

MEETING MINUTES  
ORANGE COUNTY PLANNING BOARD  
MARCH 6, 2019  
REGULAR MEETING

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**MEMBERS PRESENT:** Lydia Wegman (Chair), At-Large Chapel Hill Township Representative; Alexander Gregory (Vice-Chair), Chapel Hill Township Representative; Adam Beeman, Cedar Grove Township Representative; Carrie Fletcher, Bingham Township Representative; Laura Nicholson, Eno Township Representative; Patricia Roberts, Cheeks Township Representative; Paul Guthrie, At-Large Chapel Hill Township; Randy Marshall, Bingham Township Representative;

**MEMBERS ABSENT:** Hunter Spitzer, At-Large; David Blankfard, Hillsborough Township Representative; Buddy Hartley, Little River Township Representative; Kim Piracci, At-Large;

**STAFF PRESENT:** Craig Benedict, Planning & Inspections Director; Michael Harvey, Current Planning Supervisor; Tina Love, Administrative Assistant III

**AGENDA ITEM 1: CALL TO ORDER AND ROLL CALL**

Chair Lydia Wegman called the meeting to order.

**AGENDA ITEM 2: INFORMATIONAL ITEMS**

- a. Recognition of Members Rotating Off the Board this Month
- b. Planning Calendar for March and April 2019

**AGENDA ITEM 3: APPROVAL OF MINUTES**

- February 6, 2019 Regular Meeting
- February 6, 2019 Ordinance Review Committee Notes

**MOTION** by Laura Nicholson to approve the February 6, 2019 Regular Meeting Minutes and the February 6, 2019 Ordinance Review Committee Notes. Seconded by Carrie Fletcher.

**VOTE:** Unanimous

**AGENDA ITEM 4: CONSIDERATION OF ADDITIONS TO AGENDA**

**AGENDA ITEM 5: PUBLIC CHARGE**

Chair Lydia Wegman waived the reading of the Public Charge

**AGENDA ITEM 6: CHAIR COMMENTS**

No Comments

**AGENDA ITEM 7: UNIFIED DEVELOPMENT ORDINANCE (UDO) TEXT AMENDMENTS – REORGANIZATION OF TABLES OF**

**PERMITTED USES** – To make a recommendation to the BOCC on proposed amendments to the UDO that would reorganize the Tables of Permitted Uses in response to the *Byrd v. Franklin County* judicial decision and modify other sections to ensure consistency within the ordinance. These amendments are scheduled for BOCC public hearing on April 2, 2019.

**PRESENTER:** Michael Harvey, Current Planning Supervisor

Michael Harvey directed the board to a packet of replacement pages which he mentioned he would review. He advised the board that all motions recommending approval should be considered consistent with the Ordinance Amendment package as modified by the staff. Mr. Harvey quickly reviewed the history behind the amendments which were also mentioned were included in the abstract. He explained that the revised Table of Permitted Uses is intended to give laypeople a way to easily understand what they are able to do with their property. In August of 2017, during a work session with elected officials, the Planning Director, and the County Attorney, staff was advised to abandon the comprehensive listing of every allowable land use and to instead condense land use categories as much as possible in

56 creating the new table. Mr. Harvey stated the staff had created a fact sheet outlining the changes, pages, and reasons  
57 why amendments were made to aid the Board in their review.

58  
59 Mr. Harvey addressed replacement page 25 (A) and explained that the County Attorney's office had asked staff to  
60 include a provision in the Unified Development Ordinance (UDO) for reasonable accommodations for individuals with  
61 handicaps. Mr. Harvey explained it was common place to have a provision in the ordinance providing handicapped  
62 individuals with opportunities to seek variances from development criteria that could impact their ability to use their  
63 property. It had been advised by the County Attorney's office that Section 2.25, a reasonable accommodation rule, be  
64 adopted. In reviewing changes, the County Attorney identified a concern relating to not only the granting of variances  
65 for reasonable accommodations but also variances, interpretations and Special Use Permits in general. Although  
66 there had been sufficient language within the UDO addressing burden of proof, Mr. Harvey informed the board that the  
67 Attorney's office had requested to add specific language which he referred to on page 25 (A) in the variance section.  
68 Mr. Harvey explained that the recommended language stated the applicant shall have the burden of establishing by  
69 competent material and substantial evidence in the form of testimony, exhibits, documents, models, plans and other  
70 materials that the application meets the requirements for approval of a variance and furthermore, the applicant shall  
71 have the burden of persuasion on those issues justifying the approval of a request.

