

**HENDERSON COUNTY
PLANNING BOARD MINUTES
August 16, 2007**

The Henderson County Planning Board met on August 16, 2007 for their regular called meeting at 5:30 p.m. in the Commissioners' Meeting Room at 100 N. King Street, Hendersonville, NC. Board members present were Tedd Pearce, Chair; Jonathan Parce, Renee Kumor, Stacy Rhodes, John Antrim and Tommy Laughter. Others present included Autumn Radcliff, Senior Planner; Matt Card, Planner; Planner; Alexis Baker, Planner; Sarah Zambon, Associate County Attorney; and Kathleen Scanlan, Secretary. Board member Mike Cooper, Gary Griffin and Mitchell Gaither were absent.

Chairman Pearce called the meeting to order and asked for the approval of the July 19, 2007 regular Planning Board Meeting Minutes. Renee Kumor made a motion to approve the July 19, 2007 minutes and John Antrim seconded the motion. All members voted in favor.

Adjustments of the Agenda. There were no adjustments needed.

Staff Reports. Ms. Radcliff announced that Anthony Starr and his wife had their third child, a girl, named Sarah Katherine on Tuesday, August 14th weighing in at 7 lbs. 4 oz.

OLD BUSINESS:

Combined Master and Development Plan – Grey's Reach (2006-M29) – Request to Modify from the Original Approval Individual or Shared Wells for 19 Single-Family Residential Lots located on Evans Road – Luther E. Smith and Associates, Agent for Robert Rogers, Owner. Presentation by Alexis Baker. Chairman Pearce asked Staff whether they had any objection to the request to amend the conditions of approval for Grey's Reach to allow individual or shared wells, to be approved by the Henderson County Health Department. A total of 19 lots on 16 acres of land were proposed in Grey's Reach with group wells. Public roads were proposed. The project is located in the T-20 zoning district. Tommy Laughter made a motion that the Planning Board find and conclude that the request to amend the conditions of approval complies with the provisions of the Subdivision Ordinance. Stacy Rhodes seconded the motion and all members voted in favor.

Request for Extension – The Orchards at Flat Rock (2005-M26) – 37.92 Acres off South Orchard Road – Norman Divers with Brooks and Medlock Engineering, Agent for Lifestyle Homes of Distinction, Owner. Presentation by Alexis Baker. Without discussion, Chairman Pearce felt that this request was straight-forward and asked for a motion to grant a one-year extension to begin at the date the Development Plan Approval expired. (Staff visited the property multiple times and has witnessed progress being made at the project site. Phase I of the project appears to be almost complete. All the infrastructure has been completed and have permitted 73 out of the 125 proposed units; 18 of the 32 original buildings are either completed or currently under construction; 22 of the 32 buildings have been platted and recorded with plans to plat and begin development of the remaining 10 buildings by early 2008). Chairman Pearce made a motion that the Planning Board find and conclude that the applicant has made a good faith effort to develop this subdivision in accordance with the approval and further move that the Planning Board approve the request for a one year extension of Development Plan approval. Tommy Laughter seconded the motion and all members voted in favor.

NEW BUSINESS:

Combined Master and Development Plan – Amber Ridge (2007-M28) – 7 Single-Family Residential Lots located off Summer Road – Mark Corn with Associated Land Surveyors, Agent for James G. Dalton, Developer and Owner. Presentation by Alexis Baker. Ms. Baker stated that Mr. Mark Corn with Associated Land Surveyors, agent on behalf of James G. Dalton, owner, submitted the Combined Master and Development Plan for the project known as Amber Ridge. The project site is located on 7.17 acres of land, located off of Summer Rd. The applicant is proposing a total of 7 lots that will be used for single-family residential purposes and 1 lot for future development.

Ms. Baker said, on November 11, 2006, staff approved the Amber Knoll minor subdivision which bordered the proposed subdivision to the northwest and was owned by James G. Dalton. As stated by the Henderson County Subdivision Ordinance §170-13, the minor subdivision procedure may not be used a second time within three years on property that is less than 1,500 feet from the original property boundaries of the original tract which was the subject of a previously approved minor subdivision application and which has been in common ownership with the original tract at any time within said 3-year period. The application for Amber Ridge is thus being processed as a major subdivision. The site is currently zoned Open Use which does not regulate the residential use of land. The site is not located in a water supply watershed district or the floodplain. A private road is proposed to serve the project site. Private water (individual wells) and private sewer (individual septic) are proposed to serve the project site.

