



Cabarrus County Government

Cabarrus County Planning and Zoning Commission Meeting

April 9, 2013

7:00 P.M.

Board of Commissioners Meeting Room

Cabarrus County Governmental Center

Agenda

1. Roll Call
2. Approval March 2012 Minutes
3. Approval of Findings of Fact for RZON2013-00001, Conditional Use Permit – Cabarrus County Landfill and Sheriff's Firing Range and Training Center
4. New Business – Planning Board Function:
 - A. Cabarrus County Zoning Ordinance
Proposed Text Changes – Chapters 7 and Chapter 8
 - B. Cabarrus County Subdivision Ordinance
Proposed Text Changes – Chapter 3 and Chapter 4
5. Directors Report
6. Legal Update



Cabarrus County Government

Planning and Zoning Commission Minutes
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Mr. Larry Ensley, Chair, called the meeting to order at 7:10 p.m. Members present in addition to the Chair were: Ms. Mary Blakeney, Mr. Eugene Divine, Mr. Danny Fesperman, Ms. Shannon Frye, Mr. Ted Kluttz, Mr. James Litaker, Mr. Chris Pinto, Mr. Richard Price, Mr. Jonathan Rett and Mr. Aaron Ritchie. 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.

Roll Call

Approval of March 12, 2013, Planning and Zoning Commission Minutes.

Mr. Aaron Ritchie, **MOTIONED, SECONDED** by Mr. Danny Fesperman to **APPROVE** the March 12, 2013, minutes. The vote was unanimous.

Approval of Findings of Fact for RZON2013-00001 – Conditional Use Permit - Cabarrus County Landfill and Sheriff's Firing Range and Training Center

Mr. Aaron Ritchie, **MOTIONED, SECONDED** by Ms. Mary Blakeney to **APPROVE** the Findings of Fact for RZON2013-00001- Conditional Use Permit-Cabarrus County Landfill and Sheriff's Firing Range and Training Center. The vote was unanimous.

New Business –Planning Board Function:

Ms. Susie Morris introduced Proposed Text Amendments to the Cabarrus County Zoning Ordinance.

She said these are minor changes, they are recurring issues. If the Board remembers, with the reception facilities, no one has really taken advantage of that. We have been approached by a few folks about it, but it seems that with some of these cases, they are located back away from the main roads. So, we thought that the language would potentially be a compromise.

Chapter 7 –Section 7-3 Permitted Based on Standards (PBS) of the Cabarrus County Zoning Ordinance.

Ms. Morris said the items in red are proposed text changes and the items in blue are text changes to those specifics sections that are proposed from our attorney after he reviewed the packet after it was sent out.

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She said in Section 7-2, How to Use this Chapter - language was added essentially to give it emphasis and it was capitalized. The only other change is under Accessory Dwelling Unit, letter "g" was added, so that it is clear under the zoning ordinance that you are only permitted one accessory dwelling unit per parcel.

Ms. Morris asked to Board to make a recommendation on each item so that they can be forwarded to the Board of Commissioners for final consideration; unless the Board would like to see changes.

There being no further discussion, Ms. Shannon Frye, **MOTIONED, SECONDED** by Mr. Aaron Ritchie to recommend to the Board of Commissioners the Proposed Text Changes to Chapter 7. The vote was unanimous.

Chapter 8 – Conditional Uses – #21 Reception Facilities of the Cabarrus County Zoning Ordinance.

Ms. Morris said the Text Amendment Committee has also reviewed the proposed text change recommendations for all the items. She did receive some comments back from them.

Ms. Morris said with Chapter 8, item #21 Reception Facilities, the Text Amendment Committee wanted to make sure that folks know that they are subject to the stream buffers; especially around our waterways and that they cannot be disturbed; it was added to letter "d".

Under letter "h", instead of having to have the frontage on a major or minor thoroughfare, they will now be required to have direct access to, or frontage on, a NCDOT maintained road or a privately maintained paved street or road. They will also have to provide a driveway permit to show that NCDOT has approved that particular access point. If it is a private street, they will have to show that there is a road maintenance agreement in place. If it is maintained by one particular person and not necessarily the neighborhood, they will have to provide documentation that they have permission to use it as an access point.

The Chair asked if it is 100 feet for structures and the required stream buffer is 50. He asked would it be possible that it would have to be 150 feet.

Ms. Morris said they are two separate things. If you think we need to clarify it, we can split them up into "d" and "e". When we looked at this text originally, the 100 feet was from the property line. The Overlay is actually a minimum of 50 feet and a maximum of 120 feet, plus an additional 40 feet for a no build zone. She said it could actually be more than that if they are close to a stream.

She said as far as the structures from the property line itself, you really would have to have a situation where the property line was the stream in order for the 140 feet to kick in. We can split those up if you think that would clarify because they are two totally different things.

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The Chair asked if the board was more comfortable splitting it up or leaving it as it is.

Ms. Frye said; let's say we have a property line that is at the stream side; so, I have now established a structure that would have to be 100 feet from the property line. Let's say we have a square, and the rear lot line is a property line, and that structure can be no closer than 100 feet from that property line, based on that standard?

Ms. Morris said from the property line is correct.

Ms. Frye said, but then you describe that there is a stream buffer, then I would go to Item "e"; so now I have establish a 100 foot off set for that section, but then another line item I now have to comply with is the required stream buffer, and based on what you have said that could be in excess, maybe up to 140 feet. So, I have 100 foot offset for Section "d", then potentially 140 feet offset for the water buffer zone. I would have two standards to meet.

