

**TOWN OF WEDDINGTON  
REGULAR PLANNING BOARD MEETING  
MONDAY, SEPTEMBER 28, 2020 – 7:00 P.M.  
WEDDINGTON TOWN HALL\*  
1924 WEDDINGTON ROAD  
WEDDINGTON, NC 28104  
AGENDA**

*\*PLEASE NOTE: DUE TO THE CURRENT STATES OF EMERGENCY RELATED TO COVID-19, THE GOVERNOR'S EXECUTIVE ORDER NO. 121 PLACING LIMITS ON CERTAIN GATHERINGS AND REQUIRING CERTAIN SOCIAL DISTANCING METHODS, AND THE IMPORTANCE OF ENSURING THE SAFETY OF TOWN RESIDENTS, STAFF, AND THE PLANNING BOARD, THE MEETING WILL BE CONDUCTED VIRTUALLY AND HAVE LIMITED PHYSICAL ATTENDANCE. THE MEETING WILL BE LIVE STREAMED ON SOCIAL MEDIA.*

1. Open the Meeting
2. Determination of Quorum
3. Approval of Minutes – August 24, 2020 Regular Planning Board Meeting Minutes
4. Old Business
5. New Business
  - A. Review of Unified Development Ordinance Sections 1 through 6
  - B. Discussion and Recommendation of Text Amendment to 58-8 Screening and Landscaping; Tree Save and Tree Replenish Requirements
6. Update from Town Planner and Report from the August Town Council Meeting
7. Board member comments
8. Adjournment

**TOWN OF WEDDINGTON  
REGULAR PLANNING BOARD MEETING  
MONDAY, AUGUST 24, 2020 – 7:00 P.M.  
VIRTUAL/LIVE STREAM  
MINUTES**

*\*PLEASE NOTE: DUE TO THE CURRENT STATES OF EMERGENCY RELATED TO COVID-19, THE GOVERNOR'S EXECUTIVE ORDER NO. 121 PLACING LIMITS ON CERTAIN GATHERINGS AND REQUIRING CERTAIN SOCIAL DISTANCING METHODS, AND THE IMPORTANCE OF ENSURING THE SAFETY OF TOWN RESIDENTS, STAFF, AND THE PLANNING BOARD, THE MEETING WILL BE CONDUCTED VIRTUALLY AND HAVE LIMITED PHYSICAL ATTENDANCE. THE MEETING WILL BE LIVE STREAMED ON SOCIAL MEDIA.*

**1. Call Meeting to Order**

Chairman Brad Prillaman called the meeting to order at 7:00 p.m.

**2. Determination of Quorum**

Quorum was determined with all members present: Chairman Brad Prillaman, Vice Chairman Walt Hogan Board members Steve Godfrey, Tami Hechtel, Jen Conway, Jim Vivian, and Ed Goscicki

Staff: Town Administrator/ Planner Lisa Thompson, Town Clerk Karen Dewey, Town Attorney Kevin Bringewatt

Visitors: Matt Simpkins, Conor Horn, Weston Boles

**3. Approval of Minutes – July 27, 2020 Regular Planning Board Meeting Minutes**

**Motion:** Board member Goscicki made a motion to approve the July 27, 2020 Regular Planning Board Meeting Minutes.  
**Second:** Board member Hogan  
**Vote:** The motion passed with a unanimous roll call vote.

**4. Old Business**

**A. Discussion and Consideration of Subdivision Entry Monument/Gates for Weddington Acres**

Ms. Thompson presented the staff report: The Planning Board reviewed the entrance on July 27, 2020 and expressed safety concerns with the amount of traffic on both Weddington Matthews Rd. and Antioch Church Rd. and the need to stack 3 cars from the call box (not the gate) to the road and a wide enough lane to pass someone who may be stuck at the call box. The plans were amended to include 60' from the call box to the edge of pavement and 20' wide lane at the call box as requested. Staffer commends approval of the Weddington Acres entry monument/gates.

The Board agreed that the applicant responded to the concerns expressed and the plans for the entry gates look safer.

**Motion:** Board member Hogan made a motion to approve the Weddington Acres Entry Monument/Gates.  
**Second:** Board member Godfrey  
**Vote:** The motion passed with a unanimous roll call vote.

## **B. Discussion and Recommendation of Conditional Zoning Amendment for Christ South**

Ms. Thompson presented the staff report: The applicant is now seeking an amendment to build phase 1, which includes the little barn, hospitality barn (within the existing garage and decking), center lawn, an existing home (Ms. Matthews residence) and parking. Phase 2 will be required to come back through the conditional zoning amendment process.

The site plan shows two points of access off Reid Dairy Rd. The first access is existing and is utilized by Thrive Day Preschool and the second access will be expanded near the existing private drive. NCDOT will be required to approve the access. The parking has been separated into sections to avoid large expanses of asphalt and it is located outside of the rear and side yard setbacks required by code. One parking space is required per 4 seats in a sanctuary plus 1 space for each employee. There are approximately 242 seats. 60 parking spaces are required, and 66 spaces have been provided. The hospitality barn will utilize existing parking spaces until phase 2 is built.

The applicant is required to provide a 50-foot landscaped buffer around the property per Section 58-8 of the zoning ordinance and buffer the parking along Reid Dairy Rd. Existing wooded areas within the buffers shall be left undisturbed. The detailed landscaping plan will be required to go through the Design Review Board process during the construction plan phase of the project.

The conceptual elevations show a fiber cement lap siding, wooden barn doors, overhead doors and a metal roof. The new elevations meet the intent of the design and appearance standards with features that avoid monotony or massing. The final elevations will be required to go through the Design Review Board process prior to construction.

Any freestanding lighting fixtures on the site will be required to follow Chapter 14, Article IV of the town's ordinances.

The development standards remain the same as originally approved except for the following:

- 4.C The maximum height of any building was raised to 45 ft.
- 4.D The conceptual drawings were noted to be for the "phase one" building, to be built in phase one and not the "principal" building which will be the main worship building and be future. As is noted in the language, design of the principal building and all other buildings will be similar in character to the phase one building drawings provided.
- 8.A No signs were shown on the master plan. The development standard was modified to remove the reference to the location of signs. All signs are required to be reviewed by the Design Review Board.

Mr. Simpkins presented some history on the project. He explained that in the planning for this property, they used answers from the town survey as a guide for development. He stated that this will be a greenspace focused on being community driven. The goal is to provide as many possibilities for people to meet throughout the week and it can be something for the Weddington community to use.

Chairman Prillaman asked about the notes on the bottom of the plans that included a "farm to table and coffee shop". Mr. Simpkins explained that the hospitality barn will function as a gathering place, or an office of sorts where he can meet with people all week long. The Church is not planning to open a Starbucks type coffee house.

Board member Godfrey asked about the existing structures. Mr. Simpkins explained that the Little Barn is only structure on the plans that isn't currently standing.

Board member Hogan asked about the status of Mrs. Matthews' house. Mr. Simpkins explained that the church does have plans for it, but she will remain there for as long as she wants. When she leaves, they will then evaluate the best use for that part of the property. The other existing structure houses the Thrive Day School, which is a school for exceptional children.

Board member Vivian asked if the coffee house is only for church members or if it is a planned business for the church. Mr. Simpkins explained that the purpose is for hospitality and office hours. To create interaction with the community. Ms. Thompson added that she will work with the applicant on the language to clarify the uses of the buildings on these plans.

Board member Goscicki wanted clarification that this was not a retail coffee shop. Mr. Simpkins responded that this particular use is not allowed in their zoning regulations. The coffee shop is only to create space for interaction with the community. This is a different concept for a church with plans to be active throughout the week and not just Sundays. The farm to table listed in the notes refers to a type of food box program and not a retail operation.

Board member Hechtel asked about the impervious surfaces in the parking lots. Mr. Simpkins responded that they are looking at alternative drainage. The plan is to keep the area as green as possible. Ms. Thompson stated that she had the same concerns. There will be a flow study and fully designed erosion control plans. Board member Hechtel asked where in the process that takes place. Ms. Thompson stated during the construction plan phase the applicant will have to do a study and provide calculations on impervious surfaces including the parking areas.

