



Mayor

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Mayor Pro-Tem

Travis Scott

Council Members

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David Stevens

David Barbour

Emery Ashley

John A. Dunn

Stephen Rabil

Town Attorney

Robert Spence, Jr.

Town Manager

Michael L. Scott

Finance Director

Greg Siler

Town Clerk

Shannan Parrish

**Town Council
Special Meeting
Agenda Packet**

Meeting Date: Thursday, February 21, 2019

Meeting Time: 6:30 p.m.

Meeting Place: Town Hall Council Chambers

350 East Market Street

Smithfield, NC 27577



**TOWN OF SMITHFIELD
TOWN COUNCIL AGENDA
SPECIAL MEETING MARCH 21, 2019
6:30 PM**

Call to Order

PAGE

Public Hearings:

- 1. ZA-18-06 Town of Smithfield:** The Smithfield Planning Department is requesting an amendment to the Unified Development Ordinance (UDO), Article 5, to update the development review process to include adding a required public notice prior to preliminary subdivision approval.
(Planning Director – Stephen Wensman) See attached information.....1

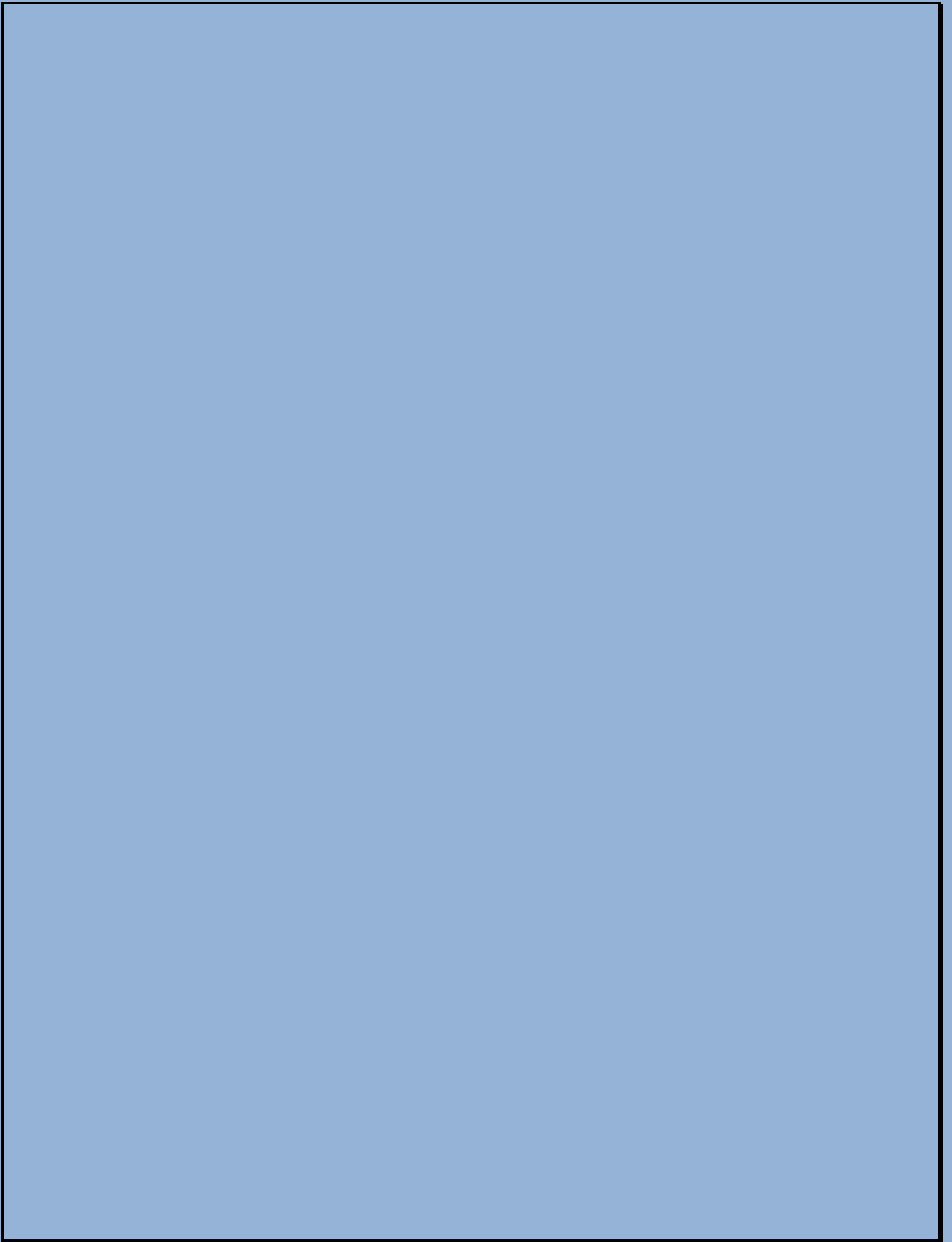
- 2. ZA-18-08 Town of Smithfield:** The Smithfield Planning Department is requesting an amendment to the Unified Development Ordinance (UDO) to amend and incorporate the Town of Smithfield Code of Ordinances, Chapter 15, Planning, Article III, Historic Properties Commission into the Unified Development Ordinance, Article 3, and to make certain amendments to other sections as they pertain to the UDO Administrator’s duties, the Board of Adjustments, the Planning Board, and the Town Council.
(Planning Director – Stephen Wensman) See attached information.....35

