

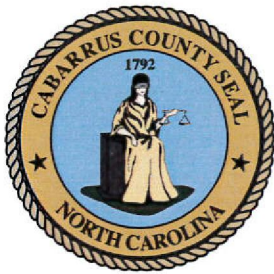


Cabarrus County Government

Cabarrus County Planning and Zoning Commission Meeting
September 12, 2017 @ 7:00 P.M.
Board of Commissioners Meeting Room
Cabarrus County Governmental Center

Agenda

1. Oath of Office to Newly Appointed Members
2. Selection of Chair and Vice-Chair, also appoint a member to be Chair of the Board in the absence of the Chair and Vice-Chair
3. Roll Call
4. Approval of August 8, 2017 Planning and Zoning Commission Meeting Minutes (Tentative)
5. **New Business – Planning Board Function:**
 - TEXT2017-00007** - Proposed Text Amendment to Zoning Ordinance, Chapter 4, Overlay Districts and Zones
 - TEXT2017-00009** - Proposed Text Amendment to Zoning Ordinance, Chapter 3 Establishment of Zones
6. Directors Report
7. Legal Update
8. Training to be held after the Business portion of the meeting



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Ms. Susie Morris, Manager, Planning and Zoning, called the meeting to order at 7:00 p.m. Members present Ms. Mary Blakeney, Mr. Jeffrey Corley, Mr. Adam Dagenhart, Ms. Holly Grimsley, Mr. James Litaker, Mr. Andrew Nance, Mr. Charles Paxton, Mr. Chris Pinto, Mr. Richard Price, Mr. Brent Rockett, Mr. Stephen Wise and Mr. Jerry Wood, Jr. Attending from the Planning and Zoning Division were, Ms. Susie Morris, Planning and Zoning, Manager, Mr. Jason Earliwine, Sr. Planner, Ms. Arlena Roberts, Clerk to the Board and Mr. Richard Koch, County Attorney.

The Oath of Office was administered to new members Ms. Holly Grimsley, Mr. Andrew Nance and Mr. Jerry Wood, Jr.

Mr. Richard Price nominated, seconded by Mr. James Litaker, Mr. Chris Pinto as the Chair of the Planning and Zoning Commission. There being no other nominations, Mr. Pinto was appointed by Affirmation.

Mr. Richard Price nominated, seconded by Mr. James Litaker to appoint Mr. Jeff Corley as the Vice-Chair of the Planning and Zoning Commission. There being no other nominations, Mr. Corley was appointed by Affirmation.

Mr. James Litaker nominated, seconded by Mr. Charles Paxton to appoint Mr. Brent Rockett as the Chair of the Planning and Zoning Commission in the absence of both the Chair and Vice-Chair of the Planning and Zoning Commission. There being no other nominations, Mr. Rockett was appointed by Affirmation.

Roll Call

The August 8, 2017, Planning and Zoning Commission meeting minutes have not been completed. Tabled until next meeting

New Business – Planning Board Function:

The Chair introduced the proposed text amendments to Zoning Ordinance.

Proposed Text Amendment to Zoning Ordinance Text2017-00007 – Chapter 4, Overlay Districts and Zones

Ms. Susie Morris, Planning and Zoning Manager addressed the Board presenting Text2017-00007, Chapter 4, Overlay Districts and Zones.

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She said the proposed change is related to the buffer requirements for water bodies. If the Board remembers, the original buffers that the County has had in place since around 1993 are related to the 404 Permit with the Reservoir. We have had some conversations about that and that people cannot ask for variances on that because it is tied to that permit.

Over the years, the Ordinance has been changed and some additional standards were added. The original language did not include intermittent streams, ponds or impoundments and it also did not include wetlands.

The proposed amendment is to modify the text, to revert back to the original 404 Permit requirements that the County is subject to as part of that Army Corps permit. She said it would be for perennial streams and that would still be the calculation, so it would undulate with the streams. The other part of the proposal is to keep a buffer around wetlands, which would just be a flat 25 foot buffer.

She said the part about intermittent streams and impoundments, unless that pond was located along the stream or was fed by a stream, those requirements would go away. Essentially, it is perennials, wetlands and ponds that are located along streams.

She said this kind of dovetails on the amendments that the Board saw a few months ago with the nonconforming lots. People were trying to meet the buffers on what may have been just an old farm pond or they may have a stream located on their property that actually is a perennial and then there is an unnamed tributary that comes off it and then that has to be buffered as well.

She said just trying to provide a little bit more flexibility when it comes to those nonconforming lots. She said it has strikethrough text and then the red text. Again, the calculations stay, so the minimum for the perennial would still be between 50 feet and 120 feet, plus that 20 foot no build buffer. But then the other buffer would be for the wetlands.

We also tried to clarify that in that no build buffer, that we allow minimum land disturbance to take place so people could actually clear underbrush there or maybe do a little bit of grading if they needed too. They would be able to have some activity in that no build buffer. But, as far as the actual stream buffer itself, that language is not proposed to change for the perennials.

Mr. Paxton asked if this was a staff change or did someone ask for a change.

Ms. Morris said we have had a few situations. A couple of years ago we had a gentleman who was trying to add on to his house. We have a lot of properties out there where there are actually roads through the buffer or roads around ponds. So, we kind of dealt with that at that time. She thinks it was probably about three years ago.

We have had some other situations that have come up, where we have had to tell people we are sorry, but you cannot ask for a variance. We have one particular case right now and we are working

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with those folks. They wanted to submit a variance and we had to tell them that they could not submit a variance.

Again, it is just kind of looking at it from the standpoint where a lot of the properties that we have left out in the County are nonconforming lots. They may have been created before we had a zoning ordinance period, because we did not have zoning until 1983. They may have been created before the reservoir was created itself and these other buffers came into play. There are a lot of different situations, but we have had folks that we had to say we are sorry too. She said either they figured it out or they moved the house or something like that. We do have one currently that we are trying to work through some issues with that applicant

Mr. Jeff Corley asked if Soil and Water has commented at all.

Ms. Morris said they have not. Typically, when it came to these buffers, the only comments that we heard from Soil and Water was that they did want that 50 foot buffer maintained, so that if they did an EEP project the buffer would be in place. Because they want the non-disturbed area to come in and do the restorations. She said that particular language is not changing. If you wanted to put any type of a trail near a stream it would have to be at least that 50 feet off of the bank or it might be 60. She thinks it is 60, to get the 50 and then some leeway. But historically, that is the only type of comments they have ever had for us related to this or that they have provided on a regular basis.

Mr. Corley asked Ms. Morris to explain that if a new subdivision came in today and there were perennial and intermittent streams on that property, how a development today with these standards would look different than with these proposed changes?

