



## Minutes of 11/6/2013 Planning Board Meeting [adopted]

Russ W O'Melia on 12/11/2013 at 11:42 AM

Category: [Planning Board Minutes](#)

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### MINUTES

**Wake County Planning Board  
Wednesday, November 6, 2013  
1:30 P.M., Room 2700  
Wake County Justice Center  
301 S. McDowell St.  
Raleigh, N.C.**

**Members Present (9):** Mr. Matt Martin, Ms. Michelle Muir, Ms. Tara Kreider, Mr. Joseph Springer, Ms. Nancy Szabados, Mr. Michael Birch, Mr. Graham Cawthorne, Mr. Dale Bouldin, and Mr. Matthew Brubaker

**Members Not Present (1):** Mr. Douglas Ball

**Staff Members Present (7):** Mr. Steven Finn (Land Development Administrator), Mr. Bryan Coates (Planner III), Ms. Sharon Peterson (Long-Range Planning Administrator), Mr. Tim Maloney (Planning, Development, and Inspections Director), Ms. Stacy Harper (Planner II), Mr. Adam Cook (Planner I), and Mr. Russ O'Melia (Clerk to the Board)

**County Attorneys Present (1):** Mr. Kenneth Murphy

**1. Call to Order** – Mr. Martin called the meeting to order at 1:34 p.m.

**2. Petitions and Amendments** – There were none.

**3. Approval of Minutes from the September 4, 2013 Planning Board Meeting** –

Ms. Muir made a motion to approve the minutes as submitted. Mr. Bouldin seconded the motion. The minutes were approved unanimously.

**4. LUPA 03-13: Land Use Plan Amendment to classify the 1.83 acre parcel from Apex ETJ to Apex Short Range Urban Services Area**

Mr. Maloney provided an introduction to LUPA 03-13 and ZP-881-13. He said that state statute requires the county to rezone the property within 60 days of the Town of Apex's rescission of the land as ETJ on October 15, 2013. Mr. Maloney distributed a copy of a letter from the Town of Apex when the town requested that the subject property be included in their ETJ expansion request in 2007. He also distributed a copy of a letter from the property owner agreeing with the rescission of the ETJ.

Mr. Coates presented the staff report to the board.

**Applicant:** Wake County Planning, Development, & Inspections

**Property Owner:** ANS Trust

**Request:** Amend the Wake County Land Use Plan Map to classify the 1.83 acre parcel from Apex ETJ to Apex Short Range Urban Services Area.

**Location:** This amendment would apply to the parcel (PIN-0722762014) located at 2901 US 64 Highway West.

### **Background**

The 1.83 acre parcel was relinquished from the Town of Apex ETJ on October 15, 2013 by resolution of the Town Board.

The landowner (ANS Trust) of the 1.83 acre parcel (PIN 0722762) located at 2901 US 64 Highway West in Apex along with Jim Oxford (the operator of The Local Bar formerly the Iron Horse Bar) had requested the property be removed from the Town of Apex's Extra Territorial Jurisdiction (ETJ). The property was part of the 8,937 acre ETJ granted by the Wake County Board of Commissioners on August 6, 2007.

Town of Apex utilities are serving large residential developments to the East of the property. A Town of Cary sewer line is west of the property and is a major trunk line that serves Western Wake County. The subject parcel is located less than one mile from the intersection of US 64 & NC 540 Interchange.

### **Adjacent Land Uses**

**East-** Woods and residences,

**West-** Woods, fields, and a business park

**North-** Woods and a warehouse

**South-** Woods and residences

### **Analysis:**

#### **Wake County Land Use Plan**

Goal #2 in the Wake County Land Use Plan states, *to encourage growth close to municipalities to take advantage of existing and planned infrastructure, such as transportation, water and sewer facilities.*

The Wake County Land Use Plan classifies land not within municipal jurisdiction as either Long Range Urban Services Area, Short Range Urban Services, or Non-Urban.

In the previous Southwest Area Plan, the area near the subject parcel was classified as Apex Long Range Urban Services and up to 1 unit per acre. The Area was part of the land granted to the Town of Apex ETJ in 2007. The surrounding area has changed since 2007, NC 540 has been constructed and opened to traffic as well as many subdivisions nearby have been built and annexed by the Town of Apex.

Short Range Urban Service Areas are projected and intended to be urbanized and served by municipal services in the next 10 years.

The Town of Cary sewer line to the west of the parcel is being completed as part of the Western Wake Partners project. The sewer line will become functional in early 2014. With new utility lines throughout western wake, the pressure for development and redevelopment will increase.

The subject parcel has municipal water and sewer lines within 1,000 feet of its boundary. Apex municipal limits are within 1,000 feet to the East as well. With utilities and transportation access nearby the area near the parcel is expected to be urbanized in the short term. Staff feels the Short Range Urban Service Classification is an appropriate designation.

In 1993 a Watershed Protected Area Overlay was added to the subject property to comply with the Water Supply Watershed Protection Act. The watershed overlay goes with the property no matter jurisdiction.

With the subject property being located in the Jordan Lake Water Supply Watershed, the WSO-4P-1 water supply watershed overlay district will be applied to the subject property. Nonresidential uses may be developed within parts of water supply watersheds classified as Urban Services Area/Water Supply Watershed, provided they are consistent with the Land Use Classifications Map. They may be developed either under current residential zoning (as special uses) or under nonresidential zoning subject to overlay zoning (such as WSO-4P-1) that applies the supplemental impervious surface coverage limits, buffer requirements, and hazardous material controls necessary to meet the state minimum watershed protection requirements for the low density option.

#### **Findings:**

- 1. The Town of Apex relinquished jurisdiction of the subject property on October 15, 2013.**
- 2. The property is surrounded by Apex ETJ and Town limits.**
- 3. Public Sewer and Water utilities are within a 1,000ft of the subject property.**
- 4. The property meets the guidelines for Short Range Urban Services Classification.**
- 5. The Town of Apex's planning staff has no comment on the proposed land use plan amendment 03-13.**

#### **Recommendations**

Planning Staff recommends that the 1.83 parcel located at 2901 US Highway 64 West be classified as Short Range Urban Services Area and Residential (one unit per acre).

