STATE OF SOUTH CAROLINA (
(
COUNTY OF LANCASTER (

ORDINANCE NO. 2019-1623

AN ORDINANCE

TO AMEND ORDINANCE 2016-1442, THE UNIFIED DEVELOPMENT ORDINANCE ("UDO"), CHAPTER 4 AND CHAPTER 9 TO EXPAND THE AVAILABILITY OF DEVELOPMENT AGREEMENTS FOR LAND DEVELOPMENT PROJECTS

Be it ordained by the Council of Lancaster County, South Carolina:

Section 1. Findings and Determinations.

The Council finds and determines that:

(a) In the past Lancaster County has utilized Development Agreements to allow flexibility for land development projects and to provide certainty to developers that applicable ordinances for a particular development do not change during the course of the development project.
(b) Development Agreements allow Lancaster County make provisions that the impact of development projects on public health and safety be offset by fees paid by developers.
(c) Expanding the availability of Development Agreements for land development projects will be beneficial to Lancaster County for land use planning purposes and will bolster public health and safety by providing additional funding to offset the impacts of growth from land development projects.
(d) The Unified Development Ordinance ("UDO") Section 9.2.18 requires Development Agreements be submitted upon application of landowners for a rezoning to a mixed use zoning designation.
(e) Development Agreements shall be expanded as a permissible development method in residential zoning districts, shall become a requirement for land development projects utilizing the Cluster Subdivision Overlay District (Section 4.4.1), and shall remain a requirement for all properties rezoned to a mixed-use zoning district, Chapter 3.

Section 2. Amendment of Ordinance 2016-1442

Ordinance 2016-1442 (Unified Development Ordinance) Chapter 4, Overlay Districts, Section 4 Character Protection Overlays, Subsection 1, Cluster Subdivision Overlay District (CSO), is amended as set forth on Exhibit "A" attached hereto.

Ordinance 2016-1442 (Unified Development Ordinance) Chapter 9, Administration, Section 2, Review Procedures, Subsection 18, Development Agreements, is amended as set forth on Exhibit "B" attached hereto.

Section 3. Severability.

If any section, subsection or clause of this ordinance is held to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected.

Section 4. Conflicting Provisions.

To the extent this ordinance contains provisions that conflict with provisions contained elsewhere in the Lancaster County Code or other County ordinances, the provisions contained in this ordinance supersede all other provisions and this ordinance is controlling.

Section 5. Effective Date.

This ordinance is effective upon Third Reading.

AND IT IS SO ORDAINED

Dated this 9th day of December, 2019.

LANCASTER COUNTY, SOUTH CAROLINA

Steve Harper, Chair, County Council

Larry Honeycutt, Secretary, County Council

ATTEST:

Sherrie Simpson, Clerk to Council

First Reading: November 12, 2019
Second Reading: November 25, 2019
Public Hearing: November 25, 2019
Third Reading: December 9, 2019

Approved as to form:

John DuBose, County Attorney

EXHIBIT "A"

~~Indicates Matter Stricken~~
Indicates New Matter

***

4.4 CHARACTER PROTECTION OVERLAYS

4.4.1 CLUSTER SUBDIVISION OVERLAY DISTRICT (CSO)

The Cluster Subdivision Overlay District, is hereby established. Cluster subdivisions are residential developments which offer an alternative to traditional subdivision design, with the principle purpose being to encourage open space in medium density residential districts. Cluster subdivisions shall be designed using a site planning technique that concentrates buildings and structures to the most buildable areas of a site in order to preserve the remaining area as open space for recreation and preservation of significant site features. Reductions below the minimums otherwise required by the UDO for lot area, lot width, and setbacks are allowed within a CSO, and such reductions are only permissible within a CSO. By preserving open space, a cluster subdivision will provide another tool by which the County shall preserve its rural character. Cluster subdivisions are permitted in moderate density single family residential districts, specifically, Medium Residential District. Cluster subdivisions are not permitted in any other zoning districts. Development of a Cluster Subdivision requires submission of a Development Agreement (see UDO 9.2.18). The following general provisions apply to the Cluster Subdivision Overlay District:

A. MINIMUM ACREAGE

The minimum tract area for a cluster subdivision shall be 30 gross acres [unless a larger minimum acreage is required as part of the Development Agreement Process (i.e. 25-acres of highland)], shall consist of contiguous parcels, and must adjoin or have direct access to at least one collector street.