Board member Goscicki stated his appreciation for the master plan and asked if parking was efficient for the ultimate build out of the property. Mr. Simpkins responded that the parking outlined in the plans is enough for the finished project.

Board member Conway asked what the estimated timeline for completion of phase 1 is. She stated concerns with the project stopping because of funding and an eyesore being left. Mr. Simpkins responded that they hope to have phase 1 completed by next summer, they must work on getting bids. Mr. Simpkins stated that the church is not interested in making Weddington less beautiful. They will have cash in hand for the phase before starting the project. Chairman Prillaman asked if there were enough funds in had to complete phase 1. Mr. Simpkins replied that they had some. The goal is to have all cash and then begin breaking ground.

Land Use Plan Consistency Statement:

*The subject parcel is designated for Traditional Residential on the Weddington Land Use Plan.*

*The conditional zoning meets the goals of the land use plan in that the use retains a mix of land uses that reinforce a unique small-town character; the design is consistent with the unique small-town character of Weddington. The existing trees and undisturbed area create a buffer between the existing residential homes. It is reasonable given the use and character of the area with the school and fire department nearby.*

**Motion:** Board member Hogan made a motion to adopt the Land Use Plan Consistency Statement  
**Second:** Board member Godfrey  
**Vote:** The motion passed with a unanimous roll call vote.

- Motion:** Board member Godfrey made a motion to forward the Conditional Zoning Amendment for Christ South for Phase 1 to the Town Council with a favorable recommendation with the understanding the Ms. Thompson will work with the applicant on the language to clarify the building uses.
- Second:** Board member Goscicki
- Vote:** The motion passed with a unanimous roll call vote.

## 5. New Business

### A. Discussion of Unified Development Ordinance and presentation from Town Attorney Kevin Bringewatt

Mr. Bringewatt discussed the scope of the UDO. The goal is to unify the existing development ordinance in the Town of Weddington Code of Ordinances. Combining zoning and subdivision ordinances in to one well-organized document. State Statutes changed, requiring all municipalities to comply with Chapter 160D and creating the UDO for the town will streamline existing provisions. Mr. Bringewatt discussed the timeline the Planning Board will follow in their review of the document. The schedule can be revisited and revised as needed.

- August 2020 First draft of articles 1-6
- September 2020 First draft of articles 7-9; Planning Board Review and work session re: articles 1-6
- October 2020 First draft of Articles 10-14; Planning Board Review and work session re: articles 7-9 (\*likely no need for review and work session for articles 10-14)
- November 2020 Initial Public Comment and review period (not required)
- December 2020 Council work session #3 and confirm next steps.
- Early 2021 proceed with formal text adoption process. Time built in for additional public sessions or council work as needed.

## 6. Update from Town Planner and Report from the August Town Council Meeting

Ms. Thompson presented the update: The Council voted to join the Western Union Municipal Alliance with Mineral Springs, Wesley Chapel, Marvin, and Stallings. This will help the municipalities advocate for mutual interests and goals and communicate to the county and state as a united voice. The group met on Thursday and will meet on the 4<sup>th</sup> Thursday of every month.

## 7. Board member comments

## 8. Adjournment

- Motion:** Board member Hogan made a motion to adjourn the August 24, 2020 Planning Board Regular Meeting at 8:16 p.m.
- Second:** Board member Godfrey
- Vote:** The motion passed with a unanimous roll call vote.

Approved: \_\_\_\_\_

\_\_\_\_\_  
Brad Prillaman, Chairman

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## Unified Development Ordinance

### Introduction and Overview

The Town of Weddington ("Town") finds that it is appropriate to update its land development ordinances to (a) comply with legislative requirements imposed by the state legislature as set forth in North Carolina General Statute 160D and (b) improve the organization of its existing ordinances to make the ordinances simpler to find and easier to follow. This unified development ordinance ("UDO") is adopted with the purpose of implementing these objectives.

#### **Introduction; Overview and Background Information.**

This initial Section of the UDO provides a general overview of the UDO requirements. Specific, more detailed requirements are set forth in the Articles. For ease of reference and use, the Articles are organized in a manner consistent with North Carolina General Statutes 160D.

- 1. Applicability and Jurisdiction.** These regulations shall govern the use of all land and the development thereof within all of the incorporated area of the Town [and any extraterritorial jurisdiction]
- 2. Boards, Professional Staff and Other Agencies and Committees.** The following entities and person have roles in administering the provisions of this UDO:
  - Town Council
  - Planning Board
  - Board of Adjustment
  - Town Staff
  - Other governmental entities such as Union County and the North Carolina Department of Transportation (NCDOT).
- 3. Planning.** State law requires that as a condition of adopting and applying zoning regulations a local government shall adopt and reasonably maintain a comprehensive plan that sets forth goals, policies, and programs intended to guide the present and future physical, social, and economic development of the jurisdiction. A comprehensive plan is intended to guide coordinated, efficient, and orderly development within the planning and development regulation jurisdiction based on an analysis of present and future needs.
- 4. Processes and Procedures.**
  - a. Types of Decisions.** There are three types of decisions that are made by the entities and persons listed in Section 2, above:
    - i. Legislative.** Legislative decisions set policy and provides the decision-making board with the maximum amount of discretion. The legislative process typically includes public engagement. In connection with any requested rezoning of

property or amendment to this UDO, there is a required public hearing with broad public notice and a mandatory planning board review.

- ii. Quasi-judicial. Quasi-judicial decisions require the board to apply standards that are already set in the ordinance using a legalistic process to gather quality evidence to resolve contested facts, and to apply those facts to standards that involve judgment (such as being “compatible “ or “harmonious” with the surrounding neighborhood). Public engagement is limited to those who have relevant evidence on whether the proposal meets the standards.
  - iii. Administrative. Administrative decisions require staff to apply objective standards set in the ordinance to facts that are supplied in applications. If the application meets the standards it is approved; if not, it is denied. The process is bureaucratic in nature, with minimal discretion or public engagement.
- b. **Available Approvals/Permits and Process.** As an overview, the following approvals and permits are contemplated by this UDO:
- i. Legislative Amendments to development ordinance or Zoning Map (legislative)
    - 1. Text Amendments
    - 2. Zoning Map Changes
    - 3. Conditional Rezoning
  - ii. Quasi-judicial
    - 1. Variances
    - 2. Appeals
  - iii. Administrative
    - 1. Subdivision Plats
    - 2. Land Development Permits, such as Zoning Permits, Grading Permits, and Building Permits
    - 3. Miscellaneous Permits, such as Temporary Use Permits (administrative).

## 5. Zoning districts; Zoning Map.

- a. **Zoning Districts.** The Town’s existing zoning districts are as follows::
- i. R-80
  - ii. R-60
  - iii. R-40 [including all areas formerly entitled “R-CD”]
  - iv. R-40(D)
  - v. RE
  - vi. B-1 (CZ)
  - vii. B-2 (CZ)
  - viii. MX
  - ix. ED (business)
- b. **Conditional Zoning.** Additionally, this UDO permits property owners to petition the Town Council to consider creating conditional zoning (CZ) districts. CZ districts are zoning districts in which the development and use of the property is subject to the rules, regulations, and conditions imposed as part of the legislative decision creating the



district and applying it to the particular property. All of the property specific standards and conditions (typically including a site plan) are incorporated into the zoning district regulations. The rezoning of any parcel of land to a CZ district shall be a voluntary process initiated by the property owner or his authorized agent.

- c. **Zoning Map.** The Town's Zoning Map is incorporated herein by reference. The Zoning Map may be changed by Town Council from time-to-time in accordance with the procedures set forth herein.

6. **Permitted Uses.** Certain primary uses of land are permitted "by right" (BR) in each zoning district provided all applicable provisions of this UDO (and any other applicable legal requirements) are satisfied. This UDO provides for additional supplemental requirements (SR) that are applicable to a certain "by-right" uses of land.

Others primary uses of land are permitted through the conditional zoning (CZ) process, again, in some cases, some with some supplemental requirements set forth herein.

The permitted uses (both by right and conditional) are set forth in the Permitted Use Table set forth in Section \_\_, of Article 9 of this UDO.

