



**Huntersville Ordinances Advisory
Board Minutes
June 3, 2021
3:30 p.m. – 5:00 p.m.
Location: VIRTUAL MEETING**

- NOTICE VIRTUAL MEETING -

Virtual Meeting Information - Members of the public may view the meeting on Facebook Live at <https://www.facebook.com/HuntersvilleNCTownGovernment>.

A. Call to Order

Attendance: M. Jones, T. Taylor, L. Munger, K. Jones, J. Henson, S. Moore (joined at 3:33 p.m.), B. Skelly, F. Gammon, and T. Finlay (joined at 3:36 p.m.)

Non-voting members present: J. Simoneau, J. Glass & T. Barron

B. Adoption of Minutes

1. Adoption of May 6, 2021 Minutes (Attachment 1)

J. Henson made a Motion to Adopt the May 6, 2021 Minutes. L. Munger seconded the motion. The motion passed unanimously (8-0).

2. Adoption of May 10, 2021 Minutes (Attachment 2)

S. Moore made a Motion to Adopt the May 10, 2021 Minutes. J. Henson seconded the motion. The motion passed unanimously (8-0).

C. Comments from Audience (3 minutes per person allocation)

D. Other Business

1. Zoning text amendment on detached garage location for Farmhouse Cluster subdivisions (Attachment 3).

L. Speight, Planner 1 provided a review of the submitted text amendment to Article 3.2.1 (3,6) and Article 3.2.2 (e,6) related to detached garages in side yards within farmhouse clusters. Staff recommends that this be limited to side and rear yard of home lots. The opaque buffer is a typical requirement within a farmhouse cluster however, the inclusion of that statement in this amendment ensures it would be required. Staff supports this amendment with the alternative text.

J. Henson confirmed that the opaque buffer requirement would not be required of interior lots, only lots bordering public streets. Staff confirmed that it would be a case-by-case basis relative to visibility to the public street, not the private street that is within the farmhouse cluster.

S. Moore asked if this proposal would create an issue if the farmhouse cluster was ever taken over and annexed into the Town. Staff responded that they do not foresee this causing an issue.

L. Munger asked why the applicant elected a text amendment versus requesting a variance from the Board of Adjustments. Staff responded that the applicant did not express a hardship that would have met the threshold for a variance request, therefore, a text amendment while it affects only a few properties, would be the most appropriate path.

L. Munger made a Motion to Approve the text amendment utilizing the alternative language. B. Skelly seconded the motion. The motion passed unanimously (9-0).

2. Continued discussion on commercial communication towers (Attachment 4, 5).
S. Moore requested to be recused from the discussion. M. Jones made a Motion to Recuse S. Moore. L. Munger seconded the motion. The motion passed unanimously (8-0).

J. Simoneau, Planning Director reviewed Article 9.9.10 and 9.9.12 (c) which states that if you have a commercial communication tower it must be located 200 feet from all property lines adjacent to residential or mixed-use districts. The Skybrook development has a situation where there is a tower less than 200 feet from lots that they would like to develop. The purpose of this discussion today is to gain the feedback of the Ordinance Advisory Board as it relates to amendments that may be proposed in a future text amendment. Per the Board's request, a survey of what other municipalities are doing as it relates to this was completed and found to be similar in many ways, with a few variances.

L. Munger asked if there was a recommended number for an adjustment. Staff responded they are comfortable with the current 200-foot requirement.

F. Gammon asked where the distance requirements that are currently in the Ordinance were derived from and if a reduction would be reasonable. Staff stated that they are not sure where the original distances were derived from and anyone can propose a reduction, the idea is to get a read on what the Board feels would be reasonable.

T. Finlay asked if staff would be comfortable with the 200 feet being relative to variable heights on the towers. Staff stated that they could possibly work with that, and that would be consistent with the research on what is approved in other communities.

M. Jones suggested creating flexibility as this is an essential piece of the telecommunications and it is likely that there will become more towers in closer proximity to each other. As it relates to safety in the event of collapse, we can see from Duke powerlines in the Birkdale area that there is a home within approximately 120' of a high-voltage line there, so there must be a method to getting this done since these towers are not going away.

F. Gammon stated that he agreed with T. Finlay statement as to what is reasonable. There is a maximum height in Article 9.9.12 (a). He stated that proposing a varying scale based on the height of the tower seemed reasonable.

L. Munger asked if an inventory of towers in the Town was available. Staff commented that this will likely be completed if a text amendment is submitted.

Staff took from the discussion that the Board sentiment is flexibility based on the height of the tower. Staff will work with the applicant and to collect the requested information.

