Planning and Development
Department

Cabarrus County Government

Cabarrus County Planning and Zoning Commission Meeting
July 11, 2017 @ 7:00 P.M.
Board of Commissioners Meeting Room
Cabarrus County Governmental Center

Agenda

1. Oath of Office to Newly Appointed Member

2. Roll Call

3. Approval of May 9, 2017, Planning and Zoning Commission Meeting Minutes

4. New Business – Planning Board Function:

   Proposed Text Changes to the Cabarrus County Development Ordinance

   A. TEXT 2017-00005- Chapter 7, Performance Based Standards, #2 accessory building, accessory dwelling and swimming pools accessory to single family residential

5. Directors Report

6. Legal Update

Cabarrus County Government

Planning and Zoning Commission Minutes
July 11, 2017

Ms. Shannon Frye, Chair, called the meeting to order at 7:05 p.m. Members present in addition to the Chair, were Ms. Mary Blakeney, Mr. Jeffrey Corley, Mr. Adam Dagenhart, Mr. Andrew Graham, Mr. James Litaker, Mr. Richard Price, Mr. Aaron Ritchie, Mr. Brent Rockett and Mr. Steve Wise. Attending from the Planning and Zoning Division were, Ms. Susie Morris, Planning and Zoning, Manager, Ms. Arlena Roberts, Clerk to the Board and Mr. Richard Koch, County Attorney.

Arlena Robert, Clerk to the Board administered the Oath of Office to newly appointed member, Mr. Brent Rockett (Harrisburg Area).

Roll Call

Mr. Aaron Ritchie, **MOTIONED, SECONDED** by Mr. James Litaker to **APPROVE** the May 9, 2017, meeting minutes. The Vote was unanimous.

New Business – Proposed Text Changes to the Cabarrus County Development Ordinance

Ms. Susie Morris, Planning and Zoning Manager, addressed the Board presenting the following Text Amendments.

TEXT 2017-00005 - Chapter 7 Performance Based Standards,, #2 accessory building, accessory dwelling and swimming pools accessory to single family residential.

Ms. Morris said this is a relatively straight forward text amendment. The request is to remove the percent of accessory structures allowed based on lot size. She said right now in Chapter 7, we have requirements depending on whether your lot is under two acres or it is over two acres, then there is a certain percentage on accessory buildings coverage that is included in the overall impervious area but has to be calculated separately. The impervious says 15 but this says 3, it is a little confusing to people. So, the request is to completely remove that language.

Item (a) - Accessory building on lots less than two acres
Item (a) - Accessory buildings on lots two acres or greater

As the Text Committee was working through this, a clarification was asked for, on Item b under accessory buildings on lots two acres or greater. It is to clarify that lots that are greater than two acres can still place an accessory structure in front of the principal structure as long as it is located at least 100 feet from the road right of way.

The Chair said if they are doing an accessory structure and there is already a principal structure on the lot and now it says that accessory buildings may be up to 15 feet in height, are there any considerations that the accessory structure cannot exceed the height or the size of the principal? Or can it actually go greater than? She is thinking about the proportionality between the accessory and principal, is there any?

Ms. Morris said the intent based on definition would be that that accessory structure would be less than whatever the primary is and we would handle that part through permitting and talking to that person. We do not currently do zoning permitting online, we still have the face to face conversations with people because there are too many unknowns.

She said occasionally we get one. We had someone come in asking for a 7,000 square foot accessory building, at their house. Clearly, that was not allowed.

We did not put anything in there, hoping that based on definition and the intent of an accessory building that no would be asking for something that would be bigger.

We are not proposing any changes to the accessory dwelling units. That will still remain 50 percent of the base floor area or that 1100; whichever is less.

Mr. James Litaker asked if there were any existing structures that do not comply in these areas now that we know of.

Ms. Morris said yes. In 2005, when we did the Designing Cabarrus project, and then when we did the Central Area Plan, a lot of that property was down zoned. So, we have a lot of lots that were LDR that are now potentially CR; which is a two acre lot.

