

Minutes

PLANNING BOARD AND BOARD OF COMMISSIONERS

Joint public hearing

7 p.m. Aug. 15, 2024

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



Present

Town Board: Mayor Mark Bell and commissioners Meaghun Darub, Robb English, Matt Hughes and Evelyn Lloyd

Planning Board: Chair Frank Casadonte, Vice Chair Hooper Schultz, John Giglia, Jeanette Benjey, Robert Iglesias, Tiffney Marley and Christian Schmidt

Absent: Board of Commissioners: Commissioner Kathleen Ferguson; Planning Board: Members Saru Salvi and Sherra Lawrence

Staff: Planning and Economic Development Manager Shannan Campbell, Senior Planner Tom King, Planner II Molly Boyle, Environmental Engineering Supervisor Bryant Green, Stormwater and Environmental Services Manager Terry Hackett and Town Attorney Bob Hornik

1. Call to order and confirmation of quorum

Mayor Mark Bell called the meeting to order at 7 p.m. and confirmed a quorum. Bell noted the length of the agenda and suggested a time check after two hours. Also, Bell disclosed that he and Commissioner Meaghan Darub are board members for Porch Hillsborough, which has a relationship with the Hillsborough Community Gardens. Hillsborough Community Gardens was related to items 5E and 5F on the agenda. No other board members or commissioners are involved with Porch Hillsborough or the Hillsborough Community Gardens. Bell then passed the gavel to Planning Board Chair Frank Casadonte.

2. Agenda changes and approval

There were no changes. The agenda stood as presented.

Motion: Planning Board Vice Chair Hooper Schultz moved to approve the agenda as presented. Member Christian Schmidt seconded.

Vote: 7-0. Motion passed.

3. Minutes review and approval

Minutes from Joint Public Hearing on May 16, 2024

Only Planning Board members voted on this item.

Motion: Planning Board member John Giglia moved to approve the May 16, 2024, minutes as presented. Schultz seconded.

Vote: 7-0. Motion passed.

4. Open the public hearing

Motion: Bell motioned to open the public hearing. Commissioner Matt Hughes seconded.

Vote: 12-0

5. Public hearing items

First, Planner II Molly Boyle reviewed the meeting logistics with the audience.

A. Annexation and rezoning request for “Waterstone South”

Boyle explained the original “Waterstone South” request did not list the PIN for a narrow strip of land along Interstate 40 (1.823 acres), and the PIN was not included in the legal ad for the original public hearing. So, the town was holding another hearing. She noted that residents who spoke at the previous hearings did not have to speak again unless they so wished. Their previous comments were summarized in the minutes for those hearing dates.

Eric Chupp, who represents Capkov Ventures, Inc., provided a summary of the proposal. He added that Capkov Ventures agreed to invest \$250,000 in town repairs and upgrades to the Elizabeth Grady Pumping Station. Chupp also noted that the University of North Carolina Hospital was not amenable to extending the proposed greenway to its property via the land strip along Interstate 40. Similarly, the current property owner of the land strip, who would grant a utilities easement for the proposed site, would not allow a greenway easement. Instead, Capkov is pursuing other greenway options on the east side of the proposed site.

Giglia posited where residents of the proposed development would grocery shop. The Aldi, Chupp suggested, and perhaps the increase in population could spur new the development of new grocery stores in town.

Darab asked Chupp to clarify a sidewalk shown on the master plan near A.L. Stanback Middle School and asked if Capkov had contacted Orange County Schools (OCS). Chupp said he would look into that sidewalk shown on the map and replied that he has not been in contact with OCS.

Public comment began with Jean Brooks, an Orange County resident. She shared photos with the boards depicting traffic typical along NC 86 at 2:30 p.m. near the proposed site. She is concerned the development is too large, would negatively impact wildlife and cause traffic congestion, and that there is a conflict of interest between an Orange County Board of Adjustment member and Capkov. She stated she would prefer to see single-family homes in the development instead of townhomes/apartments. Hughes asked her why single-family homes are preferred over townhomes. Brooks replied that townhomes provide too much population density. Brooks also expressed trespassing concerns by residents of the proposed development through Scarlett Mountain Road instead of using designated sidewalks and crosswalks along Hwy 86.