Additionally a property owner may petition the Town Council through the CZ zoning process to consider permitting primary uses that are not identified as permitted in this UDO (although the Town Council has no obligation to approve any such requests).

7. **Summary Table.** For ease of reference, the following Table 1 is a summary of the types of approvals typically requested:

**Table 1: Summary: Approvals; Responsible Party; Type of Decision**

Type of Decision	Approval	Responsible Party (final decision-maker)	Comments
Legislative	UDO Text Amendment	Council	
Legislative	Zoning Map Change	Council	
Legislative	Conditional Zoning	Council	
Quasi-judicial	Variance	Zoning Board of Adjustment	
Quasi-judicial	Appeal of Decision by Zoning administrator	Zoning Board of Adjustment	
Administrative	Final Subdivision Plat (for recording at Register of Deeds)	Administrator	Includes confirmation that proposed development is conformity applicable zoning requirements

			previously imposed by the Council
Administrative	Land Development Permits, such as Zoning Permits, Grading Permits, and Building Permits	Administrator (or Union County or third party service provider)	

## Article 1. General Provisions.

**D-101. Application.** N.C.G.S. Chapter 160D is applies to all development regulations and programs adopted pursuant to Chapter 160D or applicable or related local acts. In order to accomplish the purpose of these regulations this UDO regulates all development within the Town of Weddington's jurisdiction, including without limitation, the density of development, the location and use of buildings, structures and land for trade, industry, residence or other purposes, the height and number of stories of buildings and other structures, the size of yards, courts and other open spaces and other related matters as set forth herein

**D-102 Definitions.** The definitions set forth in N.C.G.S. 160D-102 are incorporated herein by reference. Additionally the definitions set forth in Appendix 1 are incorporated herein by reference. [KMB Note: add definitions from Zoning Ordinance 58.4 as needed as Appendix]

**D-103. Unified development ordinance.** This UDO is adopted pursuant to Chapter 160D and consolidates one or more previous stand-alone ordinances. Upon the effective date, this Ordinance shall supersede and replace the previous Zoning and Subdivision Ordinances for the Town of Weddington, as well [KMB NOTE: INSERT other existing ordinance references].

**D-104. Development approvals run with the land.** Unless provided otherwise by law, all rights, privileges, benefits, burdens, and obligations created by development approvals made pursuant to this UDO attach to and run with the land.

### **D-105. Maps.**

- (a) **Zoning Map.** Zoning district boundaries adopted pursuant to this UDO shall be drawn on a map that is adopted or incorporated within a duly adopted development regulation. Zoning district maps that are so adopted shall be maintained for public inspection in the office of the local government clerk or such other office as specified in the development regulation. The maps may be in paper or a digital format approved by the local government. The map entitled "Official Zoning Map of the Town of Weddington, North Carolina", as certified as such by the town clerk, is hereby ratified and adopted by reference and declared to be a part of this UDO. The zoning of the districts on said map is hereby declared to be in the proper zoning for said districts as of the effective date of this UDO. The maps shall be updated as revisions are approved in accordance with this UDO.

- (b) **Other Maps; Incorporation by Reference.** Development regulations adopted pursuant to this UDO may reference or incorporate by reference flood insurance rate maps, watershed boundary maps, or other maps officially adopted or promulgated by State and federal agencies. For these maps a regulation text or zoning map may reference a specific officially adopted map or may incorporate by reference the most recent officially adopted version of such maps. When zoning district boundaries are based on these maps, the regulation may provide that the zoning district boundaries are automatically amended to remain consistent with changes in the officially promulgated State or federal maps, provided a copy of the currently effective version of any incorporated map shall be maintained for public inspection as provided in subsection (a) of this section. [KMB NOTE: INSERT references to other maps as appropriate [floodplain?]]

**D-106. Refund of illegal fees.** See N.C.G.S. 160D-106.

**D-107. Moratoria.** A temporary moratorium may be adopted by the Town in accordance with the requirements of 160D-107.

**D-108. Permit choice and Vested Rights.**

- (a) **Permit Choice.** If a land development regulation is amended between the time a development permit application was submitted and a development permit decision is made or if a land development regulation is amended after a development permit decision has been challenged and found to be wrongfully denied or illegal, G.S. 143-755 applies.
- (b) **Vested Rights.** Types and duration of statutory vested rights shall be as set forth in N.C.G.S. 160D-108 and 160D-108.1. Amendments in land development regulations are not applicable or enforceable without the written consent of the owner with regard to any vested rights.

**D-109. Conflicts of interest.**

(a) **Governing Board.** A governing board member shall not vote on any legislative decision regarding a development regulation adopted pursuant to this UDO where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A governing board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

(b) **Appointed Boards.** Members of appointed boards shall not vote on any advisory or legislative decision regarding a development regulation adopted pursuant to this Chapter where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. An appointed board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the

applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

(c) **Administrative Staff.** No staff member shall make a final decision on an administrative decision required by this Chapter if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the development regulation or other ordinance.

No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under this Chapter unless the staff member is the owner of the land or building involved. No staff member or other individual or an employee of a company contracting with a local government to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the local government, as determined by the local government.

(d) **Quasi-Judicial Decisions.** A member of any board exercising quasi-judicial functions pursuant to this Chapter shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.

(e) **Resolution of Objection.** If an objection is raised to a board member's participation at or prior to the hearing or vote on a particular matter and that member does not recuse himself or herself, the remaining members of the board shall by majority vote rule on the objection.

(f) **Familial Relationship.** For purposes of this section, a "close familial relationship" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

**D-110. Broad construction.** As set forth in N.C.G.S. 160A- 4, it is the policy of the General Assembly that the cities of this State should have adequate authority to execute the powers, duties, privileges, and immunities conferred upon them by law. To this end, the provisions of this UDO and of city charters shall be broadly construed and grants of power shall be construed to include any additional and supplementary powers that are reasonably necessary or expedient to carry them into execution and effect: Provided, that the exercise of such additional or supplementary powers shall not be contrary to State or federal law or to the public policy of the State.

**D-111. Effect on prior laws.** The enactment of this Chapter shall not require the readoption of any local government ordinance enacted pursuant to laws that were in effect before this UDO was adopted and are restated or revised herein. The provisions of this UDO shall not affect any act heretofore done, any liability incurred, any right accrued or vested, or any suit or prosecution begun or cause of action accrued prior to its adoption. The enactment of this UDO

shall not be deemed to amend the geographic area within which local government development regulations adopted prior to January 1, 2019, are effective.

## **D-112. Nonconforming Uses**

### **ARTICLE IV. - NONCONFORMING USES**

#### **Sec. 58-107. - Purpose; applicability.**

Nonconforming uses, which are uses of structures or of land existing at the time of the adoption or amendment of the ordinance from which this chapter is derived but which do not comply with the provisions of this chapter, are declared by this chapter to be incompatible with permitted uses in the various districts. The intent of this article is to permit the continued use of a structure, or portion thereof, or of the use of land legally existing prior to the effective date of the ordinance from which this chapter is derived until such uses are removed, but not to encourage their survival. Such nonconforming uses shall not be expanded, extended, or changed in any manner except as provided in this article. Creation of additional nonconforming uses are not to be encouraged.

#### **Sec. 58-108. - Nonconforming uses of structures.**

(a) A conforming structure in which a nonconforming use is being conducted may be used to expand and enlarge such nonconforming use into an area of the structure then in existence, and designed for such nonconforming use.

(b) No structural changes shall be made to any structure occupied by a nonconforming use except as follows:

(1) Those structural changes ordered by an authorized official in order to insure the safety of the structure.

(2) Maintenance and repairs to keep a structure in sound condition shall be permitted.

(c) When a nonconforming use of a structure has been changed to a conforming use, it shall not thereafter be used for any nonconforming use.

(d) If said use is discontinued for 180 days or more, the use shall not be allowed to reestablish. All new uses in said structure shall thereafter be conforming.

(e) If said conforming structure housing a nonconforming use is destroyed to an extent of greater than 50 percent of its replacement cost at the time of destruction, it may be rebuilt and may then be used for the same nonconforming use.

(f) A nonconforming use of a structure may not be changed to another nonconforming use.

