure how the proposed square footage regulations would cover both businesses.

Hughes asked if there was a limit for home occupations in a single dwelling unit. Boyle said nothing in the current UDO prevents multiple home occupations in the same dwelling. Hughes said he was concerned that regulations might prohibit some residents from running short-term rentals because of the square footage limits. Boyle said the proposed revision would increase the maximum size for the home occupations that are allowed. Referencing Black's comments, she said short-term rentals aren't limited to ADUs and that staff could investigate alternatives if the board doesn't want short-term rentals to be treated as home occupations.

She invited feedback from the boards about further revisions before the next Planning Board meeting. Schmidt said he saw value in adding the increased flexibility of the proposed revision and taking up larger issues like splitting off short-term rentals from home occupations when the town embarks on a fuller revision of the UDO.

Darab asked if an owner could live in the smaller portion of a dwelling and rent out the larger portion. Boyle said yes, there are no restrictions on the location of short-term rentals per se, only of ADUs, but the owner must reside in the primary dwelling. Lawrence asked why an ADU can't be built on a private road. Boyle said it seems there was concern about increased vehicle trips on private roads, as well as concerns from utilities. She added staff could include changes that allow ADUs on lots accessed by private roads if desired. Hughes asked how many potential ADUs could be built on private roads in town. Boyle said she wasn't sure. Asked if an HOA could turn down a request for an ADU, Boyle said yes.

B. Rezoning request for 128 W. Margaret Ln. (PIN 9874-06-2054)

Campbell explained that this property is unique and zoned for Neighborhood Business Special Use, which restricts the permitted uses and has been discontinued by the town after changes to the General Statutes. She said the property owner has had trouble renting out the property and is requesting to rezone to Neighborhood Business (NB), a general use zoning district. The NB district allows for myriad land uses; however, the property owner recognizes that the property lies on the boundary between commercial and residential and is willing to convert it to conditional rezoning that would limit some of those uses.

Chandler asked for clarification about the zoning options. Campbell explained that Neighborhood Business Special Use zoning is no longer allowed by the state legislature, but it is very similar to a conditional zoning. Asked by Schmidt for clarification about the proposed change, Campbell said the proposal is to rezone the property to either a general use district (Neighborhood Business) or to a conditional zoning district (Neighborhood Business Conditional Zoning), which would limit the uses. Commissioner Robb English asked if the owner decides to sell the property, would the new zoning apply to the new owner. Campbell said yes, the zoning goes with the land, not the ownership.

The owner of the property, Andrew Lloyd, Jr, addressed the board. He said he bought the property 7 or 8 years ago. He first rented it to a reality company, which moved out a year ago. Since then, the property has sat vacant. Several parties were interested in leasing it, but their proposed land uses weren't allowed under the current zoning. Though an attorney has recently begun leasing the property, Mr. Lloyd said in the event the attorney ends the lease, he would like to have it rezoned so he can lease it to others.

Mr. Lloyd explained that if the boards think the general use district is too broad, he would agree to exclude uses that wouldn't be good for the town/neighborhood. He assured the boards he would accept only tenants that he felt were good for the town. Schultz asked if rezoning under the current ordinance would require additional parking. Campbell said it would depend on the tenants and their needs, but there is plenty of public parking nearby.

Commissioner Lloyd said the area is a residential neighborhood and should not have a business located there. Mr. Lloyd said there are businesses close by. Chandler asked about the businesses which had expressed an interest in renting the property but did not fit with the current zoning regulations. Campbell said one was a physical therapist, the other an art therapist. English asked if the owner would have accepted the physical therapist if it was allowed. Mr. Lloyd said he'd asked residents and concluded it would be good for the town.

Asked by Ferguson what uses fell under “medical facility,” Campbell read the definition from the current UDO. Ferguson said the ordinance should be revisited; Campbell said that will be done in the UDO rewrite. Ferguson asked if the current 8-person occupancy limit still holds under the new zoning. Campbell said no. Chandler asked if the rezoning would apply to other residences. Campbell said no. Hughes suggested, given the concerns of neighbors, if Mr. Lloyd and staff could agree to exclude certain uses rather than do a blanket rezoning. Campbell said the owner was willing to exclude several uses and listed them. Bell asked if legal services are currently allowed. Hornik said yes, probably under general office uses. Lloyd reiterated her opposition to allowing a business in a residential neighborhood. Casadonte suggested the board move to public comment.

James Boericke, who lives at 153 W. Margaret Lane, said in June of 2015 the owner applied to change the zoning from residential to neighborhood business. However, the lot size is only 909 square feet, but a minimum of 10,000 square feet is required for many of the permitted uses. A special use permit was allowed in 2015 and, since the lot was so small, the permit waived the parking, lighting, and landscaping specifications. Since then, the property has been a quiet and valuable neighbor. He has no objections to its continued use as an office. He said he saw no reason to change the zoning to Neighborhood Business since the lot doesn’t meet the 10,000 square foot minimum for the permitted uses. Regardless of what Mr. Lloyd’s intentions are, he said, the rezoning change conveys with the property.