72  
73 Lydia Wegman asked Mr. Harvey to clarify the meaning and he responded that the applicant now has the responsibility  
74 of persuading the board that they are correct and that the request should be granted.

75  
76 Michael Harvey explained that the language was referenced within applicable State statutes and was beginning to  
77 appear in other local government ordinances to help applicants understand what their obligations under the variance,  
78 interpretation, and special use permit review processes were. He said applicants have to prove their case to the board  
79 and hold persuade members the competent material evidence and testimony offered justified the approval of the  
80 request. Mr. Harvey advised that the attorney had an interest in adding the language "burden of persuasion" to Section  
81 2.11; Section 2.11.13, dealing with interpretations; and in Section 5.3.2.

82  
83 Lydia Wegman questioned the meaning of the phrase and asked what the County Attorney's interpretation of the  
84 phrase was as well. Mr. Harvey explained he only had the ability to explain his interpretation of the phrase, reiterate  
85 what had been discussed, and commented that the felt the language was clear in that applicants always had the  
86 burden to persuade review board's they should receive approval for their requests. The amendment merely seeks to  
87 add the phrase to the UDO.

88  
89 Lydia Wegman read from the packet, establishing by competent material and substantial evidence, and stated she felt  
90 this covers what is required. She expressed disapproval for the language and found it to be vague and uncommon.

91  
92 Craig Benedict stated that applicants only had to explain what they are trying to prove along with items they are  
93 submitting. He commented that he didn't believe an applicant had to go too far in adding an explanation of how the  
94 standard is being achieved.

95  
96 Michael Harvey reminded the board that variance interpretation and Special Use Permits are carried on in a different  
97 format than a typical legislative hearing. He explained that the language is designed to ensure there is proper and  
98 adequate dissemination of what is expected from applicants with the applicant bearing the burden of proof and with  
99 having to persuade to the board that they are correct thereby justifying approval of the request.

100  
101 Randy Marshall remarked that decisions should be made based on agreed upon facts, and he disapproved of  
102 language found in the packet. He felt the applicant would not have any recourse for not being able to persuade the  
103 board on their case and remarked the language would render verdicts based on opinions. Carrie Fletcher agreed with  
104 Mr. Marshall.

105  
106 Michael Harvey expressed that he did not desire to lead the board in any one direction and remarked that it was  
107 perfectly acceptable for the board to ask the County Attorney to provide something in writing before acting on any  
108 Ordinance Amendment they felt uncomfortable with.

109  
110 Lydia Wegman found the remark an intelligent suggestion.

111

112 Carrie Fletcher asked whether the language was leading to applicants having to retain legal guidance. Mr. Harvey  
113 informed the board that state law does not mandate an applicant have an attorney nor does the ordinance but stated it  
114 to be advisable for applicants entering a quasi-judicial hearing or a hearing requesting a variance observing a fair trial  
115 standard to have the advice, counsel, or representation of an attorney.

116  
117 Carrie Fletcher remarked that from a layperson's perspective, she felt the language was pushing civilians to have legal  
118 representation.

119  
120 Paul Guthrie commented that it could go both ways and stated it would be difficult situation if a person wanted to  
121 litigate and had the means to do so.

122  
123 Michael Harvey requested for Mr. Guthrie to elaborate on his comment so he could respond adequately and asked  
124 whether Mr. Guthrie's concern was based on appeals or whether it would more difficult to deny projects. Mr. Guthrie  
125 responded that he felt there would be a lot of litigation if the County Commissioners don't state in similar language  
126 reason behind an applicant's denial.

127  
128 Michael Harvey reminded the board that both the Board of Adjustments and the County Commissioners is represented  
129 by the attorney's office. He explained the attorney representatives work with their boards to craft decisions consistent  
130 with the evidence in the record. Mr. Harvey informed the board that once a public hearing is closed on any Special  
131 Use Permit, variance application, or interpretation, the staff can no longer engage with the board and only the County's  
132 appointed legal counsel can engage with them in crafting the appropriate decision based on the Board's interpretation  
133 of the evidence and testimony in the record.

134  
135 Paul Guthrie commented that it was quite conceivable for a court on appeal to find issue with the persuasion language.  
136 He stated he found he language to be vulnerable to judicial attack.

