

ORANGE COUNTY PLANNING & INSPECTIONS DEPARTMENT
Craig N. Benedict, AICP, Director

Current Planning
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131 West Margaret Lane
P O Box 8181
Hillsborough,
North Carolina, 27278



November 16, 2010

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Campus Box 4000
Chapel Hill, NC 27599

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425 Macnider Hall
Campus Box 7000
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Anna Wu
Facilities Planning Department
103 Airport Drive
Campus Box 1090
Chapel Hill, NC 27599-1090

RE: CONTINUED review of development activities at 1907 Orange Chapel Clover Garden Road (TMBL 6.33..12 / PIN 9728-93-1820)

- I. Special Use Permit Issues
- II. Site Plan Modification

To Whom It May Concern:

Thank you for your recent submittal of a formal response to our April 9, 2010 letter concerning permitting requirements associated with the continued operation of a University research facility located at 1907 Orange Chapel Clover Garden Road (hereafter 'the property').

The property is approximately fifty-six (56) acres in area and is currently zoned Agricultural Residential (AR). The property is also located within the Agricultural Residential Land Use Category as defined within the 2030 Orange County Comprehensive Plan. The property is wooded in areas with some open fields including a few streams.

I. SPECIAL USE PERMIT ISSUES:

Your letter addresses staff's determination, as referenced within our aforementioned letter, that the existing facility would require a Class A Special Use Permit (hereafter 'SUP') to allow for the approval and installation of a proposed septic system for the facility. We understand that the presently installed system, now taken out of service from a ground absorption standpoint, is over 3,000 gallons per day. As you may recall the County has a provision within the Orange County Zoning Ordinance (hereafter 'the Ordinance') mandating that development projects requiring a septic system with a design/processing capacity of over 3,000 gallons a day of ground absorption are required to obtain a SUP.

Staff had determined that the existing and proposed septic system exceeded the established 'threshold' requirements and, as a result, a SUP was required to allow for the facility to operate with the revised system. In rendering our decision, based on the information we had on hand at the time, staff further determined that the property should have gone through the SUP review and approval process back in early 2000 with the review and approval of the last site plan modification request.

However in reviewing your response, dated October 28, 2010, planning staff, the Planning Director, and the County Attorney's office has determined the following with respect to your contention that a SUP is not required to allow for the continued operations of the existing facility:

1. NCGS 153A-347 limits the applicability of the imposition of zoning regulation(s) by counties to the: 'erection, construction, and use of buildings' owned by the State.
2. The proposed wastewater project does not involve the 'erection, construction, and use of buildings' on the property. It involves the installation, and upgrading, of a septic system in accordance with the requirements associated with the North Carolina Department of Environment and Natural Resources.

For our records, please accept this letter as a formal request for a copy and all relevant information associated with this State permit.

3. Existing case law does not support the conclusion that a wastewater treatment facility is a 'building' and as such is not regulated by the County's zoning ordinances.

While staff continues to maintain that we are not seeking to regulate the proposed septic system through a zoning approval process, and we reserve the right to continue monitoring the use of the existing facility in order to evaluate its compliance with existing development regulations, through this letter we hereby modify our original determination and find that a SUP **is not** required to allow for the installation/modification of the septic system on the property as currently proposed by the University.

Please note that all required State and local permits and inspections will be required to allow for the septic system to be modified. We encourage you to remain in contact and coordinate efforts with the Orange County Health Department and Building Inspections

Department to ensure that applicable permitting and inspection requirements are adhered to. For more information, please contact the Health Department at (919) 245-2360 and the Building Inspections Department at (919) 245-2600.

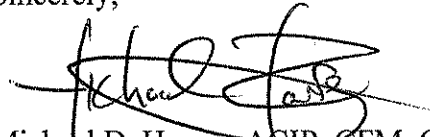
II. SITE PLAN MODIFICATION:

Further, through this letter staff is informing you that the University will be required to submit a revised site plan proposing a site plan modification in accordance with the provisions of Article Fourteen (14). The submittal of this site plan is considered to be an administrative review and will be handled by members of the Department.