If the Board is familiar with the Cedarvale Subdivision, toward Midland, that subdivision is supposed to have a two acre lot and they are a normal subdivision lot; a third or a fourth of an acre. She said it would provide some flexibility with those people; to be able to have one or two sheds on their property instead of only one small one. It is looking at it in terms of those nonconforming lots out there; to allow them a little more flexibility.

We had the conversations about the size, because apparently, a long time ago, that may have been how those percentages ended up in the Ordinance. People were building garages that were bigger than the primary structure. We feel like we can handle it internally through the permitting process using those definitions and the intent.

Mr. Rick Price said it seems reasonable to him. He certainly does not see anything unreasonable about what we are doing. Anything that we can do to remove ambiguity, the potential for misunderstanding of the Ordinance, he thinks we should and he thinks this addresses that.

Mr. Litaker asked if this will address any possibility of condominiums or townhomes that would be in these areas.

Ms. Morris said we probably are not going to see condominiums or townhome development in the unincorporated county because of the utility policies. Most of those are located in the city limits already and if they wanted to do a project like that, based on current policies, they would have to annex into the city limits. This would not apply.

There being no further discussion, Mr. Aaron Ritchie, **MOTIONED, SECONDED** by Mr. James Litaker to recommend Approval of TEXT2017-00005 Chapter 7, Performance Based Standards, #2 accessory building, accessory dwelling and swimming pools accessory to single family residential to the Board of Commissioners. The vote was unanimous.

TEXT2017-00006 - Chapter 4, Overlay District and Zones

Ms. Morris apologized for the last minute addition to the Agenda. We have been working through this with the State for about two weeks. We had a pool permitting company come in to get permits for and existing subdivision. As we were looking at the permits for that, we discovered that in that particular subdivision, most of the lots in that subdivision were already over the watershed requirement.

She said two or three years ago we did not require a plot plans. It was on the honor system and the comments went on the permit and then people kind of went out and did what they wanted too.

We talked to the State about options. If the Board remembers, we adopted the model ordinance from the State which allows some variance options. As we got into the discussion with them about to pursue a variance and how it is classified, we started having some discussions with them about potential options.

Some of the options were for the folks to take up their paved driveway and put down a different type of concrete. That was not going to work because the concrete is already there and the property owner did not want to do that. In some cases, the houses themselves were over what the impervious allowance is because in that particular part of the watershed we had a 12 percent restriction on those lots.

In having the discussions with the State and with our Contract Engineer, they both had recommendations and the text that the Board has includes recommendations on how to work through these issues that we have in this neighborhood, because these two are probably not the only two and as other people want to add pools or accessory structures, they would probably be back in here for a variance.

The reason we had to talk with the State is because when you are asking for a watershed variance, depending on the classification of the variance, this Board potentially would only serve as a recommendation Board. Your decision does not necessarily stand, it has to be sent off to the State and the State has to make a final recommendation.

If you look at the text in the Ordinance, which is going to stay, it really is the old standard where application of the Ordinance pretty much has to render that parcel useless for them to agree but they should have gotten the variance at the local level.

She said the contact at the State kept saying that it is a really hard threshold and she does not know that they could meet that threshold and maybe we need to look at other options.

Looking at the other options, the way that the State looks at the watershed, is that they are more concerned about the density side of things. So they are more concerned about the overall density for a project.

Before 2007, we were not tipped in with the State for stormwater. She said 2007 and forward, this should not be an issue because the Board knows that with the last submittal that you got with the solar farm, people are getting the stormwater permits like they are supposed to, the restriction are being put in there and typically it is low density because of the utility issue. They are not developing high density.

She said it is two-fold; one is you have the density side of things and the second side of it is that you have this impervious factor. The impervious applies to lots, the density applies to developments. But everything that we have is not in a development. So we kind of have to have both, if that makes sense.

