

Amended Minutes of the Town of Huntersville Ordinance Advisory Board

The Town of Huntersville Ordinance Advisory Board met in person at 3:30 p.m. on Thursday, October 5, 2023.

Call to Order/Roll Call

Chairwoman Hallman called the meeting to order at 3:30 pm.

Voting Members Present: A. Hallman, K. Jones, M. Jones, S. Harrington, M. Pollard, and F. Gammon

Voting Members Absent: J. Palillo, J. Kluttz, H. Whittaker

Non-Voting Members Present: Commissioner Kovacs, J. Simoneau, T. Barron, E. Sloop, and J. Glass

Non-Voting Members Absent: None

Approval of Minutes

Item 2A. Consider approval of the July 6, 2023, Regular Meeting Minutes

Motion: S. Harrington made a Motion to Approve the July 6, 2023, regular meeting minutes. K. Jones seconded the motion.

Vote: The motion passed unanimously (6-0).

Public Comments

None

Chairwoman Hallman commented to the Board regarding the importance of having their opinion for or against an item noted for the record so that the Planning Board and Town Board can benefit from understanding what caused someone to vote as they did.

Action Agenda

4A. Consider a recommendation on petition #TA23-06, a request by the Huntersville Planning Department for a text amendment to Article 3, Section 3.2.1(d)(4)(a), 3.2.2(d)(4)(a), 3.2.4(d)(1)(e), 3.2.5(d)(1)(d), 3.2.6(d)(4), 3.2.7(d)(1)(d), 3.2.11(d)(1)(d), 3.2.13(d)(2)(c), 3.3.1(d)(1), Article 8.14, and Article 11.1.3 to bring the text into compliance with HB 488.

N. Farber, Planner II reviewed the proposed text amendment.

M. Jones stated, "160d-804(j), the way I read our Ordinance it implies that we can impose the most restrictive standards but that seems to conflict with the statute that says, "regulations shall not require pavement design standards for new private driveway construction that are more stringent than the minimum pavement design standards that are adopted by NCDOT." And then there is another out, if the proposed design is signed and sealed by a duly licensed professional

engineer. This kind of implies something different.” Staff responded that the intention is not to be in conflict. E. Sloop responded that the majority of the design standards are not addressed in the ordinance they are in manuals that are maintained by engineering staff. This caveat is there if needed and the manuals will be updated if needed.

M. Pollard asked what the manuals are and if they are legally enforceable. Staff responded that engineering manuals are adopted policy and outline all of the specific engineering guidelines that must be followed in developing a project.

S. Harrington asked staff to confirm if in Article 3 the \$40,000 should be underlined. Staff confirmed that is correct.

M. Jones commented, “as it relates to the 40,000, that number has changed numerous times between \$5,000 and \$40,000. Going forward what the policy to make sure that we are staying on top of legislative changes to make sure that sort of oversight doesn’t happen again.” Staff responded that the Legal department advises the Planning department of changes. M. Jones continued, “I understand that, but it hasn’t been \$5,000 in years, it’s gone from 20 to 30, 30 to 40 and we are just now picking this up. What is the process to make sure we are not missing changes like this in the future? What’s done in the past is the past but what are we doing going forward to make sure this sort of oversight of legislative change doesn’t happen again?” Staff responded that the Town having two attorneys and their proactive assistance in this area we will continue to bring forth changes as they occur.

F. Gammon asked staff to confirm against NCGS 160D if a building permit is needed to replace a hot water heater. M. Jones stated, “I have it Frank. I have what you are talking about. In House Bill 488, section 160D-1110, Building Permits section A2: the installation or extension or general repair of any plumbing system except that in any one or two family dwelling unit, a permit is not required for connection of a water heater that is being replaced if the work is being performed by a person licensed who personally examines the work at completion and ensures that a leak test has been performed on the gas piping. The same applies to electric so I concur with Mr. Gammon, this bill needs to be re-reviewed and I think what we are looking at today needs to be flushed out and corrected.”

Motion: M. Jones made a Motion to request Staff to re-review the Bill and ensure that the text amendments that they are bringing before us fully comply with the legislation as approved by the NC legislature. K. Jones seconded the motion.

M. Jones commented, “as the reasons stated during this discussion speak for themselves. There are a number of areas that need to be reconsidered and looked at for the benefit of applicants and the citizens of Huntersville.”

F. Gammon commented that he does not want to defer the amendment but agrees that staff should review it and move it forward to the Planning Board with any necessary corrections.

Commissioner Kovacs commented that she is in support of the comments made and if this Board does not feel comfortable tabling the item that the Town Board would likely table if the answers are not available when presented to them.