Ms. Morris said if a development came today and let's say the Rocky River was located in the development, they would have to have the minimum of the 50 feet and the maximum of the 120 feet and then the 20 foot buffer and it would undulate with the stream.

We also have the standard that says if you are creating a lot, if that lot is less than one acre, the river stream overlay property cannot count towards the overall acreage for that lot. So, it bumps it up. If it is more than an acre, 50 percent still has to be out and they have to have 1500 square feet of a buildable area. As far as the perennial streams, that side of it would not change. But, if there was an unnamed tributary, if there was what a lot of people consider a wet weather ditch on the property, which actually is some type of intermittent stream, what we would use at the staff level would be the USGS maps; anything that is a blue line stream, anything that is a dashed line now, would not have to be buffered unless it was wetlands.

Ms. Morris said some of these changes did come about during the time when the IBT (Interbasin Transfer) was being considered. There may be some question out there as to whether or not this is somehow tied to that transfer. But to this point, it looks like the certificate was issued to Concord and Kannapolis. But she believes Concord would like to have clarification; whether that is from the Attorney or whether that is from the folks at EMC that issued the certificate, to make sure that what Cabarrus County does, or does not do, does not impact that IBT for somebody to open it back

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up for discussion or to say hey, they are not doing what they need to do so, that water line to Albemarle needs to be turned off.

We will deal with that side of it. If the Board would like to make a recommendation this evening, just know that it may or may not proceed to the Commissioners next month. We may have to work through some legal issues before we take it to the Commissioners or it may not make it to the Commissioners. Just so that you know everything that we know to make your decision.

Mr. Charles Paxton **MOTIONED, SECONDED** by Ms. Mary Blakeney to recommend **APPROVAL** of TEXT2017-00007 – Chapter 4, Overlay Districts and Zones, as presented by staff. He said based on the knowledge that it improves the situation instead of making the language unclarified at this point. The vote was 7 to 2 with Mr. Corley and Mr. Adam Dagenhart voting against. The recommendation passes with a simple majority vote.

Ms. Morris said for the new Board members this is a recommendation to the Board of Commissioners. Once it makes it to them, they take your recommendation under advisement but sometimes they do change things.

Mr. Dagenhart said he wishes they would have discussed it.

Mr. Koch said Mr. Corley handed him the Inter-Basin Transfer Certificate right before the meeting started. It is quite a few pages (35 pages) and he knows that he read it a long time ago when it first passed. He was trying to see if there was anything in it that addressed any County ordinances or issues. He has not seen anything at this point. It does address city issues, particularly those of the City of Kannapolis and the City of Concord, who were the original applicants for the Inter-Basin Transfer and it does reference the UDO in a couple of places where the County never adopted the UDO. After a quick perusal, there is nothing in here that he has seen that would impact the ability of the County to make this ordinance change.

Mr. Corley said he will check and put their stamp on it in the morning.

Mr. Koch thinks they would like to have an opportunity to look at it a little bit further to see if there is anything in there that might be affected by this proposed change. If there is, we will deal with it before it goes to the Board of Commissioners.

Ms. Morris said the document that Mr. Corley and Mr. Koch are referring to is the last document that she had on record. There is a possibility that there could be something else out there. But, based on the County's file, this was the last formal document that we had from the State.

Mr. Koch said it is a copy of the original certificate approving the Inter-Basin Transfer, dated January 25, 2007. He is not aware of anything later than that.

Ms. Morris asked if the Board wanted to keep the motion in place or go back and have additional discussion.

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The Chair said yes, he believes that Mr. Dagenhart wants some additional discussion.

Mr. Dagenhart said staff normally gives the presentation and then we discuss it. He said from Mr. Corley's and my perspective, there are subdivisions that were County approved years ago and there are no buffers. He said every time we have a rain event we have problems. He said do we approve something that benefits a very small percentage, i.e. those that are trying to develop or trying to protect those other property owners along those streams; Old South, Zemosa Acres.

Obviously, these are in the City limits now but they were approved by the County back when there probably wasn't any zoning, but we are basically going back to that on these intermittent streams. He does not know if that is something that we need to think about more.

Ms. Morris said from staff perspective she can tell you that when those particular subdivisions were approved, the County was not subject to any kind of stormwater requirements until July 1, 2007. There may be easements in subdivisions, but it was up to the homeowners association to take care of them or those easements came along with a DOT street that was improved. Those two in particular, definitely, were prior to anything happening in 2007 and were provided utilities from the City at that time.

Mr. Koch thinks at least one of those, if not both of them, were before there was even a reservoir and a 404 permit for that and certainly before the Inter-Basin Transfer.

Ms. Morris said just to remind the Board, the County is tipped-in because of Concord, Kannapolis and Harrisburg. You all know and you see in your packets that we require stormwater if it is required.

Our threshold, is if it is one acre or cumulative one acre disturbed. She thinks the City's is different, it is 20,000 disturbed or impervious and then the stormwater kicks in. But since ours is based on the State's model ordinance, one acre or cumulative one acre, but we do have stormwater standards now in place and the perennials would remain in place. She said it is really the intermittent piece that we need to find out about.

Mr. Corley said maybe his opinion is skewed just because he deals with this almost on a regular basis. It is a quality of life issue, it is what you value in your community and in the land. He always look when you roll back environmental ordinances like this; like right now you have protection on your big streams and your smaller tributaries. What we are doing is, we are saying we are no longer going to really protect those smaller tributaries. Which he thinks is pretty unfortunate. We are in a period of really fast growth. How much of that growth will be in unincorporated areas, he does not know. We have these great intermittent buffers and he sees every day the value of it in the new construction development of a subdivision. The way that engineers have to design that site to interact with that buffer is completely different if you tell me is all I have to worry about is this big stream and everything else I don't have to worry about anymore. That kind of over simplifies it; he understands that.

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He said that is where he comes from. It is a value you thing and we are growing and we are still growing very fast and he hates the idea of accepting less. Because what we have protected, has kind of made us what we are and what we are kind of known for. But that is his unique perspective.

Mr. Dagenhart said maybe we write into the text that in this particular case the ones that cannot meet the buffers. You certainly can get a certified stream specialist and the State to concur that it is not an intermittent stream. There is that option, at least we (Concord) have that option, whether the County has an option or not he is not sure.

Ms. Morris said yes, that is in the language. She said it goes either way, if there is not a stream or if there is a stream that is identified, then they will have to hire a professional to classify that stream and get concurrence.

Mr. Dagenhart said with all the events that have taken place these last couple of weeks, especially with Houston; they do not have zoning. He said we are not on the coast but, it could still happen. Nobody wants to walk outside and see a 20 foot wide ditch full of water, in their backyard, right next to their house.

Mr. Paxton said if this passes, would this be less on us or more on us for the landowner? He guesses it depends on who the landowner is.

