

AN ORDINANCE TO AMEND PARAGRAPH 6.2.4 OF THE UNIFIED DEVELOPMENT ORDINANCE

WHEREAS, the [insert governing body] wishes to amend Paragraph 6.2.4 of the Unified Development Ordinance to clarify its intent; and

WHEREAS, it is the objective of the [insert governing body] to have the Unified Development Ordinance promote regulatory efficiency and consistency and the health, safety, and general welfare of the community;

WHEREAS, Section 6 of the Unified Development Ordinance addresses District Intensity Standards, and

WHEREAS, Paragraph 6.2.4 provides for conservation subdivisions, which permit more concentrated development in a portion of a subdivision in order to achieve other highly desirable goals, and

WHEREAS, the approval of subdivisions is an administrative decision based on a determination of whether an application meets defined objective standards, and

WHEREAS, Paragraph 6.2.4A generally identifies twelve possible goals and potential collateral benefits identified as “purposes” which may be achieved by the creation of a conservation subdivision, and

WHEREAS, Paragraphs 6.2.1 and 6.2.4H set forth the specific standards which must be met in order to qualify as a conservation subdivision, and

WHEREAS, on November 28, 2022, the opponents to a conservation subdivision appeared before the Board of County Commissioners and claimed that the language of Paragraph 6.2.4A requires that a conservation subdivision must achieve each and every one of the twelve identified “purposes”, and

WHEREAS, the twelve “purposes” are diverse, some potentially conflicting, and some rarely occurring in the County, that requiring all twelve to be met, would essentially prevent any application for a conservation subdivision from being approved, and

WHEREAS, one of the listed “purposes” concerns street designs, which is irrelevant to the goals and standards of a conservation subdivision, and

WHEREAS, the longstanding interpretation of Paragraph 6.2.4 by the Planning Staff and Board of County Commissioners is that the “purposes” set forth in Paragraph 6.2.4A are not a mandatory list, all of which must be met, but rather the specific standards set forth in Paragraphs 6.2.1 and 6.2.H are the criteria which must be satisfied in order to qualify for approval of a conservation subdivision, and

WHEREAS, since 2006, fifteen Conservation Subdivisions have been approved in Durham County, none of which achieved all twelve “purposes”, and

WHEREAS, the Board of County Commissioners made inquiry to the Planning Staff about the opponents' argument and after consideration, rejected the opponents' proposed interpretation of the ordinance, and

WHEREAS, the opponents to the Conservation Subdivision then filed litigation on December 28, 2022, claiming the Board of County Commissioners erred in interpreting and applying the ordinance they previously adopted, their decision was arbitrary and capricious, and they acted beyond the scope of their authority in approving the Conservation Subdivision, and

WHEREAS, on August 15, 2023, the Superior Court of Durham County entered an order rejecting the opponents claims and granting summary judgment to the County, and

WHEREAS, the opponents have appealed that decision to the North Carolina Court of Appeals, and

WHEREAS, the approval of Conservation Subdivisions is an administrative one, such that if an application is submitted which complies with the requirements of paragraphs 6.2.1 and 6.2.4H, it will be approved and could then be appealed by opponents, resulting in further unnecessary litigation, and

WHEREAS, minor amendments to paragraphs 6.2.4A and 6.2.4B can clarify the intent and application of paragraph 6.2.4 consistent with the longstanding interpretation of it by the Planning Staff and the Board of County Commissioners and resolve the basis of the claims of the opponents currently challenging the County's decision, and

WHEREAS, these amendments preserve the status quo and permit the continued use of this planning tool,

NOW, THEREFORE, be it ordained that Article 6, District Intensity Standards; of the Unified Development Ordinance, is amended to make the following changes set forth in the deletions (strikethroughs) and additions (underlining) below:

1. Section 6.2 Residential Rural (RR) Development Intensity
(Paragraphs not listed remain unchanged)

6.2.4. Conservation Subdivision

A. Purpose

The conservation subdivision ~~standards are shall be~~ established for the following purposes:

1. To provide flexibility of design in order to promote environmentally sensitive and efficient uses of the land;
2. To preserve in perpetuity unique or sensitive natural resources such as groundwater, floodplains, wetlands, streams, steep slopes, woodlands and wildlife habitat;

3. To preserve important historic and archaeological sites;
4. To permit clustering of houses and structures on less environmentally sensitive soils which will reduce the amount of infrastructure, including paved surfaces and utility easements, necessary for residential development;
5. To reduce erosion and sedimentation by minimizing land disturbance and removal of vegetation in residential development;
6. To promote interconnected greenways and corridors throughout the community;
7. To promote contiguous green space with adjacent jurisdictions;
8. To encourage interaction in the community by clustering houses and orienting them closer to the street, providing public gathering places and encouraging use of parks and community facilities as focal points in the neighborhood;
- ~~9. To encourage street designs that reduce traffic speeds and reliance on main arteries;~~
10. To promote construction of landscaped walking trails and bike paths conveniently located both within the subdivision and connected to neighboring communities, businesses and facilities to reduce reliance on automobiles;
11. To conserve scenic views from public roadways and reduce perceived density; and
12. To protect prime agricultural land and preserve farming as an economic activity.

B. Applicability of Regulations

This conservation subdivision option is available as a use by right subject to subdivision approval in accordance with Sec. 3.6, Subdivision Review; and in accordance with the standards set forth in ~~paragraph 6.2.4A, Purpose, and~~ paragraph 6.2.4H, Primary and Secondary Conservation Areas.

(Paragraphs 6.2.4C through 6.2.4H have been omitted as they remain unchanged)

2. That this amendment of the Unified Development Ordinance shall become effective upon adoption.