



Planning, Development & Inspections

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Proposed Ordinance Amendment 01-18

To: Board of County Commissioners
Project Name: 2018 UDO Amendments
Case Number: OA-01-18
Date: July 23, 2018

Staff: Terry Nolan, Planner III

Purpose:

To amend the Wake County Unified Development Ordinance (UDO) to be consistent with State Statutes and to provide clear guidelines for development review.

Background:

This package of minor amendments was prompted by a change in state law that exempts additional low hazard and intermediate hazard dams from the Article 21, Chapter 143 of the North Carolina General Statutes also known as the Dam Safety Law. Staff identified the need to bring forward an amendment to Article 8 of the Unified Development Ordinance (UDO) in order to be consistent with the change to State law. Given the minor nature of the Article 8 text amendment, staff reviewed the UDO for other minor amendment needs that could be completed at the same time. Staff identified three additional sections of the UDO in which a minor text change is recommended to clarify regulation and/or to make the text consistent with current practice.

Text Amendment #1: Article 8-42-3 Lakes and Dams

The North Carolina Legislature passed HB 119, which changed the Dam Safety Law, effective July 1, 2011. HB 119 amended the Dam Safety Law to exempt additional low hazard and medium hazard dams from state regulation. HB 119 raised the regulatory threshold for a dam from 15 feet to 25 feet in height and changed the lake capacity from 10 to 50-acre feet. North Carolina's Dam Safety Program continues to regulate high hazard dams regardless of size.

Existing and new dams continue to be regulated through Wake County and state policies. County UDO provision 8-42 requires all dams are structurally capable of conveying a 24-hour, 100-year storm. Wake County Environmental Services reviews plans to ensure proposed dams meet this criterion. All dams must be designed, and construction overseen, by a professional engineer and registered with the North Carolina Division of Energy, Mineral, and Land Resources. The State inspects all dams on a regular cycle; low hazard classification dams are inspected every 5 years and high hazard dams are inspected every 2 years. Their inspections are visual in nature of the condition of the embankment, emergency spillway channel and the riser pipe in the pond/lake (if present). The state requires some privately-owned dams to have an in-depth inspection by a professional engineer.

Statewide, HB 119 reduced the number of regulated low hazard and intermediate hazard dams by 75%. The change reduces County staff time for development review. To date, staff has facilitated two residential developments in which a proposed dam and lake falls under the new criteria for an exemption. Developers have indicated that the state permitting process can take two to three months, therefore the new exemptions reduce the development timeline.

Article 8-42 of the UDO sets forth regulations for the construction of lakes and dams and references the Dam Safety Law in section three. The proposed text amendment below edits section 8-42-3 changing the height from 15 to 25 feet and the capacity from 10 to 50-acre feet.

The proposed amendment reads as follows:

8-42 Lakes and Dams

8-42-1 If a lake is proposed to be constructed or retained within a subdivision, the lake and its dam must be constructed or structurally upgraded to accommodate the runoff from a 24-hour, 100-year frequency storm.

8-42-2 Runoff computation must use [SCS] methods or other acceptable engineering standards.

8-42-3 Any lake with a dam that is ~~15~~ 25 feet in height or more, or that ~~has~~ an impoundment capacity of ~~10~~ 50-acre feet of more must obtain State agency approval in accordance with Article 21, Chapter 143 of the North Carolina General Statutes.

Text Amendment #2: Article 19-23-5 Special Use Staff Review

Article 19-23 of the UDO outlines the steps to process a special use request; section 19-23-5 describes staff review. The text amendment proposes to delete part of section 19-23-5 (E) which states the Planning Director recommends approval or denial of the application. Staff recommends deleting the language as shown below because staff do not provide a recommendation to the Board of Adjustment. Special use requests are an evidentiary hearing in which the Board of Adjustment makes its decision based on evidence presented at the hearing.