J. Henson made a Motion to Reinstate S. Moore. M. Jones seconded the motion. The motion passed unanimously (8-0).

3. Continued discussion on dormitory amendment for Metrolina Greenhouse in TR zone with a special use permit (Attachment 6).
J. Simoneau, Planning Director reviewed the floorplan samples that were sent out to members which outlined the sleeping, eating, and bathing facilities. The land area being considered for

placement is along Huntersville-Concord Road in the TR zoning which would require a text amendment. The proposed amendment to Article 12 would include a definition for dormitory to include agriculture. Amend Article 3.2.2 to include dormitories as a special use in the TR zone.

This discussion related to this at the May 2021 meeting highlighted that there was one missing element, the standards relative to a special use permit. Staff then provided an overview of common standards currently applied to special use permits. These included:

- Not endanger health and safety, does not substantially reduce the value of nearby property.
- Use does not conflict with long range plans.
- Use does not constitute a nuisance to adjoining properties with respect to noise, dust, fumes, odor, traffic.
- Many SUPs have special setback requirements for buildings, parking, trash facilities
- Visual screening requirements from adjoining properties and streets; possibly even some fencing which we see when there may be hazards such as mining or something with water around it, not necessarily to fence in a dormitory.
- Demonstrate you are complying with state/federal regulations which may or may not apply for H2A housing.
- Specific driveway standards (i.e., paved “x” number of feet from public road or specify material for the driveway
- Specify the type of road access (i.e., thoroughfare, not residential subdivision streets)
- Minimum size requirements to qualify (i.e., “x” number of acres) could minimize potential site locations
- Specific lighting or parking standards

Art VanWingerden, CFO of Metrolina Greenhouses explained that one of the concerns expressed at the May 2021 meeting related to how close the structure would be to the road. He then described the location proposed and stated it would not be visible from the road or to any homeowner. They will only be clearing enough for the road and the structures. There will be a minimum of 100 feet of woods to buffer to the neighbors. The federal government outlines all the of requirements for dormitory size, square feet per person, number of bathrooms, etc. and all of those will be inspected and verified by a H2A representative to approve of their use. As stated at the previous meeting, hotel use will not continue to be an option, in 2020 due to COVID-19 there was availability, this year is more of a challenge and next year will be a major challenge. For any traffic concerns, there will be buses of 15-50 will shuttle from here to the greenhouse.

F. Gammon commented that if Metrolina hires H2A’s then they have to house H2A’s so its not a matter of if they build it, it is a matter of where they build it. He then asked why the TR zoned land is being proposed. The applicant responded that this piece of land provides privacy and this one makes the most sense now.

T. Taylor asked if an amendment is necessary versus a special use permit, and if approval of this amendment would allow for any other H2A housing in TR zoning. Staff responded that an amendment is required for the dormitory use to be allowed for agricultural purposes and to be in the TR zoning. This amendment would make it possible for additional parcels to be used for H2A housing but as a special use permit it would require board approval and the standards that could be applied, such as minimum size requirements, would be implemented which reduce the number of parcels that would qualify.

F. Gammon asked if one of the conditions of the special use permit could be that the H2A

housing must be for the benefit of a Huntersville business. Staff did not believe that standard would be acceptable, but it could be located on-site where the business is located and the business needs to be at least 100 acres, then it will most likely accomplish the same goal.

J. Henson said he would be in support of it and the standards are what will be important. A minimum acreage, a buffer for adjacent properties and public right-of-way is great, and to verify which term is most suitable, agriculture or bona fide farm, or if the minimum acreage is sufficient. He then asked if this would be limited to H2A housing or could this special use permit be applied to a different type of use which may include travel and would then change the car counts. Staff responded that bona fide farm could be written in as that is a legally recognized term with set standards, and if you add a standard that this must be at or adjacent to the business it services then the car counts should be minimal.

The applicant commented that the location selected is specifically because as of today they can access city water and city sewer at this location. Eventually the full greenhouse will be on city water and sewer, the fees have been paid and they are waiting for the installation which has already taken a year and a half and is not yet installed. Any other locations that may work would likely require running about 3,000 feet of water pipe to reach it. Federal regulations state that H2A can only be farming and agricultural uses. H2B can be used for other businesses that are not specifically agriculture. This request would be limited to H2A uses.

F. Gammon asked if the amendment should include the Rural zone as well since anyone else who may need this would likely be in TR or R zones. Staff agreed that would make sense and since this is an applicant sponsored request it may not be included in this request, but administrative staff could propose additional zones if that saw fit to do that in the future.

T. Finlay expressed concern about the H2A format and supporting the implementation of that. He expressed a concern over who will oversee what the investment is that is put into these workers, developing future immigration channels for them and integrating them from the community versus isolating them in a dormitory just to work.

L. Munger expressed discomfort that mirror some of the comments made and recommended we consider limiting this to the Rural zoning, so it is tied to the farms. While he understands that creates a second step for the applicant it is something he would find more favorable.

