



Rowan County Department of Planning & Development

402 North Main Street – Suite 204 – Salisbury, NC 28144

Phone: (704) 216-8588

www.rowancountync.gov/planning

MEMORANDUM

TO: Rowan County Board of Commissioners
FROM: Aaron Poplin, Planner
DATE: November 10, 2022
RE: **ZTA 04-22 Density Averaging**

SUGGESTED BOARD ACTION

☐ Receive staff report ☐ Schedule hearing for **ZTA 04-22** for December 5th, 2022

BACKGROUND

In 1992 the State of North Carolina began requiring all local governments having land use jurisdiction within a water supply watershed adopt and implement water supply watershed protection ordinances. Rowan County adopted a water supply watershed protection ordinance in 1994 and incorporated it into the Zoning ordinance when county wide zoning was adopted in 1998. In 2012 the General Assembly adopted SB 229 which added a provision to the statute regulating watershed protection that allows for two noncontiguous properties to be treated as a single contiguous property for the purposes of compliance with local water supply watershed programs.

Currently the County has two options in our Zoning ordinance to increase the built-upon area of a project over the low-density standards. The special non-residential intensity allocation (SNIA) permit is an option that allows projects to increase built upon area above the low-density standard up to 70% of the lot. The other option being the High-Density option which allows up to 50% built upon area in WS-IV-CA and 70% built upon area in WS-IV-PA. The County has not had any developers seeking to use Density Averaging to increase the built-upon area of projects, but other jurisdictions outside the county have seen developer interest. Staff is proposing the following text amendment to the Zoning and Subdivision ordinances to give the County a process to review Density Averaging requests, and to create development requirements to ensure that Density Averaging projects both meet the requirements of state statute and are consistent with the

planning goals set forth by the County.

Staff Comments

PROPOSED CHANGES

The proposed changes are to both the Zoning Ordinance and the Subdivision Ordinance. The changes in the zoning ordinances are in the following sections:

1. Sec. 21-4 Definitions.
 - Definitions were added for Density Averaging, Donating Property, and Receiving Property.
2. 21-33 Overlay Districts
 - Added a new section 21-33(2)(f)(4)
 - Lays out purpose and intent along with the eligibility requirements to use Density Averaging.
3. 21-311 Board of Commissioners
 - Establishes the Board of Commissioners as the Watershed Review Board.
4. 21-318 Density Averaging Permit Application
 - Establishes a new section of the Zoning Ordinance sec 21-318.
 - Lays out the process for applying for a Density Averaging Permit.
5. 22-59 Certifications and notations on plats
 - Adds a new certificate that will need to be on all final plats with a Donating or Receiving Property.

Existing text proposed for deletion appear ~~highlighted with strikethroughs~~ while new text appear as **bold red text**.

Sec. 21-4. Definitions

Density Averaging means a process involving two (2) non-contiguous tracts of land, referred to as “Donating Property” and “Receiving Property”, which are located in the same water supply watershed within Rowan County and are used to aggregate all or a portion of a tract’s allowable built upon area or density to achieve compliance with the respective watershed’s built-upon limits. Density averaging requests are subject to standards specified in section 21-33(2)(f)(4) and review process in 21-318.

Donating Property means a tract of land that is and will remain in a perpetual, undeveloped and vegetative or

natural state aggregated with a Receiving Property to comply with water supply watershed built-upon limits

Receiving Property means a project on a tract of land that has been allowed to exceed built-upon limits of section 21-33(2)(d) as it is paired with a Donating Property, which contains sufficient acreage or square footage to collectively comply with the water supply watershed built-upon limits for the respective water supply watershed.

Sec. 21-33(2)(f) Options in Density Compliance

4. Density Averaging

a. Purpose and Intent

1. **Purpose.** Density Averaging provides non-residential developments in watershed overlay districts the option to aggregate density between two non-contiguous properties for the purpose of compliance with the water supply watershed development standards of 21-33(2). This process involves the allowable built upon area of a donating property being transferred to a receiving property to comply with the built-upon limits for the respective water supply watershed.
2. **Intent.** Density Averaging is intended as an alternative method of compliance for built-upon limits within the subject parcel boundary, stormwater control measures with High Density standards, or SNIA applications for non-residential development.

b. **Eligibility.** An applicant may average development density between two non-contiguous properties (i.e. (1) Donating Property and (1) Receiving Property) for purposes of achieving compliance with the water supply watershed development standards if all of the following circumstances exist:

1. The properties are within the same water supply watershed, located entirely within

Staff Comments

Section 21-33(2)(f) is a reorganization of the existing watershed overlay district provisions.