The proposed amendment reads as follows:

19-23-5 Staff Review

- (A) After accepting an application as complete, the Planning Director must refer it to appropriate staff for review.
- (B) The review staff must determine whether the proposed development complies with all applicable regulations and standards, and identify any other significant concerns about whether the required conclusions can be reached.
- (C) The Planning Director must notify the applicant of the staff findings and concerns, and, on determining that revisions to the application could constructively address the staff findings, invite the applicant to revise the application to address those findings.
- (D) If a revised application is submitted, the Planning Director must cause it to be reviewed in the same manner as the original application.

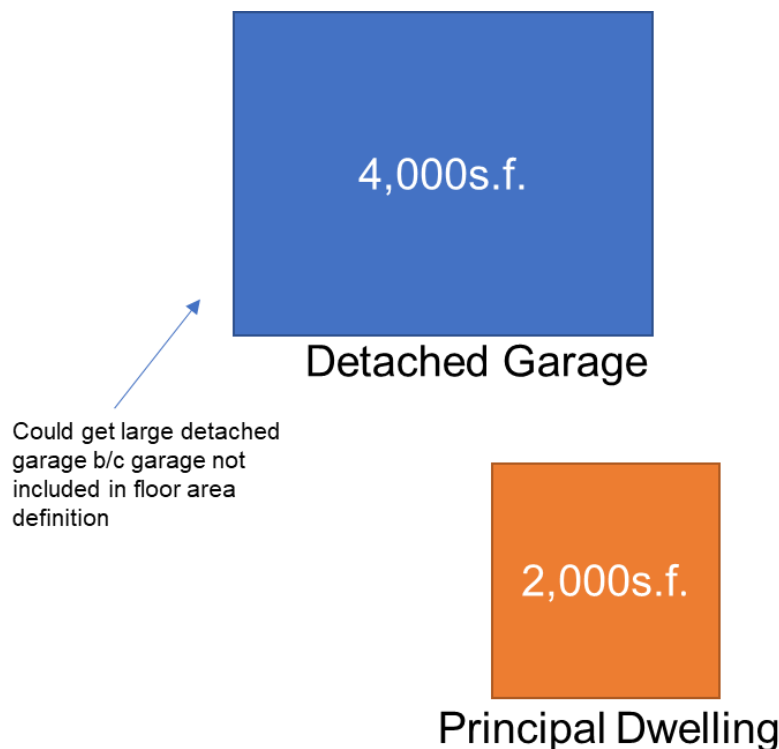
- (E) The Planning Director must then prepare a staff report that summarizes the analysis.
~~and recommends approval or denial of the application.~~
- (F) At a reasonable time before the hearing, the Planning Director must send members of the Board of Adjustment copies of the application and the staff report. The Planning Director must also send the applicant a copy of the staff report.

Text Amendment #3: Article 21-11 Definitions and Measurement – Floor Area

Under the current floor area definition in Article 21, garages are being incorrectly excluded from floor area calculations. Staff has determined that because attached garages are typically enclosed with exterior walls, they should be counted toward the total floor area of a building or structure. The proposed ordinance modifies the existing definition of floor area to include garages in floor area calculations.

Staff identified inconsistent development impacts that can arise due to the exclusion of the garage from the floor area definition. In current code, the total square footage of accessory structures may not exceed the total square footage of the principal dwelling unit. Because the garage is excluded from the floor area definition, a property owner could construct a detached garage of unlimited size (see example A). On the flip side, in the case of a home with an attached garage, an accessory structure like a shed or accessory dwelling unit (ADU) would be on the smaller side because the attached garage area would not be counted toward the allowable square footage for accessory structures (see example B). Example C illustrates an example of the proposed UDO code.

Example A: Home with Large Detached Garage



Example B: Home with Small Accessory Dwelling Unit (ADU)

Accessory Dwelling Unit must be
Smaller because attached garage
Not included in total square footage

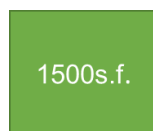


ADU



Principal Dwelling

Example C: Home with Accessory Structures Under Proposed Code



ADU



Principal Dwelling

With the addition of the garage square footage, the calculation for the total floor area square footage for the principal dwelling unit will be larger. This will allow a property owner greater flexibility to construct an accessory dwelling unit (ADU), because the size of an ADU can be up to 50% of the total square footage of the principal dwelling unit.