Business Item

- 1. Discussion Concerning adoption of an Annexation Policy**
(Town Manager – Michael Scott & Planning Director Stephen Wensman)
See attached information.....87

Adjourn

Public Hearings





Request for Town Council Action

**Agenda
Item:** ZA-18-06
Date: 02/21/2019

Subject: Unified Development Ordinance Text Amendment
Department: Planning
Presented by: Stephen Wensman, Planning Director
Presentation: Public Hearing

Issue Statement

The Town of Smithfield Planning Department is requesting an amendment to the Unified Development Ordinance (UDO) to update the development review process contained in Article 5.

Financial Impact

None

Action Needed

To hold a public hearing, review and provide guidance on the draft text amendment, ZA-18-06, and then table the item to the March meeting.

Recommendation

Planning Staff recommends the Council hold the public hearing, review the zoning text amendment and provide guidance on whether there should be public hearings at the Planning Board for quasi-judicial and legislative items, then table the item to the March meeting to enable staff time to redraft the ordinance accordingly.

Approved: Town Manager Town Attorney

Attachments:

1. Staff Report
2. Ordinance Amendment
3. Full draft amendment to Article 5
4. Consistency Statement
5. Application and Petition for Amendment to the UDO



Staff Report

Public **ZA-18-06**
Hearing:
Date: **02/21/2019**

REQUEST:

The Town of Smithfield Planning Department is requesting an amendment to the Unified Development Ordinance (UDO) to update the development review process contained in Article 5.

HISTORY:

- January 2, 2018 – The Town of Smithfield approved an ordinance amendment to allow for administrative approval by the UDO Administrator when major site plans and final plats are found to meet or exceed minimum development standards.
- Additional amendments are needed and these were reviewed with the UDO Subcommittee on December 5, 2018 and recommended for approval.

ANALYSIS:

The January 2, 2018 amendment to Article 5 removed the requirement for Planning Board review and Town Council approval for major site plans, returning the process to the pre-UDO update process.

Additional amendments needed include:

- Section 5.6, 5.6.5 and 5.6.6 - Clarify Town Council review of final plats without Planning Board review.
- Section 5.8.2.1.3 – Clarifies that the Town of Smithfield will hold public hearings at the Town Council and provide notification for preliminary plats (Note: public notification of preliminary plats is not required by State Statutes, however it is a practice apparently practiced in the Town of Smithfield in the past and still desired).
- Section 5.8.2.2 – Clarifies the final plat are sent to the Town Council for final approval (Note: the final plat process is to verify that the final plat is generally conforming to the preliminary plat and to provide for public dedication of streets, parks and other public amenities).

PLANNING BOARD REVIEW:

The Planning Board formed a subcommittee to review amendments and the subcommittee recommended approval but was expressed a desire to hold public hearings for legislative and quasi-judicial cases at the Planning Board. The full Planning Board reviewed the draft amendments and has recommended approval, but with changes to have public hearings for both legislative and quasi-judicial as was the practices in the past. This would require public notification of properties and notices in the paper prior to the hearings.

ANALYSIS:

For quasi-judicial cases, dual hearings can leave the Town vulnerable to legal challenges by creating real or perceived ex-parte communications between the Planning Board and Council. Furthermore, expert testimony may be different at each hearing with differing outcomes, also leaving the Town vulnerable to legal challenges. For Special Use cases, it would add a month to the development review process.

In general, having public hearings at the Planning Board and Council may lead to confusion as to which hearing to leave testimony.

On the other hand, a public hearing at the Planning Board allows the public to influence the process earlier and to allow staff and the applicants to work-through issues before the items go to Council for final approval.

RECOMMENDATION:

Planning Staff recommends the Council hold the public hearing on the text amendment, then consider the zoning text amendment and provide guidance on whether there should be public hearings at the Planning Board for quasi-judicial and legislative items, then table the item to the March meeting to enable staff time to redraft the ordinance accordingly.

DRAFT ORDINANCE # ZA-18-06
AN ORDINANCE TO AMEND THE TOWN OF SMITHFIELD
UNIFIED DEVELOPMENT ORDINANCE ARTICLE 5

WHEREAS, the Smithfield Town Council wishes to amend certain provisions in the Unified Development Ordinance by making changes to Article 5 as it pertains to the development review process.

WHEREAS, it is the objective of the Smithfield Town Council to have the UDO promote regulatory efficiency and consistency and the health, safety, and general welfare of the community;

NOW, THEREFORE, be it ordained that the following Articles are amended to make the following changes set forth in the deletions (strikethroughs) and additions (double underlining) below:

PART 1

[Revise Article 5, to correct development review processes.]