Next, Orange County resident Robert Sparrow shared his concern about the additional traffic the proposed site would create and the safety of the proposed sidewalk along NC 86. He also shared concerns with potential residents trespassing on his property on Scarlett Mountain Road and that the proposed development would decrease the value of the adjacent properties.

Schmidt asked Chupp to provide a concise traffic assessment for the request.

Boyle announced the end of public comment for this item.

Chupp referenced an extensive traffic impact study ranging south on New Hope Church Road, NC 86, the intersection of Old NC 86 and Interstate 40 and the intersection of Waterstone Drive and NC 86. The study proved a minor traffic increase for vehicles from the proposed development. The study and NCDOT recommend another traffic impact study upon completion of Phase I of the proposed project. Capkov will be responsible for signalization at Waterstone Drive and NC 86 if signalization levels are triggered.

Planning Board Member Robert Iglesias asked if the parameters for signalization were known. Chupp suggested a Uniform Traffic Code Level D or F Level of Service (LOS) would necessitate signalization, but the information can be found in the impact study. Schmidt added the impact study showed Phase I completion would result in Level D or F LOS at Waterstone Drive and NC 86. Thus, signalization is anticipated.

Following, Hughes applauded Capkov for proactively addressing the traffic impact and noted the delay in action from NCDOT. Chupp explained Capkov will be responsible for the infrastructure improvements after Phase I, not NCDOT. Clarifying, Casadonte remarked the signalization improvements would be made after Phase I, and Chupp responded lane improvements would be made before Phase I began.

However, Giglia expressed strong concern for the traffic impact on Old NC 86 by the proposed project. Chupp explained that the impact study showed little impact on Old NC 86. Giglia shared his view that residents of the proposed project would use Old NC 86 when driving to the grocery store or town.

Finally, Casadonte sought the opinions from Mrs. Brooks and Mr. Sparrow on the need for signalization at Scarlett Mountain Road and Highway 86, and Mr. Sparrow expressed the need for some sort of change to increase safety.

No action was taken.

B. Unified Development Ordinance (UDO) text amendments to Section 6 *Development Standards*, Subsections 6.1 *Purpose and Intent* and 6.20.16 *Stormwater Management – Riparian Buffers*

Stormwater and Environmental Services Manager for the Town of Hillsborough Terry Hackett provided background regarding the text amendments brought before the boards. The amendments were previously reviewed by the town board, but unanticipated changes were needed by the state based on legal challenges in other municipalities. Hackett explained the UDO text edits clarify riparian buffer rules application regardless of development or not. Next, Boyle displayed the text amendment edits. At Casadonte's request, Hackett summarized the edits, which were needed for clarifying items in the table for future possibilities.

No action was taken, and no speakers were present. The boards took a five minute break at 7:57 p.m.

C. Paliouras Tract Master Plan amendment

First, Boyle provided background of the Paliouras Tract, which is a 25-acre tract at the NC 86 South and Interstate 85 interchange. In 2019, the property was annexed and rezoned Entranceway Special Use Permit (ESU) with a master plan. It allowed for a car dealership, retail, and hotel/retail uses. The applicant is seeking to amend the master plan so lots 1, 2 and 8 would allow multifamily residential for development as apartments. Also, it proposes 260 apartments with 30% of the units being affordable for those earning 70% of the average mean income (AMI) and a maximum building height of 60 ft for the apartments.