M. Jones commented that most of the legacy farms remaining are in Rural zoning, but some are in Transitional Residential zoning and that in development, as density increases, open space has to increase as well. Additionally, this is a long-time Huntersville business and not having this type of housing within a reasonable proximity puts their business at a competitive disadvantage to others.

F. Gammon followed up with a question if the term agriculture should be limited to H2A housing. Staff commented that that may be an option. The amendment is from the applicant and that may not be exactly their intention. The applicant stated that if it is H2A it must be agriculture.

The applicant followed up to T. Finlay's concerns and expressed that he is also an immigrant and the goal of H2A labor is to work for 10-12 years, then return to their home country and live a very good life in their home country with their families. This program has been around for about 30-35 years and it is a program that they value because of the amount of money they can make. T. Finlay responded that he struggles with the concept when he sees the floorplan and set up and he wonders how we are integrating versus isolating people who will work here for the next 10-12

years. The applicant responded that the maximum time they can come in a year is 10 months and then they must return to their home country. There is a busy season of about 3 months where they may reach full capacity in the dormitory, the rest of the time it will allow for a bed to be between each worker so they can spread out. The plan is to build something Metrolina can be proud of and that the workers are happy about so they can enjoy being here and working here. The goal is to have a culture that the workers want to be here and enjoy coming back. An H2A person costs \$20.75 an hour, they take home \$13 an hour of that. The balance of that is for their housing, transportation, travel and immigration costs. The labor shortage has been a struggle for them for the past 2-3 years and continues to worsen.

Staff thanked the Board for their feedback and stated they would work with the applicant on the wording to present for their text amendment request.

4. Discussion on Article 8.1 Street Frontage Required (Attachment 7, 8, 9)
1:13

J. Simoneau, Planning Director reviewed the current Article 8.1 requirement to abut a public street with the exceptions outlined. Staff identified that within our jurisdiction there are 5 vacant lots on apparent right-of-way and 298 vacant lots on unbuilt public streets. Norman Park, a paper subdivision approved by Mecklenburg County is a sample of unbuilt public streets. Midas Springs is an apparent right-of-way.

The Board of Adjustments approved a variance from Article 8.1 in May 2021 for a property on Midas Springs Road, with the condition that the road be upgraded to a way that the fire department continues to be able to access. A variance has now been submitted for a property on Hedrick Circle with a similar situation.

M. Jones expressed concern about the Ordinance not being flexible and adaptive to address these types of situation so that you are not denying the property owner the right to develop their property and we may want to consider an amendment, so the Board of Adjustments does not need to hear a case for each and everyone of these properties if they have access that is durable and the correct width to allow emergency vehicles to be able to access.

K. Jones asked if the medic, fire department and police have used the portion of Hedrick Circle to Midas Springs that is in question like the many dirt roads in the ETJ that connect to public roads. M. Jones responded that it is used by postal, trash and all of the above and is mapped as a public right-of-way; however, it is not a maintained public right-of-way. Staff responded that a public right-of-way that is not maintained does not meet the definition of the Ordinance so the discussion today is to consider if it is the Board's desire to propose a text amendment that may add an additional exception to Article 8.1 that something determined to be a public use access that is approved by the fire department also could be allowed.

F. Gammon shared his experience driving the road, the current condition, there is a sign indicating it is a public road, and a yellow tape which has a portion of the road closed off.

S. Moore asked for clarification on how the BOA could determine that emergency vehicle access could be built within the state-maintained right-of-way of Midas Springs Road. Staff indicated that NCDOT advised that they maintain the current portion of Midas Springs Road and if owners of the lots that recently received the variance improve the public right-of-way that exists from decades of use to be a gravel road to state standards with a turn-around, that they would accept that for state maintenance. S. Moore commented that he agrees with the BOA decision and is fine with an amendment when there is public right-of-way and with an emergency vehicle standard.

L. Munger asked about the maintenance standards for emergency vehicles and how the new lots would be liable for keeping the road at a suitable standard, and how the road reaches to the furthest lots. Staff agreed that maintenance of roads by the state or town is always ideal because then you know it is at the right level. When the town fire department goes through their training exercises, if they find they cannot reach it then they could notify the Planning Department and we could contact the property owners and require them to clear it since it is a requirement, or fines levied if necessary. When a parcel is being developed a road must be built to the end of the lot, if there is no road there yet then it would be the responsibility of the owner of the parcel that wants to develop.

5. Introduction discussion on HOAB having a standardized checklist for text amendments-topic for July agenda (Attachment 10).

M. Jones stated that a minimum standard of diligence to make a recommendation may be helpful for the Planning Board and Town Board to know what has been researched, save them time, and create transparency for the decisions being made.

6. Discussion on availability for July 1, 2021 HOAB meeting.

All Board members were polled and confirmed their availability for the July 1, 2021 meeting.

E. Adjourn

S. Moore made a Motion to Adjourn. L. Munger seconded the motion. The motion passed unanimously (9-0).