S. Harrington asked if it is possible to reword the motion to approve everything except the water heater statement so the balance of the items could move forward. M. Jones responded that he is welcome to make a substitute motion as he would like staff to look at the driveway design standards in addition to the hot water heater item.

Vote: The motion passed (4-2) with A. Hallman and F. Gammon opposed.

4B. Consider a recommendation in #TA23-07, a request by the Huntersville Planning Department for a text amendment to Article 12, Section 12.2.1 "Interconnected" to clean up definition.

P. Patterson, Planner I reviewed the proposed text amendment.

Motion: M. Pollard made a Motion to recommend Approval of TA23-07. M. Jones seconded the motion.

Vote: The motion passed unanimously (6-0).

Other Business

5A. Discuss possible changes to the Zoning Ordinance related to Breezeways and Accessory Structures.

N. Farber, Planner II reviewed the item for discussion and stated that staff would like to bring this forward as a future text amendment. Staff reviewed what the Zoning Ordinance currently allows detached accessory structures square footage not exceeding the primary structure first floor heated area square footage. Accessory dwelling units (ADU) may not exceed 650 square feet or 50% of the first-floor area of principle dwelling, whichever is greater. Either structure must be placed in the rear yard. ADU's may also be combined with a detached garage so you could have a first floor 1,500 square foot detached garage with a 500 square foot ADU on the second story.

Staff then reviewed the definition of breezeway and staff's interpretation in the past to allow a fully enclosed breezeway to be attached to a detached structure rendering it an attached structure which removes the limitations of the square footage. Staff indicated that current requests appear to be using this method to subvert the ordinance. Staff provided examples of requests which appear to be to allow structures to be placed in the front or side yard, or an excessively long breezeway.

Staff stated that there are approximately 40 municipalities in North Carolina with language included in their zoning ordinances addressing this issue. Examples were provided to reflect that connection by breezeway shall not deem the structures one building. Other examples

provided reflect maximums of building sizes and maximums of height and length of breezeways.

Staff recommends that we consider amending the definition of building and/or breezeway within the Zoning Ordinance and potentially limiting the length of a breezeway to 15 feet.

F. Gammon asked why the breezeway should be limited to 15 feet when it could be utilized in the right place for the right reason and require more than 15 feet. Staff responded the recommendation would be to eliminate the abuse of the breezeway possibly by creating a length. F. Gammon responded that a specific measurement may only be appropriate to specific zoning.

F. Gammon then asked if staff knows what the purpose of the large structures are that people are building. Staff responded that businesses are not allowed so they are for storage.

M. Pollard asked staff to research and provide quantities on how many applicants a 15-foot breezeway would have affected and how frequently staff is seeing these requests. Staff responded that it should be noted that applicants are not initially requesting breezeways when they are requesting to add an accessory structure or accessory dwelling unit, applicants are simply seeing this as a way to gain approval on the size of structure or location of the structure that they want to build. Staff stated there is no method to provide quantifiable data on these requests its simply something staff knows we frequently deal with.

M. Jones commented, "so if someone wants to build a structure and the only way they can do that is by creating a breezeway, which creates more impervious area, it seems like the breezeway is not the problem it is the way our Ordinance is structured. If someone has a 1,000 square foot older home and they want to build an RV garage and they can't do that without building a breezeway this get's into reasonable and unnecessary, flexible and adaptive, is there substantial bearing to public health, safety and welfare, which I can't see how this complies with any of that. Maybe we're looking at the wrong thing here, it's not the breezeway, it's what they are trying to get at." Staff responded that if the Board desires to look at allowing a larger accessory structure or accessory dwelling unit in certain zoning districts then that could be taken separately. The current issue staff is facing is how to be fair and not subjective in determining at what point a breezeway length should not be allowed when an applicant is proposing 70-feet.

M. Jones commented, "I can just think of someone buys a large lot and they have an expectation that they want to build a large workshop or an RV garage or whatever they want to do and then because the older home they bought is not of substantial size, they can't do what they want and they don't understand that when they buy it. Then where people are finding ways around it, that tells me, if everyone is going around the ordinance that there is something wrong with the ordinance that needs to be taken a look at and it's not the breezeway here its our ordinance related to accessory structures."

F. Gammon asked if staff considered special use permits for larger structures. Staff stated they had not but they would take that under advisement. Commissioner Kovacs commented she would be in support of special use permits as an option.

Staff responded that defining what a breezeway is or permits would assist staff with providing a consistent interpretation regardless of the proposed building size or location.

F. Gammon commented that he would like to see some flexibility based on lot size and zoning district or permitted uses versus a one size fits all ordinance.

