

MINUTES

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

The Town of Southern Pines Planning Board met on Thursday, June 23, 2016 at 7:00 p.m. at the Douglass Community Center, 1185 W. Pennsylvania Avenue, Southern Pines, North Carolina.

Planning Board members John McLaughlin, Vice Chairman, Jim Curlee, William Ross, Kristen Obst, Brittany Paschal, Bill Pate and Larry Harward were present.

Town staff members Bart Nuckols, Planning Director, Chris Kennedy, Senior Planner, and Cindy Williams, Secretary to the Board, were also present.

Vice Chairman John McLaughlin called the meeting to order at 7:03 p.m.

OATH OF OFFICE:

Vice Chairman McLaughlin administered the Oath of Office to new member Larry Harward.

BOARD ELECTIONS:

Jim Curlee made a **motion**, which was seconded by Bill Pate, to nominate John McLaughlin as Chairman of the Planning Board.

Voice Vote:

Bill Pate	yea
Brittany Paschal	yea
Larry Harward	yea
Jim Curlee	yea
Kristen Obst	yea
William Ross	yea

The motion passed.

Kristen Obst made a **motion**, which was seconded by William Ross, to nominate Brittany Paschal as Vice Chairman of the Planning Board.

Voice Vote:

Bill Pate yea
John McLaughlin yea
Larry Harward yea
Jim Curlee yea
Kristen Obst yea
William Ross yea

The motion passed.

APPROVAL OF MINUTES:

James Curlee made a **motion**, which was seconded by Bill Pate, to approve the Minutes of the May 19, 2016 Planning Board meeting as written.

Voice Call Vote:

Bill Pate yea
Brittany Paschal yea
John McLaughlin yea
Larry Harward yea
Jim Curlee yea
Kristen Obst yea
William Ross yea

The **motion carried.**

Chairman John McLaughlin opened the public hearing.

PUBLIC HEARING:

**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 REPORT – Senior Planner Chris Kennedy:

Mr. Kennedy provided an overview of the petition, stating that UDO Section 4.11.3(C) addresses lot access. To subdivide property, each lot must have access to a street either through the

creation of a flag lot or a direct access to the street frontage. If a property does not have a direct access but property owner seeks to create a subdivision, UDO Section 4.11.3(C) allows an access to be a private easement that runs to that property.

Mr. Kennedy said that currently, if a property is zoned PD, RS-1, RM-1 or RM-2, up to twenty-five (25) dwelling units served by one (1) driveway. In the RE and RR zoning districts, up to three (3) dwelling units can be served by one (1) driveway. There is no such provision for RS-3 and RS-2, so for each dwelling unit, i.e. each lot, there must be a separate driveway. The petitioner has provided a text amendment to Section 4.11.3(C) (2) adding RS-3 to the provision with the RE and the RR, allowing up to three (3) dwelling units to be served by one (1) driveway. The driveway must be a twenty (20) foot wide easement as required by the UDO for emergency service access and must be recorded within a deed as an irrevocable easement that permanently establishes the easement, specifically outlines the maintenance of the easement, and prohibits further division of the lots accessed via the easement.

Mr. Kennedy stated that this is a basic text amendment in terms of the language to be added to the ordinance— only adding the four (4) characters “RS-3,” to the UDO section. Mr. Kennedy further stated that the petitioner has provided a narrative detailing how the application meets the criteria of the UDO as well as the Comprehensive Long Range Plan and how the text amendment addresses Section 2.17.10(A) through (E) individually. Mr. Kennedy said this amendment, like any other text amendment, is a creation of policy that will apply to any RS-3 property within the Town and not just to one (1) specific property.

Mr. Nuckols responded that those properties include Forest Creek, the Weymouth area, some property on Midland Road and on Central Drive, and other parcels scattered throughout Town.

Jim Curlee asked which properties on Midland Road are included.

