

ZONING ORDINANCE AMENDMENT REQUEST

CASE: A-424, 07/16

PETITIONER: Planning Staff

REQUEST: Amend the Zoning Ordinance to update references to the 2006 CAMA Land Use Plan to coincide with the adoption of the Comprehensive Land Use Plan

BACKGROUND AND SUMMARY:

In concert with the adoption of PlanNHC, the county's comprehensive land use plan, the Zoning Ordinance must be updated to remove references to the 2006 CAMA Land Use Plan ('06 Plan). Because the Zoning Ordinance will remain the county's effective land development ordinance until a new development ordinance is created and adopted, the existing references to the 2006 CAMA Land Use Plan must be removed and replaced with references to the place types within the comprehensive land use plan or other designations as appropriate.

In anticipation of detailed discussions involving diverse stakeholders about updating the county's land development regulations, Staff approached this effort with the ambition of not making any fundamental changes to the regulatory concepts in the Zoning Ordinance that are currently guided by references to the 2006 CAMA Land Use Plan.

However, the differences in the land use classifications from the 2006 CAMA Land Use Plan and the place types in the Comprehensive Land Use Plan created a challenge in approaching some of the land use plan references, particularly the Conservation land use classification from the 2006 CAMA Land Use plan that includes areas within the 100 year flood zone (AE and VE special flood hazard areas) and CAMA Estuarine Areas of Environmental Concern (AECs).

The land use plan references in the Zoning Ordinance often guide density. In updating the 2006 CAMA Land Use Plan references, Planning Staff analyzed the density guidance specified for the place types in the Comprehensive Land Use Plan and have made recommendations for what place types or other designations would be most appropriate to maintain the spirit of the regulation while also making a step towards the guidance set forth in PlanNHC.

In summary, the recommended changes are harmonious with the existing development strategies within the Zoning Ordinance, while simultaneously reflecting the visions for new opportunities created with PlanNHC.

1 **Section 50: Establishment of Use District; Table of Permitted Uses**
 2

Permitted Uses	PD	R 20S	R 20	R 15	R 10	R 7	B 1	B 2	I 1	I 2	O & I	A R	A I	S C	R A	R F M U
High Density Development (3/22/82) Permitted only within Urban or Transition Area <u>Employment Center, Urban Mixed Use, or Community Mixed Use Place Types</u> (2/16/87, 10/11/95)	P		S	S	S						S					

Note 1: High Density Development projects are currently only permitted in areas classified as Urban or Transition. These were areas identified in the 2006 CAMA Land Use Plan as either having or are planned to have urban services available to concentrate intensive urban development. These two land use classifications also correlated with the concept of the Urban Services Boundary, which was another tool of the '06 Plan to limit development sprawl.

Staff recommends High Density Development projects be limited to the Employment Center, Urban Mixed Use, and Community Mixed Use place types only, as these place types call for moderate to high densities for residential uses. The Employment Center and Community Mixed Use place types both specify 12 to 15 dwelling units per acre (du/a) as the ideal density range for multifamily residential.

The remainder of the place types are not appropriate for High Density Development. Residential development is not encouraged in the Commerce Zone or Conservation place types. Very low density is appropriate for Rural Residential, and 2 to 6 du/a is the ideal density for General Residential which could be achieved through a rezoning to R-7.

Permitted Uses	PD	R 20S	R 20	R 15	R 10	R 7	B 1	B 2	I 1	I 2	O & I	A R	A I	S C	R A	R F M U
Mobile Home Park (Density shall not exceed 2.5 Units beyond <u>Urban Transition area Employment Center, Urban Mixed Use, or Community Mixed Use Place Types</u>) (2/16/87, 10/11/95)	P			S	S	S									S	

Note 2: Currently, the density for areas of Mobile Home Parks that fall outside of the Urban or Transition land use classes is limited at 2.5 du/a. Staff recommends maintaining the 2.5 du/a density cap for areas of Mobile Home Parks that are not classified as Employment Center, Urban Mixed Use, or Community Mixed Use.