137  
138 Michael Harvey sought clarification on the boards' concerns, outlining them follows:

- 139 1. The board does not understand the rational for including the phrase " the applicant shall have the burden of  
140 persuasion on those issues".  
141 2. The board did not understand the plain meaning or impact of the term persuasion in this context;  
142 3. The board wondered if there needed to be a standard specifically outlining what the applicant had to do to  
143 persuade the Board of Adjusting or the BOCC an application should be approved;  
144 4. The BOCC's review; the implications of appeals during litigation;  
145 5. The implications of the phrase on the County's land use planning program; and  
146 6. The boards' concerns regarding the findings of fact in denying or approving an action.

147  
148 Lydia Wegman asked to add in, and why it is necessary. She further explained that even though the planning board  
149 comes in earlier, a recommendation is still needed on the Special Use Permits and this becomes difficult for the  
150 planning board.

151  
152 Paul Guthrie stated he would feel a little bit better if there was another sentence added to indicate that if the boards  
153 feel they have not been persuaded that they would meticulously document which items there were not persuaded on.

154  
155 Michael Harvey clarified that he thought something of that nature was already in the ordinance. He acknowledged that  
156 the language was not sitting well with the board and stated he was well aware that the board did not understand the  
157 ramifications of the language and acknowledged that the board was not comfortable without the attorney providing in  
158 person or writing some reason as to why it had to be added. Various members on the board agreed with Michael's  
159 statements. Ms. Fletcher remarked that she was not comfortable with the phrase. Ms. Wegman requested clarification  
160 other than other jurisdictions have included this language.

161  
162 Paul Guthrie question how burden is measured in litigation. Mr. Harvey acknowledged that this was another area of  
163 concern for the board.

164  
165 Adam Beeman commented that if all required items were checked off and an applicant had sound evidence, that the  
166 boards could still deny their request if they decided they didn't like the project. He stated there needs to be a goal to

167 reach for and explained that an applicant should be able to reach for XYZ to get a variance. It should not be based on  
168 the ability to convince someone to pass the applicant's problem.

169  
170 Randy Marshall added the applicant needs to understand what the boards were not persuaded on to give them a basis  
171 for appeal. Adam Beeman stated that he understood Randy Marshall's comment.

172  
173 Michael Harvey reminded the board that every decision by either the County Commissioners or the Board of  
174 Adjustment on Special Use Permits, variances, or appeals are automatically appealable within 30 days to the Orange  
175 County Superior Court.

176  
177 Randy Marshall expressed his desire to have the boards give reason for not being persuaded on an applicant's case.  
178 He stated there should be a responsibility on the basis of the board members who don't agree to give a reason why.

179  
180 Adam Beeman agreed. He expressed that this could pose an undue burden on the average homeowner. He  
181 remarked that it would be a burden on an applicant to have to take the case to the Supreme Court of the County and  
182 appeal because it didn't pass.

183  
184 Alexander Gregory stated he was okay as it was originally written but expressed that there was some confusion with  
185 the language upon hearing the concerns of the other board members. He explained that when he originally read the  
186 language he understood it to mean that a person could have all their pieces together but that would not mean someone  
187 on the board would agree with that person, and so they would have to take it a step further to explain and to try to  
188 convince somebody who would be voting on it.

189  
190 Adam Beeman questioned what the reason would be for denying an applicant. Alexander Gregory stated that  
191 someone could have their own personal reasons for denying the applicant. He again stated that he understood it to  
192 mean that they should be prepared even if they have everything in order.

193  
194 Michael Harvey resumed his explanation of the amendments. He explained that 25 (B-F), articulated in the table, is a  
195 renumbering of sections to make them now compliant with the flow. The next change on page 25 (G) is the same  
196 burden of proof language in interpretations. He then moved to Page 29 and explained it was included for consistency.  
197 He explained that he made a change on page 30 in an attempt to keep the flow of pages correct. Page 29 updates a  
198 reference to the provision of the UDO. He explained as pages are added and deleted, citations change so instead of  
199 5.1.4, it's now 5.1.3. He stated that the language on Page 30 has been there since the beginning, but he had shown it  
200 as existing text, meaning it had not been highlighted in any way shape or form. It is new text and has to be identified  
201 as new text, that's the change and that's the reason for footnotes. The note will also appear in the master table  
202 provided to the board.