Attorney Hornik said while the application as submitted sought to rezone the property to straight Neighborhood Business, Lloyd had offered to exclude some uses if desired. That would change the zoning from a general use to a conditional zoning district, so that only those permitted uses that were not excluded would be allowed. If the property is rezoned to a conditional zoning district, there could be other conditions to address the concerns Boericke had mentioned. Boericke asked when the conditions would be applied. Hornik said at the time the rezoning is approved. Campbell said no decisions would be made tonight.

Schmidt asked if the intent is to reproduce the flexibility of the old special use district, which allowed the applicant and the board to specifically select which uses would be permissible. Boyle said yes, she understood the owner was amenable to limiting the number of uses through conditional zoning.

Jean Masse, who lives at 158 W. Margaret Lane, said allowing a special use permit was a slippery slope. She said she and other neighbors voiced concerns in 2015 with the first rezoning request for the property. She said the Hot Tin Roof bar illustrates the potential problems with allowing businesses in a residential neighborhood. She acknowledged the current owner has good intentions but said the permit, which she considered as “carte blanche,” conveys with the property. She said neighbors agreed to a small business in 2015, and now we’re back again debating something potentially larger. As a physical therapist herself, she said such a business requires a good bit of parking. She suggested the property could be sold as a residence.

Ferguson said the property is a commercial property. Masse said it was once a residence and that rezoning would set a precedent for businesses encroaching on residential neighborhoods. Asked by Hughes about the 2015 rezoning, Masse said there was a public notice to change its zoning from residential to neighborhood business. Ferguson asked about the distance from the property to Churton St. A town staff member determined it was 250 feet. Ferguson asked about traffic into the public parking deck and number of available spaces. Campbell said she’d have to look that up.

Casadonte proposed a 5-minute break and reconvened the meeting at 8:20pm.

C. Annexation and rezoning request for Waterstone South planned development

Campbell explained this project is comprised of several parcels, comprising almost 100 acres, with a master plan for 450 apartments, 205 townhouses, 200,000 square feet of medical offices, and 40,000 square feet of neighborhood commercial space. She said neither the applicant nor town staff were prepared to give a presentation, as there were many technical issues to resolve with standards for the zoning district and how to service the project with water and sewer. Both parties would like more time to prepare their presentations for the public hearing in May. She said the board can still take public comments and take note of concerns. Members of the public were invited to come forward.

Wilson Lamb said he retired to southwest Hillsborough 25 years ago. He said the UDO has been used relentlessly against ordinary people, and exceptions, amendments, and rezonings have been constantly added to accommodate developers. He said the Woodsedge trailer park serves a purpose of providing affordable housing that would be eliminated by the project. He urged the boards to think where the town is going and said the community needs ordinary people, even those who live in trailers. He added the density out there is low, the impact is low, and yet the proposal is to put 450 apartments there, on top of the Collins Ridge development. He urged the boards to leave some things alone so the town can retain its small-town character and not become an unlivable, undrivable community. He added the town has run businesses out of town by zoning and regulations, while building more housing and raising taxes.

Jean Forest Brooks, of 1725 E. Scarlett Mountain Road said she was an Orange County native, having lived here for 72 years. Her property is adjacent to the proposed development. She said if the project goes through, she will probably sell her property and home. She said she has a lot of wildlife on her property. She said the area doesn't need any more large housing projects like this one. She said she and her husband had information showing the Orange County Board of Commissioners had approved the Woodsedge trailer park with the condition that the adjacent land couldn't be developed since the owner had used his allotment of housing, yet now a developer wants to buy the land and put housing on it. She said she had also found a study that anticipates finding archeological remains on the project site. At the last hearing, she'd been told a traffic study had been done, but there hasn't been one for the area in question. She said she worried about traffic and the need for widening roads and was completely against the project.

Robert Sparrow, who lives at 3718 Stagecoach Road, said his road was the original road that went from Chapel Hill into Hillsborough. He said he'd found many historical objects, such as bullets and horseshoes, along the road. He said it's very difficult to turn left out of East Scarlett Mountain Road already between 7:30 and 9 am because of the heavy traffic. He said Mr. Brooks said these 25 acres would never be developed. He said students from A. L. Stanbeck Middle School at the end of East Scarlett Mountain Rd will be walking through the project. The developer is proposing to split up 25 acres with beautiful large oak trees and a historic road. He said the wildlife Ms. Brooks spoke about is going to be wiped out. He said homeowners are also worried about people coming onto their property.