Ms. Morris said it potentially would be less. But the owner would need to be educated that just because that buffer goes away, that does not mean that the intermittent stream is going away. She said a lot of people talk about it being a wet weather ditch that it is dry in the summer and sometimes we have water in the winter; but what if you have a significant rain event?

She gave a presentation this morning to the Realtors Association about flooding in Cabarrus County. It is all interrelated. In this particular case, the permit for the reservoir established a series of you are going to do X, Y and Z Cabarrus County. Cabarrus County has held the line on not only the perennial streams, but also the intermittent streams, by not allowing people to have variances. Some of the other jurisdictions allow people to apply for variances. We have really tried to hold the line, but it is getting to the point where if you have the right circumstances it can render a property potentially unusable, because we do not allow the variance option on this particular item that is part of the Ordinance. She said that would be an overall County decision, if we were to start allowing variances on those buffers.

Mr. Paxton said staff views it more as a positive instead of a negative to make these proposed changes, is that correct?

Ms. Morris said the proposed changes will help potentially, nonconforming lots. There is a difference between a new development and an existing lot. It is trying to find the balance. The other option would be to approach Legal to have the conversation with the County Manager's office and the Commissioners to open up for people to allow variances, instead of changing the language.

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Mr. Koch said at the risk of speaking for the Commissioners and the County Manager, he thinks the prevailing sentiment is to have less regulations rather than more; in a general sense that is. He said that takes different forms depending on which part you are talking about. He thinks it would be fair to say, that it would be problematic to have an already created lot or parcel that because of strict setbacks related to water bodies and the like that would make the lot unusable. In particular, if it is a residential lot to make it unusable for someone to build a house on. He thinks that is part of the dynamic here of trying to deal with some of the nonconforming lots and some others that were created prior to the recent subdivisions, where all of that gets taken into account on the front end. There is a number of these people, he is not sure how big that number is, but certainly it is more than just one or two, they have a situation where the after the fact end position of these buffers on their property affects their ability to use it in any normal or realistic way.

We try to balance, as Ms. Morris says, those kind of situations where you basically have taken somebody who bought a piece of property or owned it under certain regulations and now there have been these subsequent ones that have been imposed on a lot and it makes it so they cannot use it in some sort of reasonable way. He is not talking about building out over the waterbody. He is talking about some of the setbacks based on the configurations of some of these lots, basically, leaves you with a building envelop that is relatively small or even unbuildable. He said there is some sentiment to try and not to let some of these regulations create that sort of a situation for people.

He said it is not a huge problem and the subsequent subdivisions take a lot of this into account. They are able to design the whole subdivision to deal with it. But, that is not the case with some of these. The attempt is to try and balance it. Who knows whether the setbacks that are imposed by these different permits are the right amount? He does not know, he does not have the expertise to decide. He said it just has that affect in certain circumstances; that is part of it.

As Ms. Morris said, we have been trying to hold the line on variances. But, then that gets into a very individual situation and some not consistent results. At least, when you have an Ordinance and you say you cannot have any variances from those setbacks, at least it is dealt with consistently for everybody who is affected by that particular ordinance, as opposed to someone coming in with a more sympathetic argument to the Board, because you will be hearing those and maybe somebody who is for whatever reason not quite so sympathetic, but the situations might not be all that much different. Who is to say? But that is the idea.

He said if the permits have a certain minimum amount that they consider acceptable, then you would have to ask yourself the question, why would we impose something greater than that. Particularly, again if it is going to create issues for certain people with certain property after acquired ordinance changes. He said that is a rhetorical question, but it is something to think about.

When they come in to see staff, they are like put yourself in my shoes if you owned this lot? We have these regulations that are preventing you from doing something that otherwise would be considered reasonable and the requirements are greater because we feel that there is a need to do that, which is really an appropriate reasoning to try to protect waterbodies and our streams and

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arguably intermittent streams. How would you feel if it were your lot and you could not do what you thought you ought to be able to do with it because of that particular configuration?

Mr. Koch said those are some of the issues that have come up. This is an attempt to try to address that in a way that seemed fairly reasonable. The proposed changes were made and he does not know what the right answer is and that is why the Board makes a recommendation. He said there is nothing illegal about any of it, so the Board has to decide which way they want to go with it.

He said if the Board wants to change their decision from tonight, under our rules, it would have to be from someone who voted for it that would make a new motion. It cannot be Mr. Dagenhart or Mr. Corley since they voted against it.

He does not know if that is part of having this additional discussion, since you already had a vote on it. But if that is the sentiment and you want to defer it, it would have to come from someone other than Mr. Dagenhart and Mr. Corley.

Mr. Litaker **MOTIONED** to have the first motion deferred to have more discussion.

Mr. Koch thinks that the **MOTION** would also have to include rescinding the prior vote and then defer it.

Mr. Litaker **MOTIONED, SECONDED** by Mr. Steve Wise, to rescind the prior vote and defer it to give more time to bring more information to the table to make a better decision on this matter.

Mr. Price said his understanding is that we are not under any kind of a time restraint in sending this to the Commissioners; is that correct?

Ms. Morris thinks the ones that we are working with would like an answer sooner rather than later. But they do not have the option of the variance, so if the Board wants additional information then we will just have to let them know. They were aware that we would be working through the process and that there is no guarantee just because we bring it to the Board, that it makes it way on to the Board of Commissioners or that the Commissioners will approve it.

Mr. Price asked if Ms. Morris foresees any problems with the Commissioners, if we wait until October to send that to them.

Ms. Morris doesn't think so. Normally, we try not to take items to the Board when we start getting into November and December, just because things are so hectic and the agendas tend to get a little bit bigger.

Mr. Corley said can't we have further discussion now? To him this is a two sided thing. It feels to him very administrative. We are going to remove these buffer protections so that we allow these minutely, technically, possible things that prevent people from doing exactly what they want to do and instead of dealing with that through a procedures.

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He said what keeps coming to his mind is what we talked about with WSACC. They changed the Ordinance and now all of a sudden they were out of compliance and they have a front setback issue. Well, they applied for a variance and they got it or at least some semblance of a variance. We are not saying let's just eliminate setbacks. He is concerned of the way we are fixing it. He certainly understands the hardship in the existing lots and he gets it. But he is not comfortable with the fix for what we are trying to solve just feels a little overblown, to just eliminate this wholesale and move forward.

His comments to everyone else is, if you do not see that, he is happy with his vote and he hopes everyone is happy with their vote. He is not asking that anyone change their vote. To him it feels like we are not completely in sync on the way we have chosen to fix the problem.

Mr. Litaker thought Mr. Corley wanted staff to bring back more information.