This site plan modification will need to show the location of all existing, and proposed, structures for the property as well as the location of the aforementioned septic system. The University will also be required to pay the required site plan review fee of \$1,000.00 as denoted on our current adopted fee schedule for the review and approval of the site plan modification request. Please find attached to this document a copy of the site plan application that will need to be completed as part of this submittal.

Staff looks forward to working with you on this matter and will assist with the processing of the site plan modification application package. You may reach staff at (919) 245-2575 for additional assistance.

Sincerely,



Michael D. Harvey ACIP, CFM, CZO
Current Planning Supervisor
Planner III
Orange County

ATTACHMENTS: 1. UNC Response to County April 9, 2010 letter
2. Site Plan Application

CC: Orange County Commissioners
Frank Clifton, County Manager
Craig Benedict, Planning Director
John Roberts, County Attorney
Sahana Ayer, Staff Attorney
Susan Mellott, Building Inspections
Tom Konsler, Environmental Health
File



THE UNIVERSITY
of NORTH CAROLINA
at CHAPEL HILL

UNIVERSITY ARCHITECT AND DIRECTOR
FACILITIES PLANNING DEPARTMENT

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October 28, 2010

Mr. Craig Benedict, AICP, Director
Orange County Planning and Inspections Department
131 West Margaret Lane
P.O. Box 8181
Hillsborough, NC 28278

Dear Mr. Benedict:

I am writing to follow-up on our meeting of October 8, 2010 concerning future plans for the Bingham Facility. As you know, the University has declined the NIH award that would have provided funds for expansion of the facility. Our current plan, as we discussed with you, is to repair and renovate the older buildings and some of the infrastructure, but we will not be constructing any new facilities or expanding any of the existing ones. As we noted in our meeting, the wastewater system will not support any expansion of the existing facilities. As soon as it is available, we will provide to the Orange County Planning Department an updated and corrected site plan for administrative review and approval.

A letter dated April 9, 2010 suggested that the University should seek to obtain a Class A Special Use Permit (SUP) for the wastewater system serving the Bingham Facility. We believe the University is exempt from that requirement for the following reasons:

- a. The Bingham Facility has been in continuous existence since 1971, before the effective date of the County's Zoning Ordinance and before the requirement to obtain an SUP for a wastewater system treating more than 3000 gallons per day. Therefore by default, this use is already permitted.
- b. The North Carolina Department of Environment and Natural Resources (DENR) has statutory authority to regulate this type of wastewater treatment system and is requiring the University to upgrade the system to meet DENR regulations found in Title 15A, subchapter 2T of the North Carolina Administrative Code. The statutory authority and the accompanying state regulations pre-empt the County's ability to regulate this use.
- c. North Carolina General Statute section 153-347 subjects state buildings to regulation by a county's zoning ordinance. A wastewater system consisting of underground piping is not a building and thus cannot be regulated by the County.

For these reasons the University does not believe it must seek an SUP for the wastewater system. We will of course provide you with copies of our plans for the system as well as our application to DENR.

We appreciate the courtesy you have extended to us and your willingness to work with us. Please contact me if you have any questions.

Sincerely,

Anna A. Wu, FAIA

c: Robert P. Lowman
Masaya Konishi
Bruce Runberg

APPLICATION FOR SITE PLAN APPROVAL

PROJECT NAME:

DATE:

LOCATION:

OWNER/DEVELOPER:

ADDRESS:

PHONE:

AGENT/CONTACT:

PHONE:

A. SUMMARY INFORMATION

Orange County Tax Map _____ Block _____ Lot(s) _____ Twp. _____

Zoning District(s): On site _____ and Adjacent _____

Total Acreage: _____ Phases _____

Number/Type of Structures: (existing) _____

(proposed) _____

Water Supply: _____ Public _____ Community _____ Individual

Fire District _____

Adjacent Land Uses _____

Critical Areas: _____ Streams/drainageways:

_____ flood prone areas: _____ slopes:

_____ watershed, _____ historic sites,

_____ natural areas, other _____

- B.** All site plans must be prepared by a registered engineer, landscape architect, or land surveyor (see "Approval Procedures" for exception). Drawings shall be at a scale adequate to show required detail (generally not more than 1"=50') and shall contain the following information:

Check completed items. Shaded areas are for office use only.

		a. The boundary of the lot(s) to be developed with bearings, and distances;
		b. The name, address, and phone number of the applicant and the property owner;
		c. Name of project, vicinity map, north arrow, scale, tax map reference number, date of plan preparation, and subsequent revision dates;
		d. Zoning of the property to be developed and all adjacent zoning and existing adjacent land uses;

		e. Adjacent right-of-way widths with road names and numbers;
		f. Total gross land area of the parcel, maximum and proposed floor area, minimum and proposed open space, and minimum and proposed pedestrian/landscape area (Refer to Article 5.1.2 of the Zoning Ordinance);
		g. Maximum and proposed impervious surface and required stream buffers in PW II and WQCA (Article 6.23 and 6.24);
		h. Estimated traffic generated by the proposed development in trips per day (if it exceeds 800 trips per day, submit a traffic impact study in accordance with Article 13).
		i. Front, side and rear building setbacks as required by Article 5 and 6 of the Zoning Ordinance;
		j. Overhead and underground utilities with accompanying easements and storm drainage facilities/easements; (including septic tanks and wastewater disposal fields, wells, fire hydrants, irrigation, and security lights.)
		k. Vehicular use areas including existing and proposed streets and access drives, off street parking and loading to comply with Article 10 of the Zoning Ordinance, and entry/exit points of adjacent parcels;
		l. Overhead and underground utilities with accompanying easements and storm drainage facilities/easements; (including septic tanks and wastewater disposal fields, wells, fire hydrants, irrigation, and security lights.)
		m. Solid waste disposal facilities;
		n. All free-standing and wall-mounted signs in accordance with Article 9 of the Zoning Ordinance;
		o. A landscape plan demonstrating compliance with Article 12.3 of the Zoning Ordinance;
		p. Existing contour lines (dashed) and proposed contours (solid) at 5-foot intervals with 10-foot contours bold. Where site conditions warrant, 2-foot contours may be required.
		q. Retaining walls, tree wells, or rip rap as part of the grading plan;
		r. Streams, ponds, drainage ditches, swamps, floodway and floodplain boundaries; and
		s. Phase lines and numbers if the development is to be phased.

Additional information may be required based on site location and type of development proposed.

C. ADDITIONAL SUBMITTAL REQUIREMENTS:

- _____ 1. A minimum of three (3) copies of the site plan. Additional copies may be required based on the nature and location of development.
- _____ 2. One full size copy of an Orange County tax map with subject parcel(s) identified.
- _____ 3. Auxiliary documents, in draft form, which assure completion and/or maintenance of improvements required by Orange County. Such documents may include, but not be limited to, a private road maintenance agreement, association documents, articles of incorporated, and restrictive covenants. If necessary, these documents may be required as evidence that ordinance requirements are being met.

I, the applicant, hereby certify that the foregoing application is complete and accurate.

Applicant's Signature

Owner's Signature

(Date)

(Date)

*Amended
11/21/89

ARTICLE XIV. SITE PLAN APPROVAL

14.1

INTENT

To establish a set of standards for site plan applications.

APPLICABILITY

As required by Article 21.4 of this Ordinance, a zoning compliance permit must be issued before any new site development, building, structure, or vehicular use area may be erected, constructed or used. Site plan approval is required for a zoning compliance permit with the following exceptions:

*Amended 4-2-
90

- (a) Single-family detached dwellings and duplexes, and accessory structures to those residential uses; provided, however, when such uses are located in the University Lake Watershed (ULW) District, site plan approval shall be required.
- (b) Temporary uses which do not exceed thirty (30) days in duration; and
- (c) Interior renovation or repair of an existing structure, provided the use of the lot and/or structure has not changed.