Staff believe the proposed change is minor in nature. Garages have always been included in the calculation of Maximum Impervious Coverage (% of lot) as outlined in Article 5 of the UDO, which restricts the percent of impervious surface on a residential lot. The proposed text amendment will not change how property is assessed for tax purposes.

The proposed amendment reads as follows:

21-11 Floor Area

The sum of the enclosed areas on all floors of a building or buildings, measured from the outside of exterior walls, including halls, lobbies, arcades, stairways, elevator shafts, enclosed porches, garages and balconies, and any below ground floor areas used for access and storage. Open terraces, patios, atriums, or balconies, carports, garages, breezeways, and screened porches are excluded from floor area calculations.

Text Amendment #4: Article 21-11 Definitions and Measurement – Lot Width

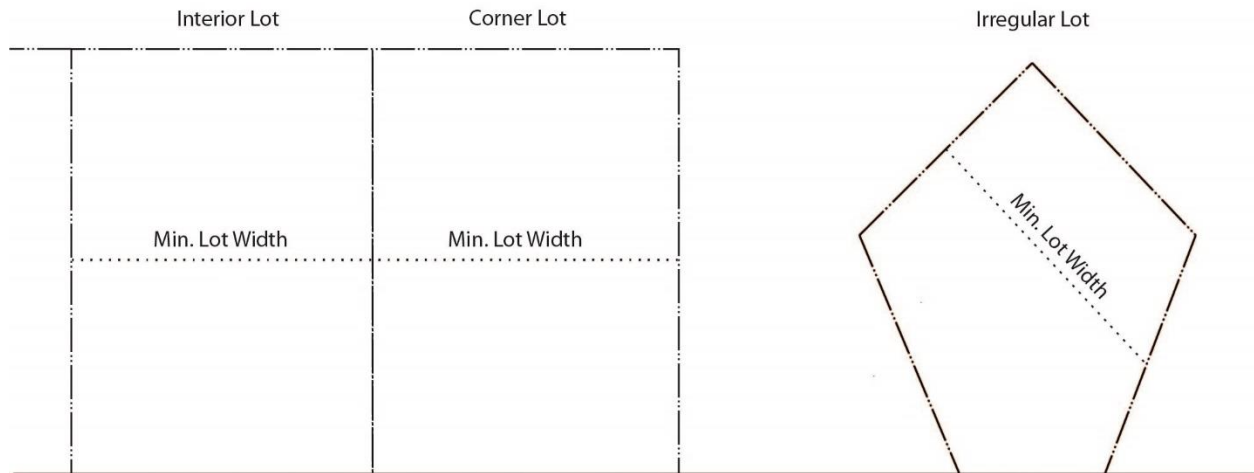
Article 21 currently defines Lot Width as “the horizontal distance between side lot lines”. There is no clear definition where the lot should be measured to determine the minimum standard for a lot. The proposed text amendment clarifies how the minimum lot width should be measured and takes into account corner lots and irregularly shaped lots. The purpose of the definition is to encourage regularly shaped and buildable lots whenever possible. The amendment would also include Figure 1 to show how various lot shapes are measured.

The proposed amendment reads as follows:

21-11 Lot Width

The horizontal distance between the midpoints of the side lot lines. Lot width on corner lots is the horizontal distance between one of the front lot lines and the opposite interior lot line. Lot width for irregularly shaped lots is measured from the midway point of the shortest side lot line perpendicular to the other side property lot line.

Figure 1: UDO exhibit showing Minimum Lot Width



Staff Findings

The proposed amendments:

- 1) Bring Wake County Unified Development Ordinances in line with North Carolina General Statutes.
- 2) Establish clearer guidelines for determining floor area calculations and lot width.
- 3) Reflect current practice for preparing reports to the Board of Adjustment.