Mr. Don d'Ambrosi, 275 Ferrell Road West, Apex, NC came forward to address the board on behalf of the applicant. Mr. d'Ambrosi believed that there were enforcement and inspection issues on the property that the Town of Apex was unable to rectify with the business operator. The site and surrounding area is designated as high-density mixed use on Apex's Land Use Plan. The building has been there since the 1940's before the county's zoning went into effect. He said that neither he nor the property owner have a problem with the Short-Range Urban Services Area designation for the site. The property owner would like to have a commercial zoning category that reflects the commercial use and the designation that the Town of Apex put on the property.

Ms. Muir asked staff what other options there are for designating the property in the Land Use Plan. Mr. Coates answered that the options were Long-Range Urban Services Area, Short-Range Urban Services Area, and an activity center. Long-Range Urban Services Area would mean that urban services are anticipated 10 – 20 years in the future. This would not apply due to the proximity to Apex town limits. Designated the property as an activity center is not

feasible since it is a 1.83 acre parcel amongst a large area of Apex jurisdiction, and all of the land south of the property is zoned rural residential by Apex. Classifying the land as Short-Range Urban Services Area makes the most sense based on the utility investment in the area and the high likelihood that the property will be redeveloped and annexed into the Town of Apex.

Ms. Muir made a motion that the board recommend that the Board of Commissioners adopt the proposed Land Use Plan Amendment to classify 1.83 acres (PIN- 0722762014) from Apex ETJ to Apex Short Range Urban Service Area and Residential (one unit per acre). Mr. Martin seconded the motion. The motion passed unanimously.

**5. ZP-881-13: To rezone a parcel from Apex zoning district B1 (Neighborhood Business District) with a Primary Watershed Protection Overlay to Wake County zoning district HD (Highway District) with a WSO-4P-1 Watershed Protection Overlay**

Mr. Martin disclosed that he participated in a meeting with staff and the applicant regarding this case prior to the board meeting. Mr. Cook presented the staff report to the board.

**Request:** This request is to rezone a parcel from Apex zoning district B1 (Neighborhood Business District) with a Primary Watershed Protection Overlay to Wake County zoning district HD (Highway District) with a WSO-4P-1 Watershed Protection Overlay.

The Town of Apex Town Council passed an ordinance relinquishing extraterritorial jurisdiction for the subject property at its October 15, 2013 meeting. In accordance with General Statute 160A-360(f), the County has a period of 60 days to assign zoning to the relinquished parcel.

**Location:** The subject property is located at 2901 US 64 Highway West

**Present Zoning:** B1 Neighborhood Business District with a Primary Watershed Protection Overlay (Apex Zoning)

**Proposed Zoning:** HD Highway District with a WSO-4P-1 Watershed Protection Overlay (In 1993 a Watershed Protected Area Overlay was added to the subject property to comply with the Water Supply Watershed Protection Act.)

**Existing Land Use:** Bar/Club

**Petitioner:** Wake County

**Design Firm:** N/A

**Owners:** The ANS Trust

**PIN #:** 0722762014

**Surrounding Land Uses and Zoning Districts**

<b>Direction</b>	<b>Land Use</b>	<b>Zoning</b>
North	US 64 Highway West, vacant, wooded	PUD-CZ (Apex)
East	Vacant, wooded, single-family residential	RR & MD (Apex)

South	Vacant, wooded, single-family residential	RR (Apex)
West	Vacant, wooded	RR (Apex)

**Land Use/Zoning History**

- 1960: General zoning was first applied to the western portion of Wake County.
- 1984: Special use permit for an existing rear deck.
- 1988: Special use permit for the expansion of a nonconforming use.
- 1989: Special use permit to continue a nonconformity.
- 1993: Watershed Protected Area Overlay (WPAO) applied to subject property.
- 2007: Town of Apex extended its extraterritorial jurisdiction to include the subject property.
- 2007: Town of Apex rezoned the subject property to B1 Neighborhood Business District.
- 2013: Town of Apex relinquished subject property from its extraterritorial jurisdiction.

**Wake County Land Use Plan**

Prior to the subject site being located in the Apex ETJ, the site was located in the Town of Apex’s Long-Range Urban Services Area (LRUSA) and was included in the Southwest Area Land Use Plan. Upon returning to Wake County’s jurisdiction, staff recommends the parcel will be included in the Town of Apex’s Short Range Urban Services Area (SRUSA).

The Land Use Plan’s policies and goals, which have been adopted by the Board of Commissioners, address how development is to occur in the county so as to maintain and enhance the character of the area and the quality of life for its residents. These policies and goals direct more intensive uses to specified areas as identified on the Land Use Plan (such as activity centers). The Southwest Area Land Use Plan was jointly developed by the planning staffs of Wake County and the towns of Apex, Holly Springs and Fuquay-Varina and a community advisory committee, via an extensive public participation process.

In accordance with the North Carolina General Statutes and the Wake County Unified Development Ordinance, any proposed rezoning should be consistent with the Wake County Land Use Plan.

The planning staff has determined rezoning the subject site to a residential zoning district (Highway District) is consistent with the Land Use Plan. The existing use of the property as a bar is not consistent with the Land Use Plan. The Land Use Plan Residential Classification allows for some non-residential uses, however a bar/club is not one of those uses. Non-residential uses that are allowed in a residential classification outside of an Activity Center are those such as a daycare, fire station, communications tower, and park.

The 2007 Southwest Area Land Use Plan Update designated the land use as up to one dwelling unit per acre prior to the 2007 Apex ETJ expansion. Planning staff recommends reassigning the same land use to the parcel. Any expansion or change of use, on this property will have to be determined to be consistent with the Land Use Plan via a site-specific development plan before it could be approved for development.