She said breaking them out might be clearer.

Ms. Morris said in any case, you have to be at least 100 feet from the property line. The River Stream Overlay only comes into play if you are adjacent to the stream. We are trying to point people in the right direction, so that they will know, that when they are near those water bodies they will also need to look back at Chapter 4, because that is where it is going to tell you. Yes, you may be allowed to only have the 50 feet plus the 20 feet, but, the 100 feet in these standards is going to trump that.

Ms. Morris said if the Board likes, we can split them up, but regardless, they will have to meet the 100 feet, at any property line.

Ms. Frye thinks that is the single standard in Item d. She said just for the numeration, make Item e to read: required stream buffers must be maintained or in compliance; have it broken out so that it is crystal clear.

Ms. Morris asked if it should be changed to say: where structures, viewing areas or sitting areas are located near water bodies, the required stream buffers must be maintained. She said to make it clear that those same items are subject to that buffer standard as well and is the stricter of the two.

It was the consensus of the Board to have Ms. Morris make that clarification.

There being no further discussion, Ms. Mary Blakeney, **MOTIONED, SECONDED** by Mr. Aaron Ritchie, to recommend to the Board of Commissioners the Proposed Text Changes to Chapter 8 with the changes to Item e. The vote was unanimous.

Chapter 4 -Proposed Text Changes to the Cabarrus County Subdivision Ordinance

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Ms. Morris said Section 11- C2, is just an enumeration, that it is a 45 foot right-of-way that is consistent with NCDOT standards.

Item #12 is new language and it allows for an existing 45 foot right-of-way; since we do allow up to the five lots. We have some older subdivisions where parcels are land locked in the rear. This would allow them to either use a flag lot option or to subdivide directly off of that existing 45 foot right-of-way. They would not be allowed to extend that 45 foot right-of-way. If there is no road maintenance agreement in place, anyone who uses that road for access would have to sign a new road maintenance agreement. If there is an agreement in place it would have to be amended to add those new lots to it. She said that is the intent behind this particular language.

Item #13 clarifies that we do allow private streets as a permanent option, but it has to be built to NCDOT standards and there would have to be a road maintenance agreement associated with it when the plat is submitted.

Ms. Frye said under Item 12-a, where we are transitioning after the first 25 feet to 18 feet, down to 12 feet. When we make that taper to 12 feet, she was thinking that 15 feet was the typical width for a two way safe passage. She said noting that we are tapering because you will have probably less ingress and egress the further you get into that site. She thought that dimensionally 15 feet was the bottom out for a two-way.

Ms. Morris said this comes directly from the NCDOT standards. We could have a stricter standard if the Board would like to entertain 15 feet versus the 12 feet. She thinks that it kind of assumes that since there is a gravel road, you will probably not have a lot of two-lane passing on that street. She said it is gravel and is how the neighbors have decided to maintain.

Ms. Frye would not want to create a condition, if that is an existing condition that they have to grade and clear additional to create 15 feet.

Ms. Morris said this does talk about if there is an already an existing 45 foot right of way. If we had a situation where someone had the 45 foot right of way, but it was a dirt road; this is the standard that they would have to go by. Since it mimics NCDOT standards, this is the standard that we have always used. She said probably more than likely it is what you will find if you did a field inspection of these types of subdivisions.

She said where it tapers down, the first 25 feet and the 18 feet wide comes directly from NCDOT and we do check to make sure that is in so that they are not dragging gravel back out onto the road.

Ms. Frye said is fine with leaving the 12 feet. She said if the 18 feet is the standard and we are all in agreement that once you get far enough into there that maintaining the 12 feet is satisfactory to the point that Ms. Morris made with regards that you will be so far back in there, that the minimal amount of travel will accommodate a 12 feet width; we can leave it.

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Ms. Morris said if someone came in today and wanted to do a new five lot subdivision and do the 45 foot right of way, this is the same standard that they would have to meet. We have a lot of streets shown on paper that do not exist, so when someone does continually subdivide that property, there would then become an accountability factor. So hopefully, we would have the 12 foot emergency access; all weather access. She said the Fire Marshal is familiar with that particular standard.

There being no further discussion, Ms. Shannon Frye, **MOTIONED, SECONDED** by Mr. Larry Ensley, to recommend to the Board of Commissioners the Proposed Text Changes to Section 11 of the Subdivision Ordinance. The vote was unanimous.

Chapter 3 – Proposed Text Changes to the Cabarrus County Subdivision Ordinance –
Certificates

Ms. Morris said typically what is on a final plat, whether it is an exemption or a 20 lot subdivision, we have the same set of certificates that are used on final plats. Because of the way an exemption works, they are subject to the Zoning Ordinance, but they do not have to follow the Subdivision Ordinance.

The last certificate that has been added is a certificate to address if the owner wants to have the certificate that says that they are exempt from the other things being applied to them. For example, in the standard certificate it says that they are dedicating the parks or roads; this particular certificate would apply if none of those other things apply.

She said if they are subdividing property but it is all on an existing roadway and there are no new roads, no new parks, no new easements, any of those things that would actually have to be dedicated to the public. That is what the optional certificate would take care of and it is optional. We want the property owner to sign off, so we know that they know that this subdivision is happening. That particular certificate is geared more toward a major subdivision not a minor subdivision or an exemption.

