



AGENDA

**Town of Southern Pines Planning Board Meeting
June 23, 2016 at 7:00 PM
Douglass Community Center
1185 W. Pennsylvania Avenue**

- I. Call to Order**
- II. Board Elections**
- III. Approval of Minutes: May 19, 2016**
- IV. Public Hearing:**

**OA-02-16 Ordinance Amendment to Chapter 4: Section 4.11.
Transportation: Section 4.11.3 Access to Lots; Petitioner, Nancy
Garner**
- V. Old Business**
- VI. New Business**
- VII. Adjournment**

Agenda Item

To: Planning Board

Via: Bart Nuckols, Planning Director

From: Chris Kennedy, Senior Planner

Subject: OA-02-16 Ordinance Amendment to Chapter 4: Section 4.11. Transportation: Section 4.11.3 Access to Lots; Petitioner, Nancy Garner

Date: June 23, 2016

OA-02-16 Ordinance Amendment to Chapter 4: Section 4.11. Transportation: Section 4.11.3 Access to Lots; Petitioner, Nancy Garner

On behalf of the petitioner Ms. Nancy Garner, Mr. Richard Lee Yelverton III of Van Camp, Meacham & Newman, PLLC is requesting to amend the Town of Southern Pines Unified Development Ordinance Chapter 4: Section 4.11. Transportation (Streets): Section 4.11.3 *Access to Lots*; to amend the existing ordinance language to include the RS-3 (Residential Single-Family – 3) zoning classification into the standards set forth in Section 4.11.3(c)(2) so that an easement can serve as the primary access for up to three (3) dwelling units in the RS-3 (Residential Single-Family – 3) zoning classification.

Staff Comments:

- **Current Language from UDO:**

4.11.3(C) A private drive may be approved as the sole access for a Lot or Parcel subject to the following conditions:

- (1) It accesses a public or private street and is located on a perpetual easement not less than twenty (20) feet in width;
- (2) The easement serves no more than three (3) lots in the RE or RR zoning district or no more than twenty-five (25) dwelling units in a RS-1, RM, or PD zoning district;
- (3) Prior to recording of the plat, that delineates the Lot, restrictive covenants are recorded in the Moore County Registry that permanently establish the easement, provide for maintenance of the private drive and prohibit further division of any of the Lots served by the easement. If the private drive is part of a subdivision for Townhouses or Condominiums, the Lots may be served by a “Private Ingress/Egress/Access Easement” that is maintained by the “home owners association” and shall be clearly designated on Final Plat and in restrictive HOA documents.

- **Proposed Language:**

4.11.3(C) A private drive may be approved as the sole access for a Lot or Parcel subject to the following conditions:

- (1) It accesses a public or private street and is located on a perpetual easement not less than twenty (20) feet in width;
 - (2) The easement serves no more than three (3) lots in the **RS-3**, RE or RR zoning district or no more than twenty-five (25) dwelling units in a RS-1, RM, or PD zoning district;
 - (3) Prior to recording of the plat, that delineates the Lot, restrictive covenants are recorded in the Moore County Registry that permanently establish the easement, provide for maintenance of the private drive and prohibit further division of any of the Lots served by the easement. If the private drive is part of a subdivision for Townhouses or Condominiums, the Lots may be served by a “Private Ingress/Egress/Access Easement” that is maintained by the “home owners association” and shall be clearly designated on Final Plat and in restrictive HOA documents.
- Section 2.17.10 outlines the criteria to be used by the hearing bodies in their consideration of an ordinance amendment. The Planning Board public hearing shall be conducted using legislative hearing procedures.

2.17.10 *Criteria for UDO Text Amendments*

In its review of an application for a UDO text amendment, the Hearing Bodies shall consider the following criteria. No single factor is controlling; instead, each must be weighed in relation to the other standards.

