

**Agenda**  
**Town of Southern Pines Planning Board**  
**Regular Meeting, Thursday, October 20, 2011– 7:00 PM**  
**Douglass Community Center, 1185 West Pennsylvania Avenue,**  
**Southern Pines, NC**

- I. Call to Order**
- II. Approval of Minutes – September 22, 2011 Meeting**

**III. Public Hearings:**

**OA-06-11 – Amend Sections 15, 146 and 164 to include Food Trucks in General Business (GB) Districts, David Talbert, Petitioner**

The request is to amend the Unified Development Ordinance, **Article II: Basic Definitions & Interpretations, Section 15 Definitions of Basic Terms** to include retail sales – food truck; **Article X: Permissible Uses, Section 146 Table of Permissible Uses** to include food trucks as a permissible use in the GB districts; and **Article XI: Supplementary Use Regulations, Section 164 Temporary Uses** to include additional requirements for food trucks.

- IV. New Business**
- V. Other Business**
- VI. Adjournment**

Minutes  
Town of Southern Pines  
Meeting –September 22, 2011, 7:00 PM – Douglass Community Center,  
Southern Pines, NC 28387

The Town of Southern Pines Planning Board met in regular session, Thursday, August 18, 2011, 7:00 PM, at the Douglass Community Center, 1185 West Pennsylvania Avenue, Southern Pines, NC.

The members of the Planning Board in attendance were Chairman John McInerney, Mike Martin, Archie Morrison, Jim Simeon and Joan Strawson. Vice-Chair Sean Butler and Beth Lyerly were absent.

Staff members attending the meeting were Bart Nuckols, Planning Director, Kathy Blake, AICP, Planner and Neva Sherry, Secretary to the Planning Board.

Chairman McInerney called the meeting to order at 7:05 PM.

Jim Simeon, seconded by Archie Morrison, made a **motion** to approve the minutes from the August 18, 2011 meeting. The **motion carried unanimously**.

**PUBLIC HEARINGS:**

**OA-05-11 – Amend Section 326 Protests to Zoning District Changes, Town of Southern Pines, Petitioner**

The request is to amend the Unified Development Ordinance, **Article XX: Amendments, Section 326 Protests to Zoning District Changes** to update based on the *North Carolina General Statutes 160A-385 Changes* that concerns “qualified protests”.

**Bart Nuckols**, Planning Director, stated that this amendment was to bring the Unified Development Ordinance in line with the North Carolina General Statutes. He noted that previously a protest petition required 20% of the surrounding property owners within 100 feet to sign the petition to generate a “qualified protest” petition. The new General Statutes requires only 5% of property owners within 100 feet of the property requested for rezoning. This makes it easier for citizens to meet the requirements for requiring a ¾ vote of the Town Council.

Joan Strawson, seconded by Archie Morrison, made a **motion** to close the public hearing on OA-05-11. The **motion carried unanimously**.

Joan Strawson, seconded by Mike Martin, made a **motion** to approve the requested text amendment and to make a finding and determination that the approval of the text amendment request is consistent with the adopted Land Use Plan and that the approval of the text amendment request is reasonable and in the public interest due to the approval being consistent with the comprehensive plan and as a result, the approval furthers the goals and objectives of the comprehensive plan.

The **motion carried unanimously**.

Joan Strawson, seconded by Mike Martin, moved to recommend approval of OA-05-11. The motion carried unanimously.

**PUBLIC HEARINGS CONTINUED:**

**Z-03-11 to FRR, Martin Park at 350 Commerce Ave., Town of Southern Pines - Petitioner**

This is a request to rezone Martin Park at 350 Commerce Ave. to FRR (Facilities, Resources, Recreation). The property is identified as PIN 857113232733 (LRK# 53340). Per the Moore County Tax records, the property owner as the Town of Southern Pines. The property is 48.63 acres and is located on the west end of Commerce Avenue cul-de-sac. The parcel also has approximately 554 feet of road frontage along Murray Hill Rd.