#### **Sec. 58-109. - Nonconforming uses of land.**

Nonconforming uses of land, which may include structures incidental and accessory to the use of the land, such as but not limited to, storage yards for various materials, or areas used for recreational purposes, shall not be used for other nonconforming purposes, once the nonconforming use has been abandoned.

(1) No such nonconforming use of land shall be enlarged, increased or extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of the ordinance from which this chapter is derived.

(2) If said land use is abandoned for 180 days or more or destroyed, the land use shall be considered discontinued and shall not be reestablished unless the use is in conformance with the regulations of the district in which it is located. The term "destruction," for the purpose of this subsection, is defined as damage to an extent of more than 50 percent of the replacement cost at the time of destruction.

(3) A nonconforming use of land may not be changed to another nonconforming use of land.

#### Sec. 58-110. - Nonconforming structures.

Where a structure exists at the effective date of adoption or amendment of the ordinance from which this chapter is derived that could not be built under the terms of this chapter, such structure may remain so long as it remains otherwise lawful, subject to the following provisions:

(1) A nonconforming structure may not, under any circumstances, be enlarged or altered in a way which increases its nonconformity or be replaced with a similar nonconforming structure.

(2) If a nonconforming structure or nonconforming portion of a structure is destroyed to an extent of more than 50 percent of its replacement cost at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this chapter.

(3) A nonconforming structure which is abandoned for 180 days or more shall be considered discontinued and shall not be allowed occupancy or use unless in conformance with the district in which it is located.

(4) Said nonconforming structure may be moved to another lot so long as the structure is permitted in accordance with this chapter on said lot.

#### Sec. 58-111. - Nonconforming lots of record.

In any district where a lot has been recorded on a plat filed with the county or Mecklenburg County offices of the register of deeds, and is not in violation of this chapter, chapter 46, or the Mecklenburg County zoning ordinance or subdivision regulations prior to the effective date of the ordinance from which this chapter is derived, and such lot does not comply with the minimum lot area and width requirements for the zoning districts in which such lot is located, such lot may be used for any use permitted in that zoning district, provided that the principal and accessory structures meet all applicable front, side and rear yard requirements of this chapter.

#### Sec. 58-112. - Nonconforming signs.

(a) Nonconforming advertising signs shall be allowed to continue, provided that:

(1) No structural changes to the support structure or changes to the sign face itself except message changes which do not renew or extend the life of said sign shall be allowed.

(2) Maintenance to nonconforming advertising signs shall be limited to painting and repair of the existing sign.

(3) Once a nonconforming advertising sign is removed, taken down, or destroyed (i.e., receiving damage to an extent of more than 50 percent of the replacement cost at the time of destruction), such sign shall not be replaced with another sign unless such sign is in conformance with this chapter.

(b) Nonconforming business or identification signs shall be allowed to continue, provided that:

(1) Signs which are nonconforming with respect to size or illumination requirements may be repaired and/or repainted or relettered provided such nonconformance is not increased. No other changes to this category of nonconforming signs shall be allowed.

(2) Signs which are nonconforming with respect to location or number permitted or any other provision of this article shall not be altered in any way except to make such sign comply with the provisions of this chapter.

(c) Signs associated with a legal nonconforming use of a structure or land shall be allowed to continue, provided that:

(1) Nonconforming signs associated with a nonconforming use of a structure or land shall not be changed except to make such signs comply with the applicable sign regulations for the district in which said use or land is located.

(2) Replacement signs for a legal nonconforming use of a structure or land shall be permitted in accordance with the applicable sign regulations for the district in which said use or land is located.

#### Sec. 58-113. - Abandonment.

A nonconforming use of a structure, nonconforming use of land, nonconforming structure, or nonconforming sign which has been abandoned shall not thereafter be reestablished. Such structures or land shall thereafter be used only for such purpose as permitted in the applicable zoning districts and in full compliance with this chapter.

#### Sec. 58-114. - Alterations.

If a nonconforming building, or a building housing a nonconforming use, has been damaged to a degree of less than 50 percent of its replacement cost, then such structure may be restored to the same degree of nonconformity as existed before such damage.

#### Sec. 58-115. - Change of tenancy or ownership.

There may be a change in tenancy, ownership or management in an existing nonconforming use, provided there is no change in the nature or character of such nonconforming use and that all other applicable requirements of this chapter are met.

## **Article 2. Planning and Development Regulation Jurisdiction.**

**D-201. Planning and development regulation jurisdiction.** These regulations shall govern the use of all land and the development thereof within all of the incorporated area of the Town of Weddington, and any extraterritorial jurisdiction.

**D-202. Municipal extraterritorial jurisdiction.** [reserved]

**D-203. Split jurisdiction.** See N.C.G.S. 160D-203.

**D-204. Pending jurisdiction.** See N.C.G.S. 160D-204

## **Article 3. Boards and Organizational Arrangements.**

**D-301. Planning boards.** The Town previously created a planning board of the town ("Planning Board"). Such Planning Board shall continue to provide the functions as set forth herein.

(a) Composition and vacancies; attendance at meetings; compensation. The planning board shall consist of seven members. All members shall be citizens and residents of the town, and shall be appointed by the town council. Members shall be appointed for terms of four years; provided that vacancies occurring for reasons other than expiration of term shall be filled as they occur for the unexpired remainder of the term. For purposes of the initial board, there shall be four members appointed for initial terms to expire on December 31, 1987, and thereafter, the terms for those seats shall be for four years. The remaining three members of the initial board shall be appointed for initial terms to expire December 31, 1989, and thereafter, the terms of those seats shall be for four years. Faithful attendance at meetings of the board is to be considered a prerequisite to continued membership, and the town council, after a public hearing, may remove and replace any member continually delinquent in the performance of his duties.

(b) Organization; rules; meetings and records. The planning board shall elect a chairman and create and fill such other offices as it may determine necessary and appropriate. The term of the chairman and other officers shall be one year, with eligibility for re-election. The chairman shall be elected each year at the December meeting of the planning board. The board shall adopt rules for the transaction of its business and shall keep a record of its members' attendance and of its resolutions, discussions, findings and recommendations, which record shall be a public record. The board shall hold at least one meeting monthly, and all of its meetings shall be open to the public

(c) Jurisdiction; quorum. For the purpose of taking any action, a majority of the members of the planning board shall constitute a quorum.



(d) Powers and duties generally.

- (1) To prepare, review, maintain, monitor, and periodically update and recommend to the governing board a comprehensive plan, and such other plans as deemed appropriate, and conduct ongoing related research, data collection, mapping, and analysis.
  - (2) To facilitate and coordinate citizen engagement and participation in the planning process.
  - (3) To develop and recommend policies, ordinances, development regulations, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner.
  - (4) To advise the governing board concerning the implementation of plans, including, but not limited to, review and comment on all zoning text and map amendments as required by G.S. 160D-604.
  - (5) To exercise any functions in the administration and enforcement of various means for carrying out plans that the governing board may direct.
  - (6) To provide a preliminary forum for review of quasi-judicial decisions, provided that no part of the forum or recommendation may be used as a basis for the deciding board.
  - (7) To perform any other related duties that the governing board may direct.
- The general duties of the planning board shall be as follows:

Additionally the Planning Board shall serve as the stormwater review board and rule on all petitions in accordance with the procedures set forth in [section 58-617].

**D-302. Boards of adjustment.** The Town previously created a board of adjustment of the town. The zoning board of adjustment shall continue to provide the functions as set forth herein.

(a) *Composition.* The board of adjustment shall consist of five regular members who are residents of the town and shall be appointed by the town council. In addition, two alternate members shall serve on the board of adjustment, both residents of the town, and shall be appointed by the town council. Alternate members shall serve in the absence for any cause of any regular member. Initial appointment of the regular members shall be as follows: Three regular members and one alternate member appointed by the town council for terms to expire on December 31, 1987, and two regular members and one alternate member appointed by the town council for terms to expire on December 31, 1989. Thereafter, all members and alternate members shall be appointed by the town council for terms to correspond with planning board terms set out in article II of chapter 38. Any vacancy in the membership shall be filled for the unexpired term in the same manner as the initial appointment. Members shall serve without pay but may be reimbursed for any expenses incurred while representing the board. Such alternate member while attending any regular or special meeting of the board of adjustment and serving

in the absence of any regular member shall have and may exercise all the powers and duties of such regular members.