**Town of Apex Review Comments**

As part of the Wake County planning staff’s review of this rezoning request, a copy of the petition was forwarded to the Town of Apex’s planning staff since this site is proposed to be located within their Short-Range Urban Services Area (SRUSA).

The Town of Apex's planning staff has indicated that they have no comment about the proposed rezoning.

### **Input from Neighboring Property Owners**

As per our normal process the planning staff mailed out letters to all property owners within 1,000 feet of the subject property. On October 29, 2013 a public meeting notice sign was posted on the subject property's frontage along US 64 Highway West.

### **Required Statement of Consistency with the Land Use Plan and Public Interest**

North Carolina General Statute 153A-341 and Section 19-20-6 (E) of the Wake County Unified Development Ordinance require that the Planning Board provide the Board of Commissioners with a statement of whether or not the proposed rezoning petition is consistent with the Land Use Plan and otherwise advances the public health, safety, and general welfare. In making a determination of whether or not to approve the rezoning petition, the Board of Commissioners must adopt a statement describing whether or not the proposed petition is consistent with the Land Use Plan and otherwise advances the public health, safety, and general welfare, or why it chose to deviate from the Land Use Plan and how that decision is reasonable and in the public interest.

### **Zoning History**

Prior to becoming part of the Town of Apex's extraterritorial jurisdiction in 2007, the subject property was zoned HD Highway District. In 1993 a Watershed Protected Area Overlay was added to the subject property to comply with the Water Supply Watershed Protection Act. The property was rezoned to B1 Neighborhood Business District by the Town of Apex in 2007 after becoming part of its extraterritorial jurisdiction. The property remained a nonconforming use in the Apex B1 zoning district as a bar use is not permitted in the B1 zoning district.

The proposed HD Highway District does not allow a bar use. The existing bar use has a vested right to continue as a nonconforming use in accordance with the regulations found in Article 7 (Nonconformities) of the Wake County Unified Development Ordinance. Any signs, buildings, structures, development activities, or uses that did not receive permits through either the Town of Apex or Wake County would be subject to enforcement actions by the County.

### **Utilities**

The property is currently served by an individual well and septic system. Development on this property will be supported by an individual well and septic system unless and until municipal utility connections are provided by the Town of Apex. Subsequent development proposals on the subject property would be required to connect to municipal water and/or sewer lines, in accordance with the provisions of Article 12 of the Wake County Unified Development Ordinance (UDO), if the Town were to provide utility lines within this area.

### **Environmental Issues**

There are no known Federal Emergency Management Agency (FEMA) regulatory floodplains or Wake County flood hazard soils on the subject property. The subject property is located in the Jordan Lake Water Supply Watershed.

With the subject property being located in the Jordan Lake Water Supply Watershed, the WSO-4P-1 water supply watershed overlay district will be applied to the subject property. Nonresidential uses may be developed within parts of water supply watersheds classified as Urban Services Area / Water Supply Watershed, provided they are consistent with the Land Use Classifications Map. They may be developed either under current residential zoning (as special uses) or under nonresidential zoning subject to overlay zoning (such as WSO-4P-1) that applies the supplemental impervious surface coverage limits, buffer requirements, and hazardous material controls necessary to meet the state minimum watershed protection requirements for

the low density option.

Any expansion or redevelopment of the subject property will be subject to the development rules of the Jordan Lake Nutrient Management Strategy.

### **Wake County Transportation Plan**

The subject property has frontage along US 64 Highway West, which is classified as a major thoroughfare in the Wake County Transportation Plan. The County's plan shows an existing and proposed right-of-way of 200 feet. No additional right-of-way will be required from this property owner, because the 200 feet right-of-way already exists.

US 64 Highway West has a current four-lane cross-section of 78 feet and has a design capacity of 31,500 Vehicle Trips per Day (VTD) (according to the Wake County Transportation Plan). The 2003 Wake County Transportation Plan lists ADT figures of 21,000 vehicles per day.

### **Traffic Impact Analysis**

A Traffic Impact Analysis (TIA) would be required by the Wake County Unified Development Ordinance (UDO), during the site plan review process, for any development that generates more than 1,000 trips per day, or more than 100 peak-hour trips, as determined by the Institute of Transportation Engineers' Trip Generation Manual for specific proposed uses.

### **Planning Staff Findings**

1. The Town of Apex relinquished jurisdiction of the subject property on October 15, 2013. General Statute 160A-360 allows the County a period of 60 days to hold hearings and take other measures to adopt its regulations for the area.
2. The proposed HD Highway District with a WSO-4P-1 Watershed Protection Overlay will match the County zoning that was in place prior to the subject property's inclusion in the Town of Apex's extraterritorial jurisdiction.
3. The WSO-4P-1 watershed protection overlay is added in accordance with the Water Supply Watershed Protection Act adopted in 1992 by the North Carolina Environmental Management Commission.
4. The proposed HD Highway District with a WSO-4P-1 Watershed Protection Overlay is consistent with the Land Use Plan.
5. The existing bar use is a nonconforming use and is not consistent with the Land Use Plan.
6. Any development activities or uses that have not been lawfully permitted are subject to the development standards of the Wake County Unified Development Ordinance.
7. The Town of Apex's planning staff has indicated that they have no comment about the proposed rezoning.
8. The planning staff has not received any opposition from the neighboring property owners or the general public.

### **Planning Staff Recommendation**

The Planning Staff recommends approval of the requested zoning map amendment, ZP-881-13, as presented, and finds that the amendment is consistent with the Land Use Plan and otherwise advances the public health, safety, and general welfare, as required by UDO Section 19-21-6 (C).

Mr. Birch asked if the property would maintain its legal nonconforming use status when the

county rezones it. Mr. Cook answered that it would maintain its status as a legal nonconforming use. Mr. Birch said that there are some site features that will need to be brought into compliance upon the rezoning. Mr. Cook confirmed that this was correct. Mr. Birch asked what would need to happen if the owner wanted to redevelop the site for a commercial use that is not allowed in the Highway District outside an activity center. Mr. Cook said that the site would have to go back into Apex's jurisdiction.

