

..Title

A legislative public hearing requested by the Chatham County Board of Commissioners to consider amendments to the Chatham County Subdivision Regulations; specifically, sections 2.3, 5.2, and 7.7 to amend language related to Concept Plan reviews and approvals

..Abstract

Introduction & Background:

During the frequent discussions about the upcoming UDO adoption and implementation many potential applicants, as well as staff, have started to consider the implications of permit choice and vested rights on projects submitted under the old county zoning and subdivision regulations. According to Chapter 160D and G.S. 143-755 if an applicant submits a permit application for any type of development and a rule or ordinance is amended between the time the application was submitted and a permit decision is made, the applicant may choose which adopted version of the rule or ordinance will apply to their permit and use of the building, structure, or use indicated in the permit application. The rule is broad and applies to any permit that would be issued by a state or local government.

Planning staff has made an in-depth analysis of the subdivision process during the UDO process and found a need to adjust the language and process regarding concept plan submittals. Concept Plan is the first step in the major subdivision process. Applicants generally have a conceptual layout and have done some environmental work to show the site conditions. The concern for staff is developers using the concept plan submittal for permit choice and creating a perpetual vested right. In theory, a developer could draw up a quick site plan, do some preliminary soil tests, talk to the neighbors, and then submit their concept plan application. It could then take years before the developer submits a first plat submittal. In the meantime, there may be new, more stringent, regulations in place for the tracts in question; but the developer can choose to be regulated under the older ordinance.

State statute allows for applicants to choose, and this right has not affected the process much in Chatham County. However, after the UDO is adopted, there will be questions about which set of regulations are more beneficial to developers. Applicants may choose to submit a hastily prepared concept plan to "save their place" under the old subdivision regulations. Planning staff has heard from some developers and land use attorneys that they are considering this option. For that reason, staff suggest adding a time limit to the concept plan submittal. There is a time limit on every other part of the process to maintain efficiency.

The proposed process change would place a six (6) month time limit between submittal of a concept plan review and the submittal of a First Plat application. This rule would apply to concept plans submitted after the adoption of the UDO, but before the effective date. The intent of the procedural change is only to maintain the efficacy of the current regulations and ensure the effectiveness of the new UDO.

Discussion & Analysis:

Planning Staff and the UDO consultants have discussed the six month time limit and believe it is adequate for developers. Much of the work related to the concept plan is generally done before submittal and is also work needed for the First Plat as well. The concept plan process would not be changed in any other way. The process for a concept plan starts with a pre-application or pre-concept meeting, then the applicant is supposed to do their preliminary environmental work and make necessary changes to the plan. The next step is a mandatory neighborhood meeting. Followed by the technical review committee meeting and eventual First Plat submittal. The time

limit clock would start after pre-concept meeting, but before the community meeting.

The time limit affects both permit choice and vested rights. Having a deadline on concept plans may not limit the amount of applications submitted for concept plan review but will set establish an expiration date. The applicant can choose either regulation, but they will just need submit their First Plat in a timely manner. Once the First Plat application is submitted then the concept plan has been completed, and the applicant will be deemed to have a vested right.

Permit choice and vested rights are closely related, but notably different in a few ways. One applies before the permit is approved and one applies after the permit is approved. In the case of vested rights, the developer already has a valid permit and are allowed to continue development in accordance with the approved permit even if rules are subsequently changed. If the developer wants to have a vested right, they will need to submit the First Plat application within six months of the concept plan submittal. This will only apply to concept plans submitted after the UDO adoption, but before the effective date.

Permit choice applies to a broad range of “development[s]” “development permits,” and “land development regulations,” as defined at G.S. 143-755. Notably, the development permits are administrative and quasi-judicial permits; legislative zoning decisions do not trigger permit choice. Therefore, most of our rezoning applications are not applicable.

“Development” is defined as any of the following:

1. The construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site, or demolition of any structure.
2. Excavation, grading, filling, clearing, or alteration of land.
3. The subdivision of land as defined in G.S. 160D-802.
4. The initiation of substantial change in the use of land or the intensity of the use of land.

“Development permit” is defined as an administrative or quasi-judicial development approval, including any of the following:

1. Zoning permits.
2. Site plan approvals.
3. Special use permits.
4. Variances.
5. Certificates of appropriateness.
6. Plat approvals.
7. Development agreements.
8. Building permits.
9. Subdivision of land.
10. State agency permits for development.
11. Driveway permits.
12. Erosion and sedimentation control permits.
13. Sign permit.

“Land development regulation” is defined as any “State statute, rule, or regulation, or local ordinance affecting the development or use of real property, including any of the following:”

1. Unified development ordinance.
2. Zoning regulation, including zoning maps.
3. Subdivision regulation.
4. Erosion and sedimentation control regulation.
5. Floodplain or flood damage prevention regulation.

6. Mountain ridge protection regulation.
7. Stormwater control regulation.
8. Wireless telecommunication facility regulation.
9. Historic preservation or landmark regulation.
10. Housing code.

There is not a direct mention of a concept plan as a “Development Permit,” but based on consultation with the County Attorney, it was determined that the intent of the concept plan step is the same as a permit. There is an application and a fee with review by planning staff.

How does this relate to the Comprehensive Plan: N/A

Budgetary Impact: N/A

Recommendation/Motion:

Hold the Public Hearing and send the item to the Planning Board for recommendation.