B. MINIMUM LOT AREA

The minimum lot area (in square feet) per dwelling unit within a cluster subdivision shall be 5,000 square feet. This shall be the minimum lot area allowed for any lot with the minimum lot width of 50 feet, as defined in Section C below. The minimum lot area per dwelling unit shall increase proportionately with an increase in lot width.

C. MINIMUM LOT WIDTH

In a cluster subdivision, where both central water and sewer services are available and adequate, the minimum lot width shall be 50 feet.

D. VARIETY OF LOT SIZES

Individual lots in a cluster subdivision shall vary in size and layout. No more than 34 percent of the lots in a cluster subdivision shall have a single designated lot width. The following shall also apply:

1. The minimum separation between any two designated lot widths shall be 10 feet. For example, if 34 percent of the total number of lots has a lot width of 50 feet, 34 percent could have a lot width of 60 feet, and the remaining could have a lot width of 70 feet or greater.
2. The Planning Commission may allow a developer to vary the width of individual lots to accommodate site restrictions (i.e., easements, corner lot widths, etc). However, such lots shall be counted with the nearest designated lot width.

E. SETBACKS

The following minimum setbacks are required for individual lots within a cluster subdivision:

1. Front Yard: The minimum front yard setback shall be 20 feet. The front yard setback for a corner lot shall be as set forth in Chapters 2 and 3 of the UDO;
2. Rear Yard: The minimum rear yard setback shall be 30 feet;
3. Side Yard: The minimum side yard setback shall be 7 ½ feet.

F. OPEN SPACE REQUIREMENT

For a cluster subdivision, no less than 25 percent of the site acreage, not including primary conservation areas as defined in Item 3 below, shall be set aside in perpetuity as open space. Open space shall be clearly labeled as such on any preliminary or final plat (including sketch plans) submitted for review. Open space in a cluster subdivision is also subject to the following:

1. ~~Open space shall be defined as set forth in Chapter 7 of the UDO.~~ Open space may include, but is not limited to, passive recreation, natural preservation of important scenic vistas, environmentally sensitive lands, habitat for wildlife, and historically or archaeologically significant areas. Structures, swimming pools, and athletic facilities shall not count as open space. However, structures are permitted in the open space when they serve an accessory function, such as a gazebo, fishing dock, playground equipment, or play structures;
2. The amount of open space required to be set aside shall be determined by the following formula:

Open Space Set Aside = Total Parcel minus Primary Conservation Areas multiplied by Open Space Percentage then added to Primary Conservation Areas

TO = ((TP - PC) OSP) + PC

TO	= Total Open Space Set Aside	(acres)
TP	= Total Parcel	(acres)
PC	= Primary Conservation Areas	(acres)
OSP	= Open Space Percentage	(% of Improvable Area)

3. Primary Conservation area includes those areas that cannot otherwise be built upon or improved and therefore would be preserved in a conventional development. Such areas specifically include wetlands, surface waters, and intermittent stream channels;
4. To fulfill the requirements of this item (f), the following shall be included in the required open space where practicable:
    a. Wooded areas;
    b. Scenic vistas;
    c. Streams, ponds, wetlands, and floodplains;
    d. Buffers, including landscaped, perimeter, river, and stream;
    e. Areas containing slopes in excess of 25 percent;
    f. Other areas containing unusual natural site features (such as major rock formations); and
    g. Other environmentally, historically, or archaeologically significant or unique areas;
5. Open space shall be contiguous to the extent practicable when not restricted by topography, existing water body, and other natural features;
6. Pedestrians shall have access to open space;
7. Open space shall be deed restricted and shall not be developed for use other than open space;
8. Open space shall remain under the ownership and control of the developer (or successors) or a homeowners association or similar organization. The person or entity identified as having the right of ownership and control over such open space shall be responsible for the continuing upkeep and proper maintenance of the open space. The County shall have no responsibility for the maintenance of open space areas. If open space location meets a need in the County comprehensive plan, the County and developer may consider conveyance of completed open space to the County, upon Planning Commission and Council approval.