203  
204 Michael Harvey mentioned that there were other changes to be discussed and continued to Page 56, under recreation,  
205 Land Use, camp retreat. He explained that because of changes having to be made to the Assembly Land Use, retreat  
206 centers would be split from recreation into assembly. Mr. Harvey explained that retreat had to come out of recreation  
207 because of the character and the scope of the use and guided the board to this on page 56. He further explained that  
208 they were also seeing the deletion of sweepstakes, cafe and parlor and stated that state law prohibits them. The  
209 attorney has decided that if it's prohibited by state law, to let state law tell people it's prohibited and illegal. When and if  
210 state law is ever changes this, an ordinance amendment will have to be done, but there will be a legal basis for  
211 establishing a regulatory standard for that land use at that time. He explained that theaters were also being moved as  
212 it is considered an assembly use. He explained that the board would also notice a renumbering as pages are deleted  
213 or moved around.

214 Craig Benedict questioned what a camp was by itself without retreat center. Mr. Harvey responded that a camp is  
215 basically like a boy scout or summer camp. Mr. Benedict sought reassurance that it was not an assembly. Mr. Harvey  
216 replied, no, and remarked it was a recreation activity.

217  
218 Randy Marshall inquired if it was similar to Camp New Hope. Mr. Harvey replied that Camp New Hope would be  
219 considered a retreat center. Mr. Harvey explained that Camp New Hope was established before the requirement for a  
220 Special Use Permit. Per the ordinance, Mr. Harvey said, they have what is deemed to be a de facto Special Use  
221 Permit. He explained that the camp is considered to be conforming and further explained that changes don't impact  
222 anybody who had a Class B Special Use Permit for a retreat center in the county. He stated it does not undermine any

223 of the existing regulatory requirements that would grant the ability for someone to be considered conforming that did a  
224 permit in the 60s or 70s.

225  
226 Randy Marshall asked if conforming meant they would they have to change to be the New Hope Retreat Center. Mr.  
227 Harvey replied, no.

228  
229 Michael Harvey continued to the next change and guided the board to page 57. He spoke on the references to  
230 dormitories, fraternities, and sororities and explained that those reference were being deleted because they are either  
231 a rooming house or a multi-family land use. He stated they were already covered under the code so there would be no  
232 reason to repeat it. Additionally, he explained that dormitories, fraternities, and sororities are also connected to  
233 university operations which are required to get Special Use Permits under the code. He stated that there are none in  
234 Orange County, so it was being deleted. Mr. Harvey informed that board that he had met with a few commissioners  
235 the in the previous week and brought the concerns of airports to their attention. He mentioned that the commissioners  
236 liked the notion of deleting the airports from the residential districts but did not find it appropriate to move them into an  
237 industrial as recommended. He stated they liked the idea of doing further study to find better ways to handle airports  
238 than what's currently in the code. He brought an additional concern the board and asked them to consider what to do  
239 with someone who has a heliport or an airfield as an accessory use on their property.

240  
241 Craig Benedict commented that these airports are allowed as accessory use to residential if it is for a private party.

242  
243 Michael Harvey remarked, yes, and stated that the commissioners he had met with addressed that there needs to be  
244 some thought about adopting some minimal standards for those types of activities.

245  
246 Michael Harvey moved to page 61 and reminded the board that this was a topic they had touched on. He explained  
247 that there used to be two categories wholesale trade durable and wholesale trade nondurable goods which were both  
248 permitted in the same zoning districts and added that they are now being combined into one group, wholesale trade.

249  
250 Michael Harvey explained the changes to assembly uses and stated that the recommendation is to eliminate the  
251 overall category and splitting it out per use. He defined assembly use as a gathering of people for a purpose and then  
252 explained the differences between various assemblies, such as places of worship, clubs, lodges, community centers,  
253 theaters and retreat centers. Mr. Harvey informed the board that the changes were made to clarify the distinction  
254 between the various types of assemblies. He stated that the changes addressed some of the loop hole issues, but it  
255 was decided that they needed to rid of the over-arching category and splitting it per use. He addressed the changes to  
256 special events as defined in the ordinance and asked the board to note the definition on the table that had been  
257 provided. Mr. Harvey pointed out a regulatory standard which had been added into the definition of a special event  
258 and informed everyone it had been moved to the appropriate section in the UDO.

259  
260 Randy Marshall voiced his concern that anyone could say they were gathering to worship. Mr. Harvey asked him to  
261 remember that determinations would be performed on a case-by-case basis, and he then reiterated the definition of a  
262 place of worship. He explained that if a person is proposing a land use, the first task would be to determine whether or  
263 not that person meets the requirements for what constitutes a place of worship.