What we are proposing, is that there will not be any changes in the density or the lot size. So, in the critical area, you would still be required to have a two acre lot. If you did a cluster type subdivision, then it still has to be at one dwelling per two acres. So they might be able to do a trade off, but that is our open space subdivision option and our CR and our AO which is mainly located around the reservoir, would allow them to potentially go down to one acre, but they would have to give that 30 something percent open space. So, we do have an open space option.

In the protected area, they have to have a minimum of a one acre lot or if it was an actual development then they would have to meet one dwelling unit per acre. At this point, we are not seeing developments in the watershed. We are seeing individual lots that are existing and the developments that are out there are more toward Kannapolis or they are in the protected area, not necessarily in the critical areas.

She said because people want to build on their lots and they do not want to be restricted. If they came in and did a development and you came to buy that lot and they said you could only have 12 percent impervious on that lot and your lot is a 1/3 of an acre or even a 1/2 acre, that is pretty restrictive. A lot of people want the flexibility to be able to do what they want to do.

She said we are not proposing any changes for that part.

In Chapter 7, Section 4-5, dealing with the critical area, we do not allow commercial or industrial development in the critical area. If the Board remembers, we had that lovely wedding

facility that showed up on the beautiful banks of Coddle Creek Reservoir. It was shut down because you cannot have commercial development there.

The vegetative buffer that it talks about, that is our stream buffers, waterbody buffers on individual lots are a part of this. For anything that is non-single family residential or nonresidential for example, if someone wanted to build a church or a school in that area, they could do that, but they will be limited to six percent. Six percent max because that is what the State says. No commercial or hazardous materials or industrial materials within a half mile. Again this is the model ordinance from the State and then landfills or petroleum contaminated soils are also not allowed.

She said #7 was where based on the initial model ordinance that was sent to us, we went with 12 percent for residential lots, because that was twice what commercial lots were given and we thought it would provide some flexibility.

This is where we are finding that there is a conflict between what it allows and what potentially the overall zoning district would potentially allow. Especially, for the nonconforming lots. Because with the nonconforming lot, our fall back is MDR, with a MDR standard that actually bumps it up about 28 percent. They can get 40 percent coverage and she thinks it is about 35 percent on the structural. So, it would allow them some flexibility.

For the balance of the watershed, the protected area, we are proposing that be based on the minimum for the zoning district and is the zoning district used for permitting. It would allow us that flexibility during permitting if it is an existing nonconforming lot.

The state and the engineer requested that we add some clarification because we had all other residential and nonresidential shall not exceed 12 percent. They suggested that we add the built upon in addition to meeting the minimum lot size density in the zoning district. It is just to clarify that you get the 12 percent if you are trying to do one of those projects that might be allowed but you will also have to meet the zoning district; whichever is the most strict.

The other watersheds are Class 4. So, again the suggestion was to clarify that the density is for single family residential only. That the maximum impervious for single family residential lots would be based on the zoning district and again the district used for permitting and that clarification to meet the applicable minimums

She said really the thing that is changing, is that 12 percent that was in there, as that kind of one or the other. Again, the State focuses more on the density side of it, which is handled now through the stormwater side of things. But, back in the day when we did not have stormwater, we now have developments that are nonconforming and nonconforming in the impervious areas because they were not necessarily subject to those same restrictions. They were subject to the watershed but not to the stormwater, where all of that comes into play. This hopefully, will allow the flexibility for people to have a pool or to have a shed or to build a little bit bigger house on that lot, if it is a nonconforming lot.

For example, in the AO you are restricted to 15 percent and you are supposed to have a three acre lot. But, we have lots in the AO that are probably less than an acre. So it is kind of to provide a tradeoff and a little bit more flexibility.

Ms. Morris said it was reviewed by the State and they are good with it. Our contract engineer is good with it, they are the PE's, so hopefully they are leading us in the right direction.

Mr. Jeff Corley said you do not have much development pressure for a development up there right; it has just been single family?

Ms. Morris said right. She does not know if the Board saw in the paper the industrial park near Barr Road. Kannapolis actually asked for a variance and an adjustment to the watershed for that building to happen. But, to get to those higher densities, they need the utilities so they would not be working with us, they would end up being in Kannapolis, because ultimately, that is there annexation area; them or Concord on the south side.