Ms. Muir asked if there is commercial zoning that Wake County could apply. Mr. Cook said that there are some commercial districts that would allow for a bar use, but they would have to go through a special use permit process to be conforming.

Mr. Birch asked why staff did not recommend a commercial zoning district that would allow a bar use. Mr. Cook answered that those districts would not be consistent with the Land Use Plan. In addition, with the restrictions on the property due to it being in a watershed area, it would be difficult to redevelop the site for a commercial use on a limited amount of acreage. The surrounding area is zoned rural residential by Apex; this is designed as a low density residential zoning of up to one residence per acre. Mr. Cook said that staff took into consideration this surrounding zoning when recommending the HD zoning district. Mr. Coates said that there are not any commercially zoned properties in the water supply watersheds. The county has chosen to protect the watershed by using low density residential zoning with limited commercial activities. Municipalities have chosen higher density options in the watersheds. In other watersheds in Wake County, property owners have struggled to install commercial uses on parcels less than three acres due to the impervious surface and setback requirements. With the subject property being 1.83 acres, Mr. Coates said that the HD district is more appropriate.

Mr. Martin asked what the difference would be between the HD zoning that staff is suggesting and a commercial zoning district. Mr. Cook said that a commercial zoning district would allow a greater amount of commercial uses.

Ms. Kreider asked if there are any plans for the rural residential area. Mr. Coates said that staff is not aware of any plans, but land owners are able to develop in Apex's jurisdiction at a higher density than what Wake County would allow.

Mr. d'Ambrosi expressed concern that the property owner could not go to the Board of Adjustment to legalize the current use. He said that if the property was in one of the commercial zoning districts (Heavy Commercial or General Business), the property owner could at least ask for the special use permit which is not available in Highway District.

Mr. Brubaker asked if the Apex zoning that was applied to the site (B1 Neighborhood Business District) allowed bars. Mr. Finn said that bars are not allowed in the Apex B1 Neighborhood Business District.

Mr. d'Ambrosi believed that the Apex Town Manager initially requested that the site be changed to Wake County jurisdiction, and the property owner acquiesced. He expressed concern about the site's grandfathering rights. Mr. Cook said that the site would continue to be a legal nonconforming use; the current use could continue, but the nonconforming use cannot be expanded.

Mr. Birch asked Mr. d'Ambrosi what zoning district the property owner would propose. Mr. d'Ambrosi responded that the GB district would be what the property owner would propose based on consistency with what Apex's Land Use Plan shows. He noted nearby activity centers

and planned commercial activities in Apex's jurisdictions. He said that there are not many commercial uses allowed in the HD district, and there may be some uses allowed in the GB district that could be put on the site.

Ms. Szabados asked if the bar use could continue after being annexed into Apex. Mr. Cook said that the bar could continue to have the vested right to continue as a legal nonconforming use, though the property owner could not expand the current use. This vested right is not affected by what zoning district is applied to the land while in Wake County's jurisdiction.

Mr. Birch supported preserving the ability for the current use to continue. This is able to occur regardless of what zoning district is applied. He would not be opposed to considering a conditional use rezoning in the future for one of the commercial districts, but he had concerns about some of the uses allowed in the GB and HC zoning districts that would not be appropriate for the site. The conditional use rezoning would also allow for further examination that would not be constrained by the 60-day deadline. Mr. Birch said that he supported rezoning the property to HD.

Mr. Cawthorne said that the highest and best use for the property would be a high density use with water and sewer. Zoning the property as commercial would be inappropriate with all of the residentially zoned property around it. Mr. Cawthorne supported rezoning the property to HD.

Mr. Brubaker and Ms. Muir expressed concern about rezoning the property to a district where the current use is not allowed. Mr. Birch said that the concern is mitigated by the fact that the property has always been in a zoning district where the use has been prohibited. The property has never obtained rights that are now being taken away by the county.

Ms. Muir asked if the nonconforming site features (setbacks, buffers, etc.) would change based on what zoning district was applied. Ms. Everette said that the setbacks would be more stringent for this property in the GB district than the HD district. Also, this commercial use surrounded by residential zoning would require bufferyards.

Ms. Muir said that there are uses in the GB district that are permitted that she would not want to apply to this property.

Mr. Birch made a motion that the Planning Board recommends approval of the rezoning petition, ZP-881-13, as presented, and finds that the requested zoning map amendment is consistent with the Land Use Plan and otherwise advances the public health, safety, and general welfare, as required by UDO Section 19-21-6 (C). Mr. Springer seconded the motion. The motion passed unanimously.

## **6. OA 03-13: To amend the Unified Development Ordinance (UDO) to further clarify the process of posting and renewing a financial guarantee for required infrastructure**

Ms. Harper presented the staff report to the board.

### **Purpose**

To amend the Unified Development Ordinance (UDO) to further clarify the process of posting and renewing a financial guarantee for required infrastructure.

### **Background**

Sections 8-22 and 8-24 of the UDO detail the process, form and amount of financial guarantees for both Performance Guarantees and Maintenance Guarantees, respectively. While trying to institute policies and procedures already listed in the UDO it was discovered that the two sections need amending for clarification purposes.

Wake County currently holds 140 financial guarantees on subdivisions or phases within subdivisions. Of the 140 total guarantees, 127 of those are maintenance guarantees which have origination dates from 1996 to present.

Developers may post a Performance Guarantee when the required infrastructure has not been completed to the satisfaction of both Wake County and NCDOT. Performance Guarantees are equal to 125 percent of the engineer's estimate to construct all required infrastructure.

After analysis, the Performance Guarantee section was found to be in compliance with actual policies and procedures *except for Section 8-22-3(A) which does not currently reflect the correct process for accepting cash deposit guarantees*. Changes are also needed in Sections 8-22-3(B) and (C) to clarify that estimates must be based on the total cost to build infrastructure that has not been accepted for maintenance and to include a range of professionals who may provide the estimate.