    The person or entity having the right of ownership and control over such recreational facilities and open space shall be responsible for the continuing upkeep and proper maintenance of the same. It shall not be the responsibility of the County to maintain these areas.
9. A cluster subdivision shall include provisions for the protection of trees and other natural amenities within the area or areas designated for open space. The removal of trees and natural vegetation in designated open space is strongly discouraged, though it is permitted during the development phases for the purpose of trails and other such recreational improvements as approved by planning staff. All open space shall be clearly labeled as such on any preliminary or final plat (including sketch plans) submitted for review. Trees over 24 inches in diameter (DBH) shall be preserved and incorporated in designated open space where practicable, and upon the request of planning staff such trees existing within areas designated for trails and other such recreational improvements may also need to be shown and labeled. Upon completion of development phases, no person or entity shall remove or destroy any trees or natural vegetation from designated open space without approval from the Administrator. However, normal maintenance and removal of dead or fallen trees are permitted and recommended, and shall be the responsibility of the person or entity identified as having the right of ownership as outlined in Item 8 above.

G. MAXIMUM DENSITY

The maximum number of dwelling units allowed per acre for a cluster subdivision shall not exceed the maximum for the residential use district in which it is located, as set forth in Chapter 2 of the UDO, where the total number of dwelling units allowed shall be based on the gross acreage of the site. For example, when the CSO is located within the MDR, Medium Density Residential, where the maximum density is two dwelling units per acre, a 100-acre parcel of land shall be allowed to have no more than 200 dwelling units built on the site.

H. COMMERCIAL REQUIREMENT: There shall be no required commercial within a cluster subdivision.

I. SITE PLANNING REVIEW STANDARDS: A cluster subdivision shall follow the site plan review standards and procedures as set forth in Chapter 9 of the UDO, including but not limited to Section 9.2. Furthermore, planning staff shall also include the following in their review:

1. Overall site design shall be harmonious in terms of landscaping, enclosure of principal and accessory uses, sizes of structures, street patterns, and use relationships;
2. The site layout shall accommodate and preserve any features of historic, cultural, archaeological, or sensitive environmental value. Individual lots, buildings, structures, streets, parking areas, utilities, and infrastructure shall be designed and sited to minimize the alteration of natural features, vegetation, and topography;
3. Where practicable, individual lots, buildings, structures, streets, parking areas, utilities, and infrastructure should be designed and sited to be compatible with surrounding development patterns;
4. Where practicable, open space shall be located on a site in such a manner so that view sheds from existing public right-of-way are not obstructed, but are enhanced by the open space;
5. Private streets are permitted in a cluster subdivision, provided such streets meet the construction standards of Chapter 6 and Appendix C of the UDO. The following shall apply:
    a. As required in Chapter 6 of the Lancaster County Code, as amended, the minimum right-of-way and pavement width shall be as follows:

Road Type	Right-of-Way (feet)	Pavement (feet)
Local (closed drainage)	50	22
Local (open drainage)	66	22
Collector	66	24

    b. On-street parking is permitted in a cluster subdivision where adequate right-of-way and pavement width is provided in accordance with standards of the South Carolina Department of Transportation; and
    c. To ensure adequate clearance for emergency vehicles in a cluster subdivision, the Planning Commission may require signage and/or pavement markings to clearly indicate areas where on-street parking is prohibited;
6. Installing sidewalks on both sides of local streets in a cluster subdivision is encouraged. At a minimum, a sidewalk will be required on at least one side of every local street, with a

sidewalk required on both sides of arterial and collector streets. Local, arterial, and collector streets shall be clearly labeled as such on any preliminary or final plat submitted for review;