(b) Duties. The board shall hear and decide all matters upon which it is required to pass under any statute or development regulation. As of the effective date of this UDO, the specific duties of the board of adjustment are: (i) Hearing and deciding all appeals from decisions, citations (with and without civil penalties), orders, requirements or other determinations made by the zoning administrator; (ii) Hearing and deciding appeals that require interpretation of this chapter; (iii) Hearing and granting variances from the provisions of this UDO.

**D-303. Historic preservation commission.** The Planning Board is appointed as the Historic Preservation Commissions and shall have all the powers and duties as provided in N.G.C.S. 160D-303.

**D-304. Appearance commission.** The Planning Board is appointed as the community appearance commission (also known as Design Review Board) for purposes of reviewing designs for of commercial development and signs as set forth in this UDO and as specified in G.S. 160D-960.

**D-305. Housing appeals board.** [reserved]

**D-306. Other advisory boards.** The Planning Board is appointed as the Stormwater Review Board for purposes set forth in this UDO.

The Town Council may by ordinance establish additional advisory boards as deemed appropriate. The ordinance establishing such boards shall specify the composition and duties of such boards.

**D-307. Extraterritorial representation on boards.** See N.C.G.S. 160D-307.

**D-308. Rules of procedure.** Rules of procedure that are consistent with the provisions of this Chapter may be adopted by the governing board for any or all boards created under this Article. In the absence of action by the governing board, each board created under this Article is authorized to adopt its own rules of procedure that are consistent with the provisions of this Chapter. A copy of any adopted rules of procedure shall be maintained by the local government clerk or such other official as designated by ordinance and posted on the local government Web site if one exists. Each board shall keep minutes of its proceedings.

**D-309. Oath of office.** All members appointed to boards under this Article shall, before entering their duties, qualify by taking an oath of office as required by G.S. 153A-26 and G.S. 160A-61.

**D-310. Appointments to boards.** Unless specified otherwise by statute or local ordinance, all appointments to boards authorized by this Chapter shall be made by the governing board of the

local government. The governing board may establish reasonable procedures to solicit, review, and make appointments.

## **Article 4. Administration, Enforcement, and Appeals.**

### **D-401. Application. [reserved]**

### **D-402. Administrative staff.**

(a) Authorization. The Town Administrator appointed to administer this UDO in cooperation with Union County and State representatives.

(b) Duties. Duties assigned to staff include, but are not limited to, drafting and implementing plans and development regulations to be adopted pursuant to this Chapter; determining whether applications for development approvals are complete; receiving and processing applications for development approvals; providing notices of applications and hearings; making decisions and determinations regarding development regulation implementation; determining whether applications for development approvals meet applicable standards as established by law and local ordinance; conducting inspections; issuing or denying certificates of compliance or occupancy; enforcing development regulations, including issuing notices of violation, orders to correct violations, and recommending bringing judicial actions against actual or threatened violations; keeping adequate records; and any other actions that may be required in order adequately to enforce the laws and development regulations under their jurisdiction. The administrative and enforcement provisions related to building permits set forth in Article 11 of this Chapter shall be followed for those permits.

### **D-403. Administrative development approvals and determinations.**

- (a) Development Approvals. No person shall commence or proceed with development within the Town's jurisdiction without first securing any required development approval from the Town. A development approval shall be in writing and may contain a provision that the development shall comply with all applicable State and local laws. A local government may issue development approvals in print or electronic form. Any development approval issued exclusively in electronic form shall be protected from further editing once issued. Applications for development approvals may be made by the landowner, a lessee or person holding an option or contract to purchase or lease land, or an authorized agent of the landowner. An easement holder may also apply for development approval for such development as is authorized by the easement. The development approvals contemplated by this UDO are set forth as follows: [KMB NOTE: REVIEW AND INSERT all approvals identified in this UDO with cross reference to sections as applicable]
- (b) Determinations and Notice of Determinations. The Town Administrator is charged with making determinations under the development regulation. The Town Administrator shall give written notice to the owner of the property that is the subject of the determination and to the party who sought the determination, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail. The notice shall be delivered to the last address listed for the

owner of the affected property on the county tax abstract and to the address provided in the application or request for a determination if the party seeking the determination is different from the owner.

- (c) **Duration of Development Approval.** Unless a different period is specified by this Chapter or other specific applicable law, or a different period is provided by a quasi-judicial development approval, a development agreement, or a local ordinance, a development approval issued pursuant to this Chapter shall expire one year after the date of issuance if the work authorized by the development approval has not been substantially commenced. Local development regulations may provide for development approvals of shorter duration for temporary land uses, special events, temporary signs, and similar development. Unless provided otherwise by this Chapter or other specific applicable law or a longer period is provided by local ordinance, if after commencement the work or activity is discontinued for a period of 12 months after commencement, the development approval shall immediately expire. The time periods set out in this subsection shall be tolled during the pendency of any appeal. No work or activity authorized by any development approval that has expired shall thereafter be performed until a new development approval has been secured. Nothing in this subsection shall be deemed to limit any vested rights secured under G.S. 160D-108.
- (d) **Changes.** After a development approval has been issued, no deviations from the terms of the application or the development approval shall be made until written approval of proposed changes or deviations has been obtained. A local government may define by ordinance minor modifications to development approvals that can be exempted or administratively approved. The local government shall follow the same development review and approval process required for issuance of the development approval in the review and approval of any major modification of that approval.
- (e) **Inspections.** Administrative staff may inspect work undertaken pursuant to a development approval to assure that the work is being done in accordance with applicable State and local laws and of the terms of the approval. In exercising this power, staff are authorized to enter any premises within the jurisdiction of the local government at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials; provided, however, that the appropriate consent has been given for inspection of areas not open to the public or that an appropriate inspection warrant has been secured.
- (f) **Revocation of Development Approvals.** In addition to initiation of enforcement actions under G.S. 160D-404, development approvals may be revoked by the local government issuing the development approval by notifying the holder in writing stating the reason for the revocation. The local government shall follow the same development review and approval process required for issuance of the development approval, including any required notice or hearing, in the review and approval of any revocation of that approval. Development approvals shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of any applicable local development regulation or any State law delegated to the local government for

enforcement purposes in lieu of the State; or for false statements or misrepresentations made in securing the approval. Any development approval mistakenly issued in violation of an applicable State or local law may also be revoked. The revocation of a development approval by a staff member may be appealed pursuant to G.S. 160D-405. If an appeal is filed regarding a development regulation adopted by a local government pursuant to this Chapter, the provisions of G.S. 160D-405(e) regarding stays shall be applicable.

- (g) **Certificate of Occupancy.** A local government may, upon completion of work or activity undertaken pursuant to a development approval, make final inspections and issue a certificate of compliance or occupancy if staff finds that the completed work complies with all applicable State and local laws and with the terms of the approval. No building, structure, or use of land that is subject to a building permit required by Article 11 of this Chapter shall be occupied or used until a certificate of occupancy or temporary certificate pursuant to G.S. 160D-1114 has been issued.
- (h) **Optional Communication Requirements.** A regulation adopted pursuant to this Chapter may require notice and/or informational meetings as part of the administrative decision-making process.
- (i) Application requirements for all development approvals are listed in Appendix 2.

#### **D-404. Enforcement.**

(a) **Notices of Violation.** When staff determines work or activity has been undertaken in violation of a development regulation or any State law delegated to the local government for enforcement purposes in lieu of the State or in violation of the terms of a development approval, a written notice of violation may be issued. The notice of violation shall be delivered to the holder of the development approval and to the landowner of the property involved, if the landowner is not the holder of the development approval, by personal delivery, electronic delivery, or first-class mail and may be provided by similar means to the occupant of the property or the person undertaking the work or activity. The notice of violation may be posted on the property. The person providing the notice of violation shall certify to the local government that the notice was provided, and the certificate shall be deemed conclusive in the absence of fraud. Except as provided by G.S. 160D-1123 or G.S. 160D-1206 or otherwise provided by law, a notice of violation may be appealed to the board of adjustment pursuant to G.S. 160D-405.