**Bart Nuckols**, Planning Director, commented on the request stating that this proposal was to apply zoning to Martin Park, currently an off-leash dog park. Zoning which had not been applied to this property when it was given to the Town of Southern Pines by Dr. Martin years ago. The application of zoning will bring it in line with all of the other parks for the Town, which are all are zoned FRR. The Town of Southern Pines *Comprehensive Land Use Plan* identifies this parcel as Urban Reserve.

**John McInerney** commented for clarity, that this request is to apply zoning that was overlooked when the town received the property. FRR is the zoning applied to parks for the Town of Southern Pines and since Martin Park – currently an off-leash dog park, is Town property; FRR is the zoning that is appropriate. **Bart Nuckols** replied that this is correct.

**Carrie Nassa**, 2215 South Grape Street, has been in the area a year. Once this property is zoned, what are the possibilities that this could be zoned commercial, agricultural, or residential? Chairman John **McInerney** commented that if she were concerned due to the comment in the staff report regarding the Urban Reserve designation within the Comprehensive Land Use Plan stating "...Urban Reserve defers development intensity decisions until a later date". He felt that since the property was given to the town as a park, he would assume that the Town would not have any intension to change the use of a park. Planning Director **Bart Nuckols** stated that it was more likely of something happening with the property as it exists currently unzoned then it would zoned.

**Jim Simeon** asked what were the particulars of the gift as it was given to the Town by Dr. Martin.

**Robert Reeve**, Director Parks and Recreation, said that at the time Dr. Martin gave the property to the Town of Southern Pines, it was Aberdeen's jurisdiction property. The Town entered a land swap with the Town of Aberdeen to bring this property into Southern Pines. It was the intent of Southern Pines to keep it for development, as is other park property. When this was done, originally there was some early planning in 1996 that this was going to be the site for the soccer complex. An environmental study was done in 1996 that indentified this land as an active site for the Red Cockaded Woodpecker. This halted the location of the soccer complex on the property.

A couple of years later it was decided to use the property as an off-leach dog park. It is properly the largest temporary off-leach dog park. There has not been any other plan to this day to develop this park any other way. Hopefully one day it may be developed into a regional park such as Reservoir Park or Memorial Park with all types of amenities. At this time, nothing has been done planning wise.

**Robert Reeve** pointed out that years ago designation applied to five (5) acres of land close to the Armory was transferred to Martin Park. Therefore, five (5) areas of Martin Park are even more restrictive as they fall under the *Land & Water Conservation Funds*. This means that maybe 5, 10, 15, 30 years down the road, the Town may place amenities on the property just as they did at Sandhurst Park. There has been no money allocated or specific plan for Martin Park other than what citizens are enjoying it now, as an off-leash dog park.

A discussion ensued as follows:

- Jim Simeon asked if all or a portion of Martin Park were to be developed to a different type of park than it is currently, what would be the procedure? Bart Nuckols said that he did not know of anything under the current UDO that would bring this before the Planning Board. It would most probably require the Town Council to become involved budgetary as well as being involved with the Parks and Recreation Department on any planning of use for the site.
- Mr. Simeon also asked if the Town would be under any restrictions on the property deed as it was given to the Town of Southern Pines. Staff did not know the answer to this question.

**James Koch**, 117 Lazar Lane, asked if the park could be developed without a public hearing. **John McInerney** replied yes, but maybe this would be unlikely base on past actions of the Southern Pines Town Council. **Robert Reeve** said the usually there are neighborhood meetings to discuss a proposed plan for a park in order to receive input from citizens.

**Tracy Koch**, 117 Lazar Lane, stated is it correct that the zoning of the property to FRR would limit development in close proximity of the park. **Kathy Blake**, Planner, responded that there are some uses listed in the UDO that have restrictions placed in regards to use and zoning designation. For instance, some entertainment uses are not allowed in close proximity to parks and churches. This is one of the reasons that staff thinks it is important to apply FRR zoning to this site. Ms. Koch responded that she was happy that this would protect this land for family use. She asked if Red Cockaded Woodpeckers were, were still on the endangered species list. She noted that there were signs on trees noting the woodpeckers. **Bart Nuckols** replied to his knowledge, yes they were and this is handled under the US Fish and Wildlife Department.