Staff has reviewed the submitted Combined Master Plan and Development Plan for Amber Ridge for conformance with the Henderson County Subdivision Ordinance (HCSO) and offers the comments that follow:

Master Plan Comments:

1. **County Comprehensive Plan (CCP).** The Future Land Use Map of the CCP shows the project site as being located within the Rural Agricultural Area (RAA).
 - **Rural Agricultural Area.** The Rural Agricultural Area (RAA) designation of the Growth Management Strategy is applied to the project site. The RAA is intended to remain predominantly rural with a density of 5 or more acres per dwelling unit (average lot sizes of 5 or more acres per unit). According to the plan, the project would have an average density of .97 units per acre (average lot size of 1.02 acres), not including the lot set aside for future development. The proposed densities/lot sizes are reduced from those recommended by the CCP. The CCP states that regulations should encourage “densities that are consistent with steep slopes, poor septic capacities, and sensitive topography.” The project site contains limited areas with moderate slopes of 25-35% in the lot set aside for future development. The applicant has indicated that private individual wells and individual septic will be available to the development.
2. **Land Development Code (LDC).** According to Proposed Draft 10 of the Land Development Code Zoning Map the proposed project site for this development is located entirely in the Residential Zoning District 3 (R3). The current draft of the Land Development Code (LDC) allows for a density of 0.66 units per acre (average lot size of 1.5 acres). According to the plan, the project would have an average density of 0.97 units per acre. The proposed development is denser than the LDC would allow. While both the LDC and CCP propose less dense developments in the project area, the proposed project is more consistent with the LDC. Since differences exist between proposed densities with the LDC and the CCP, if the LDC is adopted as proposed, the CCP may need to be amended to be consistent with the LDC.

Development Plan Comments:

1. **Sedimentation and Erosion Control Plan.** The Applicant shall submit notice from NCDENR that a soil erosion and sedimentation control plan has been received or provide documentation that no plan is required prior to beginning construction (HCSO 170-19).
2. **Road Frontage and Existing Off-Site Access.** Any tract of land to be subdivided must have frontage on an existing public (state-maintained) road or a private right-of-way to the public road (HCSO §170-28). The project site uses a private 45-foot proposed right-of-way as offsite access to Summer Road. As the offsite access is owned by James C. Dalton and wife, relatives of the owner, the applicant has provided staff with a “Right of Way Conveyance”, filed by the register of deeds, permitting use of this off-site access.
3. **Future Development.** The Combined Master and Development Plan shows a lot designated as future development. When any “future development” areas of a major subdivision are to be subdivided, the development must comply with the provisions of the HCSO, including review by the Planning Board (§170-31).
4. **Private Local Road.** It has been brought to our attention that the private local road labeled “Daniel Ridge Drive” used to access “Amber Ridge Lane” has already been constructed. However, the drainage ditches have not been stabilized. While the road was constructed prior to submission of the subdivision application, the roads must comply with HCSO §170-21 before the final plat can be submitted.
5. **Final Plat Requirements.** The Final Plat(s) must meet the requirements of Appendix 7 of the Subdivision Ordinance.

Review Agency Comments:

1. **Comments from the Fire Marshal.** Mr. Rocky Hyder commented that fire suppression water supply sources are limited in this area and therefore a dry hydrant should be located on Little Hungry Creek, if possible. He said access roads as proposed will support two-way traffic for emergency vehicles with use of the shoulders. The Planning Board can only require the applicant to meet the minimum standards of the Henderson County Subdivision Ordinance; the Planning Board may not have the authority to require any additional standards.
2. **Comments from Engineering and Facility services.** Mr. Marcus Jones stated that he had taken a site visit and noted that the road had been constructed and lots surveyed. He also mentioned that the site had been cleared, lots stabilized, but that the road ditch was not stabilized..
3. **Comments from Property Addressing.** The comments address the need to extend Amber Ridge for future development. A clear three-way intersection of Amber Ridge and Daniel Ridge should be shown.

After some Board discussion on the increase in lots, Chairman Pearce said that this is denser than what the Land Development Code allows. There was discussion regarding the Amber Ridge and Daniel Ridge roads being brought up to the Subdivision Ordinance standards. Mr. Terry Baker, agent for the project stated that it would not be a problem to do so.