4 **Section 51.1: Regulations Applicable to the Following Residential Districts**

5 51.1-2: Performance Residential: In addition to the density limit established in the applicable zone, all
6 Performance Residential Development shall comply with the following regulations:

7 (11) In calculating the density for a proposed development, the following areas shall first be subtracted
8 from the gross area of land to be committed to development. In lieu of subtracting Dorovan,
9 Johnston, and Pamlico soils, the developer may choose to preserve 100% of such areas as
10 conservation space. Such designation shall follow the requirements of Section 55.1-4(4) Methods
11 of Conservation Space Preservation with all improvements limited to Section 55.1-4(3)
12 Improvements.

- 13
- 14 (A) all natural lakes, ponds, rivers, or marshes; and,
- 15 (B) all areas of Class IV soils as defined in A Classification of Soils in New Hanover
16 County for Septic Tank Suitability. All calculations shall be rounded to the nearest
17 whole unit. (1/4/84)(9/6/94)
- 18 (C) Residential units shall not be clustered at a density greater than 2.5 units per net
19 tract acre in areas classified Rural Residential place type, Conservation place type,
20 AE or VE special flood hazard areas, or CAMA Estuarine Areas of Environmental
21 Concern, Conservation, Rural or Resource Protection in the Wilmington – New
22 Hanover Land-Use Plan, except under the following circumstances. If a
23 development encompasses Rural Residential place type, Conservation place type,
24 AE or VE special flood hazard areas, or CAMA Estuarine Areas of Environmental
25 Concern, Resource Protection or Rural areas, and Conservation areas, then

26 density may exceed 2.5 units per acre in the areas of the site outside of the AE or
27 VE special flood hazard areas or CAMA Estuarine Areas of Environmental Concern,
28 the Resource Protection or Rural area, provided the number of units in the AE or
29 VE special flood hazard areas or CAMA Estuarine Areas of Environmental Concern
30 the Conservation area is reduced by an equal amount. At no time shall any portion
31 of the project designated as AE or VE special flood hazard areas, CAMA Estuarine
32 Areas of Environmental Concern, Rural Residential place type, or Conservation
33 place type classified conservation exceed the 2.5 units/acre limitation, nor shall
34 the overall density of the project exceed the limits specified in the respective
35 residential zoning districts. ~~For the purposes of this section, the conservation area~~
36 ~~shall include all lands following their natural topography that are at or below the~~
37 ~~100-year flood elevation as shown on the Flood Insurance Rate Map and upland~~
38 ~~of any marsh line.~~(2/16/87)(10/99)

Note 3: Section 51.1-2(11) prescribes how density is calculated for Performance Residential projects. Subsection (C) currently allows for a transfer of units from a portion of a project that is classified as Conservation, Rural, or Resource Protection by the '06 Plan to other areas of the project outside of those land use classifications. In the 2006 CAMA Plan, AE and VE Special Flood Hazard Areas and CAMA Estuarine AECs were included in the Conservation land use classification. Staff recommends applying the 2.5 du/a density cap to areas designated as AE or VE special flood hazard areas, CAMA Estuarine AECs, and the Conservation and Rural Residential place types, and updating the references to allow the transfer of units from only the areas of the site designated as AE/VE SFHAs or CAMA Estuarine AECs to other portions of the site outside of these areas.

39 **Section 51.8: R-7 Medium Density Development**

40 Purpose: The purpose of this section is to encourage medium density development in General Residential,
41 Community Mixed Use, and Employment Center place types ~~Urban and Transition areas~~ where adequate
42 services are available. The district will allow greater variety of housing types provided that environmental
43 impacts are minimized and adequate open space is provided.

Note 4: Section 51.8 describes where the R-7 Medium Density Development residential zoning district is appropriate, which is currently Urban and Transition areas. Staff recommends updating the references to General Residential, Community Mixed Use, and Employment Center based on the guidance for density and land use types. Residential uses are not encouraged in the Commerce Zone or Conservation place types. The density attainable through R-7 is too high for Rural Residential, and too low for Urban Mixed Use.