Mr. Eric Chupp from Capkov Ventures said his company was working to address these concerns. He said this is a large project which involves a brand new zoning district, so there were still lots of unanswered questions to work through, some of which have come up recently. He said his company is concerned about sewer and water, and the town is waiting on a capital improvement project (CIP), so it agreed to wait for the report from the CIP consultant so it could provide more information and more thoroughly address the issues at the May hearing.

Derrick Eads of 1608 East Scarlett Mountain Road said when he moved to his current address he was told that Woodsedge Properties LLC, the owners of the mobile home park, owned all the woods up to East Scarlett Mountain Road and that it could never be sold or developed but would remain a buffer between the mobile

home park and East Scarlett Mountain Road. He noted there will be a county public meeting on May 8. He said the county and Capkov Ventures had violated a special use permit with the division and sale of the property, which may be one reason the project has been delayed. He said he didn't understand how the developer was allowed to buy the property.

Casadonte reminded everyone that the public hearing would be continued to May 16th at 7 pm and the public will have another opportunity to speak then as well.

D. Revisions to Historic District Commission Design Standards

Campbell explained the revisions intended to clean up the historic district design standards. Planning staff have worked with the Historic District Commission, which has approved the revisions. However, because they are a part of the UDO, they must go through the same process as UDO text amendments. A lot of the revisions were about things that keep coming before the commission that they are fine with, so the revisions will reduce the commission's workload for meetings. She gave an overview of the revisions.

Bell said one proposed change under "ordinary maintenance and repair and minor work" seemed to recommend that owners check with town staff, as opposed to the old language, which required proposals to be submitted. Campbell said the revision was meant to streamline inquiries so staff could answer them rather than homeowners going before the HDC. Bell asked how owners would know if they can do something without asking. He said it seemed like the revision was disincentivizing people from asking staff for guidance. Campbell said staff could wordsmith the revision to clarify that homeowners need to consult staff. Chandler said she thought the board had discussed in a prior meeting allowing the installation of solar panels, but the revisions suggest it is prohibited. Campbell said installation is prohibited only in locations that compromise the architectural integrity of the building, which applies only to the historic district.

Casadonte asked for a motion to close the public hearing on items 5A, 5B, and 5D. Chandler asked if the applicant could provide the level of clear cutting involved in the Waterstone South at the May meeting. Boyle said the developer won't have that level of site-specific detail at this juncture since this is just the rezoning request. Asked by Chandler about the project's adherence to the Comprehensive Sustainability Plan, Boyle said the applicant would address the project's alignment with the plan, and the boards would determine if they thought the project was congruent with it.

6. Close the public hearing

Casadonte asked for a motion to close the public hearing on items 5A, 5B, and 5D.

Motion: Ferguson moved to close the public hearing for items 5A, 5B, and 5D. Schultz seconded.

Vote: 13-0.

Motion: Ferguson moved to continue the public hearing for item 5C to May 16, 2024. Giglia seconded.

Vote: 13-0

Schultz said he would likely miss the May meeting and asked if he could participate remotely. Campbell offered to investigate but noted that, if remote, he would not count towards quorum or be able to vote. Schultz said he would just submit written comments.

7. Staff and Board Updates

Boyle said she had checked on the legality of a solar mandate. She said North Carolina is a Dillon's Rule state, which means the town gets its regulatory authority from the state. If the state doesn't give local governments express authority to do something, they do not have the authority to do it. Hillsborough can't mandate the inclusion of solar since the state has not authorized that. The town can require it for its own buildings but not for new housing.

Giglia asked if there were other things the town could require. Boyle said the town has something like that in the current UDO, like the tree preservation requirements. She offered to send more information from the Comprehensive Sustainability Plan as well about measures the town is moving toward. Chandler said she was concerned that there is nothing mandatory in the Comprehensive Sustainability Plan. She'd recently asked about clear cutting and was told it was required for stormwater ponds. She said she was concerned that there's nothing holding people accountable.

Boyle said the UDO is an enforcement document, while the Comprehensive Sustainability Plan is more of a visionary document and is not binding. The Planning Board and Board of Commissioners are to use their discretionary authority to decide if a project aligns with the plan or not.

Boyle also added that there are no Planning Board representative positions for the Tree and Water/Sewer Boards, so those appointments made in April were moot. However, she said she would notify Planning Board members of any vacancies on those boards; board members can serve on multiple boards in Hillsborough if they wish.

Schultz said there were no updates for the Parks and Recreation Board.

In member Robert Iglesias's absence, Senior Planner Tom King said the Board of Adjustment had elected a chair and vice-chair at its last meeting.

8. Adjournment

Motion: Chandler moved to adjourn the meeting. Giglia seconded.

Vote: 8-0

Casadonte adjourned the meeting at 9:00 p.m.

Respectfully submitted,



Molly Boyle, Planner II
Staff support to the Planning Board

Approved: May 16, 2024