

**TOWN OF YOUNGSVILLE
PLANNING BOARD MEETING
Youngsville Community House -- 115 East Main Street
February 5, 2019
6:00 P.M.**

Chairman Donnie Tharrington called the meeting to order at 6:00 P.M.

In attendance were Chairman Tharrington; Vice-Chairman Mark Hurt; Members John Cyrus, Janice Pearce, Scott Anderson, Hank Lindwall, and Bob Martin; and Board Clerk Sandi Fleming. Planning, Zoning, and Subdivision Administrator Bob Clark; Senior Planner Andy Thomas; and Town Administrator Roe O'Donnell, due to commitments elsewhere, were not present.

Chairman Tharrington welcomed all attendees and addressed the Minutes transcribed at the Board's regular meeting held on January 3, 2019.

Without additional discussion, the following Motion was made by Member Janice Pearce, seconded by Member John Cyrus, and unanimously carried:

MOTION: The Minutes of the Planning Board meeting held on January 3, 2019, are approved, as presented.

Attention was then directed to N-Focus representative Rick Flowe, who, per the Agenda, proceeded with initial presentation of Youngsville's newly drafted and proposed Unified Development Ordinance ("YDO"). Unlike Plan 2040, which serves as somewhat of a narrative characterizing the Town, the YDO consists solely of technical zoning standards and specifications, the bulk of which have been compartmentalized for easier reference and use. The Board and Zoning staff are being introduced to replacement measures significantly more concise and compliant with State law than those currently followed. "It may be a huge meal to digest, but we're gon'na consume this elephant, one bite at a time."

With that goal in mind, the Ordinance will be piecemeal delivered, reviewed, and discussed. Binders have been individually assigned for tabbed insertion of maps and materials as those items are respectively distributed at upcoming work sessions. Review pace is, of course, scaled to accommodate a target of final adoption and enactment in or about July of this year. Each session will consist of both an introductory segment for new information and a question-and-answer forum encompassing data presented at the prior meeting. The floor remains open at all times to suggestions and corrections.

I. Reading Guide and Table of Contents:

The full Ordinance consists of 23 Articles, each containing, for indexing convenience, its own separate set of page numbers. Tabs Nos. 24-30 are reserved for supporting documentation, such as updated fees and forms, applicable rules of procedure, and the Comprehensive Land Use Plan and Map from which the YDO and official Zoning Map are carved.

The Reading Guide is our tool for sifting 23 Articles into three categorical “buckets,” so to speak – the first containing zoning guidelines; the second, administrative and procedural policies; and, the third, State and Federal mandates. Inasmuch as it’s evident that Bucket No. 2 is the least colorful of the three, strategy is simply to empty it as soon as possible and devote our time, instead, to more core topics of interest. Articles 1, 3, 4, 5, and 6 are the first “batch” to be absorbed – Article 2 has been pulled as food for thought at a later session.

II. Article 1: Purpose and Authority, Official Zoning Map:

The YDO, as the same may from time to time be amended, will supersede, in its entirety, the Zoning Ordinance now in place. Its content is designed to implement Plan 2040 (currently pending adoption by the Board of Commissioners), and its purpose is to regulate land usage in such a manner as to promote the health, safety, and general welfare of all citizens who reside and/or own an interest in real property lying within our designated zoning jurisdiction.

This Ordinance is authorized and governed by and is supplemental to the General Statutes of the State of North Carolina – what the Statutes enable, the Ordinance establishes. Its intent is not to repeal or abrogate any other legally existing easement, covenant, restriction, agreement, vesting, or permit. In the event, however, that a requirement or standard of the YDO is more or less restrictive than another said easement, covenant, restriction, agreement, or permit, the higher standard, or stricter interpretation, shall prevail. Where, on the other hand, the Ordinance prescribes regulations in addition to those set by the General Statutes, State law takes precedence.

When it comes to conflict between specifications stated within the YDO itself, the stricter of the standards will always apply, with but one exception – regulations for overlays in some instances overrule those for underlying districts. If inconsistency exists between text and maps or illustrations, text shall control, and construction of that text is, as directed by today’s society, gender-neutral.

A severability clause is included, allowing that, should any provision or standard of the YDO be deemed by a court of law to be invalid or unenforceable, all remaining stipulations are thereby unaffected and shall remain in full force. Its provisions, nevertheless, will have no effect or bearing of any kind on legal proceedings, violations, citations, or permits pending at the time of enactment.

The Official Zoning Map is incorporated into and made a part of the Ordinance. It, and any revisions thereto, must bear the Town seal, be attested by the Town Clerk, reflect the Town boundaries, and be properly filed in the Town Hall. District boundaries may follow easily distinguishable, surveyed lot lines, or they may be set by bordering rights-of-way (even if abandoned), utility easements, or waterways, in which case it’s always the centerline of that roadway, alley, railroad, easement, stream, river, canal, lake, or body of water that serves as the marked boundary. Flood Hazard Areas are best determined by Corps of Engineering maps, and the Zoning Map itself contains a scale for use in coinciding lines. In the event of dispute, authority to interpret lies with the Board of Adjustment. Split zoning is to be avoided wherever possible.