Most of the eligibility requirements were pulled from either the model ordinance or from state statute.

Rowan County's Planning Jurisdiction.
Properties located in the critical area of the watershed are not eligible to be a Receiving Property but may be used as the Donating Property for projects outside the critical area

- 2. Overall project density on the Receiving Property meets applicable built-upon area requirements (existing and proposed) as prescribed in section 21-33(2)(d). Built-upon area calculations from both properties including any remaining balance of the Donating Property shall be provided.**
- 3. The Donating Property must be an existing or proposed tract of land having sufficient acreage or square footage to offset all, or requisite portion, of the built-upon area on the Receiving Property. At a minimum, access shall be sufficient to provide vehicular access for tract maintenance.**
- 4. The Donating Property will remain in a perpetually undeveloped and vegetated or natural state and will be managed by one of the following means:**
 - a. Conveyed and accepted by a local government as a public park or greenway;**
 - b. Placed under a conservation easement or farmland preservation easement; or**
 - c. Recorded plat and deed restriction;****Applicants have the burden of demonstration to the Board of Commissioners their proposal will ensure perpetual compliance with this chapter.**
- 5. The following areas shall not be eligible for use as the Donating Property:**
 - a. Any area within a floodway or non-encroachment area as identified on the Rowan County Flood Insurance Rate Maps.**

Staff Comments

The location requirements would prevent any municipality from utilizing Density Averaging and keep this provision exclusively for County development.

State statute allows for Donating Properties to be easements. (b)(3) is a higher standard that would require the donating property to be its own deeded property. This is to improve the County's record keeping, and to help keep the restrictions from being lost in the chain of title.

- b. Any dedicated or observed road easement or right of way.
 - c. Any dedicated utility easement or right of way.
 - d. Any railroad right of way
 - e. Any area within a stream buffer as required by section 21-213(h).
 - f. Any area identified as a wetland.
 - g. Any septic drain fields identified by the Rowan County Environmental Health Department.
 - h. Any area within an existing conservation easement.
6. Properties that have received a SNIA permit, utilize the High-Density standards from section 21-33(2), or have received a watershed variance are not eligible for Density Averaging.
 7. The proposed development is a non-residential use.
 8. Both the Receiving Property and the Donating Property can be in joint or separate ownership so long as all other requirements of this section are met.
 9. Development permitted under density averaging and meeting applicable low-density requirements shall transport stormwater runoff by vegetated conveyances to the maximum extent practicable as certified by a North Carolina Professional Engineer.
 10. Built upon areas are designed and located to minimize stormwater runoff impact to the receiving waters, minimize concentrated stormwater flow, maximize the use of sheet flow through vegetated areas, and maximize the flow length through vegetated areas as certified by a North Carolina Professional Engineer.
 11. Vegetated setbacks on both properties meet the minimum requirements of 21-213(h)
- c. Application. Projects that meet the eligibility requirements in subsection 2(f)(4) may submit

Staff Comments

(b)(5) prevents areas that would not normally be developed from being used as a Donating Property. State statute requires either the Watershed Review Board or the Board of Adjustment to approve Density Averaging.

Restricting Density Averaging to non-residential uses is a higher standard. Residential subdivisions have a similar provision to increase density using Custer Subdivisions.

a Density Averaging permit application for consideration by the Board of Commissioners subject to the process outlined in section 21-318 of this chapter.

Staff Comments

The review process is similar to the special use permit process. The notification requirements would be for both the Donating and Receiving properties.

Section 21-311. Board of Commissioners

(8) Function as the Watershed Review Board regarding decisions related to Special Non-Residential Intensity Allocation (SNIA) permits, High Density development permits, Variance from Watershed Overlay (WSO) standards and Density Averaging requests.

Sec. 21-318. Density Averaging permit application

1. A Density Averaging permit shall be required for any project that averages the density of two non-contiguous properties for the purpose of compliance with the development requirements set forth in sec 21-33(2).
2. An application for a Density Averaging permit shall be made on the proper form and submitted to the Planning Department with the following information:
 - a. Documentation demonstrating how the Receiving Property will comply with section 21-33(2)(f)(4)(b)
 - b. Existing plats and deeds.
 - c. Draft plat(s).
 - d. Metes & Bounds description(s) of the Donating Property, intended for recordation.
 - e. Site Plan.
3. The Planning Department shall review the application and, if deemed complete, submit a recommendation to the Board of Commissioners to schedule a quasi-judicial hearing regarding the application. Notice and quasi-judicial hearings shall be as provided in section 21-315. Prior to any

decision to approve or deny the application the Board shall make the following findings:

- a. The participating parcels as a whole conform to the intent and requirements of sec 21-33(2);
 - b. The proposed application and supporting documents assure the Donating Property will perpetually remain in an undeveloped, vegetative or natural state; and
 - c. The proposed development on the Receiving Property is consistent with the zoning district which it is located and in general conformity with any adopted county plans.
4. The Board shall take action as prescribed in section 21-58(g).
- a. If the Board approves the application, the Planning Department shall issue a Density Averaging permit.
 - b. If the Board approves the application, such approval shall be indicated on the site plan, deed and plat required to ensure the Donating Property remains perpetually undeveloped, the Receiving Property complies with built-upon area limitations, and overall project complies the intent of Density Averaging.
 - c. If the Board disapproves the application, the reasons for such action shall be stated in the minutes of the Board and presented to the applicant in writing either by personal service or registered mail, return receipt requested. The applicant may make changes and submit a revised plan which shall be submitted, reviewed, and acted upon by the Board pursuant to the procedures in this section.
5. If a Density Averaging permit has been approved by the Board of Commissioners, no change in the development proposal

authorized for participating parcels shall be made unless the permit is amended by the Board of Commissioners. The amendment process will follow the same procedure as required for the original issuance of the Density Averaging permit.

Staff Comments

Sec. 22-59.- Certifications and notations required on plats

This certificate shall appear on all final plats with a Donating or Receiving Property.

Density Averaging Certificate

This plat complies with the provisions of Density Averaging from section 21-33(2) of the Rowan County Zoning Ordinance and has received Density Averaging permit approval from the Rowan County Board of Commissioners.

Density Averaging Permit Number: _____

Approval date: _____

/s/___

Subdivision Administrator

PLANNING BOARD MEETING

The Planning Board conducted a courtesy hearing on Monday October 24th 2022. The Planning Board approved the amendment and offered the following

statement.

Statements of Consistency and Reasonableness:

ZTA 04-22 is reasonable, appropriate and necessary to meet the development needs of Rowan County not previously envisioned by the East and West Area Land Use Plans. Furthermore, the adoption of ZTA 04-22 is deemed an amendment to the East and West Area Land Use Plans. This text amendment will allow for the flexibility of applying impervious limitations across multiple parcels and reflects NC Senate bill 249 which became NC GS 143-214.5 as adjusted to exceed state requirements in keeping with the Rowan County Watershed Program.

PROCEDURES

The Board must develop a statement of consistency regarding the proposed zoning and subdivision ordinance amendments describing whether its action is consistent with any adopted comprehensive plans and indicate why their action is

reasonable and in the public interest [sec. 21-362 (j)]. See enclosed form to assist in statement development.

STAFF COMMENTS

- Density Averaging is mandated by GS 143-214.5. Without specific adopted standards the County would need to follow the state required minimums.
- This text amendment has a few standards that exceed the state minimums. These higher standards are proposed to help the County stay in compliance with the Water Supply Watershed program.
- Other higher standards could be considered.
- It is important to consider that Donating Properties must remain in an undeveloped state in perpetuity. Density Averaging standards and Land Use Plan recommendations should take that fact into account.

CONSISTENCY WORKSHEET

**CONSISTENCY
QUESTION**

*"Is the proposed amendment consistent with any adopted plan".
Consider the future land use map and if applicable.*

REFERENCE SOURCES

YES NO

Is the request consistent with applicable plans?

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☐

Example:

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Example:

Staff Report & Land
Use Plans

YES NO N/A

Is the request consistent with any other adopted plans?

☐
☐
☐

If applicable, refer to
Staff Report

YES NO

Is the request consistent with the zoning districts purpose
and intent?

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☐

Example:

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Example:

Sec. 21-32 of ZO

YES NO

Is the request reasonable and in the public interest?

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☐

Example:

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Example:

Staff Report, Land Use
Plans, Ordinances,
Public Comment

**STATEMENT
DEVELOPMENT**

*"Prior to adopting or rejecting any text amendment, one of
the following statements shall be adopted:"*

1 "_____ is consistent with the _____ Land Use Plan(s) and reasonable / appropriate based on the following..."

2 "_____ is not consistent with the _____ Land Use Plan(s) and reasonable / appropriate based on the following..."

3 "_____ is reasonable, appropriate, and necessary to meet the development needs of Rowan County not previously envisioned by the _____ Land Use Plan(s)..." Furthermore, the adoption of _____ is deemed an amendment to the _____ Land Use Plan(s)

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