264  
265 Randy Marshall stated that he could argue that the categories that were just listed are exclusionary as opposed to  
266 inclusive. He voiced that he felt this was a loophole being left open.

267  
268 Michael Harvey asserted that it would be the totality of all the definitions, standards and framework that would establish  
269 the County with the authority to say they are a place of worship and reiterated it would have to be done on a case-by-  
270 case basis.

271  
272 Randy Marshall asked whether the Rams club would be considered a place of worship. Mr. Harvey stated that for  
273 some people, yes, but it would be considered a club with respect to the construction of the UDO. Randy stated that  
274 that was his pointed and commented that it was in the mind of the beholder. Mr. Harvey replied that he understood but  
275 stated that it would be a club based on the current definition.

276  
277 Alexander Gregory remarked that he thought there to enough logic there in the case-by- case basis.

278

279 Michael Harvey commented that Randy had a valid point but stated there would be larger issues involved if everything  
280 remained in one central category. He explained it would be difficult to handle and try to make exclusions instead of just  
281 splitting it out.

282  
283 Craig Benedict commented that he felt as though there was something missing in regard to someone wanting to put an  
284 assembly facility for retreat uses in a commercial area. He stated that this type of situation would have previously been  
285 captured by the general category.

286  
287 Michael Harvey remarked that if the board wanted to add retreat center as a permitted use in any commercial district,  
288 they could do so and then staff could incorporate. Mr. Harvey recommended that since the board was already going to  
289 ask the County Attorney for direction prior to voting, that they might want to add for the staff to consider allowing retreat  
290 centers in commercial zoning districts as well. Mr. Benedict mentioned that they sort of had that and stated he couldn't  
291 think of anything else to call it in the table.

292  
293 Michael Harvey spoke on special events and mentioned that it was split out. He explained there was now a distinction  
294 between rural special events and special events and stated that rural special events by definition have to happen on a  
295 farm. He continued to page 69 (A) through 73 and stated there were only formatting changes. He then reminded  
296 everyone of the provision he spoke of earlier regarding the burden of persuasion in section 5.3.2. He then moved to  
297 page 74 which eliminates all the regulatory standards for governing how we approve dorms, fraternity, and sororities.  
298 He stated 74 (A) had changes in formatting. He briefly spoke of the change performed on page 79 dealing with Class  
299 2 kennels and explained any changes that occurred.

300  
301 Michael Harvey then guided the board to pages 79 through 83 regarding short term rentals. He said they had lumped  
302 everything into term short-term rentals and explained that they had eliminated all the discretionary standards of  
303 evaluation per the attorney's requirements. Additionally, Mr. Harvey mentioned they had eliminated some of the  
304 language listed for short term rental large referencing that it had to demonstrate a compliance with parking which was  
305 already mandated by the ordinance.

306  
307 Lydia Wegman, asked Mr. Harvey if he meant for rentals. Mr. Harvey replied, yes and explained that a site plan would  
308 have to be submitted and it would have to demonstrate compliance with the code.

309  
310 Michael Harvey stated there has been questions raised about how this impacts Airbnb. Mr. Harvey stated that the  
311 current ordinance does not allow for nonhost occupied structures in the residential zoning districts. He stated, if you  
312 want to go through a Special Use Permit, you can technically have a non-host occupied structure, but you can't have  
313 an Airbnb. Furthermore, if you don't have a host then it's not a short-term rental and therefore is not permitted. In  
314 fact, Mr. Harvey stated, it would be a nonhost occupied short-term rental which is not permitted in residential districts  
315 and that is consistent with the current code. This does not impact the rental of a house for use as a single-family  
316 residence.

317  
318 Randy Marshall, does this knock down the arboretums desire to use that house as an Airbnb

319  
320 Michael Harvey conveyed that there would still be existing impacts on the Keith Arboretum from the current code. Mr.  
321 Harvey said that it didn't add any heightened level of complexity to their ability to do that and questioned whether or not  
322 the lease allows it to happen in the first place.

323  
324 Randy Marshall sought clarification on whether they were proposing that would be an Airbnb without a host.

325  
326 Michael Harvey confirmed and stated that this knocks that down but commented that he would argue it already  
327 knocked down under the current code.