Chairman Pearce made a motion that the Planning Board find and conclude that the Combined Master and Development Plan appears to comply with the provisions of the Subdivision Ordinance; and further move that the Combined Master Plan and Development Plan be approved subject to the following conditions: the applicant satisfies any conditions that may result from the comments listed in the Staff Report. John Antrim seconded the motion and all members voted in favor.

(Jonathan Parce left the meeting at this time).

Update and Discussion of the Land Development Code. Presentation by Autumn Radcliff.

The Board members reviewed the options and/or revisions to the proposed text of the Land Development Code and under advisement from Ms. Zambon, Associate County Attorney; they reviewed each option, with Ms. Radcliff presenting them, and gave suggestions on some for changes. The following is a summary of the Planning Board's review.

The recommended solutions to the following issues that the Planning Board agreed with:

Residential Issue 1 – Transitioning R2 to R2-MH – Replacing the R-2 designation with R2-MH for areas currently zoned Open Use.

Residential Issue 2 – Accessory/Temporary Manufactured Homes – Allow manufactured homes as permanent/temporary accessory dwellings with certain restrictions and requirements.

Residential Issue 3 – Suburban Overlay District – Creating an overlay district with the following: minimum lot requirement of 2/3 acre; increase front yard setbacks; duplexes and triplexes as special uses only.

Residential Issue 5 – Subdivisions Referred by Planning Board – Allow Planning Board to refer any subdivision for good cause to the Board of Commissioners for review and approval.

Residential Issue 6 – Subdivisions Reviewed and Approved by the Board of Commissioners – Require major subdivisions with 300 or more lots/units to be reviewed and approved by the Board of Commissioners.

Residential Issue 9 – Special Subdivisions – Allow subdividing 5, ½ acre lots or less if permitted by the zoning district, over a 5-year period with certain road requirements.

Commercial Issues 1, 2, 3, 5, 6, 7, 8, 9, and 10 – Board members had no objections to these.

Industrial Issues 1, 2, 3, 4 – Board members had no objections to these.

Development Issue 1, 2, and 4 – Board members had no objections to these.

Legal Issue 2 – Nonconforming Commercial and Industrial Uses/Structures within the former Open Use Zoning District – Board members had no objection.

The following issues that the Planning Board did not agree with or suggested a change to:

Residential Issue 3A – Suburban Overlay District –The Planning Board did not agree with applying the Suburban Overlay only to lands formerly zoned R-40 and located in the vicinity of Kanuga/Crab Creek Road. The Planning Board recommended that the Suburban Overlay District, as presented in option 3, should be applied to all R-30 and R-40 zoned areas of the county. Board members felt that it should be applied to all R-30 and R-40 zoned areas of the county and not just a certain designated area. The Board agreed with suggested language that would not allow the Suburban Overlay district to be applied to any additional areas and the existing Suburban Overlay District would be replaced upon completion of a community plan.

Residential Issue 4 – Proposed R4 Zoning District –Planning Board members agreed with Commissioners that a proposed R-4 residential zoning district specifying a density of one lot per five acres be applied to the Pisgah National Forest, the Green River Gamelands, the DuPont State Forest, and the property between the Pisgah National Forest and the Town of Mills River. The Planning Board felt that because this land bordered the Pisgah National Forest and is located in the Water Supply Watershed that it should have lower densities as recommended by the R4 zoning. An R-4 zoning designation will provide steep slope protection and is a more effective way to manage land in those areas.

Residential Issue 6A – Subdivision Review and Approved by the Board of Commissioners – Require major subdivision with 300 or more lots/units be reviewed and approved by the Board of Commissioners as a Conditional Zoning District. The Board members agreed with the Board of Commissioners' recommendation that major subdivisions with 300 or more lots be reviewed and approved by County Commissioners, but they disagreed with the Commissioners' suggestion that major subdivision of 300 lots or more be processed as a *Conditional Zoning District*, to allow Commissioners to put restrictions on subdivisions. Ms. Zambon said that the conditions would be unique to the needs of the project, but that there would still be a master checklist that developers