Once the roads are deemed by NCDOT to be built to their standards the Performance Guarantee may be replaced by a Maintenance Guarantee. Initial Maintenance Guarantees are equal to 15 percent of the total cost to construct the infrastructure. At the time of posting a new Maintenance Guarantee the developer must sign a Maintenance Guarantee Agreement, provide an engineer's estimate of the cost to construct the infrastructure and provide a financial guarantee to match that estimate. That financial guarantee may be in the form of a cash deposit, bond or letter of credit.

That guarantee is held by Wake County until such time as the roadways are accepted by NCDOT for ownership and maintenance. In order for roads to be taken into the state system the developer must arrange for NCDOT inspection. That inspection generally results in a list of items for correction. The developer must correct the defects within 60 days and have a follow up inspection. If the streets are then found to be in an acceptable state of maintenance and meet the state guidelines regarding the number of homes on the subject street, the streets are accepted by NCDOT. When staff receives the letter of acceptance from NCDOT, the financial guarantee is released to the developer.

### **Analysis**

As part of the effort to streamline the notification and tracking process for financial guarantees it was determined that ordinance changes were needed to further clarify the process of posting and renewing a financial guarantee.

While the Maintenance Guarantee Agreement states it is valid for a period of two years the process for renewal of the agreement and the guarantee was not detailed in the UDO. Therefore staff accepted renewals of the current financial guarantee as detailed under the original agreement. Due to cost increases over time, staff felt the ordinance should be amended to provide additional funds to help defer these cost increases.

*The proposed text changes to Section 8-24 will clarify the process for the initial posting and provide for a system of graduated percentages upon renewal over the life of the maintenance guarantee.*

Section 8-24-4(A) will add the phrase "initial posting" to clarify the procedure for the first posting. At first posting, theoretically there are no defects in the road construction as the

developer has to provide the county with a letter from NCDOT stating the roads have been built to the state standards. Therefore the 15 percent financial guarantee is thought to be enough to cover repairs to the road within the first two years of the agreement.

With time it stands to reason the roads would begin to deteriorate yielding higher repair costs, therefore Section 8-24-4(B) has been added to detail the procedure for renewal of the agreement.

This section provides a graduated process in which a developer would post an additional 5 percent after having the maintenance guarantee in place for four years. The guarantee would increase an additional 5 percent, to the maximum of 25 percent, after eight years. All of these figures would be based on the original estimate, thereby saving time and engineering expense for the developer.

The proposed text amendment would require a new total cost estimate after a 10-year period and every two years (term of the agreement) thereafter. The security would remain at 25 percent, the maximum allowed under the ordinance.

This renewal process is being proposed in order to protect the property owners within Wake County's jurisdiction by helping to ensure funds are available toward subdivision roadway deterioration and defects with the goal of having those roads maintained by NCDOT. It is thought that instituting this new procedure will help provide the resources needed to fix deterioration should the developer not abide by the terms of the agreement while also providing an incentive for the developer to complete these improvements in a timely manner.

*Changes are being proposed to Section 8-24-5 to provide clarity on the term of both the initial posting and renewal of the agreement.* Currently the UDO requires a fee upon each renewal. That required fee will be eliminated but there is a provision whereby the fee will be charged if the required paperwork and guarantee have not been submitted two weeks prior to the expiration date. This fee will help offset the county's administrative costs.

Currently Section 8-24-5 also details a process in which the county inspects the roads when in fact the roads are inspected by NCDOT. Those references are proposed deletions.

References to cash deposits are proposed for amendment as the current sections 8-22-3(A) and 8-24-4(A) both call for a cash escrow account with a local bank when in fact the county accepts a cashier's check or certified check for cash deposits. The county holds those in a special fund dedicated to financial guarantees.

**Staff Findings:** The proposed amendment will:

1. Further clarify the intent of the Unified Development Ordinance relative to financial guarantees.
2. Protect the property owners within Wake County's jurisdiction by helping to ensure funds are available toward subdivision roadway deterioration and defects.
3. Provide the resources needed to fix any deterioration should the developer not abide by the terms of the agreement.
4. Provide an incentive for the developer to complete these improvements in a timely manner.

**Staff Recommendation**

That the Planning Board recommend approval of the proposed ordinance amendment as presented.

## Amendment Summary

1. **Section 8-22-3 (A)** – clarify that cash deposits must be in form of cashier check or certified check.
2. **Section 8-22-3 (B)** – clarify that estimates must be based on total cost of all infrastructure that is not being maintained by an entity (such as NCDOT).
3. **Section 8-22-3 (C)** – clarify that estimates must be based on total cost of all infrastructure and include a range of professionals who may legally provide the estimate.
4. **Section 8-24-4(A)** – clarify that existing instructions are for initial posting; note that cash deposits must be in form of cashier check or certified check; include a range of professionals who may legally provide the estimate; and delete reference to minor subdivision as sentence is redundant.
5. **Section 8-24-4(B)** – new section to provide for process of renewal whereby the amount held as guarantee increases in 5 percent increments over a 10-year period.
6. **Section 8-24-5** – delete references to annual renewal and county inspections as neither reference is valid; delete reference to fee upon each renewal except in the event of guarantee being presented after its due date; and add reference to section 8-24-4(B) for terms of renewal.

## Proposed Ordinance Text

*Note: Proposed deletions are shown in ~~strikethrough~~ while proposed additions are shown in red.*

## 8-22 Performance Guarantees

### 8-22-3 Form and Amount of Performance Guarantee

- (A) Performance guarantees must be in the form of a performance bond, letter of credit or cash ~~escrow account with a local bank deposit in the form of a cashier check or certified check~~. The form of guarantee is to be determined by the developer. The performance guarantee must be conditioned upon the performance of all work necessary to complete the required subdivision improvements within the time period specified at the time of preliminary plat or construction plan approval.
- (B) The amount of the performance guarantee must equal at least 125 percent of the estimated **total** cost of the required improvements, including project management costs, ~~which that~~ have not been **accepted for ownership and/or maintenance by the applicable legal entity installed** by the time of Record Plat submittal.
- (C) The estimated **total** cost of required improvements, ~~including project management costs,~~ must be itemized by improvement type and certified by the applicant's licensed professional engineer. In the case of minor subdivisions, the applicant's licensed professional engineer, or **other licensed professional as authorized,** ~~licensed professional surveyor~~ may provide the itemized cost estimate. Cost estimates must be based on industry norms within Wake County.