M. Jones commented, "there can be a minimum lot size as a special set of standards to allow for a larger accessory structure that is a multiple of the primary residence and then on smaller lots there is a different standard. If someone buys a 5 acre parcel with a 1000 square foot home they expect to build a 5000 square foot barn and we don't let them and that's the purpose that they bought it for, you have to question what our ordinance is doing here."

M. Pollard agreed with F. Gammon's comments that purpose would be a good area to focus on so that the rules could more effectively address the uses. Staff responded that accessory structures are not permitted to be businesses so they can only be used for some type of storage. A. Hallman agreed with M. Pollard's comment that this would be valuable to be sure that one is for storage, garage, or barn versus a mother-in-law suite.

S. Harrington revisited that this may be two separate issues, one to define breezeways to not treat the structures as one building and a second to address what use, and size is permitted for an accessory structure.

Commissioner Kovacs asked what the rationale was for using 50% of the first-floor heated area was to determine the footprint for the accessory dwelling unit. She then provided the scenario that a 2-story home on 5 acres with 1,000 square foot first floor would be allowed to build the maximum of 650 square feet ADU versus a 2,000 square foot ranch home on 1-acre that would be allowed to build 1,000 square feet ADU. The factor of the lot size and that the homes are equal in square footage is not considered. She recommended staff review that in their consideration of ADU's.

E. Sloop commented that she may be able to clear up some information raised on Item TA23-06 that would allow the Board not to have to meet the following month. She then reviewed Section 3 of the proposed changes and highlighted that the wording states "when one is required, and generally required" which allows staff not to place the wordy exclusions that are applicable to this and instead know that the County will not require a building permit where one is not required. The specific language from NCGS 160D-110(a)(2) is specific to residential one and two dwellings and does not need to be detailed within the zoning ordinance.

M. Jones commented, "it is actually North Carolina building code which would encompass commercial and residential code as their splitting it so it would apply to commercial, as it

appears.” E. Sloop responded that if you read the beginning it puts the context that it is generally required and when one is required, therefore legally it is not viewed as a conflict. M. Jones responded, “it is just that the way Section 3.1 part 7 implies that you have to have a building permit for a hot water heater and the statute states the opposite.” E. Sloop responded that if it read solely based on subsection 7 it would be incorrect but if you read the entire section you can see it says, generally required and when one is required, the language therefore is not going against anything in the statute. Additionally, the County requires the building permit and they are not going to require one when it is not required.

A. Hallman asked if the average homeowner would be confused by this. E. Sloop stated that generally the zoning ordinance here is reviewed by contractors completing new construction, so she does not see this as being misunderstood by a homeowner. Additionally, the County is the only issuing authority for building permits and they are not going to require a building permit for something when it is not legally required. The County’s website and documentation provides much more detail available for the homeowner as they are the issuing authority.

E. Sloop commented that if anyone on the Board would like to reconsider to recommend approval on these simple statutory housekeeping items then the Board will not have to reconvene in November for the one item.

F. Gammon commented that he is not opposed to moving it forward, but he would like staff to still review the wording to see if it could be improved and clarified.

M. Jones commented, “there was this and 160D-804(j) that we also requested be looked at.” E. Sloop clarified that the Ordinance does not address the design standards, it is all in the Engineering Manual because they are very technical, and the goal is to not make the Ordinances more convoluted. If the Engineering Manual needs to be updated it will.

Motion: F. Gammon made a Motion to Reconsider the previous motion on TA23-06. S. Harrington seconded the motion.

M. Jones, “requested that the record note that he feels that are technical problems with what staff has presented and he feels like there should be a complete review of the legislation to make our ordinance become compliant with the relevant legislation.”

Vote: The motion passed (5-1) with M. Jones opposed.

Motion: F. Gammon made Motion to recommend Approval of TA23-06 with the caveat that Planning and Legal department review HB488 and items pertaining to 160D-804(j) and ensure that the wording as written in the current ordinance applies and in concurrence with the state statute. S. Harrington seconded the motion.

M. Pollard requested that a timeline for when the item will be presented to the HOAB be included. E. Sloop clarified that approval would move the item forward and that staff can make

the research available to the Board but the item itself would not return for consideration to the Board.

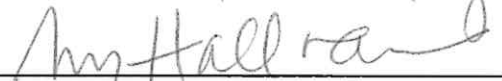
Vote: The motion passed (4-1-1) with M. Jones opposed and M. Pollard abstaining.

Adjourn

Motion: F. Gammon made a Motion to Adjourn. K. Jones seconded the motion.

Vote: The motion passed unanimously (6-0).

Approved this 2nd day of May 2023.


Chair or Vice Chair


Board Secretary