Mr. Corley said that is not affecting his vote at all; he wants to make that clear. That is a completely separate issue that we just have to resolve administratively on our side; to make sure we are not risking anything bigger. It has absolutely nothing to do with his no vote at all.

Ms. Morris said typically, when something like this comes up, it would be handled through a variance application. But because of the tie to the 404 permit we held the line and said you cannot ask for a variance. As Mr. Koch mentioned earlier, you may allow somebody one night to encroach 70 feet into a 150 foot buffer and then the next night you may allow 10 feet or nothing.

Mr. Corley said don't we do that though? We do that with every single variance we hear; we do that right? He said it feels like we do, whether we are supposed to or not, it feels like we do.

Ms. Morris said she cannot tell him how many times this has come up over the years. We have typically held the line. Again, the alternative would be to try have the conversation about allowing the variances. Other jurisdictions allow variances, even though the original language which they had was tied to the 404 permit, but the legal opinion has been that we need to kind of tow the line; no variances.

She said it is becoming increasingly difficult for staff because it is more frequent. You all know that if there are properties left in Cabarrus County, especially smaller properties, there is probably a reason; either it will not perc or there are issues like this happening.

She said this was an attempt, we can go back and we can look at the language if there is different language or maybe it is a lesser buffer or legal can revisit the variance. She really does not have any good advice for the Board from a staff perspective at this point.

Mr. Steve Wise said if we left the text as is right now, those cases for variances would come before us every time?

Ms. Morris said correct.

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Mr. Wise asked if there were a lot of them getting ready to come; multiple cases?

Ms. Morris said no, at this point we have one that is on the table that we know about, but most of the time when people are working with a surveyor they figure out a way to make it work.

In this particular case, it is kind of the perfect storm. They have a perennial on the back of the property, they have a pond and a spillway and then there is also an intermittent. It is a very small nonconforming lot and the lot would not pass muster today; it is too small, it would not happen. She said when the surveyors come in and we are explaining to them the two issues, it is the same people and we hear it from them all of the time. It is the intermittent streams and it is the ponds. They say this is going to kill my client's project, this is going to cost them X amount of dollars and they did not plan for this.

Because when they go out to the field, there is something there they did not expect or sometimes on the flip side our aerial maps will show that there is a pond there and that pond is not there anymore because they drained it; so then we have to fight that battle.

Ms. Morris said it is an ongoing thing, it is a process; again, based on the fact that we have historically said you cannot ask for a variance. We thought if we kind of went to the middle ground, where it was maintaining and holding the line on the perennials, the wetlands and anything located along either of those, that that might be the middle where we still are in the 404 and we are still doing something and we haven't thrown the baby out with the bath water.

Mr. Dagenhart said we have a motion on the Table, if we vote on it can we open it back up for discussion tonight?

Mr. Koch thinks you have a motion from Mr. Litaker to rescind the prior vote and to defer it that was seconded by Mr. Wise, so that is the motion that is pending. You have been actually having a discussion on that motion albeit not directly on the issue of the motion, but nonetheless. He said there is no problem with that.

Mr. Litaker said he did it because he thought there would be more information brought and you are saying there is no more information to be brought next time?

Mr. Corley said right. What we are checking offline is simply, does that environmental impact statement mention the County buffers?

Mr. Litaker said so it is irrelevant?

Mr. Corley said right. He thinks Ms. Morris said it best, if we find something in there that looks bad, it will get intercepted at some point.

Mr. Litaker asked if it would be best that he remove his motion and go back to what we did.

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Mr. Koch said if you can get Mr. Wise to withdraw his second and you want to withdraw your motion then yes you can.

Mr. Dagenhart suggest that the Board carry on with the motion and then we discuss making the buffer smaller, not eliminating it, just smaller. He said kind of a medium between okay we got it, now we don't have it. He would rather see the Board do that and still protect and have some integrity on protecting the environment than to just say no.

Mr. Paxton said if we do that we would have to go back to staff and Ms. Morris will have to come up with some type of number; is that right Ms. Morris?

Ms. Morris said the Text Amendment Committee would be coming up with that.

Mr. Corley would argue though, like the situations that Mr. Koch mentioned that render that lot unbuildable, an extra ten or twenty feet is not going help you at all.

Mr. Koch would agree, seemingly it shouldn't. But, when you are talking about intermittent streams, which not all intermittent steams are created equal. Some of them are nothing more than just a ditch. How often the water runs through it he does not know. He is not trying to create odd ball situations. He is just trying to give some perspective on some of that.

He thinks for benefit of staff, if the idea is to go back and have staff look at it again with some direction from the Board, namely that we do not just eliminate completely any setbacks off of intermittent, that it may be something that is reduced, which has been suggested. That maybe Ms. Morris and the Committee might be able to come up with something that is acceptable to everyone. He said the Board knows more about this than the Commissioners do, he can assure them of that. They will certainly consider what the Board has spent time in trying to put together.

Mr. Price cannot image that we have enough inventory of those properties that we are looking at a widespread issue. He understands that there may be a few but by and large he does not think that we are looking at a whole lot. He is not going to call it like a tempest in a teapot, it is probably more than that, but at the same time he does not think that we are looking at anything that is earth changing.

Ms. Morris said if the variance was an option we would not be having any of these conversations.

Mr. Koch said it is kind of hard to know, because until it perhaps changes hands and the new owner wants to do something with it that is different, you just do not know. But you are right, Ms. Morris can tell you better than he can, the number and it is not opening the flood gates so to speak. It is not that kind of a situation at all, but it is kind of hard to evaluate in terms of numbers just because things change as property changes hands and people want to do different things with their property. He said it is not a static situation.

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Ms. Morris said it is one where most of the static comes from the surveyors on behalf of the property owner. Then they will tell the property owner that the County is keeping them from doing what they want with their property and then the property owner comes to the office.

A lot of times we will be talking to five or six different people about the same issue because then you have a real estate person that is involved or two real estate people, one that is selling and one on behalf of the buyer. She said it is a reoccurring item but again in most cases they either figure out a way to make it work and they change where they want to place the house or can acquire some additional property next door to make the lot bigger to meet the setbacks and to meet the buffers.

She said like the lot that is in question, that property could very easily be combined with a lot next door and we would not be having this conversation. They do not want to combine it with the lot next door, they want to sell it and they want to build on it.

She said our intermittent buffer is 30 feet, it is a flat 30 feet. It is not subject to the calculation with 10 on top of that, so it is a total of 40 feet on either side of an intermittent. Our perennial starts at 50 feet, plus the 20; so that is anywhere from 70 to 140.

The Chair said did Mr. Litaker rescind his motion.

Ms. Morris believes he tried too.

Mr. Koch said Mr. Dagenhart wanted him too, if he understood what is going on, is that right?

Mr. Dagenhart said no. He wanted him to keep it as long as we could open it up for discussion. That is what his question was, he did not want him to rescind it.

