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WAKE COUNTY NORTH CAROLINA

Planning, Development & Inspections

A Division of Community Services
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**MINUTES OF REGULAR MEETING**

**Wake County Planning Board**
Wednesday May 6, 2020, (1:30 p.m.)
Wake County Justice Center
Online Meeting via WebEx
Raleigh, North Carolina

**Members Present:** (9) Mr. Jason Barron (Chair), Mr. Thomas Wells (Vice-Chair), Mr. Amos Clark, Mr. Asa Fleming, Mr. Ted Van Dyk, Ms. Brenna Booker-Rouse, Mr. Bill Jenkins, Mr. Daniel Kadis, Mr. Tony Yao

**Members Absent:** (1) Ms. Meredith Crawford

**County Staff:** (14) Mr. Tim Maloney (Planning, Development, and Inspections Director), Mr. Steven Finn (Land Development Administrator), Ms. Sharon Peterson (Long Range Planning Administrator), Mr. Geoffrey Pearson (Code Enforcement Program Manager), Mr. Tim Gardiner (Planner), Ms. Celena Everette (Planner), Ms. Terry Nolan (Planner), Ms. Melinda Clark (Planner), Mr. Akul Nishawala (Planner), Ms. Beth Simmons (Community Services Administrative Manager), Mrs. Loretta Alston (Clerk to the Board), Ms. Jenny Coats (Community Services Business Manager), Ms. Lisa Provencher (Senior Executive Assistant), Ms. Toni Womack (Senior Executive Assistant)

**County Attorney Present:** (1) Mr. Kenneth Murphy (Senior Assistant County Attorney)

**Guest:** (1) Leigh Anne King, Director-Clarion Associates

1. **Meeting Called to Order:** Mr. Barron, Chair, called the meeting to order at 1:31 p.m.
   Mr. Barron expressed words of encouragement, thoughts and prayers to all, especially health care workers, first responders and all those on the front line, for doing what they can to keep us safe.

2. **Oath of Office for New Member**: Mr. Kenneth Murphy administered the oath of office to new Board member, Mr. Chengwei Tony Yao. Mr. Barron welcomed Mr. Yao to the Board and thanked him for his willingness to serve Wake County.

3. **Petitions and Amendments:** Motion to adopt the agenda was made by Mr. Clark and seconded by Mr. Fleming. The agenda was unanimously approved as presented.

4. **Approval of Minutes from March 4, 2020**: Mr. Wells requested that item three of the bullet points on page two of the minutes regarding the commuter rail system be changed from *"would use existing tracks to provide...."*, and amended to read, "*will require new tracks in addition to existing tracks to provide…*". motion to approve the minutes from March 4, 2020 with corrections made by Mr. Wells and seconded by Mr. Van Dyk. The minutes were unanimously approved.

5. **OA-01-20 Tree and Vegetation Protection:** Mr. Geoffrey Pearson, Code Enforcement Program Manager, presented the proposed text amendment as a request to amend the Wake County Unified Development

Ordnance (UDO) in order to clarify and modify the regulations relative to encroachments into the Tree and Vegetation Protection Zone.

Mr. Pearson informed Board that by ordinance, the tree and vegetation protection zone is defined as an area on the outer perimeter of a development site that is intended to preserve existing trees and vegetation.

Mr. Pearson shared background stating that the UDO currently provides regulations to protect existing trees and vegetation around the outer perimeter of a development site. He stated the purpose is to enhance the visual character, control runoff, and increase absorption.

Mr. Pearson explained the problem and reason for the draft text change:

- Several resident inquiries expressing concern about clearing of trees in the tree and vegetation protection zone
- The County has initiated several enforcement actions on developers/ builders who did not meet the requirements
    - Unauthorized encroachments with septic systems
    - More trees removed than allowed
- An appeal case was heard by the Board of Adjustment challenging the legality of an encroachment into the tree and vegetation protection zone

For these reasons, staff prepared and presented a draft text change to the UDO that helps clarify and simplify the requirements and standards of the tree and vegetation protection zone.