Ms. Koch asked if Dr. Martin originally stated that he intended for the site to be a dog park. Chairman McInerney responded that he could not tell her what Dr. Martin said. Robert Reeve said that he did not believe that Dr. Martin ever said he intended for this property to be a dog park. It is his understanding that it was given to the Town for future park development. The fact is at the time it was looked at for the soccer complex and the Red-Cockaded Woodpecker stopped this, it was the idea of Town Staff and the Town Council to give the citizens an

opportunity to have an area to allow them to take their dogs off of a leach. This was temporary at the time. However, it has now been 15 years and there currently is no plan to develop Martin Park.

Mike Martin, seconded by Jim Simeon, made a **motion** to close the public hearing. The **motion carried unanimously**.

A brief discussion ensued regarding the request.

Jim Simeon, seconded by Joan Strawson, **moved that the Planning Board advise** the Town Council that the proposed amendment is consistent with those documents that constitute the officially adopted land development plan and other applicable plans zoning this area FRR per the recommendation noted per the *Comprehensive Long Range Plan, 2010*.

The **motion carried unanimously**.

Jim Simeon seconded by Mike Martin, **recommended approval of Z-03-11 with the condition that it be maintained as a dog park**.

A discussion ensued with **Mike Martin** comment that the purpose of the motion was that Martin Park remain a dog park in perpetuity. **Jim Simeon** commented that this would mean years down the road, if the Town decided to use the property in a different way, they could not do this without the public being made aware. At least the record would show that at least this point in time the dog park was something that was understood. Archie Morrison said that he understood from Staff that this property was not donated as a dog park. Jim Simeon said that he tried to contact the family about attending the meeting and was unsuccessful. Jim Simeon stated that he spoke with Dr. Martin at one time about the property being used for an off-leach dog park and Dr. Martin seemed pleased with this use. He also stated that he did not feel that this statement means that Dr. Martin's intent was for the property to be a dog park.

**Bart Nuckols**, Planning Director, reminded the Planning Board that this was not a conditional district rezoning. Standard zoning per his knowledge of NC law and case law, you cannot place conditions on standard zoning. He presented several options for the Planning Board to consider in the discussion of the proposed rezoning:

- Proceed with the motion as recommended. Staff would explain to the Town Council that this was not a Conditional District rezoning and the Planning Board could not condition the zoning, unless otherwise stated by the Town Attorney; or
- Amend the request to an approval or denial of the zoning to FRR district; or
- A straight approval or denial of the zoning to FRR district and note under agenda item "New Business" a separate motion requesting any future use of the site is designated as a dog park or some other activity if the Planning Board feels strongly about this issue.

A discussion ensued regarding the options suggested by staff. Joan Strawson commented that there was merit in placing into the record the Planning Board's opinion this should remain an off-leach dog park. Jim Simeon commented that he felt it was important that it be noted in the record; the current use is important to the public and that the Planning Board felt any change or

alteration to the current use as a dog park, be announced to the public as well as allow the public to comment on any proposed future changes.

Jim Simeon **withdrew the motion** and Mike Martin **withdrew his second to the motion** to recommend approval of FRR zoning with conditions.

Jim Simeon, seconded by Joan Strawson, **recommended approval of Z-03-11** to the Town Council to apply FRR zoning to Martin Park. The **motion carried unanimously**.

### **NEW BUSINESS**

Jim Simeon made a motion Martin Park remain as much as possible as an off leach dog park. The motion was seconded by Mike Martin. The **motion carried unanimously**.

The meeting adjourned at 7:43 PM.