44 **Section 52.2: B-2 Highway Business District**

45 **52.2-4: Dimensional Requirements:**

46
47 (4) Maximum Building Height - 40 feet; except that buildings located within the Employment Center,
48 Community Mixed Use, Urban Mixed Use, or Commerce Zone place types ~~Urban Transition Area~~
49 and fronting along a collector, Minor Arterial or Principal Arterial as indicated on the County's
50 Thoroughfare Classification Plan, may exceed 40 feet provided their FAR does not exceed 1.0
51 (2/7/83) (10/5/95)

Note 5: Section 52.2-4 describes the maximum building height for the B-2 zoning district, and allows this maximum to be exceeded in Urban and Transition areas when certain criteria are met. Staff recommends changing these references to the Employment Center, Community Mixed Use, Urban Mixed Use, and Commerce Zone place types based on the building height guidance provided by the place type cut sheets. Appropriate nonresidential uses are limited in the General Residential and Rural Residential place types, and Staff recommends the applying the 40' building height maximum in B-2 zoning that may occur in General Residential and Rural Residential place types.

52 **Section 53.2: I-1 Light Industrial**

- 53 (4) Maximum Building Height - Forty (40) feet except for buildings located within the Employment
54 Center or Commerce Zone place types ~~Urban Transition Area~~ and fronting along a Collector, Minor
55 Arterial, or Principal Arterial as indicated on the Wilmington Metropolitan Planning Organization's
56 most current Roadway Functional Classification Map, may exceed forty (40) feet provided their
57 FAR does not exceed 1.0. (2/7/83)

Note 6: Section 53.2 prescribes a 40' building height maximum for buildings in the I-1 Light Industrial zoning district, unless the site is within the Urban or Transition areas and meet other criteria. Staff recommends updating the references to Employment Center and Commerce Zone due to the appropriateness of the light industrial zoning district and uses in these two place types.

58 **Section 54: Mixed Use Districts**

59 **54.1: Exceptional Design Zoning District (EDZD)**

- 60 **54.1-2: Applicability** – Areas classified as Rural Residential place type, Conservation place type, AE or VE
61 special flood hazard areas, or CAMA Estuarine Areas of Environmental Concern ~~Conservation on the~~
62 ~~current CAMA Land Classification Map~~ are not eligible for residential density greater than 2.5 units per
63 acre, and such acreage, with the exception of area within the Rural Residential place type, must be
64 subtracted from the acreage upon which density on other portions of the district is calculated. All other
65 areas of the unincorporated planning jurisdiction for New Hanover County are eligible for the EDZD.

Note 7: 54.1-2 sets a density cap of 2.5 du/a for areas of an EDZD project that is currently classified as Conservation by the '06 Plan. Staff recommends maintaining the 2.5 du/a density cap for areas of an EDZD project that are designated as Rural Residential place type, Conservation place type, AE or VE special flood hazard areas, or CAMA Estuarine Areas of Environmental Concern. The revised language also would require that areas of an EDZD site designated as Conservation place type, AE or VE special flood hazard area, or CAMA Estuarine AEC must be subtracted from the gross site acreage when calculating density for the EDZD project.

66 **54.2 Planned Development (PD) District**

67 **54.2-2: District Regulations:**

- 68 (2) Maximum Building Height - The maximum building height for residential, commercial, and office
69 and institutional structures shall be forty (40) feet; except that the maximum height for
70 buildings located within the Urban Mixed Use, Community Mixed Use, or Employment Center
71 place types ~~urban or transition area~~ as indicated on the County's Land Classification Map and

72 fronting along a collector, minor arterial or principal arterial as indicated on the Wilmington
73 Urban Area MPO functional classification map shall be eighty (80) feet. (10/5/95) (8/1/11)

Note 8: Staff recommends changing the references for where a building height may exceed 40' in the PD district from the '06 Plan classifications of Urban and Transition areas to the Urban Mixed Use, Community Mixed Use, and Employment Center place types based on the building height guidance on the place type cut sheets.

- 74 (6) Maximum Density: (1/2/90)
75 (A) Allowable density shall be determined by the Site Capacity Standards for High Density
76 Development as authorized in Section 72-43 of this Ordinance, except that land intended
77 for commercial, office and institutional, and industrial uses shall also be subtracted from
78 the gross site area. The residential density factor of the PD district shall be 4.25 dwelling
79 units per acre if the PD shall be located within the Urban Mixed Use, Community Mixed
80 Use, General Residential, or Employment Center place types Urban or Transition area.
81 ~~The residential density factor of the PD district shall be 2.5 dwelling units per base site~~
82 ~~acre if the PD shall be located beyond the Urban or Transition area.~~ (10/5/95)

Note 9: Section 54.2-2(6) dictates how residential density is determined for PD projects by referring to the calculation procedure in the High Density Development section of the ordinance. To calculate density, the "base site area" is multiplied by a density factor. Currently, for areas within the Urban or Transition land use classifications from the '06 Plan, the density factor is 4.25 units/acre. Staff recommends changing these references to the Urban Mixed Use, Community Mixed Use, General Residential, and Employment Center place types, as such a density is appropriate in them.