(b) **Stop Work Orders.** Whenever any work or activity subject to regulation pursuant to this Chapter or other applicable local development regulation or any State law delegated to the local government for enforcement purposes in lieu of the State is undertaken in substantial violation of any State or local law, or in a manner that endangers life or property, staff may order the specific part of the work or activity that is in violation or presents such a hazard to be immediately stopped. The order shall be in writing, directed to the person doing the work or activity, and shall state the specific work or activity to be stopped, the reasons therefor, and the conditions under which the work or activity may be resumed. A copy of the order shall be delivered to the holder of the development approval and to the owner of the property involved (if that person is not the holder of the development approval) by personal delivery, electronic delivery, or first-class mail. The person or persons delivering the stop work order shall certify to the local government that the order was delivered and that certificate shall be deemed

conclusive in the absence of fraud. Except as provided by G.S. 160D-1112 and G.S. 160D-1208, a stop work order may be appealed pursuant to G.S. 160D-405. No further work or activity shall take place in violation of a stop work order pending a ruling on the appeal. Violation of a stop work order shall constitute a Class 1 misdemeanor.

(c) Remedies.

- (1) Subject to the provisions of the development regulation, any development regulation adopted pursuant to authority conferred by this Chapter may be enforced by any remedy provided by G.S. 160A-175 or G.S. 153A-123. If a building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure, or land is used or developed in violation of this Chapter or of any development regulation or other regulation made under authority of this Chapter, the local government, in addition to other remedies, may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, use, or development; to restrain, correct or abate the violation; to prevent occupancy of the building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about the premises.
- (2) When a development regulation adopted pursuant to authority conferred by this Chapter is to be applied or enforced in any area outside the planning and development regulation jurisdiction of a city as set forth in Article 2 of this Chapter, the city and the property owner shall certify that the application or enforcement of the city development regulation is not under coercion or otherwise based on representation by the city that the city's development approval would be withheld without the application or enforcement of the city development regulation outside the jurisdiction of the city. The certification may be evidenced by a signed statement of the parties on any development approval.
- (3) In case any building, structure, site, area, or object designated as a historic landmark or located within a historic district designated pursuant to this Chapter is about to be demolished whether as the result of deliberate neglect or otherwise, materially altered, remodeled, removed, or destroyed, except in compliance with the development regulation or other provisions of this Chapter, the local government, the historic preservation commission, or other party aggrieved by such action may institute any appropriate action or proceedings to prevent such unlawful demolition, destruction, material alteration, remodeling, or removal, to restrain, correct, or abate such violation, or to prevent any illegal act or conduct with respect to such building, structure, site, area, or object. Such remedies shall be in addition to any others authorized by this Chapter for violation of an ordinance. (2019-111, s. 2.4.)

**D-405. Appeals of administrative decisions.**

(a) Appeals. Except as provided in subsection (c) of this section, appeals of decisions made by the staff under this Chapter shall be made to the board of adjustment. Appeal of a

decision made pursuant to an erosion and sedimentation control regulation, a stormwater control regulation, or a provision of the housing code shall not be made to the board of adjustment unless required by a local government ordinance or code provision.

(b) Standing. Any person who has standing under G.S. 160D-1402(c) or the Town may appeal an administrative decision to the board of adjustment. An appeal is taken by filing a notice of appeal with the Town Clerk. The notice of appeal shall state the grounds for the appeal.

(c) Judicial Challenge. A person with standing may bring a separate and original civil action to challenge the constitutionality of an ordinance or development regulation, or whether the ordinance or development regulation is ultra vires, preempted, or otherwise in excess of statutory authority, without filing an appeal under subsection (a) of this section.

(d) Time to Appeal. The owner or other party shall have 30 days from receipt of the written notice of the determination within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the determination within which to file an appeal. In the absence of evidence to the contrary, notice given pursuant to G.S. 160D-403(b) by first-class mail shall be deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service.

(e) Record of Decision. The official who made the decision shall transmit to the board all documents and exhibits constituting the record upon which the decision appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

(f) Stays. An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from and accrual of any fines assessed unless the official who made the decision certifies to the board after notice of appeal has been filed that, because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or, because the violation is transitory in nature, a stay would seriously interfere with enforcement of the development regulation. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a development approval or otherwise affirming that a proposed use of property is consistent with the development regulation shall not stay the further review of an application for development approvals to use such property; in these situations, the appellant or local government may request and the board may grant a stay of a final decision of development approval applications, including building permits affected by the issue being appealed.

(g) Alternative Dispute Resolution. The parties to an appeal that has been made under this section may agree to mediation or other forms of alternative dispute resolution. The development regulation may set standards and procedures to facilitate and manage such voluntary alternative dispute resolution.

#### **D-406. Quasi-judicial procedure.**

(a) Process Required. The applicable decision-making body shall follow the statutory procedures for all quasi-judicial development decisions, including variances, special use permits,

certificates of appropriateness, and appeals of administrative determinations. These requirements are set forth in this Section D-406.

(b) Notice of Hearing. Notice of evidentiary hearings conducted pursuant to this Chapter shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the local development regulation. In the absence of evidence to the contrary, the local government may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the local government shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way. The board may continue an evidentiary hearing that has been convened without further advertisement. If an evidentiary hearing is set for a given date and a quorum of the board is not then present, the hearing shall be continued until the next regular board meeting without further advertisement.

(c) Administrative Materials. The administrator or staff to the board shall transmit to the board all applications, reports, and written materials relevant to the matter being considered. The administrative materials may be distributed to the members of the board prior to the hearing if at the same time they are distributed to the board a copy is also provided to the appellant or applicant and to the landowner if that person is not the appellant or applicant. The administrative materials shall become a part of the hearing record. The administrative materials may be provided in written or electronic form. Objections to inclusion or exclusion of administrative materials may be made before or during the hearing. Rulings on unresolved objections shall be made by the board at the hearing.

(d) Presentation of Evidence. The applicant, the local government, and any person who would have standing to appeal the decision under G.S. 160D-1402(c) shall have the right to participate as a party at the evidentiary hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the board.

Objections regarding jurisdictional and evidentiary issues, including, but not limited to, the timeliness of an appeal or the standing of a party, may be made to the board. The board chair shall rule on any objections, and the chair's rulings may be appealed to the full board. These rulings are also subject to judicial review pursuant to G.S. 160D-1402. Objections based on jurisdictional issues may be raised for the first time on judicial review.

(e) Appearance of Official New Issues. The official who made the decision or the person currently occupying that position, if the decision maker is no longer employed by the local government, shall be present at the evidentiary hearing as a witness. The appellant shall not be limited at the hearing to matters stated in a notice of appeal. If any party or the local government would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing.

(f) Oaths. The chair of the board or any member acting as chair and the clerk to the board are authorized to administer oaths to witnesses in any matter coming before the board. Any person who, while under oath during a proceeding before the board determining a quasi-judicial matter, willfully swears falsely is guilty of a Class 1 misdemeanor.



(g) Subpoenas. The board making a quasi-judicial decision under this Chapter through the chair or, in the chair's absence, anyone acting as chair may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, the applicant, the local government, and any person with standing under G.S. 160D-1402(c) may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be immediately appealed to the full board. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

(h) Appeals in Nature of Certiorari. When hearing an appeal pursuant to G.S. 160D-947(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below, and the scope of review shall be as provided in G.S. 160D-1402(j).

(i) Voting. The concurring vote of four-fifths of the board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter under G.S. 160D-109(d) shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

(j) Decisions. The board shall determine contested facts and make its decision within a reasonable time. When hearing an appeal, the board may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing, reflect the board's determination of contested facts and their application to the applicable standards, and be approved by the board and signed by the chair or other duly authorized member of the board. A quasi-judicial decision is effective upon filing the written decision with the clerk to the board or such other office or official as the development regulation specifies. The decision of the board shall be delivered within a reasonable time by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify to the local government that proper notice has been made, and the certificate shall be deemed conclusive in the absence of fraud.

(k) Judicial Review. Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160D-1402. Appeals shall be filed within the times specified in G.S. 160D-1405(d).