5.4.2. The applicant may schedule a pre-application meeting with the UDO Administrator to review a Sketch Plan of the proposed development, including minor and major subdivisions and **minor and major** site plans. The Sketch Plan shall meet the requirements of Section 5.4.4. The UDO Administrator will advise the applicant of all applicable Town regulations and policies, may suggest development alternatives, and will discuss application procedures and fees (see Section 2.7). The UDO Administrator may submit the Sketch Plan to other departments or agencies, as appropriate, for input and recommendations. Within fifteen (15) days of receipt of the sketch plan, the UDO Administrator shall forward all appropriate comments to the applicant. This timeframe may be extended if comments are requested from other agencies.

...

5.5.5. Approval. (AMENDED 1/2/2018)

All required local, state, and/or federal permits must be obtained prior to the approval of the site plan or minor subdivision. If the site plan **or final plat** is found to meet all applicable regulations of this Ordinance, then the UDO Administrator shall issue a certificate of zoning compliance.

...

SECTION 5.6 TOWN COUNCIL APPROVAL UPON PLANNING BOARD REVIEW AND RECOMMENDATION - MAJOR SUBDIVISION PRELIMINARY AND TOWN COUNCIL APPROVAL OF MAJOR SUBDIVISION FINAL PLATS. (AMENDED 1/2/2018)

Town Council Approval Upon Planning Board Review and Recommendation applies to the following:

- Major Subdivision Preliminary Plats. Includes all subdivisions not meeting the requirements for a minor subdivision.

Town Council Approval without Planning Board Review and Recommendation applies to the following:

- Major Subdivision Final Plats. Includes all subdivisions not meeting the requirements for a minor subdivision.

...

5.6.5. Major Subdivision Final Plat Review and Approval by the Town Council Without Planning Board Recommendation.

5.6.5.1. Following a complete review by the staff, the UDO Administrator shall schedule the application for review by the Town Council at the next regularly scheduled meeting.

5.6.5.2. The Town Council may take the following actions:

5.6.5.2.1. Approve the application if it substantially agrees with the preliminary plat; or

5.6.5.2.2. Deny the application and require a new preliminary plat.

5.6.56. Approval. (Amended 1/2/2018)

All required local, state, and/or federal permits must be obtained prior to the approval of the ~~site plan or~~ final plat. If the final plat is found to meet all of the applicable regulations of this Ordinance, then the UDO Administrator shall ~~issue a certificate of zoning compliance for site plans or~~ submit final subdivision plats to the ~~Planning Board~~/Town Council for approval.

...

5.8.2.1.3. After the UDO Administrator determines that the preliminary plat meets the requirements of this Ordinance, it shall be submitted to the Planning Board for review and recommendation to the Town Council. At least ten (10) days prior to the ~~Planning Board~~ Town Council meeting, the Town shall prominently post a notice on the site proposed for subdivision or on an adjacent public street or ~~highway right-of-way~~ public right-of-way not less than ten calendar days prior to the Town Council meeting. In addition, notice shall be given to other potentially interested persons by publishing a notice in a newspaper having general circulation in the area one (1) time not less than ten (10) nor more than twenty-five (25) days prior to the hearing. The Planning Board shall forward its recommendation to the Town Council within forty-five (45) days after first consideration by the Planning Board. If the Planning Board fails to act within the 45-day period, the subdivision will be placed on the next available Town Council

agenda. The Town Council shall consider the preliminary plat and approve, approve with conditions acceptable to the applicant, or disapprove the plat.

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5.8.2.2.2. Within 24 months after approval of the preliminary plat by the Town Council, the subdivider shall submit a final plat showing that he or she has completed the subdivision according to the preliminary plan and phasing plan (if applicable). The final plat may include all or only a portion of the subdivision as proposed and approved on the preliminary subdivision plat, provided that all required improvements have been installed as called for in the approved preliminary plat or a surety bond or similar financial instrument has been approved by the Town Council, in accordance with Section 5.8.2.6.

The UDO Administrator shall determine whether or not the final plat substantially agrees with the approved preliminary plan and submit to the ~~Planning Board~~/Town Council for approval. If substantial differences exist, the Town Council may deny the final plat and require that a new preliminary plat be submitted. If the plat substantially agrees with the preliminary plat, the Town Council ~~upon recommendation of the Planning Board~~ shall approve the final plat within thirty (30) days after first consideration, if the Town Council has accepted the publicly dedicated improvements or approved a performance bond agreement. Only after the final plat has been approved and recorded at the Johnston County Register of Deeds office shall any lots be transferred or conveyed. The plat must be recorded within 30 days after approval.

PART 2

That the Unified Development Ordinance shall be page numbered and revision dated as necessary to accommodate these changes.

PART 3

That these amendments of the Unified Development Ordinance shall become effective upon adoption.

Duly adopted this the ____ day of _____, 2019.