Additionally, this section (as well as 72-43(D)) limits density for portions of PD projects outside of the Urban or Transition land use classifications. Staff recommends striking this sentence and allow PD projects only within the Urban Mixed Use, Community Mixed Use, General Residential, and Employment Center place types. The residential requirement for PD conflicts with the Commerce Place type, which is established for office, commercial, and industrial uses.

- 83 (B) Residential units shall not be allowed at a density greater than 2.5 units per acre in the
84 AE and VE special flood hazard areas and CAMA Estuarine Areas of Environmental
85 Concern. areas classified Rural, Conservation, or Resource Protection in the Wilmington-
86 New Hanover Land Use Plan. In cases where a Planned Development includes Rural or
87 Resource Protection areas, and Conservation areas, then density may exceed 2.5 units
88 per acre in the Resource Protection or Rural area, provided the number of units in the
89 Conservation area is reduced by an equal amount. (2/16/87)

Note 10: This section currently limits density to 2.5 du/a in areas of a PD project classified as Rural, Conservation, or Resource Protection by the '06 Plan. Staff recommends revising this section to limit density to 2.5 du/a in the AE and VE special flood hazard areas and also CAMA Estuarine AECs. The place types in the Comprehensive Plan do not include areas included in the 2006 CAMA Plan Resource Protection classification, such as AE/VE flood zones and estuarine CAMA Estuarine AECs, which are currently limited to 2.5 du/acre by both policies in the 2006 Plan and regulations in the Zoning Ordinance, such as above. The revised language bridges the gap by tying the density to more specific areas until stakeholder discussions during the UDO process can determine if more substantial changes are appropriate. Note that even with maintaining the 2.5 du/a density limit in certain areas, the new place types will allow for more density in more areas of the county that were limited by the 2.5 du/a cap in the 2006 CAMA Plan Resource Protection land use classification.

90 (C) If the PD District shall be located within the Employment Center, Urban Mixed Use, or
91 Community Mixed Use place types Urban or Transition Area, the residential density factor
92 of the PD District may be increased by using the following "Density Bonus Chart". An
93 increase in density from 4.25 to 10.2 dwelling units per acre requires a total score of 75
94 points or more. An increase in density from 10.2 to 17 units per acre requires a total score
95 of 165 points or more. (2/16/87) (10/5/95) (8/1/11)

Note 11: *Similar to the changes proposed in Section 54.2-2(6), Staff recommends changing the references in this section from the '06 Plan classifications of Urban and Transition to the Employment Center, Urban Mixed Use, and Community Mixed Use place types, as these place types are appropriate for increased density.*

96 (7) The following minimum improvements and public services shall be provided in accordance with
97 all standards set by the County or appropriate local or State agency:

98 (O) Recognizing the County's need for adequate housing for the elderly population as stated
99 in the Comprehensive Land Use Plan 2006-CAMA Plan Update, the following district
100 regulations shall apply in instances where at least twenty-five percent (25%) of the PD
101 district number of units are included in a Continuing Care Retirement Facility as described
102 and regulated under NCGS 58 Article 64:

103 a. The maximum height for a continuing care retirement facility building shall be up
104 to 55 feet.

105 b. The thoroughfare requirements in Section 54.2-2(7) (N) and Section 61.3 may be
106 satisfied if a traffic study supports a finding by the Board of County
107 Commissioners that the roadway providing access for the proposed PD
108 development to and from an existing major or minor arterial will operate at an
109 acceptable level of service (LOS), and will not cause the LOS to drop below Level
110 C. (1/07/08) at build-out. 8/1/11)

Note 12: *Section 54.2-2(7)(O) includes a reference to the need for elderly population in the '06 Plan. This reference can be easily updated to point towards the new comprehensive plan as suggested above.*

111 **Section 54.3: RFMU Riverfront Mixed Use District**

112 **Section 54.3-1: Purpose** - The Cape Fear River is one of the region's most valuable natural resources and
113 is the focal point of activity in downtown Wilmington. The Riverfront Mixed Use District is established to
114 support seven main objectives: to enhance and preserve environmentally sensitive areas along the river;
115 to protect public access to the river through the creation of quality public spaces, to preserve cultural and
116 natural resources, to effect quality design and a variety of built forms that result in a pedestrian scale as
117 well as a compelling skyline; to promote and enhance transit options, particularly pedestrian and water-
118 oriented transportation options; to provide an opportunity for intensive development consistent with the
119 urban form; and to encourage a mix of uses that foster a sense of community and create a destination for
120 residents and visitors alike.