## 8-24 Maintenance Guarantees

### 8-24-4 Form and Amount

- (A) **Initial posting of** required maintenance guarantees must be in the form of a performance bond, letter of credit, or cash ~~escrow account with a local bank deposit in the form of a cashier check or certified check~~. The amount of the guarantee must be at least 15 percent of the total cost of constructing the public road improvements (~~excluding the costs of clearing and rough grading~~). The estimated cost

of the required improvements must be itemized and certified by the applicant's licensed professional engineer or ~~other licensed professional as authorized. licensed professional surveyor, if the surveyor was the original preparer of the plans for the subdivision. In the case of minor subdivisions, the applicant's licensed professional or licensed professional surveyor may provide the itemized cost estimate.~~ Cost estimates must be based on industry norms within Wake County. The Planning Director or Planning Board may require a higher guarantee amount when deemed necessary to address higher potential correction costs due to the subdivision's size and site characteristics, but in no event may the amount of ~~the initial posting~~ exceed 25 percent of estimated construction costs.

- (B) Maintenance guarantees may be renewed by adhering to the tiered schedule below:
- a. After four years of initial posting, the maintenance guarantee may be renewed by posting 20 percent of the original total cost estimate.
  - b. After eight years of initial posting, the maintenance guarantee may be renewed by posting 25 percent of the original total cost estimate.
  - c. After 10 years of initial posting, the maintenance guarantee may be renewed by submitting a new total cost estimate and a maintenance guarantee of at least 25 percent of that estimate.
  - d. After 12 years of initial posting, and every two years thereafter, a new total cost estimate and maintenance guarantee of 25 percent of that estimate, will be required for renewal.

#### **8-24-5 Term**

The ~~maintenance guarantee~~ agreement must have a term of two years and may be renewed provided the terms of Section 8-24-4(B) have been met. ~~and provide an option for its annual renewal if the subdivider has arranged for County inspection of the improvements, has submitted to the County an acceptable estimate of the costs necessary to correct any deterioration or defects discovered by the inspection, and has increased the amount of the security by the amount of that estimate.~~ The agreement must also provide that the subdivider pay a fee to cover the County's administrative costs. The fee will be required at the time of the initial posting and when the required documents for renewal have not been received by Wake County at least two weeks prior to expiration of the current agreement and guarantee. ~~and each subsequent renewal or extension to cover the County's administrative costs.~~

Mr. Cawthorne asked what would happen if a developer did not renew the guarantee. Ms. Harper said that the developer would be in default, and staff would cash the letter of credit. Building permits would not be issued for that subdivision until another letter of credit or bond was issued for the subdivision. Mr. Brubaker expressed concern that a builder who does not have financial or development responsibility for the roads could be unable to get a building permit because a subdivision developer defaulted. Ms. Harper said that withholding of the building permits would be a policy issue and not an ordinance issue. Mr. Maloney commented that each scenario in which a guarantee is not renewed is different, and the proposed changes would put the county in a better position to cover some of the repairs if needed should a default happen.

Ms. Muir asked what the text "other licensed professional as authorized" was referring to. Ms. Harper said that general statute authorizes professionals such as landscape architects and surveyors. Ms. Muir suggested adding text to say "other licensed professional as authorized by the North Carolina General Statute."

Ms. Muir asked how the proposed changes would affect the guarantees the county already has received. Ms. Harper said that the county currently had 127 maintenance guarantees, and each of them would be subject to the new tiered schedule. Four years after the ordinance amendment was adopted, the maintenance guarantees would be renewed by posting 20 percent of the original cost estimate, and so forth.

Ms. Kreider asked what the fee is to cover the County's administrative costs as referenced in section 8-24-5. Ms. Harper said that it is part of the fee schedule approved by the Board of Commissioners; currently the fee is \$400.

Mr. Martin reported that the Code & Operations Committee recommended approval of the ordinance amendment.

Ms. Muir made a motion that the board recommend approval of OA 03-13 as presented with additional text in sections 8-22-3 (C) and 8-24-4 that says "other licensed professional as authorized by the North Carolina General Statute." Ms. Kreider seconded the motion. The motion passed unanimously.

## **7. OA 04-13: To amend the Unified Development Ordinance (UDO) to include provisions for addressing accessory dwelling units**

Mr. Pearson presented the staff report to the board.

**Purpose:** To amend the Unified Development Ordinance (UDO) to include new provisions for addressing accessory dwelling units.

### **Background:**

Over the past year, Wake County Planning has seen an increase in the number of requests for secondary housing units on parcels located in the County. Furthermore, these requests have been to allow for a detached Accessory Dwelling Unit (ADU) on the same parcel of land as the primary dwelling unit. The current Unified Development Ordinance (UDO) does allow an ADU within the principal dwelling, however it does not permit an accessory dwelling unit as an option where it is detached from the principal dwelling. Also, the current UDO standards are somewhat vague as it relates to building additions for the purpose of adding an ADU. After much discussion on this topic, staff feels that the current UDO provisions are insufficient to address the growing trend for these types of accessory units. Consequently, the purpose of this Ordinance Amendment is to create regulatory standards within the UDO that will effectively manage the permitting and placement of Accessory Dwelling Units, while also attempting to mitigate any secondary impacts related to the units.

### **Analysis:**

According to the American Planning Association (APA), *"ADUs are a particularly desirable option for many communities today considering the current economic climate, changes in household size, increasing numbers of aging baby boomers, and the shortage of affordable housing choices."* The perceived benefits of allowing ADUs are that they (1) increase the housing supply within a community, (2) provide for a lower housing cost option for low-moderate income citizens, the elderly or disabled, and young adults, and (3) they sustain the nuclear and extended family. However, many people feel that without adequate land use controls, ADU's could negatively affect residential community character and lead to increased residential traffic and parking problems. Thus the intent of this ordinance amendment is to create performance standards that reduce the impact of ADU's, while allowing for alternative housing options.