14.2

APPLICATION REQUIREMENTS

*14.2.1

PROFESSIONAL DESIGN AND CERTIFICATION

*Amended
8-5-91

Each site plan shall be prepared by a registered engineer, landscape architect, architect, or land surveyor; however, in some cases, professional design and certification of the plan may not be required. These exceptions include, but are not limited to the following:

- a. Proposed additions to existing permitted non- residential structures where the use of the structure and lot has not changed and the floor area is not increased more than twenty-five percent (25%); and
- b. Accessory structures to existing permitted non- residential structures where vehicular use area is not extended and changes to existing grade are not more than one (1.0) foot in elevation.
- c. Single-family detached dwellings and duplexes, and accessory structures to such uses when located in the University Lake Watershed (ULW) District.
- d. Large day care homes, as defined in Article 22, Definitions.
- e. Rural Guest Establishments with three (3) guestrooms or less - Bed & Breakfasts.

*Amended
4-2-90

*Amended
8-5-91

*Amended
11/19/01

Any and all projects proposing the development of property located within the Special Flood Hazard Area Overlay District shall be required, regardless of the proposed land use, to submit a site plan prepared by a registered engineer, landscape architect, or land surveyor in accordance with the provisions herein.

*14.2.2

SUBMITTAL REQUIREMENTS

*Amended
9-4-90

The applicant shall submit to the Planning and Inspections Department:

- (a) Three (3) copies of the site plan prepared according to Article 14.2.1 and 14.2.3 (additional copies may be required depending on the nature and location of the proposed development);
- (b) The site plan application form;
- (c) A copy of the Orange County tax map with the subject property identified; and
- (d) Legal documentation establishing entities responsible for control over common areas and facilities to be approved by the County Attorney.
- (e) Three (3) copies of the Environmental Assessment and/or Environmental Impact Statement, if required by the Orange County Environmental Impact Ordinance.
- (f) Method of disposal of trees, limbs, stumps and construction debris associated with the permitted activity, which shall be by some method other than open burning.

*Amended
9-16-03

Other items which should be submitted simultaneously, but are not required as part of the site plan application are:

- (a) Erosion control and grading plans as necessary to be approved by the Erosion Control Supervisor for a grading permit, and
- (b) Building construction plans to be approved by the Code Enforcement Supervisor prior to issuance of a building permit.

14.2.3

SPECIFICATIONS FOR PLAN PREPARATION

Amended
4/2/90
12/10/02
9/16/03

Each site plan shall be drawn at a scale adequate to show required detail and shall contain the following information. The Planning Staff will determine which items are applicable for sufficiency.

- a. The boundary of the lot(s) to be developed labeled with bearings and distances;
- b. The name, address, and phone number of the applicant and the property owner;
- c. Name of project, vicinity map, north arrow, scale, tax map reference number, date of plan preparation, and subsequent revision dates;
- d. Zoning of the property to be developed and all adjacent zoning and existing adjacent land uses;
- e. Adjacent right-of-way widths with road names and numbers;
- f. Total gross land area of the parcel, maximum and proposed floor area, minimum and proposed open space, and minimum and proposed pedestrian/ landscape area (Refer to Article 5.1.2 of the Zoning Ordinance);
- g. Maximum and proposed impervious surface and required stream buffers in PW-II, WQCA, and ULW districts (see Articles 6.23, 6.24, and 6.25, respectively).
- h. Estimated traffic generated by the proposed development in trips per day (if it exceeds 800 trips per day, submit a traffic impact study in accordance with Article 13).
- i. Front, side, and rear building setbacks as required by Articles 5 and 6 of the Zoning Ordinance;
- j. Location of all proposed buildings and structures labeled according to floor area, building height and function, and proposed finished floor elevation;