One facet that sets the YDO a step above is its provision for states of emergency. Amazingly, few Ordinances actually address natural disasters and/or phenomena. Common sense suggests that zoning compliance take a back seat should Homeland Security issue an “Imminent Threat Alert,” or FEMA be forced to bring in an influx of trailers to accommodate flood victims, or, if, even, thousands of RV’s invade town to watch a solar eclipse. Our rules and specifications allow the Planning, Zoning, and Subdivision Administrator (“Zoning Administrator”), upon resolution of the Board of Commissioners, to temporarily suspend some or all zoning regulations during such a dilemma. Once expiration is declared by Federal or State authority, or by the Mayor upon resolution of the Commissioners, suspension is rescinded, and reinstatement is immediate.

III. Article 3: Definitions, Abbreviations & Symbols:

This section, together with Article 18, to be subsequently introduced, serves merely as a glossary of relative terms – any word not listed takes the applicable meaning set forth in a standard dictionary. The symbols displayed are fairly common, but many of the abbreviations provided will prove to be invaluable when it comes to review and interpretation.

IV. Article 4: Planning Board & Board of Adjustment:

Though subordinate to the Board of Commissioners, it is the Planning Board and Board of Adjustment that literally carry out the duties and responsibilities and fulfill the goals of Town Plan 2040 and the YDO. All meetings and hearings are public, as are the Minutes prepared thereof.

A. Planning Board:

This is the advisory unit that offers, on behalf of the citizens of the Town of Youngsville, opinions and recommendations to the Board of Commissioners. It consists of seven (7) members, four (4) of whom reside within Town limits and three (3) of whom live within the Town’s extraterritorial jurisdiction (“ETJ”). In-Town members are appointed by the Youngsville Board of Commissioners; ETJ members, by the Franklin County Board of Commissioners. But for initial appointment, each serves a three (3)-year term. Initially, three (3) members (including one from the ETJ) serve for three (3) years; two (2) (including one from the ETJ), for two (2) years; and two (2) (including one from the ETJ), for one year.

Attendance of at least four (4) members is necessary to constitute a meeting quorum.

B. Board of Adjustment:

The Board of Adjustment (“BOA”) acts in a quasi-judicial capacity to arbitrate appeals and requests for variances from standards imposed by the YDO. This body is comprised of five (5) members, three (3) of whom reside within the Town limits and two (2) of whom live within the ETJ. In-Town members are appointed by the Youngsville Board of Commissioners; ETJ members, by the Franklin County Board of Commissioners. But for initial appointment, each serves a three (3)-year term. Initially, two (2) members (one being from the ETJ) serve for three

(3) years; two (2) (including one from the ETJ), for two (2) years; and one ETJ member, for one year. The Board of Commissioners may, in its discretion, appoint alternate members as well, to serve in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a new member. Variance rulings require a four-fifths vote – otherwise, simple majority adequately decides.

As is true in any tribunal environment, ex parte communication, fixed opinion, and familial association are prohibited. If an objection is raised to a member’s participation and that member fails to recuse himself or herself, the remaining members shall by majority vote rule on the objection. “It is for these reasons,” stated Mr. Flowe, “that I strongly recommend deviation from a Board of Commissioners and a Board of Adjustment acting as one and the same.”

Public record is kept of the vote of each member on every matter, and of the absence of a vote by any member. Final disposition shall be by recorded resolution revealing findings of fact, and written decisions are properly delivered to all parties involved.

Planning Board and BOA rules of procedure are kept on file at Town Hall, and the Zoning Administrator shall serve as staff and provide technical assistance to both Boards.

V. Article 5: Amendments to Development Ordinance and Zoning Map:

The Board of Commissioners has authority to amend, supplement, modify, or repeal any provision of the YDO and Zoning Map. Such an amendment will be evaluated for compliance with Town Plan 2040 and may require, for the sake of compatibility, revision of the Comprehensive Land Use and Master Plan as well.

Proposed changes may be initiated not only by the Commissioners but also by the Planning Board, our Zoning Administrator, or any owner or resident holding an equitable interest in land affected by the Ordinance. Under no circumstances is a conflict of interest among Boards permissible.

Prior to filing an application for amendment, any applicant (or agent with written, notarized authorization) must meet and discuss proposed plans with the Zoning Administrator. If the proposal requires rezoning, the applicant and Zoning Administrator shall also arrange a meeting with representatives of the neighborhood in which the subject property is located. A completed application, with filing fees, and required supporting documentation, such as legal descriptions and surveys, must be submitted to Zoning staff approximately a month in advance of the Planning Board meeting at which the matter is to be presented. The Board will then review, consider consistency with and reasonableness under Town Plan 2040, and make its recommendation, in writing, to the Board of Commissioners for public hearing and final action. Should review entail additional information or consideration, leeway of an eight (8)-day meeting continuance is allowed.