As previously stated, the proposed text change would create new regulatory standards for the proper permitting and placement of accessory dwelling units (ADUs). As proposed, an ADU would be defined under the UDO as a second dwelling unit that is smaller or subordinate to that of the principal dwelling and that can be located either inside the existing principal dwelling, within a room or building addition to the principal dwelling, or located in a detached accessory building which is on the same lot as the principal dwelling. The ADU would be considered a complete and independent living facility equipped with a kitchen, bathroom and sleeping area. Examples of where an ADU could be placed include (1) an interior basement or attic, (2) within

a room addition to the side or rear of the house or over an attached garage, or (3) in a detached garage, barn, cottage house or manufactured home.

In order to ensure that the ADU remains subordinate and accessory to the principal dwelling, the ADU shall not exceed more than 50% of the gross floor area of the principal dwelling, or more than 1,000 square feet, whichever is less. For instance, if the principal dwelling has a gross floor area of 1,500 square feet, the ADU cannot exceed 750 square feet. However if the principal dwelling has a gross floor area of 2,000 square feet or higher, the maximum floor area for the ADU cannot exceed 1,000 square feet.

There can be only one accessory dwelling unit per lot. Furthermore, a manufactured home is only permitted as an accessory dwelling unit if it is placed on a parcel of land with a lot size of 5 acres or greater. Additionally, the ADU shall not be served by a separate driveway from that of the principal dwelling, and there shall be at least one off-street parking space devoted to the ADU.

A new definition for accessory dwelling units would be added to Article 21, *Definitions and Measurement*. Furthermore, Article 4, Section 4-70-2 (Use Regulations) would also be amended to reflect the incorporation of the new ADU standards.

**Staff Findings:** The proposed amendment will:

1. Be consistent with and furthers the goals, policies, and objectives of the Wake County Land Use Plan and Unified Development Ordinance;
2. Establish clearer guidelines for the permitting and regulation of interior, attached and detached accessory dwelling units.
3. Create more housing options for Wake County Citizens.

**Staff Recommendation:** That the Planning Board recommends **APPROVAL** of the proposed ordinance amendment as presented.

1. **Section 21-11** – Create new definition entitled 'Accessory Dwelling Unit' in Article 21, *Definitions and Measurement*.

2. **Section 4-70-2** – Amend section heading entitled 'Accessory Dwelling Units' to reflect new definition and development standards.

## **Article 21, Definitions & Measurement, Section 21-11 Accessory Dwelling Unit**

A second dwelling unit that is subordinate to the principal dwelling that is either (1) located within the principal dwelling, including an addition to the principal dwelling, or (2) is located in an accessory building on the same lot as the principal single-family dwelling. ~~(i.e. containing one or more rooms with separate bathroom and kitchen facilities) that is designed and constructed to serve as an individual dwelling unit. The accessory dwelling unit must be located completely within the detached house, with no separate entrance. An accessory dwelling unit is a complete, independent living facility equipped with a kitchen and with provisions for sanitation and sleeping.~~ An accessory dwelling unit may shall not occupy exceed more than 50% percent of the gross floor area of the building (detached house) within which it is located principal dwelling, or more than 750 1,000 square feet, whichever is less. ~~The accessory dwelling unit may not have separate utility connections or meters.~~

### **4-70-2 Accessory Dwelling Units**

A second dwelling unit that is subordinate to the principal dwelling that is either (1) located within the principal dwelling, including an addition to the principal dwelling, or (2) is located in an accessory building on the same lot as the principal single-family dwelling. ~~(i.e. containing~~

~~one or more rooms with separate bathroom and kitchen facilities) that is designed and constructed to serve as an individual dwelling unit. The accessory dwelling unit must be located completely within the detached house, with no separate entrance. An accessory dwelling unit is a complete, independent living facility equipped with a kitchen and with provisions for sanitation and sleeping. An accessory dwelling unit may shall not occupy exceed more than 50% percent of the gross floor area of the building (detached house) within which it is located principal dwelling, or more than 750 1,000 square feet, whichever is less. The accessory dwelling unit may not have separate utility connections or meters.~~

(A) Only one accessory dwelling unit shall be permitted per lot.

(B) A manufactured home is only permitted as an accessory dwelling unit on lots with a minimum of 5 acres.

(C) The accessory dwelling unit shall not be served by a separate driveway from that of the principal dwelling.

(D) The accessory dwelling unit shall have at least one off-street parking space in addition to that required for the principal dwelling.

Ms. Szabados said that she was surprised at how many Wake County residential properties were over 5 and 10 acres in size. The number of residential properties in Wake County planning jurisdiction that are greater than or equal to 5 acres is 2,540 (5.5%); the number of residential properties in Wake County planning jurisdiction that are greater than or equal to 10 acres is 1,407 (3.2%).

Mr. Martin reported that the Code & Operations Committee recommended approval of the proposed amendment.

Ms. Szabados said that she is hesitant to support the 5-acre minimum lot size to use mobile homes as accessory dwelling units. Mr. Cawthorne said that mobile homes are allowed in all Wake County residential zoning districts, so property owners could subdivide their land to add a mobile home. Mr. Martin said that the 5-acre minimum eliminates the possibility of a trailer park resulting from the amendment. Mr. Brubaker said that five acres is not a lot of land, so he would not be comfortable with the 5-acre minimum.

Ms. Muir proposed prohibiting accessory dwelling units from being forward of the front of the principal dwelling. Mr. Pearson said that UDO section 4-70-1 (F) states that "accessory buildings and structures may not be located nearer the street than the main building or 50 feet whichever is less."

Mr. Cawthorne said that it would be unfortunate if a citizen lived in a mobile home on five acres and had to build a stick built accessory dwelling for their family members to live in. He said that Wake County could set residential zoning districts for mobile homes if it wanted to regulate mobile homes. He added that many people that are concerned about mobile homes would live in an area with covenants to protect them from these concerns.

