MINUTES
BREVARD PLANNING BOARD REGULAR MEETING
MARCH 26, 2024
CITY COUNCIL CHAMBERS

Brevard Planning Board met for a regular meeting, Tuesday, March 26, 2024, at 5:30 PM, in Council Chambers at City Hall.

Members Present:	Greg Hunter, Chair Reid Wood, Vice Chair Peter Chaveas Molly Jenkins Alan Mercaldo James Carli
Absent:	John Schommer
Staff Present:	Paul Ray, Planning Director Emily Brewer, Senior Planner Janice H. Pinson, Board Clerk

I. Welcome

At 5:30 PM, Greg Hunter, Chair called the meeting to order.

II. Introduction of Planning Board Members

The Board introduced themselves.

III. Certification of Quorum

G. Hunter, Chair confirmed with the Board Clerk that a quorum of the Board was present.

IV. Approval of Agenda

Motion to approve the agenda J. Carli, second P. Chaveas, unanimously carried.

V. Approval of Minutes

Motion to approve the February 27, 2024, minutes by M. Jenkins, second by R. Wood unanimously carried.

VI. Public Comment

Monica Driscoll requested that the board table the Group Development and Subdivision text amendment to allow for public input. She further suggested that a more in-depth definition of conflict of interest be included in the Planning Board By-Law amendments.

There was a brief discussion with the board about her reasons.

VIII. New Business

a. Resilience Action Plan – Board letter to City Council

J. Carli highlighted the reasons that the board should sign the letter of recommendation to City Council.

There was discussion about the organizations mentioned in the letter.

A. Mercaldo stated that he felt these things can be accomplished in our community without another plan or committee.

J. Carli explained that we can document things we are already doing to apply for grants at the federal level.

J. Carli made a motion for those in support of the letter sign it and present to Council, second by P. Chaveas, vote was all in favor except A. Mercaldo voted nay.

J. Carli is to revise the letter to exclude A. Mercaldo, John Schommer (who was not in attendance) and change the language to read, "The following members of the City of Brevard Planning Board" and forward the letter to the Board Clerk.

Paul Ray, Planning Director explained that the letter would be placed on Council's agenda, and that it probably would not be presented until May.

b. TXT-24-005 Consideration of Text Amendment Group Development and Subdivision

Emily Brewer, Senior Planner presented her staff report a portion of which follows:

Background
The *Building Brevard 2030* Comprehensive Land Use plan calls for "a development pattern that respects Brevard's sense of place and prioritizes livable communities." The Unified Development Ordinance establishes procedures and standards for the development and subdivision of land within its corporate limits and extra-territorial jurisdiction.
This staff-initiated text amendment began as a comprehensive review of the City's subdivision regulations, which govern how a property may be divided in order to:
• Provide for the orderly growth and development of the City and its extra-territorial jurisdiction;

• Protect and enhance property ownership and land values;
• Maintain conditions essential to the public's health, safety, and general welfare;
• Facilitate adequate provision of public services; and
• Facilitate the further re-subdivision of larger tracts into smaller parcels of land for development.

During this process, Staff considered when the regulations should encourage subdivision of land and when subdivision wouldn't be necessary. The scope of this effort was expanded to examine development patterns, more generally, in the UDO. This includes revised group development regulations, where more than one principal structure is permitted on a property.

This initiative has been discussed by Planning Board at many recent meetings:
• On October 24th, Staff introduced the challenges in administering the subdivision regulations and opportunities for improvement.
• On January 23rd, Staff shared a revised framework for the text amendment which included subdivisions and group developments to allow for creative ways to increase density while still ensuring health, safety, and welfare is achieved.
• On February 27th, the Board reviewed a draft of the group development regulations, which contain some of the major changes proposed as part of this amendment.

Discussion

The major changes are listed below along with Staff's reasoning for proposing the change. Other amendments are reorganizations, reference updates, or clarifications resulting from these major changes.