Mr. Koch said the reason we suggested this change is because if you look at the State Statute definition of subdivision, if you subdivide into lots that are greater than 10 acres and you are not dedicating any new roadway, it is not considered a subdivision. So, even though you are dividing your property, it is not considered a subdivision. He said the previous certificate mentions the word subdivision, so we are trying to capture the situation that would occur if someone were to create lots of that size and there is no road dedication.

There being no further discussion, Mr. Aaron Ritchie **MOTIONED, SECONDED** by Ms. Mary Blakeney, to recommend to the Board of Commissioners the Proposed Text Changes to Chapter 3 – Certificates Section of the Subdivision Ordinance. The vote was unanimous.

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Ms. Morris will make the changes to Chapter 8 to clarify with the river stream overlay and will forward all the proposed text changes to the Board of Commissioners with the Commission's recommendation for approval.

Mr. Charles Stapleton, 4779 Rocky River Road, Concord, NC, addressed the Board stating that the verbiage of this text was put in after a conversation he had with Ms. Morris. He asked about being allowed multiple accessory dwelling units on a piece of property as long as it did not exceed the percentage of the square footage of the lot. We have had some disparities in how the zoning ordinance has been applied up and down Rocky River Road. He said there are a lot of ambiguities and differences and a lot of things going on. When he addressed this he felt this was just one more attack personally against him, about the zoning changes or ordinances and different changes that are going up and down the road.

He has not been able to get a true intent or definition of what an accessory dwelling unit is. He asked if someone on the Board could enlighten him on what that intent is; what it means. If you say you are only going to limit one accessory dwelling unit per parcel of land; what is your definition of an accessory dwelling unit.

The Chair understands that Mr. Stapleton has had conversations with staff and those conversations and conversations with the Board of Commissioners are being looked at and are being addressed. When they have deliberated over that they will come back to us.

Mr. Stapleton would like to know the intent or the definition of an accessory dwelling unit. He said according to the Ordinance, it is supposed to be a subordinate and incidental piece of property. He said something that is subordinate to a principal property, to create additional addresses and rental pieces of property and subdividing with separate utilities to him does not define an accessory dwelling unit. If you are going to limit the number of accessory dwelling units to one, he would like to know what the definition of that is and how to apply that.

Ms. Morris said an accessory dwelling unit is defined in the Definition section of Ordinance. The definition is: A structure, used as a residence, located on the same lot and customarily incidental and subordinate to the principal building.

We have always had the interpretation that you are only allowed one accessory dwelling unit per parcel. This is simply to codify this because it was not clear.

She said Mr. Stapleton did bring it to her attention, that the Ordinance really did not say that you could only have one dwelling unit. We have structural coverage and we have a certain percent that it talks about when you are talking about accessory buildings. There are some different things that come into play with impervious area and structural coverage, but nowhere did it really say you could only have one accessory dwelling unit on that parcel.

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So, this was simply to clarify that; this has always been the interpretation, and this has always been how staff has applied it. It is simply to codify it.

Ms. Frye asked Ms. Morris to read the definition again.

Ms. Morris read the definition: A structure, used as a residence, located on the same lot and customarily incidental and subordinate to the principal building.

She said on top of that would be those permitted based on standards, standards, that the Board just reviewed and we added that particular standard to that, you can only have one per parcel.

The Chair asked Mr. Stapleton to contact staff and or the Board of Commissioners if he had any other concerns regarding the definition or interpretation.

Mr. Tim Sherman, 1018 Twin Oaks Court, Concord, NC, addressed the board. He asked if it is an accessory building, should it not be to the same standards of the original home. When he originally moved into the house in 1982, the building that we are talking about and complaining about was a pole building with a dirt floor. He said they came in on a Saturday and put in a septic tank. The plumbing is above the ground and there are a lot of different issues with this.

If you are saying you can have one accessory house that means he can take shed from Sears, a metal building, and move somebody in it. Is that not correct, because it is not clarified what is the accessory unit. He would think it would be to the standard building codes that we have to live in every day. This was basically a pole building that they have turned into a house and it has its own lot.

He does not understand how you can do that. If that is the case then all through Cabarrus County you are lowering the housing standards by letting them take a shed and turn it into a house. There is no clarification on that and we have talked with staff and staff apparently has no authority to stop or to change this because they are still working every single day and it has been going on now for four or five months.

If staff cannot take care of it and this board cannot take care of it what is the step to go too? If you vote on it before people get to talk, what good does it do to talk if you have already amended or changed it?

The Chair said this sounds like a zoning enforcement problem.

Mr. Sherman said we have been there.

Ms. Morris said the comments that are being made are about an active zoning case. The particular one they are talking about, with the accessory dwelling unit, exceeded the permitted square footage based on those standards that were just in front of the Board. We put the property owner on notice that we revoked that particular permit. They may

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use it as a storage building, it meets the setbacks. They can use it for storage, but it does not meet the square footage requirement we have for an accessory dwelling unit.

She said as far as building code, that is a building code issue. This is the Zoning Ordinance that we are talking about. There are construction standards that go along with habitable structures, but as far as this particular structure being allowed to be used as an accessory dwelling unit, the permit has been revoked. It was issued in error.

Mr. Koch said we met with Mr. Stapleton and to his knowledge Mr. Sherman has not spoken directly to staff. Mr. Stapleton raised a complaint about this particular structure. At the end of the meeting what was agreed was that we would investigate it and to that end the entire file of the county was reviewed. We sent an appraiser from the County Assessor's office to actually go and measure the building, to hand measure it and to measure all of the setbacks. He said there is only a certain amount that you can do from the GIS system and the aerials. It turns out, that when you field measure it, it is too large.