7. In general, landscaping requirements for a cluster subdivision shall comply with the requirements of Chapter 7 of the UDO. However, the Planning Commission may vary such requirements in response to applications demonstrating alternative landscaping based on creative site planning. Existing trees and natural vegetation shall be retained wherever possible and shall count towards meeting the landscaping requirements;

8. The following buffer requirements shall apply for a cluster subdivision:

   a. In general, buffer requirements for a cluster subdivision shall comply with the requirements of Chapter 7 of the UDO where a buffer yard may be required between adjacent zoning districts;

   b. Existing trees and natural vegetation shall be retained wherever possible and shall count towards meeting the buffer requirements;

   c. Ingress/egress to the property shall be allowed within a buffer, as well as utility easements and sidewalks;

   d. A 50 foot buffer shall be required on the frontage of all existing public streets. Where there is insufficient natural vegetation to provide a visual buffer for principal structures, plantings shall be installed by the developer. A minimum of 25 percent of the trees and 75 percent of the shrubs shall be evergreens;

   e. The Planning Commission may allow a developer to vary the buffer requirement to preserve view sheds from existing view sheds, as required in Item 4 above.

   f. Buffer requirements within a cluster subdivision shall count as open space where it is contiguous with other areas designated as open space.

9. Variety in architecture and building materials shall be encouraged within a cluster subdivision. It is encouraged that buildings are constructed using quality finish materials (i.e., brick, masonry, stone, concrete siding, or stucco). Vinyl siding is permissible if in combination with other building materials.

J. OTHER ZONING REQUIREMENTS

The Cluster Subdivision Overlay District, may contain zoning and development standards and requirements that are inconsistent with or conflict with zoning and development standards and requirements contained elsewhere in the UDO. The standards and requirements contained in the Cluster Subdivision Overlay District supersede all other zoning and development standards and requirements. The Cluster Subdivision Overlay District is deemed controlling. If the Cluster Subdivision Overlay District is inconsistent with or conflicts with zoning and development standards and requirements contained elsewhere in Chapter 4, then the zoning and development standards and requirements contained in Chapter 4 supersede the standards and requirements contained in the Cluster Subdivision Overlay District and the provisions contained in Chapter 4 are deemed controlling.

K. EXAMPLES OF APPLYING FORMULAS

Below are examples of applying formulas to determine the total number of dwelling units allowed and the amount of the site acreage to be set aside as open space within a Cluster Subdivision Overlay District.

Example: Assume that a 50 acre parcel is being developed. The residential use district is MDR, Medium Density Residential District, where the maximum density is 2.5 dwelling units per acre. Assume that there are 5 acres of Primary Conservation area. The open space percentage is 25 percent (or as a decimal, .25).

EXHIBIT "B"

~~Indicates Matter Stricken~~

Indicates New Matter

***

9.2.18 DEVELOPMENT AGREEMENTS

A. APPLICABILITY

1. Development Agreements are permitted in all residential zoning districts and in association with all residential uses or developments regardless of zoning districts.

2. Development Agreements are required for all land development projects that wish to develop property utilizing the Cluster Subdivision Overlay District.

3. Development Agreements are required for all land development projects that seek rezoning to a mixed-use zoning district.

~~1.~~ 4. At the time a developer makes application for ~~mixed-use zoning district~~ a development agreement, the developer shall submit to the clerk:

a. A letter stating that the developer is seeking a development agreement ~~mixed-use zoning district~~;

b. A proposed agreement containing, at a minimum, the information required by Section 9.2.18.C; and

c. A check as required by Section 9.2.18.F.

~~2.~~ 5. Upon receipt by the clerk, the clerk shall provide copies of the developer's letter and proposed agreement to each member of the council.

~~3.~~ 6. Council may, in its discretion:

a. Provide for the appointment of an ad hoc committee of the council, to review and make recommendations to the council on the content and disposition of the proposed agreement;

b. Request the review by and comment of any county agency, department, board or commission and such agency, department, board or commission shall, upon request of the council, make appropriate resources and personnel available to the council to facilitate the council's review and consideration of the proposed agreement;

c. Make arrangements as may be necessary or proper to enter into agreements, including negotiating and drafting of agreements; and

d. Engage such consultants and professional service providers as may be needed including, but not limited to, engineering, financial, legal or other special services.