The only interest we have out there right now is people wanting to put in cell towers and they do not like it when we tell them that is commercial and they cannot go in the critical area. She said apparently there is a dead spot there.

The Chair thinks that when you have a nonconforming situation that you identify, you are either going to have to do a variance because in anticipation of there being more incidence, that going in and fixing it is the best remedy than having to handle those from a staff burden of doing each of those as individual variances.

She thinks, like Ms. Morris said, in two weeks to expeditiously work with the State to get to a solution is the best you can do given the circumstance.

Ms. Morris said hopefully it works. You do not know what you do not know, but we think it will work. So we are going to try, if the Commissioners will approve it.

She said we have two variances sitting in the office right now and they are probably not the only ones. As we have the data available and they are turning in the plot plans that have the numbers on them that they are supposed to, she thinks it is going to be more frequent.

Ms. Morris said it will be less work for the Board, because if you have to hear variances and then it has to go to the State and if the State does not agree. If it is a major variance, this Board will become a recommendation Board. She does not know what happens if they do not agree, then she guesses it will not get approved. So we were looking for alternatives instead of that, especially based on that very strict language that is incorporated into the State model.

There being no further discussion Ms. Mary Blakeney , **MOTIONED, SECONDED** by Mr. James Litaker to recommend Approval of TEXT2017-00006 - Chapter 4, Overlay District and Zones to the Board of Commissioner. The vote was unanimous.

Directors Report

Ms. Morris said we have a new member with us this evening representing the Kannapolis area.

Mr. Brent Rockett addressed the Board stating that he has had the pleasure of meeting some members before tonight and others tonight. He has lived in Cabarrus County since 2004. He moved here from Catawba County where he was born and grew up in Hickory.

He works for the Cannon Memorial YMCA in the Corporate Office as Senior Director of Operations. He has certainly, over the 13 or 14 years that he has been in Cabarrus County, become ingrained into the community and had the pleasure of meeting a lot of people here and is happy to call it home.

He is glad to have this opportunity to serve in some capacity.

Ms. Morris said we will have cases for next month. There a few so be prepared to be here for a while. There is one case that has the potential to be contentious so if you show up and there is a room full of people, it is okay.

She said there will be Board of Adjustment functions and Planning Board Functions next month. If you cannot be here for any reason please let us know so we do not get into the same situation as the solar farm, where we had six member here and seated. We have to give the applicant the option whether or not to proceed and we do not want to have to delay people. Especially since we have worked to get them to the deadline and in front of the Board to be considered.

Ms. Morris submitted this month to the Board of Commissioners some recommendations for appointments. If those appointments are approved, we will have a full complement of the Board including the Harrisburg representative. We should know on July 17th

We have three members whose term will be ending in August, Ms. Frye, Mr. Ritchie and Mr. Graham. We will have some recognitions next month as well and then at the Board of Commissioners. We have two new staff members and are fully staffed now for Planning and Zoning.

We had three volunteers for the Harrisburg Land Use Plan, Mr. Pinto, Mr. Price and Mr. Rockett. If your plans have changed let her know because they are about to get rolling on that. We have a conference call with the consultant on Thursday. After that, we will probably start working on scheduling.

She said depending on what happens at the September meeting we will be recruiting for the Text Amendment Committee.

Legal Update

Mr. Koch said today Judge McGee sent him an email that he had affirmed the Board's decision in

the Porter case. Your decision concerning the wedding reception facility out there was affirmed by the Judge. The County is not going to appeal that and if there was come inclination to do that it would not do any good because at the end of last month the General Assembly passed Senate Bill SB615 which expanded the definition of Agritourism to include wedding reception facilities.

He does not know if that bill has been signed by the Governor or not. He has some time in which to do so. It was put in an omnibus farming and agricultural bill with some 25 pages. Regardless, that kind of facility would be considered within the definition of Agritourism presumably going forward unless something remarkable happens about that bill.