## **Article 5. Planning.**

**D-501. Plans.**

(a) Preparation of Plans and Studies. The Town has adopted, and reasonably maintain, a comprehensive plan that sets forth goals, policies, and programs intended to guide the present and future physical, social, and economic development of the jurisdiction.

A comprehensive plan is intended to guide coordinated, efficient, and orderly development within the planning and development regulation jurisdiction based on an analysis of present and future needs. Planning analysis may address inventories of existing conditions and assess future trends regarding demographics and economic, environmental, and cultural factors. The planning process shall include opportunities for citizen engagement in plan preparation and adoption. In addition to a comprehensive plan, a local government may prepare and adopt such other plans as deemed appropriate. This may include, but is not limited to, land-use plans, small area plans, neighborhood plans, hazard mitigation plans, transportation plans, housing plans, and recreation and open space plans. If adopted pursuant to the process set forth in this section, such plans shall be considered in review of proposed zoning amendments.

(b) Contents. A comprehensive plan may, among other topics, address any of the following as determined by the local government that are identified in N.C.G.S. 160D-501

(c) Adoption and Effect of Plans. Plans shall be adopted by the governing board with the advice and consultation of the planning board. Adoption and amendment of a comprehensive plan is a legislative decision and shall follow the process mandated for zoning text amendments set by G.S. 160D-601. Plans adopted under this Chapter may be undertaken and adopted as part of or in conjunction with plans required under other statutes, including, but not limited to, the plans required by G.S. 113A-110. Plans adopted under this Chapter shall be advisory in nature without independent regulatory effect. Plans adopted under this Chapter do not expand, diminish, or alter the scope of authority for development regulations adopted under this Chapter. Plans adopted under this Chapter shall be considered by the planning board and governing board when considering proposed amendments to zoning regulations as required by G.S. 160D-604 and G.S. 160D-605.

If a plan is deemed amended by G.S. 160D-605 by virtue of adoption of a zoning amendment that is inconsistent with the plan, that amendment shall be noted in the plan. However, if the plan is one that requires review and approval subject to G.S. 113A-110, the plan amendment shall not be effective until that review and approval is completed.

**D-502. Grants, contracts, and technical assistance. [reserved]**

**D-503. Coordination of planning. [reserved]**

## **Article 6. Development Regulation. (Overview of Procedures for Adopting and Amending UDO Text or Rezonings)**

**D-601. Procedure for adopting, amending, or repealing development regulations.**

(a) Hearing with Published Notice. Before adopting, amending, or repealing any ordinance or development regulation authorized by this Chapter, the governing board shall hold a legislative hearing. A notice of the hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published the first time not less than 10 days nor more than 25 days before the date scheduled for the hearing. In

computing such period, the day of publication is not to be included but the day of the hearing shall be included.

(b) Notice to Military Bases. [reserved]

(c) A development regulation adopted pursuant to this Chapter shall be adopted by ordinance.

(d) Down-Zoning. No amendment to zoning regulations or a zoning map that down-zones property shall be initiated nor is it enforceable without the written consent of all property owners whose property is the subject of the down-zoning amendment, unless the down-zoning amendment is initiated by the local government. For purposes of this section, "down-zoning" means a zoning ordinance that affects an area of land in one of the following ways: (1) By decreasing the development density of the land to be less dense than was allowed under its previous usage. (2) By reducing the permitted uses of the land that are specified in a zoning ordinance or land development regulation to fewer uses than were allowed under its previous usage.

**D-602. Notice of hearing on proposed zoning map amendments.** Notices on proposed zoning map amendments, specifically including amendments to CZ districts, shall be provided in accordance with N.S.G.S. 160D-602. Additionally, the person proposing the map amendment to neighboring property owners and residents and may require the person proposing the zoning map amendment to report on any communication with neighboring property owners and residents.

**D-603. Citizen comments.** If any resident or property owner in the local government submits a written statement regarding a proposed amendment, modification, or repeal to a zoning regulation, including a text or map amendment, to the Town Clerk at least two business days prior to the proposed vote on such change, the Town Clerk shall deliver such written statement to the governing board. If the proposed change is the subject of a quasi-judicial proceeding under G.S. 160D-705 or any other statute, the Town Clerk shall provide only the names and addresses of the individuals providing written comment, and the provision of such names and addresses to all members of the board shall not disqualify any member of the board from voting.

**D-604. Planning board review and comment.** All proposed amendments to this UDO or zoning map (specifically including any CZ rezoning) shall be submitted to the planning board for review and comment. If no written report is received from the planning board within 30 days of referral of the amendment to the Planning Board, the governing board may act on the amendment without the planning board report. The governing board is not bound by the recommendations, if any, of the planning board.

**D-605. Governing board statement.**

(a) Plan Consistency. When adopting or rejecting any zoning text or map amendment, the governing board shall approve a brief statement describing whether its action is consistent or inconsistent with an adopted comprehensive plan. The requirement for a plan consistency statement may also be met by a clear indication in the minutes of the governing board that at the time of action on the amendment the governing board was aware of and considered the

planning board's recommendations and any relevant portions of an adopted comprehensive plan. If a zoning map amendment is adopted and the action was deemed inconsistent with the adopted plan, the zoning amendment shall have the effect of also amending any future land-use map in the approved plan, and no additional request or application for a plan amendment shall be required. A plan amendment and a zoning amendment may be considered concurrently. The plan consistency statement is not subject to judicial review. If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D-602(b), the governing board statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the action taken.

(b) **Additional Reasonableness Statement for Rezonings.** When adopting or rejecting any petition for a zoning map amendment, a statement analyzing the reasonableness of the proposed rezoning shall be approved by the governing board. This statement of reasonableness may consider, among other factors, (i) the size, physical conditions, and other attributes of the area proposed to be rezoned, (ii) the benefits and detriments to the landowners, the neighbors, and the surrounding community, (iii) the relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment; (iv) why the action taken is in the public interest; and (v) any changed conditions warranting the amendment. If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D-602(b), the governing board statement on reasonableness may address the overall rezoning.

(c) **Single Statement Permissible.** The statement of reasonableness and the plan consistency statement required by this section may be approved as a single statement.

**D-606 Voting Majority Vote Sufficient on First Reading.** A legislative decision for development regulation on a matter for which there has been a public hearing as set forth herein is permitted on first reading by simple majority vote. There is no need for two-thirds majority on first reading, as was required for cities under prior law.

[INSERT GRAPHIC SHOWING PROCESS STEPS IN A LEGISLATIVE DECISION CONSISTENT WITH THIS ARTICLE 6]

## **58-8 Screening and Landscaping (to be placed in Development Standards for the UDO and combined with this section).**

### **58-8.1 Tree save and Tree replenish requirements.**

In order to maintain or replenish the town tree canopy in any new major residential development the following shall apply:

- 1) The tree removal is not permitted within areas that have naturally occurring trees located outside the buildable area of a lot or development. For the purpose of these provisions “buildable area” means all areas located outside of:
  - a) Required zoning district setbacks;
  - b) Existing and proposed street rights-of-way and easements;
  - c) Utility and drainage easements.
- 2) Each lot created shall contain one existing or planted canopy tree for every 40 feet of street frontage or fraction thereof. Alternatively, the canopy trees can be placed at 40-foot intervals along a street front, irrespective of lot line locations. Street trees shall be a minimum of four feet and a maximum of 12 feet from the edge of right-of-way on private property.
- 3) Each lot less than one acre in area shall have a minimum of four canopy trees. Each lot that is one acre or more in area shall have a minimum of six canopy trees. At least two trees shall be located within the front yard and back yard of each lot. Required street trees may be counted towards the fulfillment of this requirement. Existing canopy trees, outside required zoning setbacks that are six inches or larger diameter at breast height, may be counted towards fulfilling this requirement. All canopy shade trees planted within the lot must be spaced to accommodate mature growth. New tree planting for each single-family lot shall be done on a lot-by-lot basis, prior to the issuance of a certificate of occupancy for each lot.
- 4) Areas not falling under the on-lot or perimeter landscaping requirements including detention areas and open space areas shall be landscaped with ten (10) understory, fifteen (15) evergreens, and thirty-five (35) shrubs per acre.