Mr. Kennedy responded that the Knollwood Heights Neighborhood and the properties as you leave the Town’s jurisdiction, past Longleaf and Talamore and entering Pinehurst, are zoned RS-3. They are mainly large tracts of land – old horse farms, etc. – on Midland Road that have since been subdivided into smaller tracts over time. Some still operate as horse farms.

Mr. Kennedy stated that the Town is not anticipating a rampant submission of applications as a result of this amendment, but any time you consider a text amendment you must consider the “worst-case scenario”, that being a scenario where a large number of RS-3 property utilized the new ordinance provisions.

Bill Pate asked Mr. Kennedy if currently any private road is for one residence.

Mr. Kennedy explained that if a property has enough acreage to subdivide the property into three (3) lots, currently each lot would need a twenty (20) access easement thereby creating a sixty (60) foot gross easement somewhere on the property. If you look at the Comprehensive Long Range Plan and specifically what the petitioner has provided, subsection (B) on page 5 of 7 addresses safety by stating the following:

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.

The language in the Comprehensive Long Range Plan regarding Access Management states:

[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;

Mr. Kennedy stated that this is a direct reference from the Comprehensive Long Range Plan. The NCDOT is increasingly forcing a common driveway for any new development on NCDOT streets. The Town probably had three (3) or four (4) new developments this week alone where the NCDOT forced a common driveway for each of those developments. The term “access management” is basically limiting the number of “conflicts” into a road. Access management allows the traffic to flow more freely by reducing the number of conflicts into the roadway.

Mr. Nuckols added that this text amendment would allow a broader range of lot designs for anyone wanting to develop their property because they are currently required to have direct frontage on a public street. This amendment may permit some flexibility in design that is not currently there as it becomes very expensive if you wanted to create a three (3) lot subdivision and you had to put in a street just to service two (2) of the three (3) lots or maybe all of the lots in some cases. That would increase costs to everyone because the streets may have to be maintained by the Town.

Mr. Kennedy stated that RR are typically larger agricultural tracts and RR has the same minimum lot requirement as RS-3, which is 30,000 square feet.

Chairman McLaughlin asked Mr. Kennedy if he would pinpoint where Ms. Garner’s property is located.

Mr. Kennedy responded that he could but that should not matter because text amendments are general policies and not site specific. The request by Ms. Garner – wherever her property is located within our jurisdiction – should be considered in the context of how it applies for anybody in the RS-3. If the amendment is denied and Ms. Garner does not wish to provide three (3) separate driveway easements, Ms. Garner would then need to come forward with a rezoning application to rezone the property to a zoning district that would allow her to subdivide without being required to build a street of some sort to access each lot.

Mr. Curlee asked if a waiver could be granted rather than a text amendment.

Mr. Kennedy responded there would be no such mechanism to grant that waiver. If Ms. Garner came forward with a variance there would be no unique hardship as she would be creating her own hardship in a manner that is not unique to the property, therefore the only proper way to provide this to her is through a text amendment.

Mr. Curlee asked if there was another way to accomplish this other than by text amendment.

Mr. Kennedy said that in his opinion there is not an alternative for a waiver as long as her property remains zoned RS-3 and the best way to handle the request is via the text amendment processes.

Mr. Nuckols said there is no such mechanism in the UDO to allow general waivers of that nature. Mr. Kennedy is correct that the only option other than this is to see if the petitioner qualifies for a variance before the Board of Zoning Adjustment in which they would have to demonstrate there is a hardship that is theirs and theirs alone, and the hardship is not being created by their property. In this case, as in most cases, it would be extremely difficult for the petitioner to demonstrate her hardship for a variance.

Mr. Pate asked if the RR has the same minimum lot size as RS-3.

Mr. Kennedy responded that is correct. RE has a minimum lot size of five (5) acres and RR has a minimum lot size of 30,000 square feet. When you jump to the other zoning districts – RM and RS-1 – those have a minimum lot size of 10,000 square feet, but they can have up to twenty-five (25) dwelling units from a single access. Within RR, someone could have the same provision in place. The duty of the Board is to see if there is any viability in this taking place in the RS-3, if there is any harm, or if it meets the criteria of the UDO and the Comprehensive Long Range Plan.