He said there has been no change in the Shelly case. The briefs have been filed and it is with the Court of Appeals and they have not scheduled anything. We are just waiting to hear on that.

In reference to the Little case, the order for arrest that he submitted to the Judge two months ago, he still has not signed so we are just waiting on it.

Mr. Adam Dagenhart had a question on the Porter case. Is he okay to do it? Did he get permits for what he has constructed and is operating now?

Mr. Koch said no, not to his knowledge. He did not pull a building permit or an electrical permit.

Mr. Dagenhart said he knows he is operational.

Mr. Richard Price asked what else was included in that Bill as Agritourism.

Mr. Koch read the following definition of Agritourism from SB 615:

A building or structure that is used for Agritourism is a bona fide farm purpose if the building or structure is located on a property that (i) is owned by a person who holds a qualifying farmer sales tax exemption certificate from the Department of Revenue pursuant to G.S. 105-164.13E(a) or (ii) is enrolled in the present-use value program pursuant to G.S. 105-277.3. Failure to maintain the requirements of this subsection for a period of three years after the date the building or structure was originally classified as a bona fide purpose pursuant to this subdivision shall subject the building or structure to applicable zoning and development regulation ordinances adopted by a county pursuant to subsection (a) of this section in effect on the date the property no longer meets the requirements of this subsection. For purposes of this section, "Agritourism" means any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, ranching, historic, cultural, harvest-your-own activities, or natural activities and attractions. A building or structure used for Agritourism includes any building or structure used for public or private events, including, but not limited to, weddings, receptions, meetings, demonstrations of farm activities, meals, and other events that are taking place on the farm because of its farm or rural setting.

Mr. Price said but not limited to leaves the door open.

Mr. Dagenhart asked if Mr. Porter was required to get a conditional use permit: how does that work?

Mr. Koch said he is not required to get anything; it is exempt basically.

Mr. Dagenhart said what he is operating out there now, it is not a farm it is commercial. There is not a single thing farm related out there. He has pictures and his wife has been out for something. There is nothing out there; it is strictly just a piece of land.

Mr. Koch thinks there are two facilities out there now. There is the original one and he is building a huge new building. Farm buildings are exempt from building permitting.

Mr. Price said do a Google search on Bonefrog as it relates to that farm. This is one of those Navy Seal para military type endurance things. It is being hosted out there. He does not know that that is Agritourism. This one you pay them and they bring their travelling road show and set it up on your property kind of thing.

He thinks it was started and operated by some former Navy Seals. If you want to sign up for it they will put you through the paces.

Mr. Koch said the prevailing sentiment seems to be that anything that can generate additional income for a farm family on the farm should somehow be included in the general umbrella of Agritourism.

Mr. Price said that is where but not limited too comes in. Even though he voted that perhaps the wedding facility was in fact Agritourism, and he does not regret his vote. But if you recall some of the discussion that night, he mentioned such things as motocross racing, perhaps an airshow, that sort of thing. To him that is a stretch along with para-military training.

He does not see the relationship between that and Agritourism at all. He can kind of see wedding because of everyone's general opinion of getting back to the farm and all of this bucolic wedding stuff that is taking place, not only here but everywhere. He can kind of see that. But the General Assembly has said but not limited too.

Mr. Koch said the large part of the reason that the County chose to appeal that decision was because that bill had not been enacted. To have a judicial determination and part of the consideration was for liability purposes. That if it is determined by a Judge that that is not subject to County zoning, then as far as the County is concerned, we are off the hook. Anything that happens out there is a private matter between the participants and the property owner.

He said particularly in view of he thinks it is Chapter 99E, which provides that if you put up signs on your property that say that this is an area that is a bona fide farm or Agritourism, (he forgets what the signs are supposed to say) that you assume the risk for anything that happens on that property.

He said that would include any wedding guest under any circumstances, whether it be getting knocked over by a cow, if it happens to be one close enough to that wedding or slipping and falling on the dance floor.