He said by adding a small shed shaped structure to the back of it caused it to go over the required amount. It can be no larger than 50% of the size of the principle structure. Everything out there was measured. It would not appear from driving by it or from the records that it would be in that situation, but based on the field measurements that were done subsequent to the meeting that we had, it was determined that it could not be used as an accessory dwelling. The property owner has been notified and the permit was revoked. He said it is being dealt with in that way.

Director Report

Ms. Susie Morris, Planning and Zoning Manager, will be working with the Text Amendment Committee on the next set of text amendments on the three chapters the Board had look at previously.

She informed the Board that the Inspections Department is shorthanded on building inspectors and permitting clerks. Therefore, they are running behind on inspections. So if you hear any complaints out in the community, please ask them to be patient with us. We are trying to get those positions filled. If they are having trouble getting inspections have them call us. We are doing the best that we can but it is taking a little while.

The ULI Reality Check, talked about at the last meeting is soliciting volunteers. If any of you are interested in volunteering, it will be at the Charlotte Convention Center sometime in July. They are looking for folks in the community who would be interested in participating. Please let her know and she will toss in your name.

She said it is somewhat like the blue printing exercise that we went through, but they actually use LEGO'S and get into more discussion with people as far as what needs to happen.

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Ms. Morris said if the Board knows anyone who is a local business owner, the Sustainable Local Economy group, Think Cabarrus First, is making progress towards spinning off to become a nonprofit. Please encourage anyone that has a local business that is not a member to become a member and to take part in that educational campaign. They need good folks to volunteer for the Board of Directors, so they can spin off from the county. They will also be participating in different events over the next few months, so if you see them out anywhere please stop by and show them your support.

Ms. Morris said there a couple of proposed bills that may impact us. One of the bills submitted would change how the Board of Adjustment works. Part of those changes, would be that the current language for Conditional Uses would no longer require the high vote. The only thing that would still require the high vote would be the Variances. The proposed language changes it so that you do not necessarily have to a prove hardship anymore to get a Variance. She said it will be interesting to see how this particular legislation transforms as it makes its way through the process.

There is also a bill out there and if it is approved, it would take away all of the ETJ (Extra Territorial Jurisdiction). This Board would be very involved with that because we will have to put zoning on that property. It is a considerable amount of property. We will have to see how it all works out. The effective date would be on approval. If that happens there may have to be special meetings held.

Ms. Morris said as a part of the other legislation with the Board of Adjustment, it also allows for the applicant, if they appeal, to call for a special hearing within 15 days. That may also impact us at some point. We will have to figure out what to do with that, whether or not the applicant would have to pay for the meeting. In some jurisdictions if you call a special meeting, then you are responsible for all of the charges.

She said there is proposed legislation to repeal the special legislation that was adopted in 2007, for Kannapolis to be able to go beyond their three mile limit. If that happens that property will be coming back to the county.

There are a lot of things that we are tracking. Additionally, House Bill 139 is back. This is the one that does not allow any architectural standards on residential development. There are about 10 bills that we are tracking that will have some kind of impact. This time it is a lot of the proposed legislation that has to do with planning and zoning.

Legal Updates

Mr. Koch said when Ms. Morris was talking about the potential changes to the Board of Adjustment and how it would operate, particularly, as it relates to Variances. She was talking about the hardship element. What she was speaking of is that element that was always traditionally one that boards wrestled with; it said you could not make any reasonable use of the property without the Variance. He said that was almost an impossible element to ever realistically meet; if you were seeking a Variance. It sort of

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tries to bring the Variances, at least in North Carolina, in accord with something that is a little bit more practical.

He said if you applied that standard the way it was written, you could almost never grant a Variance. As you know from experience, the Board has granted Variances here and there over the years; we never had that many of them fortunately. It would try to make that standard a little bit easier to digest when you are having to consider whether to grant a variance or not.

He said there is a lot of activity up at the General Assembly, particularly as it relates to planning and zoning matters. It will be interesting to see what happens with some of these bills. There could be some pretty substantial changes that we will be dealing with.

On a local level, the primary thing we have left is the APFO refund lawsuits, of which we have several. There is one in particular that involves multiple plaintiffs and probably the majority of the voluntary mitigation payments that had been paid over the years. The pleadings are in, in those initial cases and we have a hearing on May 3, 2013, to basically test the defenses that the County has to having to pay that money back. He said depending on the outcome of that hearing, it will be a bellwether or guide for what happens in the other cases and certainly will serve as a guide as to how we deal with the whole issue going forward. In May, assuming that the judge rules promptly, by the time the next meeting comes around we should have an update on that. It will be interesting to see what happens there.

Mr. Litaker said this is something he has run across personally and he does not know if we can address it or not. First of all he is a gun advocate and has a conceal carry. But, he has tons of friends that talk about have 6,000 – 10,000 rounds of ammunition in their home.

He asked if there were any provision that would cover this. If that house catches on fire, he would not want the fire department to be sent in there and he would not want to be living close by. Some of these homes are 30 or 40 feet apart. He asked if we are making any concessions to address any of these issues, making sure they are stored properly. At least for the safety of the firemen or police that would be going into the home.

Mr. Koch does not think there is anything in our zoning ordinance that addresses that and he is not all that familiar with the provision of the fire code to know whether it is addressed in there or not.

Ms. Morris knows that there are some provisions when it comes to fireworks and different things. She would be happy to speak with the Fire Marshal about it.