~~4.~~ 7. The clerk shall forward a copy of the proposed agreement to the planning commission. The planning commission shall review the proposed agreement and make recommendations to the council not later than the time the planning commission makes its recommendations to the council on any proposed rezoning sought by the developer, if any rezoning request is applicable. ~~the proposed mixed-use zoning district.~~

~~5.~~ 8. At least two public hearings on the proposed agreement shall be conducted. One of the two required public hearings shall be held by the planning commission and the other shall be held by council. Not less than 15 days' notice of the time and place of each hearing shall be published in at least one newspaper of general circulation in the county. The notices published for the public hearings must include the information required to be published by Code Section 6-31-50(B).

~~6.~~ 9. No agreement may be entered into by the county unless the agreement has been approved by council through the adoption of an ordinance. Any agreement approved by council must contain the information required by Section 9.2.18.C.

B. FILING PROCEDURES

1. Process Type: Legislative.

2. Public Notification: Level 1 and 2.

C. REQUIRED AGREEMENT INFORMATION

The proposed agreement filed by the developer, as provided in Section 9.2.18.A, must include:

1. A legal description of the property subject to the agreement and the names of the property's legal and equitable owners;

2. The duration of the agreement which must comply with Code Section 6-31-40;

3. A representation by the developer of the number of acres of highland contained in the property subject to the agreement (minimum 25-acres highland);

4. The then current zoning of the property and a statement, if applicable, of any proposed rezoning of the property;

5. The development uses that would be permitted on the property pursuant to the agreement, including population densities, building intensities and height;

6. A description of the public facilities that will service the development, including who provides the facilities, the date any new facilities, if needed, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of the development construction timeline for those facilities. If the agreement provides that the county shall provide certain public facilities, the agreement shall provide that the delivery date of the public facilities will be tied to defined completion percentages or other defined performance standards to be met by the developer;

7. A description, where appropriate, of any reservation or dedication of land for public purposes and any provisions to protect environmentally sensitive property as may be required or permitted pursuant to laws in effect at the time of entering into the agreement;

8. A description of all local development permits approved or needed to be approved for the development of the property together with a statement indicating that the failure of the agreement to address a particular permit, condition, term, or restriction does not relieve the developer of the necessity of complying with the law governing the permitting requirements, conditions, terms or restrictions;

9. A finding that the development permitted or proposed is consistent, or will be consistent by the time of execution of the agreement, with the county's comprehensive plan and land development regulations;

10. A description, where appropriate, of any provisions for the preservation and restoration of historic structures;

11. A development schedule including commencement dates and interim completion dates at no greater than five year intervals;

12. If more than one local government is made party to the agreement, a provision stating which local government is responsible for the overall administration of the agreement;

13. A listing of the laws and land development regulations that will apply to the development of the property subject to the agreement, including citation to specific ordinance numbers or portions of the County Code of Ordinances or both;

14. A provision, consistent with Code Section 6-31-80, addressing the circumstances under which laws and land development regulations adopted subsequent to the execution of the agreement apply to the property subject to the agreement;

15. A provision stating whether the agreement continues to apply to the property or portions of it that are annexed into a municipality or included in a newly-incorporated area and, if so, that the provisions of Code Section 6-31-110 apply;

16. A provision that:

> **a.** The agreement may be amended or cancelled by mutual consent of the parties to the agreement or their successors in interest;
>
> **b.** If the amendment constitutes a major modification of the agreement, the major modification may occur only after public notice and a public hearing by the council, provided, that, for purposes of this sub item, a "major modification" means: (i) significant changes to the development scheduled time-frames set forth in the agreement; (ii) density modifications; (iii) land use changes; (iv) any major miscalculations of infrastructure or facility needs which create demand deficiencies; or (v) any other significant deviation from the development as contained in the agreement;
>
> **c.** If the developer requests an amendment to the development schedule, including commencement dates and interim completion dates, then the dates must be modified

by the council if the developer is able to demonstrate and establish that there is good cause to modify those dates; and

d. The agreement must be modified or suspended as may be necessary to comply with any state or federal laws or regulations enacted after the agreement is entered into which prevents or precludes compliance with one or more of the provisions of the agreement;