328  
329 Patricia Roberts questioned the time difference between renting a single-family home versus being an Airbnb. Mr.  
330 Harvey responded that both short term rental small and large talk about rental by the week. He stated they were not  
331 likely to get into the policing business to find out how long occupants have rented if onsite and further stated the  
332 problem usually arises when the occupant is not home.

333  
334 Paul Guthrie asked about faculty renting out when they go on a sabbatical somewhere.

335  
336 Michael Harvey responded this would be the rental of a house as a single-family residence. He then mentioned the  
337 facts table provided in the packet. He commented that the goal was not to prevent the rental of housing for use as  
338 housing. The goal would be to prevent the conversion of a residence into a mini hotel in an established neighborhood.  
339

340 Michael Harvey continued on the amendments and guided the board to pages 83, 84, 99 and explained those to be  
341 just formatting updates. He stated page 100 to be the move of retreat center standards to eliminating retreat as a  
342 camp and explained that page 104 deals with theater as it gets moved to assembly. Mr. Harvey stated that page 145  
343 describes the assembly uses; the general use standard, setback standards, the size limitations. Then, he moved to  
344 page 153 to touch on the retreat center standards in terms of submittal and SUP requirements and explained that the  
345 new section 5.18.4. concerning rural special events was not changed. The term theater had now been added, since it  
346 was moved from recreation.  
347

348 Lydia Wegman asked Mr. Harvey if retreat center remained the same. Mr. Harvey replied, yes, but stated with one  
349 notable exception; the deletion of camp sites. In the standards of evaluation for both, he stated there was a standard  
350 of evaluation involving a site plan requirement which is why it was moved to submittal requirements for both camp and  
351 retreat. Mr. Harvey also conveyed that the subdivision provisions for special use permits and telecommunications  
352 regulations would probably be gutted as they are redundant.  
353

354 Lydia Wegman sought clarification on why Mr. Harvey thought they were superfluous and asked if they were covered  
355 elsewhere. Mr. Harvey confirmed they were in three different sections.  
356

357 Michael Harvey guided the board to page 174 and informed them that he definition of assembly use had been altered.  
358 He explained that since assembly has been split out and retreat center has been moved to assembly land uses, it  
359 would no longer be needed.  
360

361 Craig Benedict questioned where wedding fits into assembly uses. Mr. Harvey replied, retreat center.  
362

363 Craig Benedict commented that if weddings are retreat centers, then they needed to be in more commercial area  
364 locations so people can have a wedding in some sort of hall. Michael Harvey remarked that the board could make  
365 that recommendation. He responded to Mr. Benedict and stated he had never heard this comment from him before.  
366 Craig replied that it had been covered by the whole assembly uses except as listed below and stated it was permitted  
367 in multiple areas.  
368

369 Lydia Wegman questioned whether there was anything specific about wedding venues anymore. Michael Harvey,  
370 replied, no, and said it was all covered under the retreat center concept.  
371

372 Michael Harvey said that club or lodge, was amended as relayed earlier, as was community center. He moved to page  
373 182 involving family care facilities and read the recommended definition. He stated that upon further consideration, the  
374 County Attorney decided the language should say as defined as under state statute.  
375

376 Lydia Wegman questioned if that was the definition. Mr. Harvey replied, yes, and informed them that the new  
377 definition would now read as a facility which meets the definition of a family care home and North Carolina General  
378 Statute 168. Ms. Wegman inquired if state law already says this, whereas Mr. Harvey agreed.  
379

380 Michael Harvey informed the board that they had already seen the definitions for group care and group facility/group  
381 home. He continued on to page 197 and 198 which he pointed out was the area where the place of worship definition  
382 that had been added. On page 199, Mr. Harvey explained a typo in the term recreation vehicle. He then spoke on the  
383 modifications listed on page 202 involving retreat centers and then moved to the rooming house definition previously  
384 discussed. On page 204, Mr. Harvey mentioned the modifications to the reference of the North Carolina Department of  
385 Public Instruction formerly the North Carolina Department of Education. He then proceeded to the short term rental  
386 and explained his reasoning for deleting the umbrella definition he had previous created. Mr. Harvey then guided the  
387 board to the topic of vet clinic on page 210.  
388

389 Patricia Roberts asked why it would matter if the dog or cat stayed overnight. Michael Harvey answered that it would  
390 depend on where it is permitted in terms of what could be the ancillary impacts to adjacent property owners.