M. Andy Moore, Mayor

ATTEST

Shannan L. Parrish, Town Clerk

**ARTICLE 5.
DEVELOPMENT REVIEW PROCESS**

Section 5.1 Applicability5-2

Section 5.2 Application Not Required; Waiver5-2

Section 5.3 Zoning Verification5-2

Section 5.4 Pre-Application Meeting and Sketch Plan5-2

Section 5.5 Administrative Approval –Site Plan, Minor Subdivision,
or Major Subdivision Final Plat.....5-4

Section 5.6 Town Council Approval Upon Planning Board Review and Recommendation -
Major Subdivision Preliminary Plat.....5-8

Section 5.7 Site Plan Requirements5-10

Section 5.8 Subdivision Procedures5-12

Section 5.9 Construction Drawing Review Requirements5-18

ARTICLE 5. DEVELOPMENT REVIEW PROCESS

SECTION 5.1 APPLICABILITY.

The purpose of this Article is to establish an orderly process to develop land within the Town of Smithfield. It is also the intent of this Article to provide a clear and comprehensible development process that is fair and equitable to all interests, including the petitioners, affected neighbors, Town staff, related agencies, the Planning Board, and the Town Council. Approved plans shall be the guiding documents for final approval and permitting.

The development review process applies to all development actions within the planning jurisdiction except for existing individual lots for single-family detached residential and two-family residential (duplex) development. The provisions of this Article shall be applicable for all Minor and Major Subdivisions, and Site Plans, except as provided in Section 5.2.

SECTION 5.2 APPLICATION NOT REQUIRED; WAIVER.

The UDO Administrator may waive the required development review process when he determines that the submission of a development plan in accordance with this Article would serve no useful purpose. The UDO Administrator may grant such a waiver only in the following cases:

5.2.1. Accessory structures.

5.2.2. Any enlargement of a principal building by less than 20% of its existing size provided such enlargement is less than 7,000 square feet and will not result in required parking or landscaping improvements.

5.2.3. A change in principal use where such change would not result in a change in zoning, lot coverage, parking, vehicular access, signage, or other site characteristics.

SECTION 5.3 ZONING VERIFICATION.

Zoning compliance must be verified by the UDO Administrator. If the zoning is in compliance, the applicant may proceed with submittal of site plan, plats, or drawings. If the proposed development is not zoning compliant, the applicant must request a rezoning (see Section 4.6) or a variance(s) (see Section 4.10.2) before proceeding with site plan, plat, or drawing submittal.

SECTION 5.4 PRE-APPLICATION MEETING AND SKETCH PLAN.

5.4.1. The recommended pre-application meeting is a non-binding and informal review of a development proposal intended to provide information to the applicant on the procedures and policies of the Town of Smithfield, and does not confer upon the applicant any development rights. The sketch plan is only a courtesy intended to inform the applicant of the approval criteria prior to submittal of the development plan; furthermore, sketch plan review does not constitute approval of the development plan and may not be substituted for any required approvals.

ARTICLE 5. DEVELOPMENT REVIEW PROCESS

5.4.2. The applicant may schedule a pre-application meeting with the UDO Administrator to review a Sketch Plan of the proposed development, including minor and major subdivisions **and minor and major** site plans. The Sketch Plan shall meet the requirements of Section 5.4.4. The UDO Administrator will advise the applicant of all applicable Town regulations and policies, may suggest development alternatives, and will discuss application procedures and fees (see Section 2.7). The UDO Administrator may submit the Sketch Plan to other departments or agencies, as appropriate, for input and recommendations. Within fifteen (15) days of receipt of the sketch plan, the UDO Administrator shall forward all appropriate comments to the applicant. This timeframe may be extended if comments are requested from other agencies.

5.4.3. The applicant is encouraged to incorporate the recommendations of the UDO Administrator or authorized staff reviewer into the development plan before submittal.

5.4.4. To ensure an appropriate level of review, applicants are encouraged to submit as much information as possible. At a minimum, three copies of the sketch plan, drawn to scale, should be submitted, including the following:

5.4.4.1. A scale, preferably the same scale as required for development plan submittal.

5.4.4.2. Property boundaries and total acreage, including NC PINs for all properties.

5.4.4.3. Major topographical and physical features including water bodies, creeks, wetlands, buildings, streets, and the like.

5.4.4.4. Proposed streets, rights-of-way, buildings, and/or lot arrangements, including proposed lot sizes, common areas, and the buffers required by Article 10, Part II.

5.4.4.5. Existing and proposed land use, drawn to scale, with brief project description including proposed structures, yard setbacks, building sizes, unit sizes, lot sizes, open space, amenities, the amount of impervious surfaces in square feet and the percentage of impervious surface of the entire development and the like.

5.4.4.6. Name, address, and telephone number of applicant, owner, and persons (firm) preparing the development plan.

5.4.4.7. Adjacent street names, numbers, and right-of-way widths.

5.4.4.8. Zoning district classification of site and surrounding properties, including zoning of properties located across adjacent streets.