121
122 The RFMU is an elective district available only to parcels of land fronting the Cape Fear and Northeast
123 Cape Fear Rivers east of Hwy. 421, between the Holmes Bridge and the Memorial Bridge in
124 Unincorporated New Hanover County. A height restriction overlay for the area directly across from the

125 Wilmington Historic District is subject to additional restrictions on building height. In the event of conflict
 126 between regulations for riverfront mixed use developments and those in other sections of the Zoning
 127 Ordinance, the Riverfront Mixed Use regulations shall supersede unless specifically stated otherwise. ~~All~~
 128 ~~development projects within riverfront mixed use districts are subject to the CAMA Land Classification~~
 129 ~~regulations.~~

Note 13: Section 54.3-1 discusses the purposes of the Riverfront Mixed Use District (RFMU), including objectives of development within the district and where in the county RFMU is applicable. The final sentence states that projects within an RFMU district should be guided by the land use classifications, which is predominately Conservation. A 2008 amendment to the '06 Plan excepted RFMU from the density and impervious surface coverage limitations in the Conservation land use classification. Staff recommends deleting this sentence, finding it unnecessary. Density will be guided by the applicable Urban Mixed Use place type, and density and impervious surface coverage will reviewed by staff, the Technical Review Committee, the Planning Board, and the Board of Commissioners.

130 **Section 72-43: High Density Development**

131 Purpose: The purpose of this section is to encourage high density development in Employment Center,
 132 Urban Mixed Use, or Community Mixed Use place types ~~Urban or Transition areas~~ where adequate
 133 services are available, provided that environmental impacts are minimized and adequate open space is
 134 provided. (10/5/95)

Note 14: Section 72-43 prescribes supplemental regulations for High Density Development projects. Currently, these projects are permitted only in the Urban or Transition land use classifications. Staff recommends changing these references to the Employment Center, Urban Mixed Use, and Community Mixed Use place types. See Note 1 for an explanation of a similar change to the Table of Permitted Uses.

135 All High Density Developments shall comply with the following requirements:

136 (D) Determination of site capacity

- 137
 138 1. The maximum number of dwelling units that may be built may be determined by
 139 multiplying the BASE SITE AREA by the appropriate density factor from the table
 140 below. (1/2/90) (10/5/95)

<u>DISTRICT</u>	<u>DENSITY FACTOR</u>
R-10	17 units/acre
R-15	10.2 units/acre
R-20	4.25 units/acre
O&I	10.2 units/acre
PD (inside <u>Employment Center/Urban Mixed Use/Community Mixed Use Place Types</u> Urban Transition area)	4.25 units/acre
PD (outside Urban Transition area)	2.5 units/acre

Note 15: The recommended changes in this section pertain to the density calculation for PD projects, and are explained further in Note 9.

150 2. Each high density development shall be located either totally or primarily in
151 areas classified Employment Center, Urban Mixed Use, or Community Mixed Use
152 place types Urban Transition in the Wilmington – New Hanover Land Use Plan. In
153 cases where a high density development includes primarily Employment Center,
154 Urban Mixed Use, or Community Mixed Use ~~Urban or Transition areas~~ and
155 limited Conservation place type or AE or VE special flood hazard areas or CAMA
156 Estuarine Areas of Environmental Concern ~~Conservation or Rural or Resource~~
157 Protection areas, the residential units shall not be clustered at a density greater
158 than 2.5 units per BASE SITE acre in the AE or VE special flood hazard areas or
159 CAMA Estuarine Areas of Environmental Concern ~~areas classified Conservation,~~
160 ~~Rural, or Resource Protection.~~ (10/5/95)

Note 16: Section 72-43(3)D-2, above, reiterates where High Density Development may occur, which is currently only the Urban or Transition classifications from the '06 Plan. Consistent with previous similar references, Staff recommends updating these references to Employment Center, Urban Mixed Use, and Community Mixed Use.