Mr. Litaker had a patient this week who said he could get a temporary permit to grow marijuana in North Carolina as long as he was selling it to a legal state that would do the rest of it. He asked if that was a fair statement for North Carolina.

Mr. Koch has not heard anything of that sort and he would doubt that.

Mr. Litaker said growing it is growing it and he could not see how you could get a temporary permit to grow as long as you were not consuming or selling it here you would have to send it somewhere else for that.

There being no further discussion, Mr. Aaron Ritchie, **MOTIONED, SECONDED** by Mr. James Litaker to Adjourn the meeting. The vote was unanimous. The meeting ended at 8:38 p.m.

APPROVED BY:

Ms. Shannon Frye, Chair

SUBMITTED BY:

Arlena B. Roberts

ATTEST BY:

Susie Morris, Planning and Zoning Manager

Planning and Development

Memo

To: Cabarrus County Planning and Zoning Commission

From: Susie Morris, AICP, CZO, Planning and Zoning Manager

CC: File

Date: 7/5/2017

Re: Proposed Text Amendment

Attached you will find a proposed text change to the Cabarrus County Development Ordinance. The proposed change relates to the following:

TEXT2017-00005-CHAPTER 7, PERFORMANCE BASED STANDARDS, #2 ACCESSORY BUILDING, ACCESSORY DWELLING AND SWIMMING POOLS ACCESSORY TO SINGLE FAMILY RESIDENTIAL

- Remove the percent of accessory structures allowed based on lot size

Deletions are in strikethrough text. Additions and corrections are in red text.

Please be prepared to discuss the proposed changes and to make a recommendation to the Board of Commissioners.

AN ORDINANCE AMENDING THE CABARRUS COUNTY DEVELOPMENT ORDINANCE

TEXT2017-00005

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

AMEND CHAPTER 7, PERFORMANCE BASED STANDARDS, #2 ACCESSORY BUILDING, ACCESSORY DWELLING AND SWIMMING POOLS ACCESSORY TO SINGLE FAMILY RESIDENTIAL AS FOLLOWS:

Accessory building on lots less than 2 acres

~~a. The total square footage for all accessory building footprints on a lot shall not exceed 3 percent of the total lot area. Exception – all lots shall be permitted at least 600 square feet of accessory buildings.~~ (DELETE)

b. Accessory buildings shall not be located closer to an adjacent road than the principal structure. Exception – Double frontage lots may place an accessory building to the rear of the principal structure so long as the principal building setback is met along the property lines adjacent to the street.

c. Accessory buildings up to 15 feet in height shall meet the front and side setback requirements of the principal structure. The rear setback shall be no less than five (5) feet. Buildings greater than 15 feet in height shall meet the principal building setbacks listed in Chapter 5.

d. Accessory buildings shall be subject to all other dimensional, impermeable and structural coverage requirements listed in Chapter 5.

Accessory buildings on lots 2 acres or greater

~~a. The total square footage for all accessory building footprints on a lot shall not exceed 2 percent of the total area. Exception – all lots shall be permitted at least 2,600 square feet of accessory buildings.~~ (DELETE)

b. Accessory buildings shall not be located closer to an adjacent road than the principal structure or shall be located at least 100 feet from ~~a~~ the road right of way, whichever is less. Exception – double frontage lots may place an accessory building to the rear of the principal structure so long as the principal building setback is met along the property lines adjacent to the street.

c. Accessory buildings up to 15 feet in height shall meet the front and side setback requirements of the principal structure. The rear setbacks shall be no less than five (5) feet. Accessory structures greater than fifteen (15) feet in height shall meet the setback requirements of the principal structure.

d. Accessory buildings shall be subject to all other dimensional, impermeable and structural coverage requirements listed in Chapter 5.

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 _____ by the Cabarrus County Board of Commissioners.

_____
Stephen M. Morris, Chairman
Cabarrus County Board of Commissioners

ATTEST:

_____
Megan I. Smit, Clerk to the Board