### **Tree Protection**

- 1) Property owners are responsible for ensuring that all existing trees shown on approved plans as being retained to meet the requirements of this article are protected during the construction process from removal, destruction, or injury.
- 2) Before any excavation takes place on the subject site, a barrier must be erected around the drip line of all such trees sufficient to put on notice all construction personnel that any disturbance of the area within the dripline of such trees is prohibited, except as expressly approved by the administrator. Required tree barriers must be shown on construction plans including the demolition and grading plans.
- 3) Clearing or grading shall not commence on the site until tree protection measures have been inspected and approved by the Administrator.

- 4) No soil disturbance, filling, compacting or material storage shall occur within tree protection areas.

In association with the approval of any permit herein required or any site plan or subdivision plat, the Zoning Administrator and/or Town Council may require additional tree preservation measures above and beyond those listed herein that are deemed to support the tree preservation objectives of this chapter.

### **Maintenance**

- 1) The property owner is responsible for the maintenance and protection of all required landscaping and screening, in accordance with American Standard for Nursery Stock (ANSI Z60.1) as published by the American Association of Nurserymen
- 2) Failure to maintain landscaping is a violation of this ordinance.

### **Planting size and specifications**

- 1) Ornamental and understory tree species planted to satisfy the tree planting requirements of this article must have a 2-inch minimum caliper size and a minimum height of 6 feet at the time of planting.
- 2) Conifers or evergreen tree species planted to satisfy the tree planting requirements of this article must have a minimum height of 6 feet at the time of planting.
- 3) Canopy tree species planted to satisfy the tree planting requirements of this article must have a 2.5-inch minimum caliper size and a minimum height of 8 feet at the time of planting.
- 4) Tree and Plant Species Tree and plant species listed in the North Carolina Department of Transportation's Invasive Exotic Plants of North Carolina may not be credited toward satisfying the landscaping and screening requirements of this article.
- 5) All new trees planted shall be selected from the suggested species list, which is provided as Appendices A and B, provided that additional species may be used subject to specific approval of the Administrator. All trees must comply with the *American Standard for Nursery Stock* published by the American Association of Nurserymen.
- 6) All plant material shall be free from disease when planted and shall be maintained in a healthy condition. All plant material shall be installed in a fashion that ensures the availability of sufficient soil and water to sustain healthy growth. All trees shall be properly guyed and staked at the time of planting. All plant materials shall be planted in a manner which is not intrusive to utilities or pavement.

### **Time for Installation.**

All perimeter and open space landscaping for single-family major residential developments shall be completed in accordance with the approved site plan at the time that seventy (70) percent of the development is completed or within the next planting season following occupancy, whichever comes first. If the development is built in phases, then the landscaping shall be completed as seventy (70) percent of each phase is completed or within the next planting season following occupancy, whichever comes first. If plantings cannot be installed, the Zoning

Administrator may issue a temporary permit and take surety until the landscaping is completed equal to one hundred ten (110) percent of the estimated cost for landscaping improvements.

### **Replacement.**

All landscaping shall be guaranteed for two (2) years from the date of acceptance and shall be replaced by the applicant at no charge to the Town should they die or be in a declining condition in the opinion of the Arborist. The replacement tree shall be the same size, species and quality, unless said species is no longer on the approved species list and shall carry the same two (2) year guarantee. The Town may use the bond or surety to replace plants if the developer fails to perform adequately. After the initial two (2) year period, the landowner or, in the case of plant material in common open space, the homeowners' or property owners' association shall be responsible for maintaining and replacing any plants that die.

### **Plan Required.**

All applications for development and construction activities that are subject to the landscape and screening regulations of this article must be accompanied by a landscape plan. No building permit or similar authorization may be issued until the administrator determines that the landscaping and screening regulations of this article have been met.

These measures shall include, but not be limited to, the following:

- 1) *Tree landscape plan.* The tree landscape plan must show that there will be no grading or land disturbing in the root protection zone. Land disturbing is also considered trenching, placing backfill in the root protection zone, driving or parking equipment in the root protection zone, and dumping of materials detrimental to plant health in close proximity of the tree(s).
- 2) *Tree landscape protection.* Tree protection fencing shall be indicated on the tree landscape plan, grading plan and demolition plans around the perimeter of tree protection areas. Fencing in or around an existing tree canopy to be preserved/saved shall contain an area bounded by a line situated five feet beyond the drip line, for a single tree, and five feet beyond the perimeter drip line for a group of trees. The protection fencing shall consist of colored mesh fabric fencing material, three feet minimum height, with posts eight feet or less on center.

### **Inspections.**

- 1) Agents, officials or other qualified persons authorized by the town are authorized to inspect the sites subject to the provisions of this chapter to determine compliance with this chapter or rules or orders adopted or issued pursuant to this chapter.
- 2) No person shall refuse entry or access to any authorized representative or agent of the town who requests entry for the purpose of inspection, nor shall any person resist, delay, obstruct or interfere with the authorized representative while in the process of carrying out official duties.
- 3) If, through inspection, it is determined that a property owner or person in control of the land has failed to comply or is no longer in compliance with the provisions of this chapter or orders issued pursuant to this chapter, the town will serve a written notice of violation. The notice may be served by any means authorized under G.S. § 1A-1, Rule 4, or any

other means reasonably calculated to give actual notice, such as facsimile or hand delivery.

- 4) The town shall have the power to conduct the investigation as it may reasonably deem necessary to carry out its duties as prescribed in this chapter, and may enter, at reasonable times, upon any property, public or private, for the purpose of investigating and inspecting the sites subject to the provisions of this chapter.

### **Appeals.**

Any applicant aggrieved or affected by the determination of the Administrator shall have the right, within 30 days from the date of action by the Administrator, to appeal to the Board of Adjustment and shall state the reason for the appeal. Such appeal process shall be similar in nature and scope to the process stated in § 58-232 of the town regulations, as amended.

### **Penalty.**

- 1) Violation of this chapter is not an infraction or misdemeanor under G.S. § 14-4.
- 2) Any person, firm or corporation that violates any of the provisions of this chapter shall be subject to:
  - a) A civil penalty \$500 plus an additional \$50 per day per offense, for each day that the violation continues to exist;
  - b) A planting requirement of 4 trees for every tree removed, which may be assessed in addition to or in lieu of any monetary penalties; and/or
  - c) The order as a court of competent jurisdiction may issue directing a violator to replace any removed trees with new trees and planted within a specified time.
- 3) For purposes of this section, a separate offense shall be deemed to have occurred for each protected or planted tree removed or unplanted tree missing from the approved site plan or subdivision plat shall be considered a separate offense.
- 4) Where the Administrator has determined that a violation of this chapter has occurred, no certificate of occupancy or certificate of compliance shall be issued until required replacement plantings have been completed or the violation otherwise remedied.
- 5) Pursuant to G.S. § 160A-175, the violation of this chapter shall subject the offender to a civil penalty to be recovered by the town in a civil action in the nature of debt. The town may file a civil action to recover the penalty if the offender does not pay the penalty within five days being cited for violation of this chapter.
- 6) Pursuant to G.S. §§ 160A-175, 160A-365 and 160A-389, the town may also seek any appropriate equitable relief issuing from a court of competent jurisdiction that it deems necessary to ensure compliance with the provisions of this chapter. In this case, the General Court of Justice shall have jurisdiction to issue orders as may be appropriate, and it shall not be a defense to the application of the town for equitable relief that there is an adequate remedy at law.
- 7) Pursuant to G.S. § 160A-389, if a building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of this chapter or other regulation made under authority conferred thereby, the town in addition to other remedies, may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate the



violation, to prevent occupancy of the building, structure or land, or to prevent any illegal act, conduct, business or use in or about the premises.

- 8) In addition, the town may enforce this chapter in accordance to the remedies set out in G.S. § 160A-175. Hence, pursuant to G.S. § 160A-175, the town may seek a mandatory or prohibitory injunction and an order of abatement commanding the offender to correct the unlawful condition upon or cease the unlawful use of the subject premises. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the Rules of Civil Procedure in general and Rule 65 in particular.
- 9) The above remedies are cumulative, and the town may pursue any or all of the same as its direction. Each day that the violation exists shall constitute a separate and distinct offense.