Brittany Paschal asked if having a private road maintenance agreement in place would be required. If more than one (1) property is sharing the same means of ingress and egress it seems like there should be some provision regarding shared maintenance.

Mr. Kennedy stated that provision 4.11.3(C)(3) of the UDO requires covenants be recorded in the deed with the Moore County Registry establishing maintenance of an easement, so there have to be covenants relative to maintenance of the easement in place prior to recordation of a plat of those three lots in order to move forward.

Mr. Nuckols said the property in question is currently in compliance with the UDO, but presuming all positives are there and that the property would be in compliance, the Board must determine if it is appropriate to add the RS-3 zoning classification to Section 4.11.3(C)(2) of the Code.

Trey Yelverton introduced himself and stated that he was present on behalf of the petitioner, Nancy Garner.

Mr. Curlee asked Mr. Yelverton where Ms. Garner's property is located and Mr. Yelverton responded that the property sits back off of Midland Road and connects to the Talamore Golf and Family Club property.

Mr. Yelverton stated that while the proposed text amendment is not property specific, it is beneficial from a general standpoint. If you look at Ms. Garner's property specifically, it can currently be divided into three (3) lots but each would require a separate driveway. From the

standpoint of esthetics and safety, among others, it would be a detriment to the community as a whole to have three (3) access points when one (1) would be sufficient.

Mr. Yelverton continued by saying that while this specific parcel is not necessarily supposed to be part of the Board's deliberation, it is a good example of a piece of property that would benefit greatly from this text amendment and the Town and the community would benefit as well. Connecting this property to Midland Road would create one (1) twenty (20) foot easement. Alternatively, we could have three (3) twenty (20) foot easements which could create a safety concern because then you would have multiple left and right turning vehicles and multiple vehicles going in and out at three (3) different access points multiple times each day.

Mr. Yelverton stated that with one (1) access point you would have better controlled access. One (1) entrance would create flexibility in use of the property, but also control the access with one (1) means of ingress and egress. That is not to say that each lot could not have its own driveway, but he suspects that, with the flexibility provided to the property owner, those three (3) driveways would probably be rejected as unnecessary. He asked the Board to think about whether, from an aesthetic standpoint, they would rather see one (1) driveway or three (3) driveways right next to each other as they are driving down Midland Road. Again, the proposed text amendment is not property specific, but a very good example of how the text amendment can be used for the aesthetic benefit of the property around it and the benefit of the community as a whole. Mr. Yelverton said that the property currently has an easement to Midland Road.

Bill Pate asked Mr. Kennedy if he knew why the RS-3 zoning district was not previously included in Section 4.11.3(C) of the UDO.

Mr. Kennedy responded that the UDO used existing situations in determining this standard when the current UDO was adopted in 2013. The RM and the PD zoning districts were included in this provision because those districts can have up to twenty-five (25) dwelling units, which are usually associated with apartment complexes. You would never be able to build an apartment complex if it required one (1) driveway for no more than three (3) dwelling units. Conversely, many properties in the RE and RR zoning districts are larger parcels and served by shared easements. My recollection of the conversation at the time of the new UDO adoption of these situations is why RS properties were excluded. The RS-1 was added to the standards of this section of the UDO in 2014.

Mr. Kennedy continued by stating that no one suggested including any of the RS zoning districts at that time. Since then, in November of 2014, the RS-1 zoning district has been added to the up to twenty-five (25) dwelling unit provision. The current petitioner is requesting the addition of the RS-3 zoning district to the three (3) dwelling unit provision. Mr. Kennedy said if the request is approved that the UDO would only exclude RS-2 from these standards. However, in his opinion, but it may not be appropriate for RS-2 to be included in either provision. The RS-2 zoning district allows approximately half-acre lots and many of the properties are smaller and do not have the ability to be subdivided. The location of our RS-2 properties is not conducive to including them in one of the other categories so those properties are currently left by themselves. We do not address our commercial districts as they are handled completely separately from our residential districts. Mr. Kennedy said he thinks it was not contemplated at that time, to include

the RS districts with the adoption of the current UDO, and he would defer to Mr. Nuckols to see if he has a different recollection.