391  
392 Patricia Roberts commented that she couldn't imagine having a veterinary clinic that didn't have overnight  
393 accommodations in situations where surgery didn't go well.  
394  
395 Lydia Wegman read the definition of a retreat center and asked Mr. Harvey to clarify that was the entire definition. Mr.  
396 Harvey remarked, yes.  
397  
398 Lydia Wegman asked for where information on assembly land use was located. Mr. Harvey explained that assembly  
399 land use would be defined in the code and proceeded to read the definition. He stated the definition was modified to  
400 eliminate references to wedding venues and referenced the packet.  
401  
402 Randy Marshall asked if wedding venues would actually appear in the ordinance. Mr. Harvey replied, no, and specified  
403 that the reason was because it was not just wedding venues. While some in the community want wedding venues  
404 specifically listed so we can regulate them, the impact of a wedding verses a graduation party verses a bat mitzvah is  
405 the same. They are all described as a gathering of people for "X" purpose. He explained that instead of regulating  
406 wedding facilities, they would regulate the totality of the activity which is the reason for the change in the retreat center  
407 definition.  
408  
409 Laura Nicholson asked Mr. Harvey if it would be possible to separate all the other changes. Mr. Harvey replied that he  
410 would not be comfortable advising the board to recommend moving this forward with the items eliminated as the  
411 County Attorney specifically asked for them to be included. Mr. Harvey furthermore reiterated that based on the  
412 boards' comments, he understood that the board would not be interested in approving it without further explanation.  
413 He then asked the board if they were in agreement whereby there was an agreed consensus by several board  
414 members.  
415  
416 Lydia Wegman questioned whether the board should postpone voting until next month or if it was something that could  
417 be addressed with the County Attorney and then to the board through mail. Mr. Harvey conveyed an urgency in  
418 completing the project, but stated he was sensing the board to be unhappy and unlikely to act without further  
419 explanation.  
420  
421 Lydia Wegman replied that that is certainly how she felt about the burden of persuasion language.  
422  
423 Carrie Fletcher I would have an issue finalizing this unless I'm clear on that particular item. I think that's a strong  
424 enough decision maker that I would like clarification on that.  
425  
426 Michael Harvey remarked the litany of concerns would be recorded in the minutes.  
427  
428 Carrie Fletcher asked if conversations and approval could be done by email so there was no time lost. Mr. Harvey  
429 stated he didn't see a way to get an approval via email. Mr. Harvey voiced a concern that everyone might not come to  
430 a consensus causing there to be a holdup.  
431  
432 Carrie Fletcher asked the members of the board if everyone would be okay with it if the sentence was struck. Ms.  
433 Wegman replied that she would want to know why the attorney was comfortable striking it having felt strongly about  
434 putting it in.  
435  
436 Michael Harvey reminded the board that they could recommend approval as amended and then further amend that the  
437 term burden of persuasion get removed. He mentioned to them that he thinks the County Attorney may show up that  
438 public hearing and say the language has to be added back in.  
439  
440 Carrie Fletcher questioned whether the burden of persuasion language could be made clearer. She even suggested  
441 possibly listing it out.  
442  
443 Michael Harvey replied that he didn't disagree but pointed out that it could possibly be referred right back to them to  
444 modify language. Mr. Harvey addressed their unease and reiterated no one was happy with the burden of persuasion  
445 based on it's not understood, they don't like it, they don't feel it's been adequately explained, and they want the  
446 attorney to give more understanding as to why it's needed.