Upon receipt of recommendation, the Board of Commissioners shall schedule a public hearing. Notification of that hearing is to be published, once weekly for two (2) consecutive weeks, in a newspaper of general circulation within the affected area. First publication must appear not less

than ten (10) or more than twenty-five (25) days prior to date of hearing. In addition, within the same window of time, written notice will be delivered, typically by first-class mail using addresses last listed on County tax records, to the applicant and/or owner and all vestees of abutting properties. Certification of notice must be provided to the Board, and signs shall be prominently and properly posted at the parcel or parcels of land being reviewed. If notices exceed fifty (50) in number, rules and procedures surrounding a one-half page publication may be followed instead.

Upon reviewing all pertinent data, the Board of Commissioners may take whatever action it deems appropriate, including tabling the application to accommodate additional neighborhood meetings. Prior to approval or rejection, it must adopt a written statement describing the consistency of its findings with Town Plan 2040.

Unless waived pursuant to the terms of the YDO, no application pertaining to the affected property can be accepted or considered for a period of four (4) months (a time line at this point subject to revision by the Planning Board) subsequent to final ruling by the Board of Commissioners.

Conditional zoning (“CZ”) is an option under the YDO that provides marked flexibility in development while ensuring compatibility with neighboring uses – and it affords a degree of land use certainty not possible with rezoning. Attached hereto, and incorporated herein, is Section 5.4 of Article 5 of the drafted Ordinance, setting forth the applicable districts, general requirements, and application procedure prescribed for the CZ designation.

VI. Article 6: Variances and Administrative Appeals:

The purpose of a variance administered by the BOA is never to remove inconveniences and financial burdens or increase profitability of a proposed development. To the contrary, this recourse is specifically designed to grant relief from Ordinance requirements that render land difficult or impossible to use because of some unique physical characteristic, or other factor, of the property.

In no scenario shall the BOA grant a variance:

- A. With respect to any Conditional Use Permit adopted pursuant to the YDO;
- B. That would alter, modify, change, or suspend the specifications set forth in the Ordinance for conditional use;
- C. That would increase flood levels within a designated floodway district during regulatory flood discharge;
- D. Which would permit a use or density not otherwise allowed in the district in which the subject property is located;
- E. Permitting a non-conforming use of land, buildings, or structures;
- F. On any parcel previously submitted for a variance within the three (3) immediately preceding years; and/or
- G. Conflicting with the North Carolina State Building Code, the North Carolina Fire Prevention Code, or any corresponding regulation.

Once the Zoning Administrator has consulted with the applicant and the application and fees are properly accepted, the request is scheduled for consideration at a public hearing by the BOA. The hearing must be held within thirty-six (36) days of receipt of the completed application, and notices shall be delivered to the applicant owner, to vestees of all properties abutting and/or lying within 500 feet of the subject parcel, and to any other person making written request for same at least ten (10) days prior to date of hearing. Mailing and sign postings will be as hereinabove stated, and, upon review, the Board may grant, deny, or conduct an additional public hearing pertaining to the request.

Decision of the BOA should be based on competent, substantial evidence, and each person offering corroboration must be sworn by the Clerk. The following findings of fact are always necessary:

- A. Unwarranted hardship would result from strict enforcement of the Ordinance;
- B. The hardship imposed must be due to conditions peculiar to the specific property, such as location, size, or topography;
- C. Self-created hardship is not acceptable; and
- D. The requested variance is consistent with the spirit, purpose, and intent of the YDO, in a way that secures public safety and achieves substantial justice.

Effective date is that on which the BOA's written decision is filed with the Clerk. It shall be properly delivered to all applicable parties, and certification thereof made to the Clerk. If the variance is granted, the applicant may proceed with obtaining a permit under the Ordinance; if denied, application for rehearing pursuant to the YDO may be timely filed. Construction and/or operation upon the subject property must commence within twenty-four (24) months of date of issuance of the variance; otherwise, the grant will expire.

An appeal can be made to the Franklin County Superior Court within thirty (30) days from receipt of the Board's written decision – if transmittal is by first-class mail, rather than by personal or electronic delivery, three (3) additional days shall be allowed for filing.

The majority, by far, of permits issued, or denied, pursuant to the YDO do not involve rezoning, conditional zoning, or variances, and, thus, are or are not issued, absent Board review, by the Zoning Administrator and his staff. An appeal of those actions can also be directed to the BOA, in the manner and pursuant to the rules and procedures attached and incorporated herein as Section 6.2, Article 6, of the Ordinance.

Inasmuch as the next regular meeting of the Board is set for March 5, it was suggested by Mr. Flowe that an interim work session be scheduled for February 28. Member response supported March 19 instead, and the Clerk was instructed to make arrangements accordingly.

Member Hank Lindwall pointed out that State and Federal laws have changed drastically since our current Ordinance was enacted more than a quarter of a century ago – and there seems to be no shortage these days of attorneys with new formats and criteria.

To acknowledge public comment, Chairman Tharrington recognized attendee Jim Moss, of Mosswood Partners. “I’d like to respond merely,” remarked Mr. Moss, “that it’s gratifying to observe firsthand the dedication, principles, and progress of this Board.”

With no additional reflection or report by Planning staff, the meeting was adjourned at 7:20 P.M.