17. A provision for periodic review, consistent with the provisions of Section 9.2.18.G;

18. A provision addressing the effects of a material breach of the agreement, consistent with the provisions of Section 9.2.18.E;

19. A provision that the developer, within 14 days after the county enters into the agreement, will record the agreement with the county clerk of court;

20. A provision that the burdens of the agreement are binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement; and

21. A provision addressing the conditions and procedures by which the agreement may be assigned; and

22. For properties proposed to be rezoned to one of the Mixed Use Districts in UDO Chapter 3, a complete Mixed-Use District Master Development Plan prepared in accordance with UDO Chapter 9.2.9(B); and

23. For properties proposed to be rezoned to a non-mixed use residential district, a conceptual master plan showing the overall design intent of the project including, but not limited to subject property boundary, proposed street and pedestrian network, proposed lots, proposed open space and amenity features, preliminary stormwater improvements, environmentally sensitive areas, and any offsite improvements; and

24. A traffic impact analysis prepared in accordance with UDO Chapter 6.8 and SCDOT standards.

D. OPTIONAL AGREEMENT INFORMATION

The agreement approved by the council must include the information listed in Section 9.2.18.C and, in addition, may include:

1. A description of any conditions, terms, restrictions, or other requirements determined to be necessary by the council for the public health, safety, or welfare of the county's citizens;

2. Requirements that the entire development or any phase of it be commenced or completed within a specified period of time;

3. Defined performance standards to be met by the developer;

4. Identification of any laws or land development regulations anticipated to be adopted by the council subsequent to the execution of the agreement and made applicable to the property subject to the agreement;

5. Any other matter not inconsistent with the Act not prohibited by law.

E. BREACH OF AGREEMENT

1. If, as a result of the periodic review provided for in Section 9.2.178.G, the zoning administrator finds and determines that the developer has committed a material breach of the terms or conditions of the agreement, the zoning administrator shall serve notice in writing, within 30 days after the periodic review, upon the developer setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and providing the developer 30 days to respond with a corrective action plan to cure the material breach. The zoning administrator may approve a corrective action plan which provides for a cure of the material breach in one year or less. Corrective action plans providing for a cure of the material breach in excess of one year must be reviewed and approved by the council. The zoning administrator and council may establish a time for the cure of the material breach different from that proposed by the developer.

2. If the developer fails to respond to the zoning administrator's notice within 30 days or cure the material breach within the time approved by the zoning administrator or council, the council unilaterally may terminate or modify the agreement, provided, that the council has first given the developer the opportunity:

a. To rebut the finding and determination; or

b. To consent to amend the agreement to meet the concerns of the council with respect to the findings and determinations.

3. The failure of a developer to meet a commencement or completion date shall not, in and of itself, constitute a material breach of the agreement, but must be judged based on the totality of the circumstances.

F. COST OF CONSIDERATION

The developer must pay a fee, to defray the cost of consideration of the proposed agreement by the council, and the amount of the fee shall be determined in the following manner: $25.00 per acre for each acre of highland proposed to be included in the agreement with the total fee not to exceed twenty thousand dollars. The developer shall pay the fee by check made payable to Lancaster County and the check shall be included with the material submitted to the clerk as provided in Section 9.2.178.A. The fee shall be deposited in a special account and used at the direction of the council only for the purpose of defraying expenses incurred by the county in the review and consideration of the proposed agreement. Any unused fee shall be returned to the developer within six months of the county's disposition of the proposed agreement.

G. REVIEW BY ADMINISTRATOR

At least every 12 months, the zoning administrator must review compliance with the agreement by the developer. At the time of review, the developer must demonstrate good faith compliance with the terms of the agreement.