Mr. Litaker said he would, just to make sure. He said businesses are required to have a plaque indicating what types of chemicals are there. If you have a fire and all of a sudden you have police going in to check the house to make sure nobody is there; we send in

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firemen to bring out the pets sometime. Well, they need to know if there are 6000 rounds of ammunition in there and how it is stored.

He said if you have line of people standing outside watching, like in a theater, and those projectiles start going off, you will have a huge issue; scenario. He would like for us to be proactive, if there is something in zoning we could do to at least have the situation addressed.

Mr. Koch said we will check with the Fire Marshal and see if we can get some information in response to Mr. Litaker's question.

Mr. Morris said typically with the Zoning Ordinance and the Zoning Officials, we do not go into personal property. She does not know if that is something that could be handled under the Zoning Ordinance but she will follow up with the Fire Marshal's office as well as the Sheriff's Department to see if there is anything in the County code.

Mr. Litaker said we discussed that when we were zoning the firing range, about their storage of ammunition, gun powder and stuff.

Ms. Morris said that is correct because that is commercial and we can regulate. When it comes to an individual's house, it is more about the outside of the house than what happens on the inside. She said building code would take care of how that structure is built for health and safety purposes, as well as the fire code. The zoning code, typically, does not address things interior to residential.

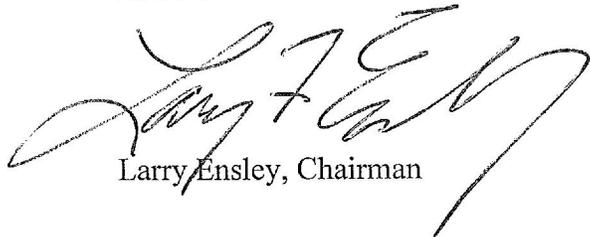
Mr. Litaker said maybe we need to think about it.

Ms. Morris does not know legally that we can. She thinks it will need to either be handled through the Fire Marshal's office and whether someone would have to get a permit or something from them or the Sheriff's Department. The Sheriff's office is the one that regulates the guns and the ammo and the Fire Marshal's office is on the safety perspective. She will follow up with them and get back to Mr. Litaker.

There being no further discussion, Mr. Aaron Ritchie, **MOTIONED, SECONDED** by Mr. Larry Ensley to **ADJOURN** the meeting. The vote was unanimous. The meeting ended at 7:55 p.m.

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APPROVED BY:

A handwritten signature in black ink, appearing to read "Larry Ensley".

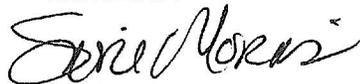
Larry Ensley, Chairman

SUBMITTED BY:

A handwritten signature in black ink, appearing to read "Arlena B. Roberts".

Arlena B. Roberts

ATTEST BY:

A handwritten signature in black ink, appearing to read "Susie Morris".

Susie Morris
Planning and Zoning Manager

FINDINGS OF FACT
CONDITIONAL USE ZONING APPLICATION
APPLICANT: CABARRUS COUNTY
CABARRUS COUNTY LANDFILL AND
SHERIFF'S FIRING RANGE AND TRAINING CENTER
RZON 2013-00001

FINDINGS OF FACT

1. The uses as proposed are not detrimental to the public health, safety or general welfare.
 - a) *The proposed uses are those already existing for many years on the property and there have been no adverse impacts.*
 - b) *The proposed uses add no new additional burden to the property that would affect the public adversely.*

2. The uses as proposed are appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, etc.
 - a) *The existing uses have not created any burdens or challenges regarding transportation, water supply and police protection, waste disposal or other public facility or infrastructure.*
 - b) *All such facilities are located nearby.*

3. The uses as proposed will not violate neighborhood character nor adversely affect surrounding land uses.
 - a) *The proposed uses are those already existing for many years on the property and there have been no adverse impacts.*
 - b) *The proposed uses add no new additional burden to the property that would affect the public adversely.*

4. The uses as proposed will comply with the general plans for the physical development of the County as embodied in the Zoning Ordinance or in the area development plans that have been adopted.
 - a) *The proposed uses are those already existing for many years on the property and there have been no adverse impacts.*
 - b) *The proposed uses add no new additional burden to the property that would affect the public adversely.*

Memo

To: Planning and Zoning Commission
From: Susie Morris, AICP, CZO, Planning and Zoning Manager
CC: File
Date: 4/8/2013
Re: Proposed Text Amendments to Zoning Ordinance

Chapter 7-Section 7-3 Uses Permitted Based on Standards (PBS)

- Please look over the proposed text changes to Chapter 7, Section 7-3, 1, Accessory Dwelling Unit, of the Zoning Ordinance.
- Additions are in **red text** and attorney corrections are in **blue text**.

Chapter 8, Conditional Uses

- Please look over the proposed changes to Chapter 8, #21. Reception Facilities.
- Additions are in **red text** and attorney corrections are in **blue text**.

Cabarrus County Subdivision Ordinance, Section 11, Public and Private Roads

- Please review the proposed changes to Section 11, Public and Private Roads
- Additions are in **red text** and attorney corrections are in **blue text**.

Cabarrus County Subdivision Ordinance, Section 5, Final Plat Requirements

- Please review the proposed changes to Section 5, Final plat requirements, Section C, Certificates
- Additions are in **red text** and attorney corrections are in **blue text**.
- Strike through text represents language that will be deleted.

If there are any items that you have questions or concerns about, please note those items so that we can discuss the proposed changes at the meeting on Tuesday.

Please be prepared to make a recommendation on these items to the Board of Commissioners.