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Neva Sherry

**MEMORANDUM**

To: Planning Board

Via: Bart Nuckols, Planning Director

From: Kathy Blake, Planner

Subject: OA-06-11 Include Food Trucks In General Business (GB) Districts, David Talbert, Petitioner

Date: October 20, 2011

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**OA-06-11 Include Food Trucks In General Business (GB) Districts, David Talbert, Petitioner**

Petitioner David Talbert submitted a Petition for An Amendment to the Zoning Ordinance to include food trucks in the Town’s General Business districts. The petition proposes to amend the Unified Development Ordinance in **Article II Basic Definitions and Interpretations, Section 15 Definitions of Basic term** to include a new term and definition for Retail Sales – food truck and **Article XI. Supplementary Uses** to include a new section for Retail Sales – food truck. Please find attached the petitioner’s text amendment.

The petitioner defines a Retail Sales – food truck as a licensed, motorized or non-motorized vehicle or mobile food unit which is temporarily stored on a premise where food items are sold to the general public.

As submitted, the petitioner has requested that food trucks be allowed in both the General and Central Business Districts but has since verbally expressed to staff his willingness to amend his request to food trucks in the General Business districts only.

Excerpt from Section 136 Commercial Districts Established:

(b) The **CB** (Central Business) district is designed to accommodate a wide variety of commercial activities (particularly those that are pedestrian-oriented) in an intensive development pattern in the town's central business district. The regulations of this district are intended to (1) preserve the general character and integrity of the current development in the central business district; (2) encourage land uses which provide for a multi-purpose central business district including retail, offices, services, entertainment and living space; (3) encourage land uses which do not require large amounts of outdoor use areas; an (4) encourage common or shared off-street parking.

(c) The **GB** (General Business) district is designed to accommodate highway-oriented retail, commercial service businesses and in some limited cases light

manufacturing, which generally have as their market area the entire town and surrounding area. The major objectives of this district are to (1) encourage planned commercial, light manufacturing and office parks; (2) discourage small lot development on major highways; (3) encourage vehicular access from service drives and other local commercial streets rather than directly from arterial streets; and (4) provide a location for major shopping facilities and land uses requiring large outdoor spaces.

**Staff Comments:**

- There appears to be no general policy guidance for food trucks in the 2010 Comprehensive Long Range Plan (CLRP).
  - A consideration for this proposal might be that food trucks potentially promote multiple uses on a single lot and reduce the need to drive. The Transportation section of the CLRP speaks on walk-ability and less reliance on automobiles.
- A broader policy issue might be the potential to impact restaurants that operate at fixed locations and the potential “fairness” issue of allowing food trucks which do not pay property taxes, water bills, etc.

**Attachments:**

Petition with its attachments  
RLUAC response

**Planning Board Actions:**

The Planning Board shall vote on whether the proposed amendment is consistent with the Land Use Plan that has been adopted and any other officially adopted plan that is applicable. The Town Council could make one of the following findings for their recommendation:

1 Motion to **approve** the requested text amendment and to make a finding and determination that the approval of the text amendment request is consistent with the adopted Land Use Plan and that the approval of the text amendment request is reasonable and in the public interest due to the approval being consistent with the comprehensive plan and, as a result, the approval furthers the goals and objectives of the comprehensive plan; OR

2 Motion to **deny** the requested text amendment and to make a finding and determination that the denial of the text amendment request is consistent with the adopted Land Use Plan and that the denial of the text amendment request is reasonable and in the public interest due to the denial being consistent with the comprehensive plan and, as a result, the denial furthers the goals and objectives of the comprehensive plan.