Mr. Koch said right.

Mr. Litaker motioned to take the offer off the table with the idea that we can discuss individual situations that are appropriate as they come along.

Mr. Koch said you do not have to motion to do that, you can just withdraw your motion if your second is willing to withdraw.

Mr. Litaker withdrew motion and Mr. Wise withdrew his second to the motion.

Mr. Dagenhart said but, we do not have a variance process for those?

Mr. Koch said not at this point; not that we recognize.

The Chair said it would be possible to take it back to the Text Amendment Committee to get their input and see what they come up with?

Planning and Zoning Commission
Minutes
September 12, 2017

Mr. Koch said the Board has already voted to send it to the Board of Commissioners.

The Chair guesses we could make a motion to rescind the previous vote?

Mr. Koch said it can only come from those who voted for it, not from one who voted against it. The reason for that rule is otherwise you can always have continual motions from the people who were in minority over the vote. It is a practical reason for that, but if that is what the Board wants to do, he is not trying to steer the discussion or the vote, he is just saying that is the way you have to do it if that is what you want to do.

The Chair is in favor of leaving it the way it was. He thinks that research and everything has been done already. He is in favor of just leaving it the way it was in the original vote. They are happy with their no votes and we were happy with our yes votes, maybe there are some who would like to go back to the no side. But right now that was voted on and he feels like it should be carried through; that is his opinion.

Mr. Koch said there is nothing to prevent any of you from talking to the Commissioners about it or coming to the Commissioners meeting when they consider it and expressing an opinion on it. That does not happen very often but there certainly is no prohibition about it. In fact, probably sometimes they would like to know. They may have questions about the whys and wherefores of it, as opposed to just looking at it. They won't typically, see the minutes of this meeting and read those in advance of their consideration of it. They will have the staff presentation and maybe a contact or something they had with a citizen or maybe even someone on this Board and then they will make their own decision on it. He said the Board is not foreclosed in having contact with the ultimate decision maker in it between now and the time that it occurs.

Mr. Corley completely supports the vote that is why there are nine people up here. To make that decision as a group.

Ms. Morris said from a staff perspective, if we find out that there is something, let's say in the IBT document, that the County is somehow linked to that, would the Board be in favor of hearing variances related to this if it was no longer a legal issue?

She is not saying that is how things can happen. She is just asking the question based on kind of what Mr. Koch said, where one may be a yes and one may be a no and that is fully within the Board's discretion as the Board of Adjustment to come up with findings either way. She said if the Text Amendment did not move forward with them hearing variances on these types of cases, is the Board comfortable with that as a Board and with the current expertise that you all have as a Board?

Mr. Litaker would like to hear situations when they come up like that. Because there are some things where you would definitely go one way or another with. He would feel comfortable with bringing it back to the Board for variances.

Mr. Price could go either way; as Mr. Corley said we have in the past kind of strayed into the weeds from time to time.

The Chair said the motion is passed and carried through.

Ms. Morris said we will check in with Concord and back in with legal about the variance option and see what our options potentially are moving forward.

Proposed Text Amendment to Zoning Ordinance Text2017-00009 – Chapter 3, Establishment of Zones

Ms. Morris said a case came down from the United State Supreme Court related to signage and not being able to read it. We still had some classifications in Chapter 3 listed as permitted uses and also in our permitted use Table that talked about for profit signs.

What this amendment will do is remove the for profit text and it would also remove the temporary Ag signs, because again, we cannot differentiate and also removes the temporary construction sign that was permitted based on standards. It would simply be replaced with language that says temporary signs, directing them to Chapter 11 where the sign regulations are located.

The Chair asked if there were any questions or comments.

Mr. Price has sort of an abstract question about temporary agricultural signs. He said what is that?

Ms. Morris said if I have farm and I want to put a sign out that says I have pumpkins in the fall, or I have tomatoes for sale or they could put out a banner. They could do that as a temporary sign. She said it gets back to if you have to read it to know what it is; you cannot do that.

Mr. Price asked if that includes also a corn field, for example that comes right up to the road somewhere and the farmer or seed company or whoever puts a sign that says this section is this type of crop and you see it all the way down. Is that a temporary agricultural sign?

Ms. Morris said no those are more for identification. You will see Tyson has a sign, if it is a Tyson farm, they have the different types of crops growing. If it is somebody who is in production business but for a third party so that they know what is where.

Mr. Price said like for delivering turkey feed or what have you. Those are not considered temporary agricultural signs?

Ms. Morris said no. This was for if you have a tree farm and want to sell Christmas trees or pumpkins or tomatoes or strawberries; like Patterson Farm does. They put the signs out pick your own strawberries and then you go to the little booth to pay and then you go pick them. It is more geared toward things like that but because you cannot differentiate by reading the sign we just have to go to that temporary sign classification. We only have three now; the agricultural sign that

says how big it can be, one is the construction sign and the other is the temporary signs that would be allowed on the commercial properties.

Mr. Paxton said are you saying if this proposed text amendment recommendation goes through, that a tomatoes for sale sign is permitted or will not be permitted or it does not affect that?

Ms. Morris said that sign is still permitted but it goes into a general category now of temporary signs, where before it was specifically called out as related to agriculture.

Mr. Koch said this is to comply with the Town of Gilbert case that the United State Supreme Court decided. Where if you have to read the sign, then it is a sign and you cannot differentiate based on content. It does not matter whether it is for profit, nonprofit, agricultural or whatever. If you have to read it then it falls under the same category as any other sign. All you can do is regulate size, and duration which would be temporary as opposed to permanent, location and matters of that sort. You cannot regulate anything involving content, no matter how innocuous it may be, no matter how offensive it may be; you cannot regulate it.

He said that was a nine to nothing decision by the United States Supreme Court. Right now, it is the law of the land. If the Board would care to do it, they can read all the concurring opinions on that and see all the different perspectives and how they kind of all came together.

He said to Mr. Price's point about the little tab for crops, the type of seeds they used or whatever, they are signs but he does not know that any of that crowd ever considered that little type of sign, but like Ms. Morris said it falls really within the purview of what we are trying to do here. But, we do have to be consistent and is why she has proposed this. Right now, our Ordinance with some of those provisions that are in there, would be in violation if someone chose to challenge it, based on that decision. He said that is kind of where we are, that decision surprised a lot of people all over the country.

Mr. Price said nine to zip coming out of the Supreme Court is kind of hard to argue with.

Mr. Koch said that is why he mentioned it.

Ms. Morris said now we tie it back to either the zoning district or the use of property. If it is an active construction site, they get a construction sign. If it is a bona fide farm with seasonal sales they get that sign. The other ones are tied back to the zoning district, which states what you can and cannot have. She said it is very limited to what we used to have because of that ruling.