5.4.4.9. The boundaries of any proposed phasing.

5.4.4.10. Sites, if any, for schools, parks, churches, and playgrounds.

ARTICLE 5. DEVELOPMENT REVIEW PROCESS

5.4.4.11. Acreage in public uses.

5.4.4.12. Approximate number of lots.

5.4.4.13. Sketch vicinity map showing the relation of the proposed site to existing uses of the land.

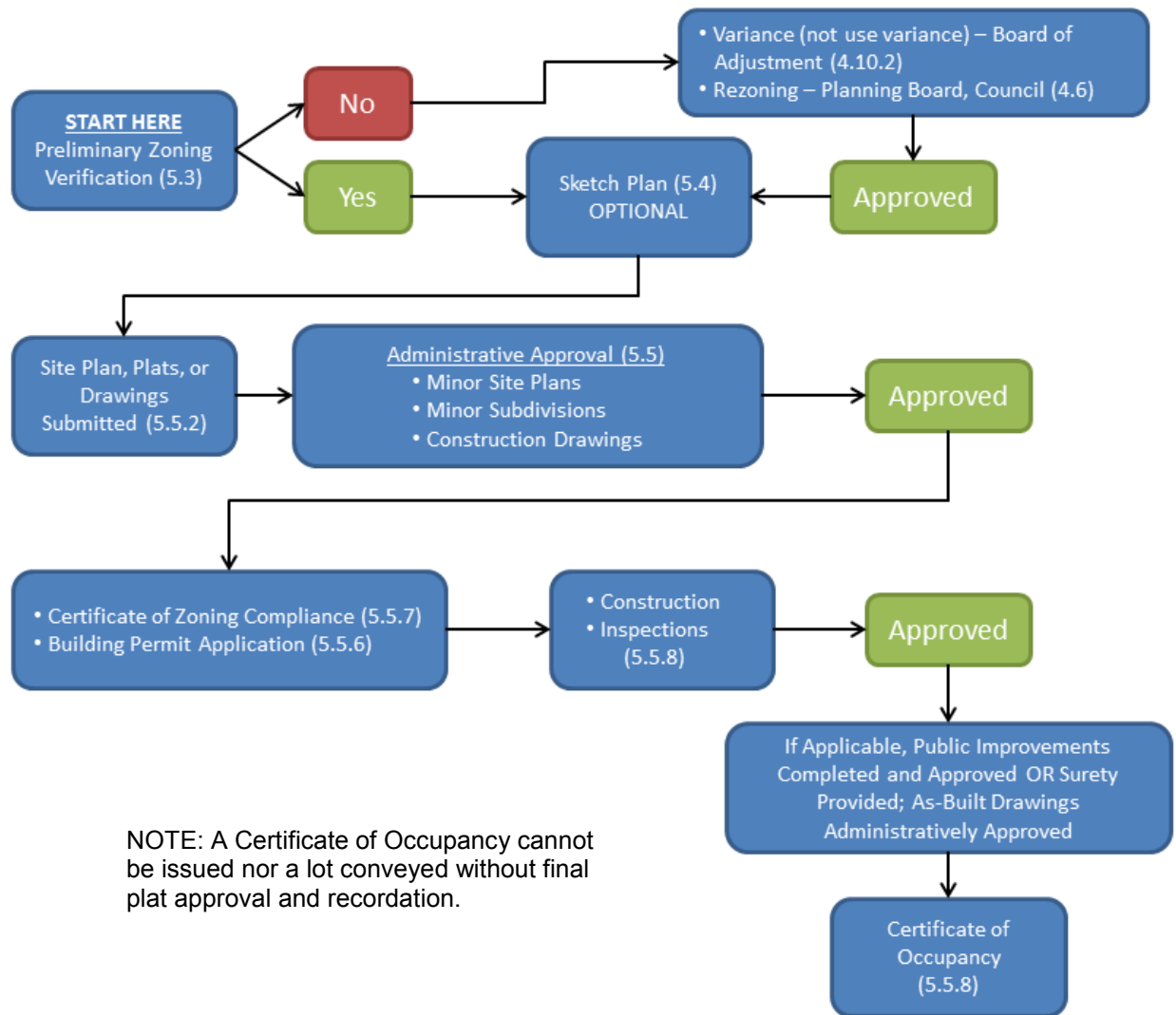
SECTION 5.5 ADMINISTRATIVE APPROVAL - SITE PLAN MINOR SUBDIVISION.

Administrative approval includes the following types of development and permits:

- Site Plans.
- Minor Subdivisions. A subdivision that does not involve any of the following: (i) the creation of more than a total of five (5) lots; (ii) the creation of any new public streets; (iii) the extension of a public water or sewer system; or (iv) the installation of drainage improvements through one (1) or more lots to serve one (1) or more other lots.
- Construction and As-Built Drawings.

ARTICLE 5. DEVELOPMENT REVIEW PROCESS

5.5.1. Administrative Approval Flowchart.



5.5.2. Site Plan, Minor Subdivision Plat, or Construction Drawings Submitted for Review.

A plan of the proposed development shall be submitted in accordance with Sections 5.7 through 5.9, as applicable, and shall be accompanied by the completed application and payment of a fee as adopted by the Town Council (see Section 2.7).

5.5.3. Preliminary Zoning Approval.

If the site plan, construction drawings, as-built drawings, or final plat is found to meet all of the applicable regulations of this Ordinance, then the UDO Administrator shall issue a zoning permit for site plans or approve minor subdivision plats.