- k. Vehicular use areas including existing and proposed streets and access drives, off street parking and loading to comply with Article 10 of the Zoning Ordinance, and entry/exit points of adjacent parcels;
- l. Overhead and underground utilities with accompanying easements and storm drainage facilities/easements; (including septic tanks and wastewater disposal fields, wells, fire hydrants, irrigation, and security lights.)
- m. Solid waste disposal facilities;
- n. All free-standing and wall-mounted signs in accordance with Article 9 of the Zoning Ordinance.
- o. A landscape plan demonstrating compliance with Article 12.3 of the Zoning Ordinance.
- p. Existing contour lines (dashed) and proposed contours (solid) at 5-foot intervals with 10-foot contours bold. Where site conditions warrant, 2-foot contours may be required;
- q. Retaining walls, tree wells, or rip rap as part of the grading plan;
- r. Streams, ponds, drainage ditches, swamps, floodway and floodplain boundaries; and
- s. Phase lines and numbers if the development is to be phased.
- t. The names of all property owners adjacent to, and across the street from, the proposed project shall be shown on the site plan.
- u. Methods of disposal of trees, limbs, stumps and construction debris associated with the permitted activity, which shall be by some method other than open burning.

Additional information may be required based on the site location and the type of development proposed.

***14.3**

SITE PLAN REVIEW

*Amended
9/4/90

14.3.1

Upon submission, the Planning and Inspection Department will review the site plan application for completeness in form and content according to Article 14.2. If an application is incomplete, it will be returned to the applicant within five (5) working days. When a complete application has been accepted, the plan, or set of plans, will be distributed to applicable agencies or other departments for review and comment. At the same time, the Planning Staff will review the plan(s) based on, but not limited to, the following general criteria:

- (a) Compliance with all applicable County ordinances;
- (b) Extent and intensity of impacts to the surrounding area;
- (c) Respect for existing site conditions, including slope, vegetation, drainage patterns, etc.;
- (d) Efficient use of the land to minimize disturbance and grading and to conserve energy;
- (e) Safe and efficient vehicular and pedestrian circulation; and
- (f) Logical placement of structures and other site functions.

Amended
9/16/03

- (g) No open burning of trees limbs, stumps and construction debris associated with the permitted activity.

14.3.2

Where an application is found to be inconsistent with the above criteria, Staff may recommend changes to the site plan.

Amended
10/7/91
8/4/93

Following review of the site plan, except as provided by Article 14.3.3 of this Ordinance, the Planning and Inspections Department will take final action on the application within 21 days of acceptance. Such action will be one of the following:

- a. Approval,
- b. Approval subject to conditions, or
- c. Denial.

Failure to meet the criteria for site plan approval listed in Article 14.3, and/or to address agency comments solicited during plan review, will result in denial of the application.

If a plan is approved subject to conditions, no zoning permit or subsequent building permit shall be issued until all conditions of approval have been met to the satisfaction of Orange County.

Site plan approval and the issuance of a zoning compliance permit does not establish a vested right to develop the property should zoning regulations change subsequent to plan approval.

At the option of the Applicant, a Site Plan may be vested for a period of not less than two (2) nor more than five (5) years. To become vested, a Site Plan must be approved by the Board of County Commissioners as a Special Use Permit, pursuant to Article 8 of this Ordinance. An approved Site Specific Development Plan shall contain the following statement: "Approval of this plan establishes a zoning vested right under G.S. 153A-344.1. Unless terminated at an earlier date, the zoning right shall be valid until _____."

14.3.3

The Site Plan for a project which requires the preparation of an Environmental Impact Statement (EIS) pursuant to the Orange County Environmental Impact Ordinance may not be approved by the Planning Department until the EIS has been made available for public review, and has been presented to the Orange County Board of Commissioners in accordance with Section 3.2 of the Environmental Impact Ordinance.

14.4

APPEAL PROCEDURES

Any decision of the Planning and Inspections Department regarding a site plan application may be appealed to the Board of Adjustment according to the provisions set forth in Article 2.3.7 of this Ordinance.

14.5

IMPROVEMENTS

As a guarantee of improvements required as a condition of site plan approval, the developer shall provide Orange County with a security bond, escrow agreement, or irrevocable letter of credit by an approved institution. The guarantee shall be effective for twelve (12) months and shall include the cost of the improvements plus ten percent (10%). It shall also be approved by the County Attorney. If a guarantee is not submitted, the developer must install all required improvements to the satisfaction of the County prior to issuance of the zoning compliance and building permits.