Section 7-1 Introduction

The purpose of this Chapter is to describe those uses, which may be approved administratively by Planning and Zoning staff, known as "performance based standards" (PBS) uses. Performance based standards uses are those which can be made compatible within a given zoning district as long as pre-established standards are met which will control for any potential negative effects of the use. PBS uses provide landowners with more flexibility in using their property yet still affords protection to neighboring landowners.

Section 7-2 How to use this chapter

The uses based on performance standards are listed below. At the beginning of each section is a statement showing which zoning districts allow the performance based standards uses. The standards that must be met to permit the use are then listed. ~~It should be emphasized that~~ THE "PBS" STANDARDS ARE IN ADDITION TO THE REGULAR DEVELOPMENT STANDARDS THAT ALL DEVELOPMENT IS OBLIGATED TO COMPLY WITH UNDER THE TERMS OF THIS ORDINANCE, INCLUDING ZONING SITE PLAN REVIEW WHERE APPLICABLE.

Section 7-3 USES PERMITTED BASED ON STANDARDS (PBS)

1. Accessory Building and Accessory Dwelling Unit

Accessory Dwelling Unit

Agricultural/Open, Countryside Residential, Low Density Residential, Medium Density Residential, High Density Residential/Mixed Use, Office/Limited Commercial, General Commercial and Limited Industrial districts

- a. Residential accessory dwelling units in the AO, CR, LDR, MDR and HDR districts shall not exceed fifty (50) percent of the square footage of the livable area of the primary structure or 1,100 square feet of gross floor area, whichever is less. Accessory dwelling units located as part of a commercial or industrial building shall not exceed 800 square feet.
- b. In residential districts, the accessory dwelling unit shall be sited to the rear of the primary structure or to the side as a secondary option. If sited as part of a commercial or industrial building, the accessory dwelling unit shall be incorporated into the overall building design.
- c. Accessory dwelling units shall meet the principal building setbacks listed in Chapter 5 for the zoning district.
- d. The accessory dwelling unit height shall not exceed the height of the principal structure.
- e. The exterior of the accessory dwelling unit must be compatible with the principal residence in terms of color, siding, roof pitch, window detailing, roofing materials, and foundation or skirting appearance as determined by the Zoning Administrator. Manufactured homes may not be used as an accessory apartment dwelling unit.

- f. Adequate off-street parking must be provided for any vehicles owned by occupants of the accessory unit. All parking shall be screened from public rights-of-way either by buffer yard or by the mass created by the house/accessory dwelling unit.
- g. **Only one accessory dwelling unit per parcel is permitted.**

Accessory Building

Agricultural/Open, Countryside Residential, Low Density Residential, Medium Density Residential, High Density Residential/Mixed Use, Office/Institutional, Office/Limited Commercial, General Commercial, Limited Industrial, General Industrial districts

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.
- 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.
- 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 road, 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 ~~principle~~ 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.

- o Hours and days of operation
- o Total number of employees, both full-time and part-time
- o Projected number of events per year and expected spectator attendance.
- o Types of accessory uses envisioned on the site
- o Any and all other relevant information that will help describe the facility
- b. The minimum site acreage shall be twenty (20) acres.
- c. The racetrack and all buildings, viewing areas, and seating areas shall be located no closer than five hundred (500) feet from any street right-of-way or property line.
- d. All access ways shall be adequately lit. Such lighting must be shielded to prevent light and glare spillover to adjacent residentially used or zoned properties.
- e. Objectionable noise shall be muffled or eliminated so as not to become a nuisance to adjacent uses. It shall be the responsibility of the applicant to provide proof that all noise for the operation can meet the requirements and general performance standards for commercial and industrial uses. The Commission may require more stringent noise restriction if it finds as a fact that noise should be muffled to a greater extent than required under Conditional Use Number 19, Race Complex, specifically section 19-A.
- f. A Level One buffer yard will be provided at the perimeter of the property.
- g. The following accessory uses may be permitted as incidental to, and limited to the patrons of, the principal use:
 - o Refreshment stands or booths
 - o Souvenir stands or booths

21. Reception Facilities

Agricultural Open and Countryside Residential districts

- a. A complete description of the facility including but not limited to:
 1. Types of events, days and hours of operation
 2. Projected number of users per weekday and weekend days, with the maximum number expected at any one event
 3. Total number of seats
 4. Types of accessory uses, if any, envisioned on the site (includes any accessory structures)
 5. Total number of employees, both full-time and part-time.
 6. Any and all other relevant information that will help describe the facility
 7. Building elevations
- b. The site shall contain at least five acres.
- c. A residential structure that is used for a reception facility shall not be altered in any way that changes its general residential appearance. Building height and other dimensional requirements for new construction shall be governed by the zoning district in which the property is located. New construction must meet commercial design standards.
- d. All structures, viewing areas, and seating areas shall be set back at least one hundred (100) feet from any street or property line. **Required stream buffers must also be maintained. See Chapter 4, Waterbody Buffer Zone.**
- e. Outdoor lights must be shielded to direct light and glare only onto the facilities' premises but may be of sufficient intensity to discourage vandalism and theft. Lighting and glare must be deflected, shaded and focused away from any adjoining properties.

which may also specify the measures to be taken to control noise, including but not limited to muting, special landscape treatment and berms.