- (A) Consistency. The text amendment shall be consistent with the adopted Comprehensive Plan.
- (B) Health, Safety, and Welfare. The amending ordinance must bear a substantial relationship to the public health, safety, or general welfare, or protect and preserve historical cultural places and areas.
- (C) Public Policy. Certain public policies in favor of the text amendment may be considered. Examples include a need for affordable housing, economic development, mixed-use development, or sustainable environmental features, which are consistent with the Town, area, neighborhood, or specific plans.
- (D) Other Factors. The Hearing Body may consider any other factors relevant to a text amendment application under state law.
- (E) Impacts. The Hearing Bodies shall not regard as controlling any advantages or disadvantages to the individual requesting the change, but shall consider the impact of the proposed amendment on the public at large.

Attachments:

- Ordinance Amendment Application
- Criteria Narrative Submitted by Petitioner

Planning Board Actions:

The Planning Board shall vote on whether the proposed amendment is consistent with *Comprehensive Long Range Plan* that has been adopted and any other officially adopted plan that is applicable. The Planning Board could make one of the following motions for recommendations or any alternative they wish:

I move to recommend...

1. **Approval** of the requested text amendment and to make a finding and determination that the approval of the text amendment request is consistent with the adopted Land Use Plan and that the approval of the text amendment request is reasonable and in the public interest due to the approval being consistent with the comprehensive plan and, as a result, the approval furthers the goals and objectives of the comprehensive plan; OR
2. **Denial** of the requested text amendment and to make a finding and determination that the denial of the text amendment request is consistent with the adopted Land Use Plan and that that the denial of the text amendment request is reasonable and in the public interest due to the denial being consistent with the comprehensive plan and, as a result, the denial furthers the goals and objectives of the comprehensive plan.

Then:

1. I move to recommend to the Town Council the approval of OA-02-16;
2. I move to recommend to the Town Council the denial of OA-02-16; OR
3. I move to recommend to the Town Council the approval of OA-02-16 with the following additional conditions...

Written Narrative Explaining How the Application to Amended the Town of Southern Pines
Unified Development Ordinance at Chapter 4: Section 4.11.3 Complies with
UDO Section 2.17.10 (the criteria for a text amendment)
In an Effort to Assist the Board in Their Deliberation.

Pursuant to TOSP UDO Section 2.17.10, prior to approving an application for a UDO text amendment, the Hearing Bodies are required to consider the following criteria:

- (A) **Consistency.** The text amendment shall be consistent with the adopted Comprehensive Plan.
- (B) **Health, Safety, and Welfare.** The amending ordinance must bear a substantial relationship to the public health, safety, or general welfare, or protect and preserve historical cultural places and areas.
- (C) **Public Policy.** Certain public policies in favor of the text amendment may be considered. Examples include a need for affordable housing, economic development, mixed-use development, or sustainable environmental features, which are consistent with the Town, area, neighborhood, or specific plans.
- (D) **Other Factors.** The Hearing Body may consider any other factors relevant to a text amendment application under state law.
- (E) **Impacts.** The Hearing Bodies shall not regard as controlling any advantages or disadvantages to the individual requesting the change, but shall consider the impact of the proposed amendment on the public at large.

While no single factor is controlling, the Hearing Body must weigh each factor in relation to other standards. With respect to each factor above, please see the following discussion:

- **(A) Consistency. The text amendment shall be consistent with the adopted Comprehensive Plan.**

The current language of the UDO Section 4.11.3 (C) authorizes a private drive to be approved as the sole access point for no more than three (3) lots in the RE and/or the RR zoning districts. Under the language of the proposed text amendment, this three (3) lot access authorization would be expanded to include the RS-3 zoning district.

- This application to permit the inclusion of the RS-3 district into the regulations of 4.11.3(C) is consistent with the CLRP as one of the underlying themes listed in Chapter 3 of the 2015-16 Comprehensive Long Range Plan Update for the RE, RR, and RS-3 zoning districts is to preserve low density development that is compatible with existing development.
- In the 2015-16 Comprehensive Long Range Plan Update, the policy section is intended to guide the Town's decision makers as they act on development proposals and during the creation or modification of regulations. Policy P-9 *Access Management* of the CLRP states that the Town should "[e]nhance the safety and function of arterial and collector streets through access management strategies that:
 - Encourage common or shared parking facilities as well as common driveways;
 - Control the number, width, and location of driveways; and,
 - Require site access from side streets where appropriate."