There being no further discussion, Mr. James Litaker, **MOTIONED, SECONDED** by Mr. Jeff Corley to recommend **APPROVAL** of Text2017-00009– Chapter 3 Establishment of Zones to the Board of Commissioners. The vote was unanimous.

Directors Report

Ms. Morris introduced the new Board members that were sworn in.

Ms. Holly Grimsley, has a construction company Holton Construction. She has been in Cabarrus County a very long time and is a former Board of Education member. She has a lot of experience with the local community and is very in tune with the community.

Mr. Jerry Wood, Jr., retired military, has a lot of experience coming to us with rules and protocols.

Mr. Andrew Nance works for Carlos Moore Architect, first year out of school and getting ready to take his Architecture AIA. Also a Cabarrus County native and very familiar with the County. He also has the design aspects that we sometimes need.

We are happy to have them and we finally have a full complement of our Board.

Mr. Charles Paxton has a real estate background. We did not get to talk about his background at the last meeting. He is from Harrisburg, very involved in the Harrisburg Land Use process and also is very involved in local happenings in Harrisburg. We are happy to have him aboard as well.

Ms. Morris said we had our staff kick off meeting for the Harrisburg Land Use Plan update. Those of you that volunteered to be on that committee, she has sent out two invites. We have three members that will be representing us; Mr. Rockett, Mr. Pinto and Mr. Corley. Mr. Price and Mr. Paxton have agreed to be back up if someone cannot attend a meeting.

The first kick-off is going to be stakeholder interviews. You should have received an email from her and if you are interested in any of the sessions that they are having let her know. She will put you down for that session. The second meeting for that will be October 6th. She sent an invite for that as well.

We will probably be having our first community meetings early November for that project. She said a lot of that is determining a lot of ground-truthing because so much of what is in Harrisburg has entitlements that goes along with it. There really is not a lot of undeveloped property that is out there. She said we will see what will happen, if we do another inter-local; if they are interested in it or not.

If the Board remembers, that is what kept them from extending utilities out into the middle of nowhere and then growth following those utilities extensions.

Ms. Morris said since we have had somewhat of a changing of the guard, she will be contacting members who will be our new Text Amendment Committee.

Legal Update

Mr. Koch said we had the oral arguments in the Shelly case back on August 21, 2017. It will be several months before the Court of Appeals makes a decision on that. That was on the dismissal of the claims against the County that the Shelly's had made, claiming that the County conspired to basically, manipulate their neighbors into filing a lawsuit against them concerning that retaining wall.

It is kind of remarkable and fantastical reading because it is almost like a parallel universe from what really happened. But nonetheless, that was up there on whether they could actually appeal preliminarily, rather than wait until the entire case was heard. It is very much legal arguments as opposed to factual arguments at this point.

Mr. Koch said on the Little case, he is still waiting for the Judge to sign the Order for Arrest. He has had it for three months. In the meantime the trailer is still out there so far as he knows. He said speaking of signs that is an illegal sign.

The Chair would like for the Text Amendment Committee to meet in person so that we can convey what they see and what others may not see. He said once a month or whenever it comes up.

There being no further discussion, Ms. Mary Blakeney, **MOTIONED, SECONDED** by Mr. James Litaker to **ADJOURN** the meeting. The vote was unanimous. The meeting ended at 8:20 p.m.

APPROVED BY:



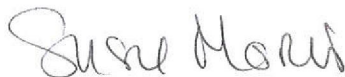
Mr. Chris Pinto, Chair

SUBMITTED BY:



Arlena B. Roberts

ATTEST BY:



Susie Morris, Planning and Zoning Manager

Memo

To: Cabarrus County Planning and Zoning Commission
From: Susie Morris, AICP, CZO, Planning and Zoning Manager
CC: File
Date: 9/6/2017
Re: Proposed Text Amendment to Zoning Ordinance (TEXT2017-00009)

- Attached you will find proposed changes to Chapter 3, Establishment of Zones.
- The proposed changes are related to temporary signs.
- The proposed changes remove line items from the permitted based on standards use lists in the text, as well as the permitted use table, and directs the reader to Chapter 11 where temporary sign information is now located.
- Please be prepared to discuss the proposed changes to the ordinance and to make a recommendation to the Board of Commissioners.

**AN ORDINANCE AMENDING THE CABARRUS COUNTY DEVELOPMENT ORDINANCE
TEXT2017-00009**

BE IT ORDAINED that the Cabarrus Development Ordinance is hereby amended as follows:

AMEND CHAPTER 3, ESTABLISHMENT OF ZONES

REMOVE the following line items as permitted based on standards uses for all zoning districts where listed in the text of Chapter 3

- For Profit Temporary Sign
- Temporary Agricultural Sign, Seasonal Sales on Site
- Temporary Construction Sign

REMOVE the following line items from Chapter 3, Section 3-8 TABLE OF PERMITTED USES, Temporary Uses

- For Profit Temporary Sign, PBS Refer to Text
- Temporary Agricultural Sign, Seasonal Sales on Site, PBS, Active Agriculture Sites, Refer to Text
- Temporary Construction Sign, PBS, Active Construction Sites, Refer to Text

ADD the following to Chapter 3, Section 3-8 TABLE OF PERMITTED USES, Temporary Uses as a new line item

- Temporary Signs, See Chapter Eleven, Signage, for Regulations

BE IT ALSO ORDAINED that the Cabarrus County Development Ordinance is hereby amended as follows:

RENUMBER AND REVISE the Table of Contents and page numbers in the Cabarrus County Development Ordinance to correspond to the text changes as needed.

Adopted this _____ day of _____, 2017 by the Cabarrus County Board of Commissioners.

Stephen M. Morris, Chairman
Cabarrus County Board of Commissioners

ATTEST:

Clerk to the Board

Memo

To: Cabarrus County Planning and Zoning Commission
From: Susie Morris, AICP, CZO, Planning and Zoning Manager
CC: File
Date: 9/6/2017
Re: Proposed Text Amendment to Zoning Ordinance (TEXT2017-00007)

- Attached you will find proposed changes to Chapter 4, Overlay Districts and Zones.
- The proposed changes are related to the buffer requirements for water bodies (streams, ponds, wetlands, impoundments).
- The changes remove language requiring buffers on intermittent streams and ponds that are not located along perennial streams.
- A wetland buffer is maintained in the language but is a set distance of 25 feet from the edge of the wetland.
- This amendment should provide additional flexibility for non-conforming lots and lots that were created prior to zoning ordinance adoption in 1982.
- Proposed additions are in red. Deletions are in strikethrough text.
- Please be prepared to discuss the proposed changes to the ordinance and to make a recommendation to the Board of Commissioners.