ARTICLE 5. DEVELOPMENT REVIEW PROCESS

5.5.4. Staff Review.

The UDO Administrator may circulate the plan or plat to relevant governmental agencies and officials. The reviewing government agencies and officials may include, but not necessarily be limited to, the following:

- UDO Administrator
- Town Manager
- Police Department
- Fire Department
- Building Inspections Department
- Recreation Department
- Town Engineer
- Town Attorney
- Other Town reviewers designated by the Town Manager
- Utilities Providers
- Johnston County Health Department
- Johnston County Board of Education
- Upper Coastal Plain Rural Planning Organization
- NC Department of Transportation
- NC Department of Environment and Natural Resources
- US Army Corps of Engineers

5.5.5 Approval. (Amended 1/2/2018)

All required local, state and/or federal permits must be obtained prior to the approval of the site plan or minor subdivision. If the site plan or final plat is found to meet all applicable regulations of this Ordinance, then the UDO Administrator shall issue a certificate of zoning compliance.

5.5.6. Appeal of Administrative Denial.

Administrative denial of an application for approval of a site plan, minor subdivision plat, or construction drawings may be appealed by the applicant to the Board of Adjustment within thirty (30) days following written notification of denial by the UDO Administrator.

5.5.7. Building Permit Required.

5.5.7.1. No building or other structure shall be erected, moved, added to, demolished, or structurally altered without a building permit issued by the Building Inspector and a zoning permit issued by the UDO Administrator. No building permit shall be issued by the Building Inspector except in conformity with the provisions of the NC State Building Code and this Ordinance, unless he or she receives a written order from the Board of Adjustment in the form of a variance to this Ordinance as provided for by this Ordinance.

5.5.7.2. Application for Building Permit. All applications for building permits shall be accompanied by plans, including a survey not more than one (1) year old, as specified by the NC State Building Code. The application shall include other information as lawfully may be required by the Building Inspector, including existing or proposed building or alteration; existing or proposed uses of the building and land; the number of families,

ARTICLE 5. DEVELOPMENT REVIEW PROCESS

dwelling units or rental units the building is designed to accommodate; conditions existing on the lot; floodplain development permit; and any other matters as may be necessary to determine conformance with, and provide for the enforcement of this Ordinance. A minimum of two (2) copies of the plans shall be required. One copy of the plans shall be returned to the applicant by the Building Inspector, after he shall have marked the copy either as approved or disapproved, and attested to same by his signature on the copy. One copy of the plans, similarly marked, shall be retained by the Building Inspector.

5.5.8. Certificate of Zoning Compliance.

5.5.8.1. No land shall be used or occupied and no building hereafter constructed, structurally altered, erected, or moved or its use changed until a certificate of zoning compliance shall have been issued by the UDO Administrator, or his designee, which may include the Building Inspector, stating that the building or the proposed use thereof complies with the provisions of this Ordinance.

5.5.8.2. A certificate of zoning compliance, either for the whole or a part of a building, shall be applied for prior to the application for a building permit and shall be issued together with the building permit.

5.5.9. Inspections and Certificates of Occupancy.

No new building, or part thereof, shall be occupied, and no addition or enlargement of any existing building shall be occupied, and no existing building after being altered or moved shall be occupied, and no change of use shall be made in any existing building or part thereof, until the Building Inspector has issued a Certificate of Occupancy.

ARTICLE 5. DEVELOPMENT REVIEW PROCESS

A certificate of occupancy shall be applied for subsequent to or concurrent with the application for a certificate of zoning compliance, and shall be issued within five (5) business days after the erection or structural alteration of such building or part shall have been completed in conformance with the provisions of this Ordinance. A temporary certificate of occupancy for a portion of a structure may be issued for a portion or portions of a building which may safely be occupied prior to final completion and occupancy of the entire building or for other temporary uses. A certificate of occupancy shall not be issued unless the proposed use of a building or land conforms to the applicable provisions of this Ordinance. If the certificate of occupancy is denied, the Building Inspector shall state in writing the reasons for refusal and the applicant shall be notified of the refusal.

For all developments, excluding single-family residential uses, prior to the issuance of a certificate of occupancy by the Building Inspector, a final zoning inspection shall be conducted to ensure that the approved plan has been followed and all required improvements have been installed to Town standards.

The Town Council must have accepted the offer of dedication for all publicly dedicated improvements, including roadways, contingent upon the recordation of the final plat or provision of performance guarantees approved by the Town Council as specified in Section 5.8.2.6.

For Site Plans and Minor Subdivision Final Plats, an as-built survey and as-built construction drawings shall be submitted to the UDO Administrator by the developer upon completion of the building foundation(s) to ensure that setbacks and building orientation match the approved site plan. If the survey shows that the placement of the building is incorrect, then the UDO Administrator shall issue a stop-work order and all construction shall be halted until the problem is remedied (see Section 1.8).