Next, Boyle provided comments from the planning staff, including the applicant met application requirements in the UDO. Also, the proposal is consistent with the Planned Growth Pattern for the town but inconsistent with the Future Land Use Map and Plan. She also informed the commissioners of their ability to approve the amendment despite the inconsistency. Boyle reminded the boards there are 877 approved residential units that have not yet been built, most of which are apartments. According to the utilities department staff regarding the proposed changes, multifamily development will use more water and discharge more sewer than a hotel at this location, and the town's hydraulic sewer modeling does not account for a higher density use

such as this. Boyle also highlighted that the town is currently updating its water system master plan, and the town is unable to estimate the impact of the proposed amendment on the utilities until the plan is finished. Utilities staff says the project will necessitate offsite utilities improvements.

If the commissioners approve the amendment, the town staff would recommend the following conditions:

- Add the affordable housing commitment as a condition to the master plan.
- Require the affordable units to be reserved for 99 years.
- Require a crosswalk at NC 86 South and Paliouras Court/Hampton Point Boulevard.
- Require offsite utility improvements to offset the impact of the development.

Bell asked if the 60 ft building height was an increase from the approved master plan. Boyle will confirm.

Next, Seth Coker presented representing Comet Development. He explained the 60 ft height detailed in the amendment would allow for the four-story buildings Comet constructs, which are 57 ft. He provided a conceptual design of the proposed change. Comet is looking for change of use and addressed three aspects of the change as follows.

- Water/sewer- Coker said that state standards are higher for hotels than multifamily units.
- Affordable housing- Residential space can assist in creating affordable housing better than a hotel.
- Since both a hotel and residential will require a development agreement, Comet would like the town's political consent before investing money in engineering plans and modeling of the proposed amendment.

Hughes asked about the figure of 70% AMI and the loss of commercial space for the town. Coker stated the lower AMI was an enticement for the town to approve, with 70% AMI units being more affordable than 80% AMI units.

Giglia clarified that the units would be apartment units.

Bell asked how the affordable housing aspect would be managed. Coker pointed to his currently managed apartments in Pittsboro, NC. The apartments would be self-reliant with a management company. Also, Coker described the location of the lots as unfavorable to retail. He stated that the site is suitable for a hotel, but current funding for hoteliers is challenging.

Bell asked Boyle about the county land use for adjacent lots. Campbell stated it was favorable to residential, but a telecommunication tower is in the middle of the adjacent lot.

Next, public comments began.

Dajer Fernandez, resident of Hillsborough, identified the similarities of the development with the Streets of South Point. He stated the values of retail space in lots 1 and 2 and the recommended crosswalk. He also encouraged an increase in walkability to build community.

No action was taken.

D. UDO text amendment to Section 5.2.8, *Dwelling, Accessory*

First, Boyle gave a summary of the application, which proposes allowing detached Attached Dwelling Units (ADU) on private streets. Currently, attached ADUs are allowed on private streets, but language in the UDO does not support detached units on private streets. Staff noted that street access standards should be held the

same for attached and detached ADUs. However, private streets should meet a minimum standard in the interest of public health, safety and welfare.

Staff comments included:

- UDO Sec. 6.21.4 and the town streets manual provide private street standards.
- A number of older streets in town pre-date the standards.
- The private portion of Daphne Drive, where the applicant lives, meets the town's private street standards.

Utility comments:

- Many of the existing private streets have undersized, outdated utilities without deeded easements, and the Utilities Department does not support development on streets such as these.

Staff recommended the following conditions/additional language to the text amendment:

- An ADU shall be allowed on a private street under the following conditions:
 - A deeded public utility easement shall be required, and existing utility lines shall be upsized if deemed necessary by the utilities department, and
 - the private street providing access to the ADU must comply to UDO Sec. 6.21.4 standards.

For context, Boyle provided images of Daphne Drive and other private streets of varying conditions in town.

Next, the applicant, Natalie Dolgireff, addressed the board. She provided a background to her property. She stated that no ADUs have been built on private roads since the UDO language around ADUs built on private roads changed. She also highlighted the inequality in health and public safety standards for attached ADUs, detached ADUs, and existing home renovations.