**AN ORDINANCE AMENDING THE CABARRUS COUNTY DEVELOPMENT
ORDINANCE
TEXT2017-00007**

BE IT ORDAINED that the Cabarrus Development Ordinance is hereby amended as follows:

AMEND CHAPTER 4, OVERLAY DISTRICTS AND ZONES AS FOLLOWS:

Section 4-8 Intention of Waterbody Buffer Zone

The purpose of the Waterbody Buffer Zone is to provide protected, vegetated strips of land adjacent to streams, rivers, lakes, ponds, impoundments, and wetlands. These buffers are retained in a natural, undisturbed state, in an effort to avoid erosion problems and to reduce the velocity of overland flow, thus trapping sediment and soil eroded from cropland or land being developed to limit pollutants from entering the waterway.

Section 4-9 Effect upon bona fide farms

While North Carolina law exempts bona fide farms from local zoning regulations, the County strongly encourages the use of best management practices in farming. A waterbody buffer is one of these practices and is therefore consistent with North Carolina Sediment Control Law and thus is a 75% reimbursable North Carolina Agricultural Cost - Share Program. This program is administered through the Cabarrus Soil and Water District. The following text shall apply to all development or changing of conditions (e.g., timbering, land clearing, etc.) adjacent to waterbodies as defined below.

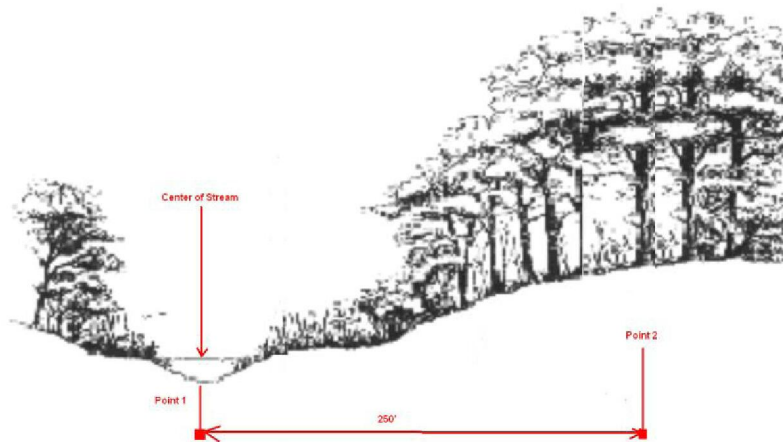
4.9-1-Impoundments for agricultural purposes

Impoundments used primarily for bona fide agricultural purposes, including animal watering, irrigation, or other agricultural uses shall not be subject to buffering requirements unless the waterbody is part of a natural drainage way (i.e., unless the waterbody is located on a perennial ~~Class 1 or Class 2~~ stream);

Section 4-10 Requirements of the Waterbody Buffer Zone

1. A minimum 50-foot buffer shall be established from the stream bank on all sides of perennial ~~or Class 1~~ streams in addition to any lakes, ponds or impoundments **located along, or on, those streams.** ~~Class 1 Perennial~~ streams include all rivers, streams, lakes, ponds or waterbodies shown on the USGS Quadrangle Maps as a solid blue line or identified in the Cabarrus County Geographic Information System.
2. A minimum ~~30~~ **25** foot ~~stream~~ buffer shall be established **along the edge of** ~~from the stream bank on all sides of all intermittent or Class 2 streams and any identified wetlands.~~ ~~Class 2 Streams shall include all rivers or streams shown on the USGS Maps as dotted or dashed blue lines, identified as a stream on the NCRS Soil Survey for Cabarrus County, identified on the Cabarrus County Geographic Information System or identified as a stream by a qualified stream classification professional as defined in Section 4-10.4~~

3. The applicant must provide a detailed survey that field verifies the location of all perennial ~~and intermittent~~ streams, lakes, ponds, impoundments and wetlands on the subject property and within 100 feet of the boundary of the subject property for all proposed plats and site plans.
4. Streams may exist even if they are not mapped on the USGS Quadrangle Maps or NCRS Soil Survey Maps. A qualified professional must identify streams that exist on the site but are not mapped. For purposes of this section, a qualified professional shall mean an individual that has attended wetlands delineation training using application of the 1987 Wetland Delineation Manual by the US Army Corps of Engineers and Identification of Perennial and Intermittent Streams training supported by the North Carolina Division of Water Quality.
5. The determination that a waterbody or stream indicated on a USGS Map or NRCS soil survey map does not exist must be concurred by the NCDENR Division of Water Quality and/or the US Army Corps of Engineers.
6. The Waterbody Buffer Zone shall be determined and clearly delineated on site prior to any development or pre-development activity occurring in order to protect the required buffer from encroachment or damage. No development, including soil disturbing activities or grading, shall occur within the established buffer area.
7. The waterbody buffer shall be maintained as follows and shall be shown on all site plans or subdivision plats related to the project submitted for review, including soil and erosion control plans:
 - a. The size of a perennial stream ~~or Class 1~~ waterbody buffer shall be measured from the annual average stream bank, perpendicularly for a distance of 50 feet plus 4 times the average percent of slope of area adjacent to the stream. This slope shall be calculated by measuring a distance of 250 feet from the center of the stream. The percent of slope for this distance shall serve as the determining factor. However, the maximum distance shall not exceed 120 feet from the edge of the stream. For Lakes, ponds or impoundments, the buffer shall be computed using the high water elevation in place of the stream bank in the calculation.