- g. In the event the facility abuts residentially used or zoned property, Level Two buffering must be implemented. See Chapter 9, Landscaping and Buffer Requirements.
- h. The parcel must have frontage on, ~~a major or minor thoroughfare~~ or have direct access to, a NCDOT maintained road or a privately maintained paved street road or street. Proposed access points to NCDOT roads must be approved by NCDOT. In the event that a privately maintained road or street is used to gain entry to the site, the applicant shall provide documentation ~~from the private road owner(s)~~ that access to the site for events is permitted.
- i. The facility must provide two parking spaces for the owner/operator, plus one for every four persons in attendance at events. Service providers (staff, caterers, etc.) should be included in this calculation at a rate of one for each employee or contracted staff member. The parking area shall remain grassed (no impervious coverage). However, handicap accessible parking is required to be an improved/hard, stable surface and to meet requirements of the North Carolina State Accessibility Code and Section 10-5.3 of this Ordinance. No on-street parking is permitted.
- j. Other than as part of the reception events, no meals shall be served to the general public on the site.
- k. The following accessory uses may be permitted as incidental to the facility and limited to the patrons of the principal use:
 - o Playground
 - o Bathroom facilities
 - o Aesthetic (gazebo, barn, etc.) features
 - o Amenity areas, gardens
- l. Signs for Reception Facilities shall meet the requirements of Chapter 11 (Standards for Permanent Signage in Residential Districts) of the Cabarrus County Zoning Ordinance:

22. Recreational Facility, Outdoor

Agricultural/Open, Countryside Residential, Low Density Residential, Medium Density Residential, High Density/Mixed Use Residential, Office/Institutional, Office/Limited Commercial, General Commercial, Limited Industrial and General Industrial districts.

A complete description of the facility including but not limited to:

- o Hours and days of operation
 - o Total number of employees, both full-time and part-time
 - o Projected number of users per weekday and weekend days
 - o Types of accessory uses, if any, envisioned on the site
 - o Any and all other relevant information that will help describe the facility
- a. The site shall contain a minimum of five acres.
 - b. All structures, viewing and seating areas shall be set back at least one hundred and fifty feet (150) from any street or property line.
 - c. The following accessory uses may be permitted as incidental to, and limited to the patrons of, the principal use:
 - o Playground
 - o Refreshment stands or booths, and/or

C. Certifications - the following certificates shall be shown on the Final Plat as applicable:

1. CERTIFICATE OF OWNERSHIP AND DEDICATION

I (We) hereby certify that I am (we are) the owner(s) of the property shown and described hereon and that I (We) hereby adopt this plan of subdivision with my (our) free consent, established minimum building lines, and dedicate all roads, alleys, walks, parks, and other sites to the public use except as noted. Further, I (We) certify the land as shown hereon is within the platting jurisdiction of Cabarrus County.

Date Property Owner/Developer

2. CERTIFICATE OF ACCURACY

[As required under General Statutes 47-30 as amended.]

Date Registered Land Surveyor

3. CERTIFICATE OF APPROVAL BY THE SUBDIVISION ADMINISTRATOR

I, _____, Subdivision Administrator of Cabarrus County hereby approve the final plat of the subdivision entitled _____ on the _____ day of _____ month, of the _____ year.

Subdivision Administrator

4. CERTIFICATE OF APPROVAL OF STREETS AND STREET DRAINAGE PLANS

Department of Transportation
Division of Highways
Proposed Subdivision Roads
Construction Standards Certification

APPROVED _____
Date District Engineer

5. CERTIFICATE OF ROAD MAINTENANCE

- a. I (We) hereby certify that I (we) will maintain the roads to the standards set forth by the North Carolina Department of Transportation until the respective governmental agency takes over this responsibility. (This does not include removal of snow or ice)

Date Property Owner and Developer

- b. Road maintenance shall hereby be the responsibility of the Homeowners Association and roads shall be maintained to the minimum standards of the North Carolina Department of Transportation until the respective governmental agency takes over this responsibility. The road maintenance agreement is recorded in Deed Book____Page____of the Cabarrus County Register of Deeds.

Date Property Owner and Developer

6. CERTIFICATE OF WATER AND SEWER CONNECTION FEE PAYMENT
(only if Concord public utility extensions are required).

- a. I hereby certify that all water and sewer connection fees for the _____ Subdivision have been paid, or that the fees are not applicable since preliminary plat approval occurred prior to June 28, 1996.

Date Finance Director

- b. Approval by the Subdivision Administrator is conditioned upon the plat being registered in the Office of the Register of Deeds within thirty (30) days of such approval and receipt of record presented to the Commerce Department.

7. Optional Owner Certificate

The following Certificate may be used for an exempt final plat where no road right of way, roads, alleys, walks or parks are being dedicated as part of the plat:

I (We) hereby certify that I am (we are) the owner(s) of the property shown and described herein and that I (we) hereby adopt this plan of division of my (our) property of my (our) free consent, establishing any lines and features shown on this plat.

Date

Property Owner

Date

Property Owner

CHAPTER 4 REQUIRED IMPROVEMENTS AND MINIMUM DESIGN STANDARDS

Section 1. Compliance with federal, state and local law

All subdivisions and lots created under this ordinance must comply with the requirements of the Cabarrus County Zoning Ordinance and other applicable Federal, State and Local laws.

Section 2. Suitability of the land for use

- A. Lands which are subject to flooding, excessive erosion, or slides because of soil types or groups, water courses and other drainageways, steep slopes, or other hazards shall not be platted for residential or other uses in such a way as to present a danger to life, property, or to the public health, safety or general welfare.
- B. A subdivider proposing to use an existing lake must structurally upgrade the lake and dam, or if constructing a new lake and dam it must be in accordance with the North Carolina Dam Safety Act, or provide evidence that the lake does not fall under the provisions of that act.
- C. All proposed subdivisions shall be planned so as to facilitate the most advantageous development of the entire neighboring area, including but not limited to road locations, utilities location, development of adjacent property, etc.