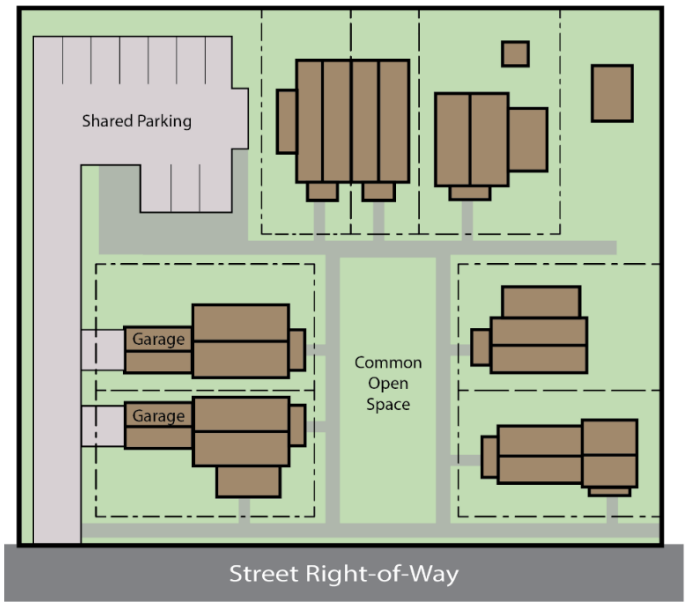
1. Group Development Regulations

Group developments are defined as "any land development subject to a site plan that includes 2 or more principal buildings on a single parcel (or grouping thereof) for the purpose of development." The current ordinance allow development of more than one principal structure in some circumstances, but there are no regulations specifically for this type of development. The proposed amendments include, among other things, requirements for street access, connectivity between buildings, and setbacks.

The proposed amendments also establish different types of group developments that are permitted in certain zoning districts with specific standards. These include, cluster home developments (see below), neighborhood developments, manufactured home parks, and shopping centers. The latter two were removed from the use matrix, as they are a type of development that consists of specific uses.

2. New Missing Middle Housing Type – Cluster Home Development

In amending the group development regulations, Staff is proposing introducing a new missing middle housing type. A "cluster home development" allows for small lot residential development in a manner that organizes multiple dwellings around a common open space, designed as a cohesive whole and maintained in shared stewardship by residents. This type of development creates smaller housing units that can be operated as a rental property under single ownership or sold as individual lots with shared ownership of common areas. Other municipalities have allowed cluster home developments (sometimes referred to as "cottage courts") to create more diverse housing options and allow for a denser development at a community-scale.



3. Types of Subdivisions

Staff revised the definitions of exempt, minor and major subdivisions to clarify the processes and submittal requirements. NCGS allows municipalities to have expedited review processes for specific classes (e.g., minor vs. major). In practice, the difference is that major subdivisions are required to go to the Technical Review Committee for review, submit a preliminary plat, and install or guarantee the required improvements before final approval. Staff revised the definitions of minor and major subdivisions so infrastructure requirements are the defining factor that necessitates a more rigorous review process.

Minor subdivisions, which have the expedited review, is now anything that creates less than 8 lots and doesn't involve the creation of public infrastructure.

4. Variances to Subdivision Regulations

Currently, the subdivision regulations are spread throughout the Unified Development Ordinance. In addition to being challenging to administer, it creates regulatory issues for other areas of the ordinance. NCGS 160D-705 states that the Board of Adjustment is allowed to grant variances to a municipality's ***zoning*** regulations. Any other land use and development regulations (including subdivision regulations) ***may*** be varied if given authority in the ordinance. As previously stated, subdivision regulations are established to maintain health, safety, and public welfare and to ensure adequate provision of services. As such, many of these standards should not be varied. But because they are so intertwined with the zoning regulations in our ordinance, the Attorney to the Board of Adjustment has advised us that any lot or subdivision regulation is eligible for a variance. The proposed amendments separate the subdivision regulations from the zoning standards and establishes a new Chapter 4 [Lot and Subdivision Requirements] with limited variance authority.

5. Subdivision Approval Procedures

Approval of a subdivision is a ministerial act, where the plat is required to be approved so long as it meets the requirements of the ordinance and applicable state statutes. This can be done through either administrative or quasi-judicial procedures, depending on the content of the regulations. Administrative decisions are those based on clear, objective standards. Quasi-judicial standards are based on objective standards, as well as standards that require some level of judgement or discretion (NCGS 160D-102). For instance, a quasi- judicial standard for a subdivision plat might be that "the project does not overburden adjacent roads" or that "the project is designed to maximize access to open spaces." These standards require some level of judgement or discretion, so the applicant is entitled to an evidentiary hearing to prove their case.

The procedural rules for subdivision approval depend on the type of standards in the ordinance, not the board it is assigned to. Current subdivision approval is with City Council, but they cannot make a legislative decision at their discretion. This was clarified by the Courts in *Guilford Financial v. City of Brevard* (2003). In this case, City Council did not follow quasi-judicial procedures and denied a subdivision without sufficient evidence. Superior court reversed the decision and instructed Council to approve the subdivision.

Staff amended the subdivision regulations to be entirely administrative, not quasi-judicial. The revised procedures have Staff as the approval authority for all subdivision decisions, with appeals being sent to the Board of Adjustment. Furthermore, each type of subdivision (exempt, minor or major) now has a clear process and detailed submittal requirements to further clarify the review process.