**Overview of Text Amendments**

1) Amend UDO Section 16-12 *Landscaping and Tree Protection* that accomplish the following:
    - Require the soil scientist to submit documentation indicating the septic system's encroachment into the buffer is the only feasible and safe alternative
    - Require the soil scientist to identify the septic system's limits of disturbance into the buffer
    - Require the unauthorized removal of trees and vegetation be replaced with a standard landscape buffer as defined in UDO Section 16-10-2 (F)(4)
2) Amend UDO Section 21-11 *Definitions* by removing the definition of Protected Tree

**Staff findings of the proposed amendments were presented as follows:**

1. Provides a record, from the design professional, that encroachment of the on-site septic system into the Tree and Vegetation Protection Zone is the only safe and feasible alternative.
2. Requires the soil scientist to identify the septic system's limits of disturbance into the Tree and Vegetation Protection Zone
3. Simplifies remediation for unauthorized removal of trees and vegetation.
4. Provides clarity in enforcement of the Tree and Vegetation Protection Zone

**Staff recommended that the Wake County Planning Board:**

1. Recommend that the Board of Commissioners adopts the statement of consistency for Ordinance Amendment 01-20 as presented; and by separate motion
2. Recommend that the Board of Commissioners adopts Ordinance Amendment 01-20 as presented

**Public comments:** None

**Board Discussion**

Mr. Barron recalled having an active conversation about these proposals with Code and Ops and had most of his questions resolved at that time.

Mr. Kadis asked for confirmation that the removal of the definition of a protected tree (radius statement of twenty-four inches) was done to give staff enforcement options. Mr. Pearson responded that this was intended to be an immediate stop gap making it easier to control and to make sure that the builder understands their responsibility.

Mr. Wells referenced the diagram of generic site plan regarding right-of-way and asked if a public street would impact the proposal? Mr. Clark referenced Section 16-12-2C in support of Mr. Wells and also referenced Section 16-12-5 regarding the Buffer vs. Zone definition; being that a zone was more protective than a buffer.

There being no further discussion, Mr. Barron entertained dual motions from the Board as follows:

**Motion for Consistency (1st Motion)**

In the matter of OA-01-20, Mr. Kadis moved that the Planning Board adopt and offer to the Board of Commissioners the following recommended statement finding that these proposed text amendments are consistent with the Wake County Land Use Plan and Wake County Unified Development Ordinance because:

1) The purpose of the Wake County Land Use Plan, and of the Unified Development Ordinance as seen in Article 1-11, is to provide a guide for the physical development of the County, preserve and enhance the overall quality of life of residents, and establish clear and efficient development review procedures. These proposed text amendments advance these purposes by modifying the regulations of the Tree and Vegetation Protection Zone, which provides enhanced visual character, reduces stormwater runoff, and increases absorption. These amendments clarify the documentation required to allow encroachment by septic systems into the Tree and Vegetation Protection Zone and simplify enforcement of remediation when there is non-compliance.
2) The proposed text amendments are reasonable and in the public interest because they provide a clear and consistent guide for the application of the Wake County Unified Development Ordinance as it pertains to enforcing and documenting permissible encroachments into the Tree and Vegetation Protection Zone.

Mr. Clark asked for clarification of Section 16-12-5 and requested to amend the motion as follows:

- Text changed from "buffer" to "zone"

The amended motion was seconded by Mr. Van Dyk and passed unanimously.

**Motion for Approval (2nd Motion)**

In the matter of OA-01-20, Mr. Wells moved that the Board finds that the adoption of these proposed text amendments is consistent with the Wake County Land Use Plan and Wake County Unified Development Ordinance and is reasonable and in the public interest and hereby make a motion to recommend approval of these proposed text amendments to the Wake County Board of Commissioners.
Motion was seconded by Mr. Fleming and passed unanimously.

For more details, click on the following link:

OA-01-20 Tree and Vegetation Protection Presentation.pptx

6. **OA-02-20 Exemptions for Bona-fide Farms:** Ms. Celena Everette, Planner, presented the text amendment to amend the Wake County Unified Development Ordinance (UDO) Article 1 – *General Provisions,* Article 9 – *Stormwater Management*, and Article 19 – *Review and Approval Procedures*, to clarify exemptions related to bona fide farms.