Section 3. Preservation of natural features and historical sites

Due consideration should be given to preserving natural features, such as trees, floodplains, wetlands, hydric soils, prime farmland soils, forests, ponds, streams, rivers and lakes, as well as significant historical, archeological and cultural sites which are of

d. Individual engineering department of municipality involved.

Proof of approval shall be provided to the Cabarrus County Commerce Department before any work shall commence. Installation of the system shall be in accordance with the approved plan and shall be certified to the County by the registered engineer retained by the developer/owner.

2. Community water systems shall be required to meet Cabarrus County specifications as set forth in Standards Specifications for the Construction of Municipal Water and Sewer Systems in Cabarrus County. Where the complete system is intended to be connected to and maintained by the County; the County reserves the right to inspect the installation of the system and requires as built drawings.
3. Sewer systems shall be designed to County's specifications and the County shall reserve the right to inspect the installation of the system and require as-built drawings.

Section 11. Public and private roads

- A. **Public/Private Designation.** Each road shown on a subdivision plat or conveyance plat shall be classified and designated as either public or private.
- B. **Road Type and Layout.** The arrangement, character, extent, width, grade, and location of all roads shall be reviewed in relation to existing and proposed transportation patterns, topographical and other natural features, public convenience and safety, proposed uses of lands to be served by such roads and existing or potential uses in adjoining areas.
- C. **Private Roads.** Roads that are classified and designated as private are subject to the following conditions. PRIVATE ROADS SHALL BE MAINTAINED BY THE ADJOINING PROPERTY OWNERS AND/OR DEVELOPER AND WILL NOT BE ACCEPTED FOR PUBLIC MAINTENANCE. Plats with private roads shall be accompanied by a road maintenance agreement. New unpaved private roads shall be permitted only if they meet the following criteria:
 1. No more than five lots may be accessed by a newly created private road.
 2. Private roads must meet NCDOT minimum right-of-way standards (45 feet).

all streets permanently serving 20 lots or less (such as a cul-de-sac). Street stubs temporarily serving 20 lots or less shall provide sidewalks on both sides of the street.

- c. Handicap ramps shall be placed at each intersection in accordance with ADA guidelines.
- d. Pedestrian crosswalks are required on any residential collector street at each intersection and any mid-block pedestrian or bicycle connections.

9. **Half Streets Prohibited.** The dedication of half roads at the perimeter of a new subdivision is prohibited.

10. **Street Trees.** Street trees shall be required for any development within the Thoroughfare Overlay Zone as described in Chapter 4, Part III of the Cabarrus County Zoning Ordinance. Street trees shall also be required along all residential streets and residential collector streets at a rate of one large canopy tree for every 40 linear feet, spaced a maximum of 50 feet apart. All street trees shall be a minimum of 2½ caliper inches at time of planting. Consideration should be given to mixing of tree species so that a monoculture subject to disease is not created. Credit shall be provided for any existing tree with a minimum DBH of 6 inches that is preserved within the planting strip or a median.

11. **Cul-de-sac Length.** NCDOT standards for cul-de-sac length must be met. No residential street cul-de-sac serving lots of 1 acre or greater in size shall exceed 1,000 feet. No residential street cul-de-sac serving lots less than one acre in size shall exceed 600 feet. The District Engineer for NCDOT has the right to vary this standard in conjunction with the Subdivision Administrator.

12. Existing 45 Foot Right-Of- Way

Where a 45 foot right-of-way exists and lot access cannot be gained from a state maintained right-of-way, up to 20 lots may use the existing right-of-way to access a public street. Increasing the length of the existing right-of-way to accommodate new lots, however, is not permitted.

For additional lots to access the existing 45 foot private right-of-way, the following shall apply:

- a. The travel way must be at least 12 feet wide with gravel four inches deep. In addition, the first 25 feet of the road must be 18 feet wide and paved when the private road adjoins a paved road.
- b. Vehicle turnarounds must be provided at the end of all dead end roads.
- c. The subdivider is responsible for obtaining a permit for access to a state maintained road.
- d. A right-of-way maintenance agreement that includes all parties that use the right-of-way must be recorded in the office of the Register of Deeds to ensure proper maintenance. In the event a right-of-way maintenance agreement is already recorded, said document shall be amended to include new lots and property owners to the Agreement. A copy of this agreement shall be provided to the Planning Division Department prior to recording and to any approvals being issued for the proposed subdivision.

13. Private Roads and Streets

New roads or streets with 5 or more lots may be permanently designated as a private road or street. These roads or streets, however, shall be built to the North Carolina Department of Transportation public standard for the appropriate type of road or street. Additionally, a Road Maintenance Agreement shall be recorded in the office of the Register of Deeds to ensure that proper maintenance of the private road is provided by property owners gaining access from the road or street.

Section 12. Access and thoroughfare planning

All subdivisions or developments shall be subject to the following provisions relating to access to the public road system.

- A. **Access Management.** Direct access to public roads is governed by the classification of that road in the CABARRUS – ROWAN MPO and/or County Thoroughfare Plans such that:
 1. No lots may directly access a road classified as a major thoroughfare. These lots must be served by an internal road system or marginal access street.
 2. Access shall be limited where lots abut minor thoroughfares and major collector roads. The Planning and Zoning Commission may at their