Mr. Nuckols responded by saying that what Mr. Kennedy stated is absolutely correct. Mr. Nuckols said he does not think RS-3 was considered for inclusion, not for any specific reason other than it was an RS district, but there is certainly a lot size component that is in place for RS-3 that is not in place for RS-2 that may, in his opinion, make sense for this type of ordinance amendment.

Chairman McLaughlin asked if anyone else would like to comment before the Board considers its decision, and asked the Board if it had sufficient information.

Mr. Curlee stated that he felt there would not be many of these situations forthcoming in the next five years, and the Planning Board and Town Council should have the opportunity to review each situation individually. He asked if there is a method whereby the Town can look at each property as this situation arises.

Mr. Kennedy responded that the only way to accomplish that would be through a rezoning, a Conditional Use Permit, or a Planned Development project. A Planned Development would require a rezoning of property. The only other option would be to amend the ordinance to state that if you want to have a shared driveway a Conditional Use Permit is required. He said he does not know of another option. The property owner would not qualify for a variance, in his opinion, and there is no ability just to waive here and there in an arbitrary manner; there must be some criteria involved. If the Board feels that these situations need to be decided on a case-by-case basis, then potentially the text amendment is not worthwhile. If the Board feels as though the approval of this amendment will not bring any harm by just “letting it go free” then maybe it should be approved. But again, he would ask that the Board reference the narrative submitted by the petitioner for the UDO criteria referencing compatibility Comprehensive Long Range Plan and determine if it meets the objectives. If it does, then he would recommend voting for the text amendment. If it does not, he would recommend voting against it.

Chairman McLaughlin asked Mr. Curlee if he was satisfied with the information Mr. Kennedy provided, and Mr. Curlee responded yes.

Chairman McLaughlin entertained a **motion** to close the public hearing. Larry Harward made the **motion**, which was seconded by Brittany Pascal.

Voice vote:

Bill Pate	yea
Brittany Paschal	yea
John McLaughlin	yea
Larry Harward	yea
James Curlee	yea
Kristen Obst	yea
William Ross	yea

The motion carried.

ACTION OF THE BOARD:

Brittany Paschal made the **motion**, which was seconded by Kristen Obst, to recommend the 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 Comprehensive 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 objections of the Comprehensive Plan in that this will further the current language of the UDO in that it preserves low density development that is compatible with other development that is existing and it encourages common shared parking facilities and common driveways which will control the flow of traffic onto main roads.

Voice Vote:

Bill Pate	yea
Brittany Paschal	yea
John McLaughlin	yea
Larry Harward	yea
James Curlee	nea
Kristen Obst	yea
William Ross	yea

The motion passed by a vote of 6 to 1.

Chairman McLaughlin entertained a **motion** to recommend to the Town Council the approval of OA-02-16.

Brittany Paschal made the **motion**, which was seconded by Larry Harward, to recommend to the Town Council the approval of OA-02-16.

Voice Vote:

Bill Pate	yea
Brittany Paschal	yea
John McLaughlin	yea
Larry Harward	yea
James Curlee	nea
Kristen Obst	yea
William Ross	yea

The motion passed by a vote of 6 to 1.

OLD BUSINESS:

Bill Pate expressed appreciation for Mike Martin’s years of service on the Planning Board.

NEW BUSINESS:

Brittany Pascal welcomed new member Larry Harward.

The meeting was adjourned at 7:45 p.m.

Respectfully submitted:

Cindy Williams
Secretary to the Board