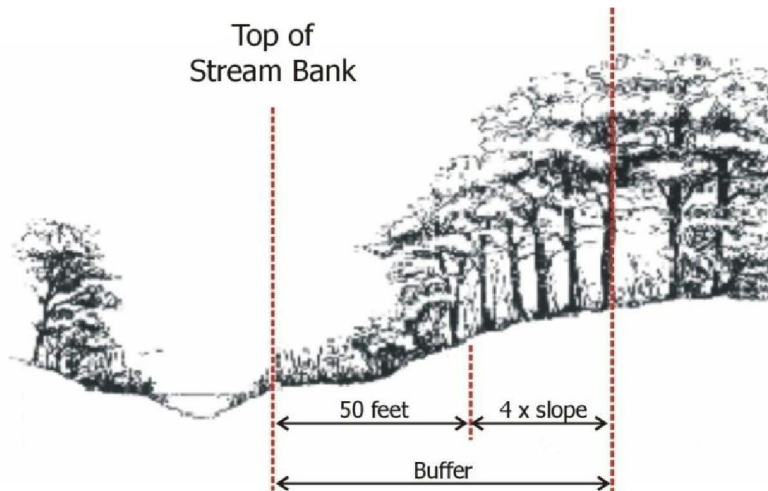


Pre-development elevation of Point 1 in feet = E1

Pre-development elevation of Point 2 in feet = E2

$$S = \frac{E2 - E1 \text{ (feet)}}{250 \text{ feet}} \times 100$$

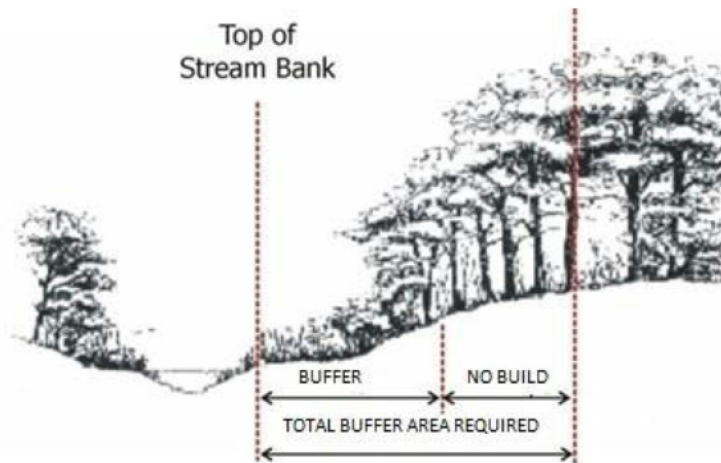
250 feet



$$\text{Width} = [50 + (4 \times S)]$$

Minimum width: 50 feet (areas with flat slopes)

Maximum width: 120 feet (areas with steep slopes)



- ~~b. The size of an intermittent stream or Class 2 waterbody buffer shall be measured from the annual average stream bank perpendicularly for a distance of 30 feet on either side of the waterbody.~~
8. All buffer areas shall remain in a natural, vegetated state. If the buffer area is wooded, it shall remain undisturbed.
 9. When agricultural soil disturbing activities such as plowing, grading, ditching, excavating, placement of fill material, or similar activities must occur near the buffer zones, they shall conform to all State and Federal regulations. Other unnamed agricultural activities that would result in significant disturbance of the existing soil, increase soil erosion, or destroy plant and wildlife habitats can only occur with an approved replacement program and shall also be consistent with North Carolina Sediment Control Law and in coordination with the North Carolina Wildlife Resources Commission's District 6 Biologist, and in consultation with the Cabarrus Soil and Water District Representative. Existing agricultural operations, forested or vegetated areas within stream buffer areas shall follow the State's forest practice guidelines which include best management practices (BMPs) as defined by the North Carolina Soil and Water Conservation Commission.
 10. Buffer Encroachments:
 - a. Sewer Easements: Permitted encroachments in the buffer area include sewer easements, providing the activities strictly adhere to applicable state and local soil and erosion control regulations/guidelines. Perennial vegetation must be established as a necessary step in completing construction of any sewer facilities. Sewer easements should be as close to perpendicular or parallel to the stream channel to minimize the impact on the stream buffer.

- b. Utilities: Overhead and/or underground utilities, roads, streets, bridges, or similar structures should be placed within existing public or private rights-of-way and must cross the buffer area as close to perpendicular as possible.
 - c. Driveways and Roads that Pre-date Waterbody Buffer Zone Adoption: Where residential driveways, right-of-ways, private streets or roads used for agricultural purposes on bona fide farms were installed prior to the adoption of this section of the zoning ordinance (July 23, 1990) and encroach into the required buffers, these roads may remain and continue to be used to access the property. These driveways, right-of-ways, private streets or farm roads, however, may only be improved if it is required for emergency vehicle access.
 - d. Structures that Pre-date Waterbody Buffer Zone Adoption: Where structures that pre-date the adoption of this section of the zoning ordinance (July 23, 1990) are located in the required buffer areas, these structures may be expanded by up to 50% percent (50%) of the square footage of the structure upon the issuance of a Certificate of Non-conformity Adjustment. To the greatest extent possible, expansions should be directed away from the buffer area. See Chapter 14 for additional information related to the Certificate of Non-conformity Adjustment process.
 - e. Fences are permitted within the buffer area, provided that the design does not interfere with the flow of water through the buffer area to the waterbody.
11. Any proposed recreation facilities or greenways must be located a minimum of 60' from the top of the stream bank. This includes any proposed pedestrian, hiking or biking trails. Recreational structures are not permitted in the waterbody buffer.
12. In the event that a buffer is disturbed, all disturbed areas within the buffer zone shall be revegetated with appropriate vegetation immediately.
13. A progress report shall be submitted by the individual, corporation, or company disturbing land in the Waterbody Buffer Zone to the Cabarrus County Planning and Zoning Department within 60 days of approval of the replacement program by the Soil and Water Conservation District staff. Two other reports may be required at 120 and 180 days if the program is not completed. The first two reports shall explain what work has been completed and any results as well as a time schedule for completion of the rest of the program. The final report shall document that the replacement program has been completed. The site shall be regularly inspected by the enforcement branch of the Cabarrus County Planning and Zoning Department and the Cabarrus Soil and Water Conservation District to assure activity and compliance. Any noncompliance shall be treated as a zoning violation and be subject to enforcement as described in Chapter Twelve of this Ordinance.

14. The minimum **building setback, also known as the no build buffer area,** for all buildings from the ~~buffer for waterbodies as classified and defined in Section 4-10-1~~ shall be at least 20 feet **from the established waterbody buffer.** ~~For waterbodies classified and defined in Section 4-10-2, the setback shall be a minimum of 10 feet from the buffer.~~ If there is a difference in the zoning ordinance setback and the no build buffer, the greater of the two shall apply. No buildings or structures shall be permitted in the no build buffer area. **Minimal land disturbance, including the clearing of underbrush, is allowed in the no build buffer.**
15. Where the Waterbody Buffer Zone or no build buffer impacts or is part of a lot, a note shall be placed on the plat or site plan and a restriction shall become part of the deed for the property stating that said property is subject to the Waterbody Buffer Zone.
- a. Land within a stream buffer shall not be used to meet the minimum area requirements for lots that are one acre or less.
 - b. If a lot is greater than one acre in area, except where lots are greater than one acre in area, the buffer area may be used to meet the minimum lot size requirements, however, at least 50 percent of the lot shall remain outside the stream buffer area.
16. Applicants and property owners are strongly encouraged to consider the dedication of property or easements subject to the Waterbody Buffer Zone to one of the following when appropriate:
- Property/Home Owners Association
 - Cabarrus Soil and Water Conservation District
 - A conservation organization

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RENUMBER AND REVISE the Table of Contents and page numbers in the Cabarrus County Development Ordinance to correspond to the text changes as needed.

Adopted this _____ day of _____, 2017 by the Cabarrus County Board of Commissioners.

Stephen M. Morris, Chairman
Cabarrus County Board of Commissioners