**Then:**

1. I move to **recommend approval** of OA-06-11; OR
2. I move to **recommend denial** of OA-06-11; OR
3. I move to **recommend approval** of OA-06-11 **with the following conditions...**

**Petition  
For An Amendment  
To The Zoning Ordinance of  
The Town of Southern Pines**

Date: 9/26/11

Case: OA- 06 - 11

**TO THE PLANNING BOARD AND TOWN COUNCIL OF THE TOWN OF SOUTHERN PINES,  
NORTH CAROLINA:**

**I, the undersigned, do hereby make a petition to amend the Zoning Ordinance of the Town of  
southern Pines as herein requested.**

1. **It is desired and requested that Section \_\_\_\_\_,**  
**\_\_\_\_\_ to be amended by \_\_\_\_\_**  
see attached definition  
and description  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**I certify that all information furnished in this petition is accurate to the best of my  
knowledge.**

Name of Petitioner: David Talbert  
Please Print

Petitioner's Signature: David Talbert

Mailing Address: 275. N. Virginia Ave.  
Southern Pines, NC 28387

Phone: 910.692.5214

*fee  
\$480*

**Note: If the petition is made by a corporation, the names and addresses of all officers in the  
corporation MUST BE provided.**

**The petitioner or his/her representative is expected to attend all meetings to answer  
questions concerning the request. The absence of the petitioner/representative is sufficient  
grounds to warrant a deferral of action by the Planning Board and/or Town Council.**

**RECEIVED**  
SEP 26 2011  
By \_\_\_\_\_

AN ORDINANCE TO AMEND THE ZONING CODE OF THE TOWN OF SOUTHERN PINES, NORTH CAROLINA TO PERMIT FOOD TRUCKS TO BE LOCATED ON DEVELOPED LOTS IN CERTAIN COMMERCIALY ZONED DISTRICTS, SUBJECT TO CONDITIONS.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF SOUTHERN PINES, NORTH CAROLINA THAT THE FOLLOWING AMENDMENTS TO THE ZONING CODE OF SAID TOWN ARE HEREBY ADOPTED:

ARTICLE II. DEFINITIONS. ( 34.1 )“Retail sales - food truck.” A licensed, motorized or non-motorized vehicle or mobile food unit which is temporarily stored on a premise where food items are sold to the general public.”

ARTICLE XI. SUPPLEMENTARY USES.

Section 164.2 Retail Sales – food truck. A retail sales – food truck in the General Business or Central Business zoning districts shall meet all of the following requirements:

(1) Retail sales - food trucks shall only be located on a lot containing a principal building(s) or use and the maximum number of retail sales - food trucks per lot shall be limited as follows:

- a. maximum of one (1) retail sales - food trucks on lots of one-half (½) acre or less.
- b. maximum of two (2) retail sales - food trucks on lots between one-half (½) acre and one (1) acre;
- c. maximum of three (3) retail sales - food trucks on lots greater than one acre, but less than two (2) acres.
- d. no maximum on lots two (2) acres or greater.

(2) Retail sales - food trucks shall be located a minimum of one hundred (100) feet from the main entrance to any eating establishment or similar food service business, one hundred (100) feet from any outdoor dining area and fifty (50) feet from any permitted food vending cart location, as measured from the designated location on the lot accommodating the retail sales - food truck.

(3) Retail sales - food trucks shall be located a minimum distance of five (5) feet from the edge of any driveway or public sidewalk, utility boxes and vaults, handicapped ramp, building entrances, exits or emergency access/exit ways, or emergency call box and shall not locate within any area of the lot that impedes, endangers, or interferes with pedestrian or vehicular traffic. Retail sales - food trucks shall be located a minimum distance of fifteen (15) feet in all directions of a fire hydrant.

(4) Retail sales - food trucks and its associated seating, if any, shall not occupy parking spaces required to fulfill the minimum requirements of the principal use, unless the principal uses hours of operation do not coincide with those of the food truck business. Nor shall any retail sales - food truck and its associated seating, if any, occupy parking spaces which may be leased to other businesses and uses to fulfill its minimum parking requirements. Retail sales - food trucks shall not occupy any handicap accessible parking space as specified in N.C.G.S. § 20-37.6.

(5) No free-standing signage or audio amplification shall be permitted as part of the retail sales - food trucks vending operation. Outdoor seating areas associated with a retail sales - food trucks vending operating shall only be permitted on lots two (2) acres or greater in size.