SECTION 5.6 TOWN COUNCIL APPROVAL UPON PLANNING BOARD REVIEW AND RECOMMENDATION - MAJOR SUBDIVISION PRELIMINARY AND TOWN COUNCIL APPROVAL OF MAJOR SUBDIVISION FINAL PLATS. (AMENDED 1/12/2018)

Town Council Approval Upon Planning Board Review and Recommendation applies to the following:

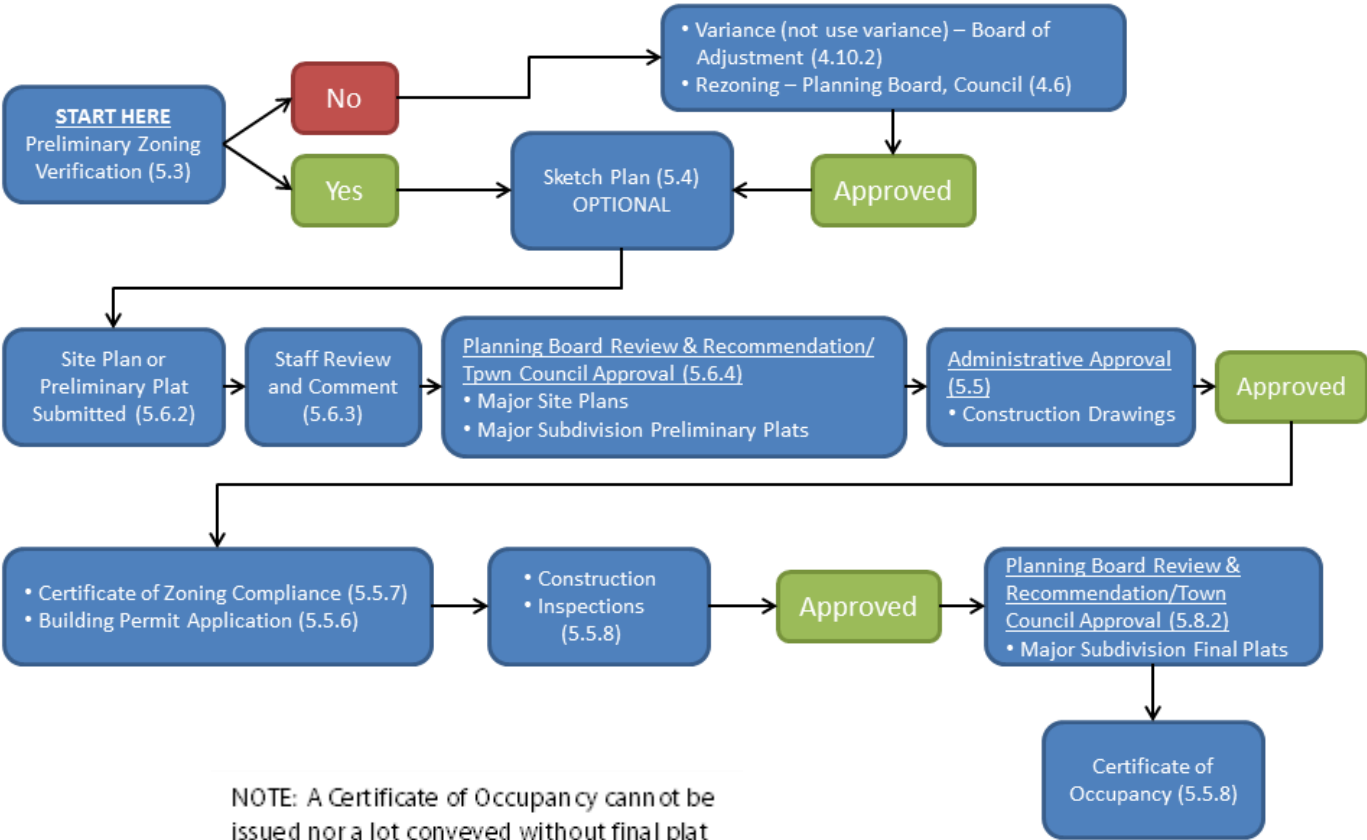
- Major Subdivision Preliminary and Final Plats. Includes all subdivisions not meeting the requirements for a minor subdivision.

Town Council Approval without Planning Board Review and Recommendation applies to the following:

- Major Subdivision Final Plats. Includes all subdivisions not meeting the requirements for a minor subdivision.

ARTICLE 5. DEVELOPMENT REVIEW PROCESS

5.6.1. Town Council Review and Approval Flowchart.



NOTE: A Certificate of Occupancy cannot be issued nor a lot conveyed without final plat approval and recordation.

5.6.2. Major Subdivision Preliminary Plat, or Construction Drawings Submitted for Review. All major subdivision preliminary plats shall be submitted in accordance with Sections 5.7 through 5.9, as applicable, and shall be accompanied by the completed application and payment of a fee as adopted by the Town Council (see Section 2.7). All major subdivision preliminary plats shall be submitted twenty-one (21) days in advance of the Planning Board meeting at which they are to be reviewed.

5.6.3. Staff Review.

The UDO Administrator will circulate the plan to relevant governmental agencies and officials for comments and recommendations. The reviewing agencies and officials may include, but not necessarily be limited to, those listed in Section 5.5.4.

5.6.4. Review and Approval by the Town Council Upon Planning Board Recommendation.

5.6.4.1. Following a complete review by the staff, the UDO Administrator shall schedule the application for review by the Planning Board at the next regularly scheduled meeting.