Addressing the staff, Schmidt asked why detached ADUs were not allowed. Boyle stated that the UDO ordinance for attached ADUs changed in 2021 because an applicant had requested it, but detached units were not addressed. Town Planning Manager Shannan Campbell continued, stating that town staff do not recommend ADUs on private streets. Green explained that attached ADUs are serviced through the existing structures crawl space. Also, many private streets that are legacy streets are challenging to access because the utility easements are unclear.

Hughes pondered how to reconcile staff's private street ADU recommendations for ADUs with the town's goals for affordable housing. Green acknowledged the dilemma and reiterated the benefits of public streets. Hughes then asked, how many private streets are in the town. Campbell pointed to a map in the agenda packet and acknowledged the considerable cost for property owners to comply with staff recommendations for ADUs. But Campbell reiterated the public safety aspect of the town staff recommendations. Only four units are allowed on private streets by the town's UDO, but the proposed change would double that.

Darub asked if detached ADUs could be allowed if the private streets were found sufficient. Boyle agreed and pointed to the staff recommendations for the application.

Bell asked about the statistics for all ADUs built since the text amendment in 2021. Campbell told of a number of inquiries regarding detached ADUs on private streets, but the town has denied them since the UDO currently does not allow them. Campbell will research how many total ADUs have been built.

Casadonte asked if there were continuing issues with utilities on public streets. Green stated that the addition of ADUs when feasible need to be up to town standards and the financial responsibility is up to the builder.

Hughes noted that many of the private streets are out of the town limits but in the Extraterritorial Judicial Authority (ETJ). Thus, the property owners cannot vote but still must follow town ordinances.

Public comment began.

Brynn Shreiner, a property owner in Hillsborough on a private street, stated he did not understand why the UDO allows a detached garage on a private street but not a detached ADU. He would like a change to 5.2.8.1.b so he could build a detached ADU and would accept the financial burden to lay utilities to a public street.

Phil Marsosudiro, an Orange County resident in the Hillsborough ETJ, supports the change for detached ADUs on private streets. He addressed UDO 5.2.8.1.b and 5.2.8.1.f. He noted that town utilities do not exist in the ETJ so his property should be exempt from 5.2.8.1.f.

Public comment ended and no action was taken.

E. Flood Damage Prevention Ordinance text amendment to Section 3C *General Provisions - Establishment of Floodplain Development Permit*

Senior Planner Tom King described the requested text amendments and provided background. First is an amendment to the flood damage prevention ordinance. The staff simplified 3.c.2.1 and added construction of private roads across the floodplain, as well as accessory utility service lines. King relayed that additions to the ordinance include agricultural resources. The intention was to keep major development out of the floodplain. NC Emergency Management has agreed to the statutes. Permits will still be needed to develop the amended uses in floodplain.

Casadonte determined that the boards understood the changes.

F. UDO text amendment to Section 3.13 *Administrative Procedures - Site Plan Review*

King stated that single-family homes and smaller commercial structures were exempt from full site plan review under UDO Section 3.13. Based on recent applications, the staff felt the review process did not align with the town's affordable housing goals. As currently written, the UDO requires full site plan review for all multi-family dwellings, including duplexes, triplexes, and quadplexes. The proposed text amendment would exempt those dwellings from full site plan review. However, five dwelling units or greater would still have to go through site plan approval. King described the essence of the changes is to clean up the language.

Schmidt inquired if the town has zoning inspectors, and King replied that town Planning staff fills that role.

No action was taken.

G. UDO text amendment to Section 5.1.8 *Use Table for Non-residential Districts*

Boyle introduced the application, giving a brief history. It involves two parcels, 16.43 acres in total, on US 70 East. The House at Gatewood, a restaurant, is located on one and the other is undeveloped. The parcels are zoned General Commercial (GC), and the application proposes to allow multifamily homes in the general commercial district subject to a Special Use Permit (SUP).