Ms. Everette shared the following background as well as an overview of the text amendments.

- In 2006, the County combined many of its local ordinances such as zoning, subdivision, stormwater and erosion control into the UDO
- Current language in the UDO exempts bona-fide farms from all the regulations in the UDO
- This exemption language needs to be revised to specify only those sections of the UDO that bona fide farms are exempt

**Staff findings and recommendations were presented as follows:**

1) Clarifies exemptions for bona fide farms in accordance with North Carolina General Statutes
2) Clarifies exemptions for bona fide farms relative to the County's local stormwater regulations

That the Wake County Planning Board:

1) Recommend that the Board of Commissioners adopts the statement of consistency for Ordinance Amendment 02-20 as presented; and by separate motion,
2) Recommend that the Board of Commissioners adopts Ordinance Amendment 02-20 as presented

Mr. Barron thanked Ms. Everette for the presentation, and as stated before, recalled having a healthy conversation at the Code and Ops committee meeting on March 4, 2020 resolving his questions and/or comments at that time.

**Public comments:** None

There being no discussion, Mr. Barron entertained motions from the Board.

**Motion for Consistency (1st Motion)**

In the matter of OA-02-20, Mr. Wells moved that the Planning Board adopt and offer to the Board of Commissioners the following recommended statement finding that these proposed text amendments are consistent with the Wake County Land Use Plan and Wake County Unified Development Ordinance because:

1) The purpose of the Wake County Land Use Plan, and of the Unified Development Ordinance as seen in Article 1-11, is to provide a guide for the physical development of the County, preserve and enhance the overall quality of life of residents, and establish clear and efficient development review procedures. These proposed text amendments advance these purposes by clarifying which articles and regulations within the Wake County Unified Development Ordinance apply and do not apply to bona fide farms. These text amendments, which clarify the Unified Development Ordinance provisions from which property used for bona fide farm purposes is exempt, are consistent with the North Carolina General Statutes.
2) The proposed text amendments are reasonable and in the public interest because they provide a clear and consistent guide for the application to, or exemption from, the Wake County Unified Development Ordinance for property used for bona fide farm purposes, and because they are consistent with the North Carolina General Statutes.

Motion was seconded by Mr. Clark and passed unanimously.

**Motion for Approval (2nd Motion)**

In the matter of OA-02-20, Mr. Fleming moved that the Board finds that the adoption of these proposed text amendments is consistent with the Wake County Land Use Plan and Wake County Unified Development Ordinance and is reasonable and in the public interest and hereby make a motion to recommend approval of these proposed text amendments to the Wake County Board of Commissioners.

Motion was seconded by Mr. Wells and passed unanimously. For more details, click on the following link:

OA-02-20 Exemptions for Bona-fide Farms Presentation.pptx

7. **Comprehensive Plan Discussion:**
    a. Extraterritorial Jurisdiction
    b. Transitional Urban Development Policies

Board members discussed and completed Survey Monkey after the presentation. The results are as follows: Planning_Board_MTS_Results_5_6_20.pdf

For more details, click on the following links:

PLANWake-Planning Board Update030420 ETJ_TUDS.pptx

PLANWake-Planning Board Update030420 ETJ_TUDS.pdf

TUDs Research.pdf

8. **Reports**

**Code and Operations Committee Report**
Committee members reviewed and discussed at length the two text amendments approved today at their March 4, 2020 meeting.

**Staff Reports**
Mr. Maloney announced that the two approved items would be scheduled at a future Wake County Board of Commissioners meeting. Mr. Finn had the following two announcements:

- We have Technical Review Committee items moving forward including Board of Adjustment cases for July and August
- Our office hours are TUES and THUR 10AM to 2PM

9. **Adjournment**
The meeting was adjourned at 3:46 p.m.

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REGULAR MEETING
WAKE COUNTY PLANNING BOARD
May 6, 2020

Chair Jason Barron declared the regular meeting of the Wake County Planning Board for Wednesday, May 6, 2020 adjourned at 3:46 p.m.

Respectfully Submitted:

Jason Barron
Wake County Planning Board

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