For more information on this topic, please refer to the UNC School of Government's blog post entitled, "*Subdivision Plat Approval: What type of decision is it?*"

6. Minimum Lot Size

Our ordinance does not require a minimum lot size for any newly established lots, but we do require compliance with the zoning standards. To ensure compliance with the density requirements, Staff will not permit a subdivision that creates more lots than the permitted residential density. For example, a one-acre parcel with a maximum allowable density of 8 dwelling units per acre cannot be divided into more than 8 lots, including any residual or parent lot. Staff added language to clarify this requirement and allow for the creation of additional lots not intended for development (e.g., environmental conservation parcels).

7 Private Roads for Subdivisions

Our current ordinance does not allow the subdivision of land off of private roads longer than 150 feet. This can limit the ability of development in areas where the roads cannot be dedicated to the City. Staff has clarified what constitutes a public street, but also

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added stipulations for when a private street may satisfy road frontage requirements for new lots. This may only be done in the ETJ (where the City cannot accept the dedication of streets), when maintenance can be guaranteed in perpetuity, and when it is built in a way that can be accessed by emergency vehicles. In accordance with NCGS 136-102.6, Staff has added a disclosure statement to be included on the subdivision plats that identifies the responsibilities of the property owners and the potential repercussions if the street is not maintained.

8. Plat Requirements and Certifications
The plat requirements and certifications are updated to reflect NCGS and clarify the administrative review items.

E. Brewer led the board through a review of the changes and there was discussion and a few minor revisions noted.

J. Carli moved to recommend approval with minor amendments noted with reference to the consistency statement, which is attached hereto and labeled, Exhibit "A", second by P. Chaveas, unanimously carried.

IX. Old Business

a. TXT-24-003 Consideration of Text Amendment UDO Chapter 15 Board Roles

Emily Brewer, Senior Planner, presented the staff report prepared by A. Bland, Assistant Planning Director a portion of which follows:

Background
The Board previously discussed the majority of this amendment at the February 27, 2024 meeting. At that time, the scope of the amendment was only the roles and responsibilities of the Planning Board (BPB) and Board of Adjustment (BOA). There have been no changes to these previously discussed amendments.
After taking the amendment to the Board previously, Staff discovered another item in this section of the UDO that needs amending. Specifically, the makeup of the board in terms of the number of members that represent the city and the extra-territorial jurisdiction (ETJ).
Discussion
North Carolina General Statutes state that the ETJ must have "proportional representation based on population for residents of the extraterritorial area" on city boards such as the BPB and BOA (GS § 160D-307). This proportionality is to be reviewed and adjusted following each decennial census; this has not yet been done following the 2020 census.
The 2020 population of the city was found to be 7,818, and the population within the ETJ is estimated to be 3,129, which results in a city-to-ETJ ratio of 2.5. This ratio of 2.5 is the goal for the proportional representation on the BPB and BOA.
The current makeup of the BOA is 3 city and 2 ETJ members* which equals a ratio of 1.5. Changing the makeup of the BOA would result in the ratio becoming further from the goal of 2.5, so no change is recommended for the BOA.
The BPB, however, can improve its proportionality. The current makeup of 4 city and 3 ETJ

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members equals a ratio of 1.33. Changing the makeup to 5 city and 2 ETJ equals the ideal 2.5 ratio. Therefore, it is recommended that one of the ETJ members be switched to a city member.

Policy Analysis

Ensuring that the makeup of the BPB and BOA are consistent with state law is obvious best practice and in the City's legal and procedural best interest.

E. Brewer explained the next steps would be to present to Council, and if approved, advertise for a new City Planning Board member, and with appointment of that member an ETJ board member would need to step down.

It was asked if it could wait until the natural term expired rather than ask an ETJ member to step down and she explained that the matter should be corrected as soon as possible. She also explained that the by-laws amendments take out the number of members to alleviate the need to amend them as things change.

M. Jenkins moved to recommend approval as revised, with reference to the consistency statement attached and labeled, Exhibit "B", second by R. Wood, unanimously carried.

b. Planning Board By-Law Amendments – Revised

Emily Brewer, Senior Planner, presented her staff report.

After a brief discussion, J. Carli moved to approve, second by R. Wood, unanimously carried.

IX. Remarks- None.

X. Adjournment

There being no further business, M. Jenkins made a motion to adjourn seconded by R. Wood, the motion carried unanimously, and the meeting adjourned 6:58 PM.

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Greg Hunter, Chair

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Janice H. Pinson, Board Clerk

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