Ms. Kreider asked about the text "principal dwelling" versus "principal single-family dwelling." Mr. Pearson preferred to keep the text saying "principal dwelling" instead of "principal single-family dwelling" since the UDO already has a definition for dwelling unit.

Ms. Muir made a motion that the board recommends approval of OA 04-13 as presented with the following text changes:

In section 4-70-2:

*A second dwelling unit that is subordinate to the principal dwelling that is either (1) located within the principal dwelling, including an addition to the principal dwelling, or (2) is located in an accessory building on the same lot as the principal ~~single-~~ family dwelling.*

In section 4-70-2 (B):

*A manufactured home is only permitted as an accessory dwelling unit on lots with a minimum of ~~5~~ 10 acres.*

In section 21-11:

*Accessory Dwelling Unit*

*A second dwelling unit that is subordinate to the principal dwelling that is either (1) located within the principal dwelling, including an addition to the principal dwelling, or (2) is located in an accessory building on the same lot as the principal ~~single-~~ family dwelling.*

Mr. Brubaker seconded the motion. By a vote of 7-1, with Mr. Springer voting against, the motion passed.

### **8. OA 05-13: To amend the Unified Development Ordinance (UDO) to include modification of definition of floor area**

Mr. Pearson presented the staff report to the board.

**Purpose:** To amend the Unified Development Ordinance (UDO) to include modification of the definition of floor area.

#### **Background:**

During a recent review of the Unified Development Ordinance (UDO), Wake County Planning Staff discovered a discrepancy in the definition of Floor Area. It was discovered that under the current floor area definition, garages are being incorrectly excluded from floor area calculations. Staff has determined that because attached garages are typically enclosed with exterior walls, they should be counted toward the total floor area of a building or structure. Consequently, the purpose of this ordinance amendment is to modify the existing definition of floor area to include garages in floor area calculations.

#### **Analysis:**

The Wake County UDO currently defines Floor Area as the following:

*The sum of the enclosed areas on all floors of a building or buildings, measured from the outside of exterior walls, including halls, lobbies, arcades, stairways, elevator shafts, enclosed porches and balconies, and any below ground floor areas used for access and storage. Open terraces, patios, atriums, or balconies, carports, garages, breezeways, and screened porches are excluded from floor area calculations.*

Because garages are considered to be part of a building and are enclosed with exterior walls, planning staff feels they should be counted as part of the floor area of a building. Open terraces, patios, carports, breezeways, and other similar non-enclosed areas are to remain excluded from floor area calculations.

An amended definition for floor area would be added to Article 21, *Definitions and*

*Measurement.*

**Staff Findings:** The proposed amendment will:

1. Be consistent with and furthers the goals, policies, and objectives of the Wake County Land Use Plan and Unified Development Ordinance;
2. Establish clearer guidelines for determining proper floor area calculations

**Staff Recommendation:** That the Planning Board recommends **APPROVAL** of the proposed ordinance amendment as presented.

**Amendment Summary:**

1. **Section 21-11** – *Modify definition entitled 'Floor Area' in Article 21, Definitions and Measurement.*

### **Article 21, Definitions & Measurement, Section 21-11**

#### **Floor Area**

The sum of the enclosed areas on all floors of a building or buildings, measured from the outside of exterior walls, including halls, lobbies, arcades, stairways, elevator shafts, enclosed porches, **garages** and balconies, and any below ground floor areas used for access and storage. Open terraces, patios, atriums, or balconies, carports, **garages**, breezeways, and screened porches are excluded from floor area calculations.

Mr. Pearson said that the floor area calculation is used when determining parking and when determining the maximum allowable size of accessory dwelling units. He said that the revenue department does not count garages as heated space.

Mr. Bouldin and Ms. Muir asked if the floor area of a garage that was attached to an accessory dwelling unit would be counted as part of the maximum allowable square footage for the accessory dwelling unit. Mr. Pearson said that only the independent living facility would be counted as part of the square footage of the accessory dwelling unit.

Mr. Bouldin said that the floor area calculation should apply the same in both the principal dwelling and the accessory dwelling unit.

Ms. Muir asked if there are some home occupations, such as day cares, that would need additional parking as a result of this amendment. Mr. Finn said that day cares are required to have one parking spot per full time employee.

Mr. Bouldin said that the amendment is not necessary. This would be different from how the square footage for houses is listed when they are for sale.

Ms. Muir asked what the impetus for the change is. Mr. Pearson said that the new definition would be more in line with convention. Mr. Bouldin said that all conventions that he is aware of use heated square footage.

Mr. Brubaker said that if the intent is for this to help commercial properties, it should be crafted so that it does not affect residential properties. He and Mr. Bouldin were concerned that this change could create a possibility where the county could tax properties based on square

footage including garages.

Mr. Brubaker made a motion to refer OA 05-13 to the Code & Operations Committee for further review. Mr. Bouldin seconded the motion. The motion passed unanimously.

**9. Reports** – There were no reports.

**10. Planning, Development, and Inspections Report** – Ms. Peterson reported that the Land Use Committee will meet on December 4 to discuss the Land Use Plan regarding the Apex-Holly Springs boundary agreement. That item would then be considered by the full Planning Board on December 4.

Mr. Maloney reported that the Board of Commissioners will hold a public work session on November 12 at Marbles Museum with an expert panel to discuss the Wake County Transit Plan.

Mr. Finn reported that staff is finished work on an 8-lot subdivision in the Falls Lake area. He said that there will be an ordinance amendment forthcoming relating to general statute changes regarding boards of adjustment.

Mr. Maloney reported that the Board of Commissioners approved four new inspections positions in the Planning, Development, & Inspections division to handle the increased number of inspections.

**11. Chairman's Report** – Mr. Martin thanked the board members for serving on the board.

**12. Adjournment** – With no other business, the meeting was adjourned at 5:00 p.m.