Planning staff's comments were as follows:

- The changes would require amending Section 4.2.5 covering the purpose and intent of General Commercial (GC) district.
- The future land use map and plan may also need to be updated.
- The text amendment would apply to all GC parcels in town.
- The town planning manager would prefer to evaluate the locations for mixed use and multifamily after the town updates the UDO, future land use map and plan, and zoning map.
- The town planning manager suggested the applicant apply to rezone the parcels instead of the text amendment. However, the applicant preferred the text amendment.
- Utility capacity is not guaranteed if the parcels are rezoned.
- The Utilities Department is dubious that the needed capacity exists for multifamily residential development at this location.

Finally, Campbell reiterated that the application is for a text amendment to GC districts. It is not a rezoning application.

Casadonte asked if Utilities had done any modeling. Green explained initial modeling disclosed that the parcels drain to a small pumping station in a cemetery without expansion space. Also, the developers would be financially responsible for any upgrades to the town systems.

Schultz asked if the Planning Board decisions should be based on current utility capacity or future improvements to the capacity. Town Attorney Bob Hornik said decisions can be delayed.

Next, Hughes asked the staff to clarify allowing rezoning GC and multifamily on the parcel. Campbell explained the proposed text amendment would allow all GC parcels in town to submit Special Use Permit applications for multi-family development. Hughes recognized that the GC parcels would still need to apply for SUPs.

Following, the applicant, Jenn Spada, described the need for a text amendment. She said adding residential to commercial would allow for mixed land uses, increasing density aligning with town ideals. It would also increase housing options and expand bus routes. By requiring a SUP, Spada noted, the town would be involved in projects developed on GC sites and encourage commercial developments by guaranteeing populations nearby.

Evelyn Lloyd stated that Commissioner Kathleen Ferguson is absent. However, Ferguson has strong feelings regarding the commercial zoning along US 70, and that she did not think Ferguson would support more residential zoning on US 70.

Schmidt suggested allowing vertical mixed-use (first floor commercial, second floor residential). Spada replied that would be acceptable to her. Maintaining GC commercial sites, expressed Schmidt, is important. Bell acknowledged the similarities between the application site and the Daniel Boone site with regards to the town's desire for a mix of residential and commercial space.

Finally, Darub asked if the staff recommendations would apply to all GC parcels. Boyle confirmed that if the text amendment was approved, the standards would apply to all GC parcels.

No action was taken.

6. Close the public hearing

Motion: Schultz moved to close the public hearing for this item. Hughes seconded.

Vote: 12-0

The Board of Commissioners were excused at 9:26 p.m.

7. Planning Board recommendations

Motion: Schultz moved to recommend approval of items 5b and 5e. Schmidt seconded.

Vote: 7-0

Boyle told the Planning Board that the recommendation for Waterstone South should not be delayed to the next Planning Board meeting. Since it had been more than 30 days since the Planning Board first heard the item, the applicant could request to go forward to the Board of Commissioners without the Planning Board recommendation. The board discussed the Waterstone South project. Boyle introduced the new Planning Board member, Tiffney Marley, who acknowledged her concerns around congestions and traffic. Casadonte said the board will discuss items 5c, 5d, 5f, and 5g at the next Planning Board meeting.

Motion: Schmidt motioned to recommend item 5A to town council. Schultz seconded.

Vote: 5-1. (Ayes: 5, Nays: 1, Abstained: 1)

8. Updates

Boyle provided town updates as follows:

- An offer was extended for a new town Planning Technician.
- Campbell sent out a Request for Proposals for zoning code enforcement.

9. Adjournment

Motion: Schultz motioned to adjourn the meeting. Schmidt seconded.

Vote: 7-0

Casadonte adjourned the joint public hearing at 9:33 p.m.

Respectfully submitted,



Molly Boyle, Planner II
Staff support to the Planning Board

Approved: September 19, 2024