This section also creates a density cap of 2.5 du/a for areas of a High Density Development project within areas classified as Conservation, Rural, or Resource Protection by the '06 Plan. Staff recommends revising this language to limit density to 2.5 du/a for portions of a High Density Development project that fall within areas designated as AE or VE special flood hazard areas or CAMA Estuarine AECs. Areas classified as Conservation place are discouraged from any development, so the 2.5 du/a density cap is unnecessary.

161 **Section 72-42: Mining**

162 **High Intensity Mining Operations**

163 High intensity mining operations shall be permitted in accordance with the use tables in Section 50-2,
164 subject to the following:

- 165 (1) The minimum lot size shall be one acre.
166 (2) Soil or other unconsolidated material (i.e. sand, marl, rock, fossil deposits, peat, fill or topsoil)
167 may be removed for use off-site. Additional on-site processing shall be permitted (i.e. Use of
168 conveyor systems; screening machines; crushing; or other mechanical equipment).
169 (3) All mining operations and their associated activities shall comply with the following standards
170 when dewatering occurs:
171 a. Must be located a minimum of 100 feet from all property lines.
172 ~~(4) High Intensity Mining activities shall not be allowed in areas classified as aquifer resource~~
173 ~~protection or watershed resource protection on the CAMA Land Classification Map.~~

Note 17: Section 72-42 sets supplemental regulations for High Intensity Mining Operations, including subsection (4) that disallows the use in the Aquifer Resource Protection or Watershed Resource Protection land use classifications from the '06 Plan.

High Intensity Mining is currently only permitted in the I-2 zoning district by Special Use Permit. Based on the limited areas of I-2 zoning that overlap with the Aquifer Resource Protection and Watershed Resource Protection areas, Staff recommends removing this subsection and rely on the special use permit process to address any concerns related to aquifers, surface and groundwater, and other potential external effects of the proposed mining operation.

REVIEW AND ACTION:

This request has been processed and reviewed per *Section 110 – Amending the Ordinance*. Notices of the petition request have been disseminated per the requirements of the Zoning Ordinance.

Staff recommends the approval of the amendment as presented above. Staff concludes that the amendment is necessary to amend language in the Zoning Ordinance that refers to land use classifications from the 2006 CAMA Land Use Plan to reference the place types in the Comprehensive Land Use Plan, in order to administer the Zoning Ordinance. Changes suggested by staff are intended to reflect the spirit and intent of the existing regulations as much as possible until robust conversations involving a diversified set of stakeholders necessitates more substantial changes to the ordinance language.

Action Needed

- **Motion to recommend approval of the petitioner’s proposal**
- **Motion to “table” the item in order to receive more information**
- **Motion to recommend denial of the petitioner’s request based on specific reasons**

Example Motion for Approval:

Motion to recommend approval, as the Planning Board finds that this request for a zoning ordinance amendment is:

1. Consistent with the purposes and intent of the 2016 Comprehensive Land Use Plan because [Describe elements of controlling land use plans and how the amendment is consistent].
2. Reasonable and in the public interest because [Briefly explain why. Factors may include public health and safety, applicable plans, or balancing benefits and detriments.].

Example Motion for Denial:

Motion to recommend denial, as the Planning Board finds that this request for a zoning ordinance amendment is:

1. Not Consistent with the purposes and intent of the 2016 Comprehensive Land Use Plan because [Describe elements of controlling land use plans and how the amendment is not consistent].
2. Not reasonable or in the public interest because [Briefly explain why not. Factors may include public health and safety, applicable plans, or balancing benefits and detriments.].

Staff Suggested Motion:

Motion to recommend approval of the amendment as presented by Staff, as the Planning Board finds that this request as described is:

1. Consistent with the purposes and intent the 2016 Comprehensive Land Use Plan, as the amendment is necessary to allow continued administration of land use regulations to facilitate intelligent growth and economic development in the county.
2. Reasonable and in the public interest as the amendment allows for uninterrupted administration of the county’s Zoning Ordinance in a manner consistent with the spirit and intent of the existing regulations.