447  
448 Alexander Gregory commented that he likes the point that it makes.  
449  
450 Randy Marshall asked whether there was pressure to complete this. Mr. Harvey stated, yes.  
451  
452 Alexander Gregory stated his faith in the attorney's judgement but questioned if they attorney would make the final call  
453 or if it would make a full circle.  
454  
455 Michael Harvey provided the option that they could technically adjourn the meeting to a day time certain reconvene in  
456 two weeks in order to get the attorney's comments.  
457  
458 Adam Beeman asked whether they would have a chance to discuss their concerns with the attorney or just receive  
459 comments. Mr. Beeman voiced his desire to have a discussion with the County Attorney. Michael Harvey replied that  
460 they could request the attorney be present and reiterated the option of reconvening to March 20<sup>th</sup>.  
461  
462 Paul Guthrie spoke on burden and stated it could only be valued by the vote of the commissioners. Mr. Harvey replied  
463 that Mr. Guthrie was correct. Mr. Guthrie described it as a self-serving definition. Mr. Harvey stated it certainly would  
464 be up to the Board of Adjustment members and Board of County Commissioners to determine if that burden had been  
465 met.  
466  
467 Paul Guthrie question why it was not said that way instead of the other way around. Mr. Harvey, acknowledged that it  
468 was a good question but stated he did not have an answer.  
469  
470 Michael Harvey asked if everyone would be available in two weeks and asked for confirmation that he was hearing that  
471 it was the board's interest to adjourn the meeting to March 20<sup>th</sup> at 7:00 p.m. in order to ask the attorney to be present  
472 to answer questions or if absent, to provide sufficient documentation articulating why burden of persuasion is  
473 necessary.  
474  
475 Lydia Wegman clarified that they not only wanted a statement, but an addition to the ordinance clarifying the meaning  
476 and why he felt compelled to add it.  
477  
478 Michael Harvey asked whether he was also hearing that the board is interested in modifying the UDO to expand retreat  
479 center activities in commercial districts.  
480  
481 Adam Beeman remarked he would motion that.  
482  
483 Lydia Wegman stated she would agree to that.  
484  
485 Carrie Fletcher stated she felt more strongly about the first than the second.  
486  
487 Michael Harvey questioned whether that was the interest of the board members.  
488  
489 Lydia Wegman stated she would support that.  
490  
491 Alexander Gregory stated he agreed.  
492  
493 Michael Harvey asked if there was a motion.  
494  
495 Adam Beeman stated that he motioned that they be allowed in the commercial districts.  
496  
497 Michael Harvey gathered clarification on the motion from the group and noted that the board's desire to:  
498  
499 1) Adjourn till March 20<sup>th</sup> at 7:00 p.m. meeting in the Planning Conference Room room 204 to have the County  
500 Attorney present and discuss why and potential changes to address the concern of what the term burden of  
501 persuasion means.  
502

503 2) To have staff include additional opportunities for retreat centers in commercial districts.

504  
505 Lydia Wegman stated she would second.

506  
507 Carrie Fletcher asked if that would finalize everything Mr. Harvey needed. Mr. Harvey agreed, but then responded that  
508 it would depend on the board's comfort with the attorney's response.

509  
510 Lydia Wegman commented that they trusted Mr. Harvey would express to the attorney their discomfort with the  
511 language as it is.

512  
513 Michael Harvey said he understood both the attorney's rationale and the boards' concerns. He stated he felt he had  
514 provided the best explanation he could offer but understands that they would like to have a discussion with the person  
515 recommending the language.

516  
517 Lydia Wegman expressed that if the attorney feels persuaded that the language is necessary that he gives some  
518 further thought to expressing it more clearly so that the standard is clearer to applicants, the BOCC, and Board of  
519 Adjustment

520  
521 Carrie Fletcher commented that that is the reason we have a citizen board, so citizens are represented, not just  
522 attorneys.

523  
524 Alexander Gregory asked if either Mr. Harvey or Mr. Benedict foresaw any issues that could arise with the burden of  
525 proof or if they had heard of any issues arising from the other jurisdictions currently using the language. Mr. Harvey  
526 replied, no, and reassured them that if he couldn't dissuade their concerns he would provide them with an opportunity  
527 to have their concerns addressed.

528  
529 Craig Benedict provided an example for the use of burden of persuasion to the board.

530  
531 Adam Beeman expressed his disapproval with the language and found it to be unfair. He expressed that the situation  
532 should be binary and not at the whim of person listening to the story, nor should a person have to pay more money to  
533 fight their cause when they may not be financially able to do so.

534  
535 Lydia Wegman asked Mr. Harvey if there needed to be a motion and a vote.

536  
537 **MOTION** by Adam Beeman to adjourn this meeting until the attorney can come back and talk to us on March 20<sup>th</sup> at  
538 7:00 p.m. in this room on the 2<sup>nd</sup> floor of the Planning Department and to add the wedding retreat status to the  
539 commercial districts.

540  
541 Lydia Wegman requested to add that the board would like an explanation from the attorney related to the burden of  
542 persuasion language and we would prefer to see additional language explaining what is meant if he is persuaded that  
543 that language is necessary. Seconded by Randy Marshall.

544 **VOTE: UNANIMOUS**

545  
546 Tina Love asked Mr. Beeman if he accepted the addition, whereas Mr. Beeman accepted.

547  
548 **AGENDA ITEM 8: ADJOURNMENT**

549 The meeting was adjourned by consensus.

550  
551  
552  
553

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Lydia N. Wegman, Chair