would have to abide by as a basic provision to getting their subdivision approved. Chairman Pearce asked about the legality of a Conditional Zoning District. Ms. Zambon added that there's a lot of case law concerning what you can do with subdivisions. Ms. Zambon stated that she would put together more information on the Conditional Zoning District for Board members to review. Chairman Pearce said that having a Conditional Zoning District gives Commissioners too much authority to reject a project. He added that he thinks the Commissioners are opening up a Pandora's Box for themselves by doing this and he feels that you'd be better off with the checklist as it is safer and there's less money lost when you face lawsuits. After some further discussion, Planning Board suggested that if Commissioners keep the Conditional Zoning District requirement in the new Code they make it part of the Zoning Ordinance of each district. The Conditional Zoning District process should also specify the kind of things that can be addressed by Commissioners. Chairman Pearce said that this is so there could be teeth to it instead of just on the "whim" of the Commissioners. Staff explained that Conditional Zoning Districts are allowed in every zoning district and allow the Board to set conditions and a proposed subdivision would still have to meet all the basic requirements for subdivision approval.

Residential Issue 7 – Public Water and Sewer Requirements – Subdivisions with 500 or more units/lots may be required to connect to public water if located within 2 miles of an existing public water system and/or connect to public water if within 1 mile. The Board members decided that regarding this issue, they preferred no distance exemption; that the number of units or lots should remain the same as indicated in Issue 6, which would be 300 units/lots and that private water and sewer systems should be allowed. The Planning Board suggested that subdivisions with 300 or more lots/units should have public or private water and sewer service. When this is not possible, the subdivision should try to pursue community wells and septic systems before allowing individual systems.

Residential Issue 8 – Off Site Access - The Planning Board suggested that, when a proposed subdivision has road frontage or existing off-site ROW of less than the 30 feet, the off-site access roads be required to meet the standards for subdivision roads based on the number of proposed lots.

Residential Issue 9 – Gated Communities – Renee Kumor said she feels the Commissioners are looking at the matter in the wrong way. She said, "Gated subdivisions are keeping people in rather than keeping the rest of the community out". The Board members said they felt property owners and potential home buyers should have the option to decide for themselves if they want to live in a gated community. Board members were against an outright ban on gated subdivision.

Commercial Issue 4/4A – Local Commercial Nodes along Upward Road – Board members felt that until we get the community plans in place, it would make more sense to go with local commercial and not change to community commercial in the Subject Area 1 and 2 as they felt that the community plans should determine whether to upgrade the area or not. Chairman Pearce said it is harder to change down a zoning area than it is to change it up.

Development Issue 3 & 4 – Traffic Impact Study and Emergency Services Impact Report– Board members suggested that a residential subdivision proposing 100-lots/units or more would prepare a Traffic Impact Study identifying needed improvements and maybe require improvements with restrictions. Board members asked Staff if they had looked further into the requirements for doing a study report to see if the required thresholds were reasonable.

Development Issue 5 - Development in Areas of Steep Slope and Floodplain – Board members suggested to look at the percent of slopes, as they were not in agreement with the suggestion of slopes 35%. Board members felt that it should be determined that slopes should be no less than 45% or greater or within the Special Flood Hazard Area shall be one dwelling unit per three acres and over. They added that the type of soil and rock should be what determines the percent of slope and that in certain cases could be even greater percentage slope. Board members asked Staff to study slopes of 55% and 75% and even 100% in regard to this issue on a map. Ms. Kumor felt that the Board sounds reckless to the community when they are talking of slopes up to 100%. Chairman Pearce stated that the public needs to see numbers beyond 45% because there might not be much difference between 45% and 75% slopes.

Development Issue 6 – Density Bonus Credit – The Planning Board recommended that only lands with conservation easements be excluded from calculating density bonus credit. The Board felt that developers might buy adjacent land with existing conservation easements just to get the density bonus credit, and those developers knew that lands they may have purchased with existing conservation easements were un-developable.

Legal Issue 1 – Inter-relation of County Permits – Board members felt that the responsibility should not lay onus on one person, the Zoning Administrator, regarding a decision of any person or party that has a County permit(s) that could be revoked or suspended but rather should be decided by a governing or legal body, such as the Board of Adjustment.

Adjournment. There being no further business, the meeting adjourned at 7:45 p.m. All members voted in favor.

Tedd Pearce, Chairman

Kathleen Scanlan, Secretary