(6) Hours of operation of retail sales - food trucks shall be limited to the hours between 6:00 am and 8:00 pm unless the designated location on the lot accommodating the retail sales - food truck is located within one hundred (100) feet of the property line of a single family or duplex dwelling in which case the hours of operation shall be limited to the hours between 7:00 am and 8:00 pm..

(7) When open for business, the retail sales - food trucks operator or his/her designee must be present at all times, except in cases of an emergency.

(8) The retail sales - food trucks vendor is responsible for the proper disposal of waste and trash associated with the operation. City trash receptacles are not to be used for this purpose. Vendors shall remove all waste and trash from their approved location at the end of each day or as needed to maintain the health and safety of the public. The vendor shall keep all areas within five (5) feet of the truck and any associated seating area clean of grease, trash, paper, cups or cans associated with the vending operation. No liquid waste or grease is to be disposed in tree pits, storm drains or onto the sidewalks, streets, or other public space. Under no circumstances shall grease be released or disposed of in the City's sanitary sewer system.

(9) With the exception of allowable outdoor seating areas, all equipment required for the operation shall be contained within, attached to or within fifteen (15) feet of the retail sales - food truck and all food preparation, storage, and sales/distribution shall be in compliance with all applicable County, State and Federal Health Department sanitary regulations.

(10) A food truck permit shall be obtained annually for the retail sales - food truck business. A copy of the approved truck permit shall be kept in the food truck. The approved retail sales - food truck as shown on the food truck permit shall be clearly delineated on the improved surface. Prior to the issuance of the food truck permit, the vendor shall provide evidence of having obtained a Town of Southern Pines Business License, NC Sales and Use Certificate for collecting and paying the proper sales taxes and a means for the disposal of grease within an approved grease disposable facility. This food truck permit shall be required to be renewed annually. If at any time evidence of the improper disposal of liquid waste or grease is discovered, the food truck permit for the retail sales - food truck business shall be rendered null and void and the retail sales - food truck business shall be required to cease operation immediately. The operator of the retail sales - food truck business shall be punished for the violation.

(11) If at any time, the Moore County Environmental Health revokes or suspends the issued food vending permit, the Town permit for the retail sales - food truck business is revoked or suspended simultaneously.

(12) All laws and clauses of laws of the Town of Southern Pines, North Carolina which are in conflict herewith are hereby repealed to the extent of said conflict.

(13) If this ordinance or the application thereof to any person or circumstance is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions or applications of the ordinance which can be given separate effect and to this end the provisions of this ordinance are declared to be severable.

(14) This ordinance shall be enforced by law as provided in N.C.G.S. 160A-175 or as provided in the Town of Southern Pines code. All criminal sanctions shall be up to the dollar limit provided in N.C.G.S. 14-4(a), as currently enacted or as hereafter amended, or any similar limitations.

(15) The civil penalty for violating this ordinance shall be as follows: For the first (1st) offense, the fine shall be fifty dollars (\$50.00). For the second (2nd) offense, the fine shall be one hundred dollars (\$100.00). For the third (3rd) offense, the fine shall be three hundred dollars (\$300.00). The permit shall be revoked after the fourth (4th) offense.

(16) This ordinance shall become effective on \_\_\_\_\_.



**TOWN OF SOUTHERN PINES**  
**Case OA-06-11 -- AMENDMENT TO SECTIONS 15, 146 AND 164**  
**OF THE UNIFIED DEVELOPMENT ORDINANCE**  
**October 6, 2011**

The Regional Land Use Advisory Commission (RLUAC) staff and Board of Directors have reviewed the proposed amendments to Sections 15, 146 and 164 of the Southern Pines Unified Development Ordinance (UDO) [*to include food trucks in the definition section, in the General Business District table of permissible uses, and as a temporary use in Section 164*] and find no conflicts with the recommendations contained in the 2003 and 2008 Joint Land Use Studies.

RLUAC therefore has no issue or concerns with these proposed amendments.

Thank you for allowing RLUAC the opportunity to review this case.

Jean Powell, Chairperson

James Dougherty, Executive Director