The proposed amendment is consistent with CLRP Policy P-9 as it seeks to further the ability for the Town to implement access management strategies in the RS-3 zoning classification.

- **(B) Health, Safety, and Welfare. The amending ordinance must bear a substantial relationship to the public health, safety, or general welfare, or protect and preserve historical cultural places and areas.**

One of the benefits of allowing a single access point to multiple lots in the RS-3 (or any other district for that matter) is the reduction in curb cuts that would be required if each lot were to require an individualized access point. For example, if three lots were developed off of Midland Road in the RS-3 district, currently each lot would require a separate curb cut off of Midland Road increasing the risk of collisions when entering or exiting from those three lots. Under the single access point approach, there would never be a time when multiple cars are attempting to exit or enter multiple access points, potentially directly adjacent to each other, along the primary road. The UDO and the CLRP, both documents adopted to promote the health, safety, and general welfare of the public, include policies and regulations to promote the reduction in driveway access through improved access management policies; the current application seeks to increase the ability for the Town to address access management issues.

- **(C) Public Policy. Certain public policies in favor of the text amendment may be considered. Examples include a need for affordable housing, economic development, mixed-use development, or sustainable environmental features, which are consistent with the Town, area, neighborhood, or specific plans.**

When considering the public policy reasons for authorizing the proposed text amendment several factors appear to be important:

- First, while the Board typically strays away from dealing with direct costs the developer in their decision making and focuses more on the validity of the project in general, it is far more economic to develop property utilizing a single access point as opposed to multiple access points for a variety of reasons including: material costs, labor, and time management; all such aspects of developing the access to property are reduced by allowing for a single point of access to multiple lots.
- Second, the environmental impact of a single access point would be significantly less than that of requiring each individual lot to have its own access point. The amount of tree clearing and impervious surface created with each driveway further increases the environmental impact of development. This environmental benefit is also relevant under paragraph (E) above, "Impacts."
- Third, from a purely aesthetic standpoint, the impact on the eye of a single point of access (one entry point to a piece or parcels of property) as opposed to multiple access points close together off of a primary road cannot be understated. The aesthetic benefit of a single access point is only an additional plus when considering the safety concerns that can be alleviated by maintaining the one access point approach as opposed to a multiple access point approach.

- **(D) Other Factors.** The Hearing Body may consider any other factors relevant to a text amendment application under state law.
- **(E) Impacts.** The Hearing Bodies shall not regard as controlling any advantages or disadvantages to the individual requesting the change, but shall consider the impact of the proposed amendment on the public at large.

With respect to the impact of the proposed text amendment on the public at large, it appears to the applicant that such an amendment would have nothing but positive impact. Under the current language of the UDO the minimum lot sizes for an RR zoned property and an RS-3 zoned property are both 30,000 square feet. Therefore this request to allow the RS-3 district the same ability to utilize the provisions under UDO Section 4.11.3 (C) as RR zoned property should provide no more of a negative impact than currently seen in the RR zoning classification. Any subdivision of land greater than three lots would necessitate a separate access or the construction of a street. It is our opinion that while the inclusion of the RS-3 zoning classification into UDO Section 4.11.3 (C) (2) increases the flexibility allowed to RS-3 landowners, it also promotes the policies of the CLRP and the UDO with respect to access management, environmental, and smart growth initiatives. For example, a particular property in the RS-3 district could, subject to the terms of the UDO, be divided into three lots. However, under the current UDO those three lots would require three separate driveways causing the impacts detailed above. The costs of building those three driveways can be quantified in terms of aesthetic, financial, environmental, and safety impacts. These impacts of the three driveway scenario certainly affect the overall impact on the public at large in a negative manner if the proposed text amendment is denied; the approval of the amendment will provide a positive impact. We do not anticipate a proliferation of building permits attempting to utilize the standards of UDO Section 4.11.3(C), however we contend that having the flexibility to utilize the standards under this section can only further a property owner's ability to be creative in mitigating any negative impacts as a result of development. We acknowledge that the proposed text amendment may bring upon a perceived or real adverse impact, just like with any development, however the benefits available to those in the RS-3 zoning district should the Board wish to approve proposed text amendment, as listed above, will considerably outweigh any of the adverse impacts created.