ARTICLE 5. DEVELOPMENT REVIEW PROCESS

5.6.4.2. The Planning Board shall forward its recommendation to the Town Council within forty-five (45) days of reviewing the application. If a recommendation is not made within 45 days, the application shall be forwarded to the Town Council without a recommendation from the Planning Board.

5.6.4.3. Once the comments of the Planning Board have been made, or the 45-day period elapses without a recommendation, the Town Council shall consider the application at its next regularly scheduled meeting.

5.6.4.4. The Council may take the following actions:

5.6.4.4.1. Approve the application;

5.6.4.4.2. Approve the application with conditions acceptable to the applicant;

5.6.4.4.3. Deny the application;

5.6.4.4.4. Table the application for a specific number of days. The Town Council may also request additional information of the applicant, other governmental agencies, or interested/affected parties in order to aid in the review of the request.

5.6.4.4.5. Return the application to the Planning Board for further consideration. This deferral does not restart the initial Planning Board 45-day review period. The Town Council may direct that the Planning Board return a recommendation by a certain date.

5.6.5. Major Subdivision Final Plat Review and Approval by the Town Council Without Planning Board Recommendation.

5.6.5.1. Following a complete review by the staff, the UDO Administrator shall schedule the application for review by the Town Council at the next regularly scheduled meeting.

5.6.5.2. The Town Council may take the following actions:

5.6.5.2.1. Approve the application if it substantially agrees with the preliminary plat; or

5.6.5.2.2. Deny the application and require a new preliminary plat.

5.6.5 6. Approval. (Amended 1/2/2018)

All required local, state, and/or federal permits must be obtained prior to the approval of the site plan or final plat. If the site plan or final plat is found to meet all of the applicable regulations of this Ordinance, then the UDO Administrator shall ~~issue a certificate of zoning compliance for site plans or~~ submit final subdivision plats to the Planning Board/Town Council for approval.

ARTICLE 5. DEVELOPMENT REVIEW PROCESS

5.6.6 7. Town Council Denial.

Following denial by the Town Council, the applicant may file a new application and associated fee. Unless the Town Council explicitly states conditions that must be met prior to the resubmission of an application, the applicant shall not submit a new application for the same property within one (1) year of the date of denial by the Town Council unless the application is (i) significantly different from the previously denied application or (ii) the applicant pays a double fee. All applications shall be resubmitted for full review unless the application is resubmitted to address conditions set forth by the Town Council for reapplication.

SECTION 5.7 SITE PLAN REQUIREMENTS.

5.7.1. Information to be Shown on Site Plan. The site plan shall be prepared by a professional engineer, registered land surveyor, or licensed architect and shall be drawn to scale of not less than one inch equals 30 feet. The site plan shall be based on the latest tax map information and shall be of a size as required by each individual site plan. The site plan shall contain the following information, if applicable as determined by the UDO Administrator:

5.7.1.1. A key map of the site with reference to surrounding areas and existing street locations.

5.7.1.2. The name and address of the owner and site plan applicant, together with the names of the owners of all contiguous land and of property directly across the street as shown by the most recent tax records.

5.7.1.3. Parcel Identification Numbers (PIN) for site and adjacent properties.

5.7.1.4. Deed book and page reference demonstrating ownership of property.

5.7.1.5. Location of all existing and proposed structures, including their outside dimensions and elevations, streets, entrances, and exits on the site, on contiguous property, and on property directly across the street.

5.7.1.6. Building setback, side line, and rear yard distances.

5.7.1.7. Location of watercourses, ponds, flood zones, water supply watershed areas, and riparian buffers.

5.7.1.8. All existing physical features, including existing trees greater than eight (8) inches in diameter measured four and one-half (4.5) feet above ground level, and significant soil conditions.

5.7.1.9. Topography showing existing and proposed contours at no greater than ten (10) foot intervals. All reference benchmarks shall be clearly designated.

ARTICLE 5. DEVELOPMENT REVIEW PROCESS

5.7.1.10. The zoning of the property, including zoning district lines where applicable.

5.7.1.11. Lot line dimensions and property lines of the tract to be developed (with dimensions identified), adjacent property lines (including corporate limits, Town boundaries, and county lines).

5.7.1.12. Parking, loading, and unloading areas shall be indicated with dimensions, traffic patterns, access aisles, and curb radii per the requirements of Article 10, Part I.

5.7.1.13. Types of surfaces for drives, sidewalks, and parking areas.

5.7.1.14. Location and design of existing and proposed sanitary waste disposal systems, water mains and appurtenances (including fire hydrants) on or adjacent to the parcel.

5.7.1.15. Other utility lines both under- and above-ground, including electric power, telephone, gas, cable television.

5.7.1.16. Location of all US Clean Water Act Section 404 wetland areas, located of detention/retention ponds (Best Management Practices), riparian buffers and impervious surface areas with area dimensions, and ratios of impervious surface to the total size of the lot.

5.7.1.17. The location of all common areas.

5.7.1.18. The location and dimensions of all areas intended as usable open space, including all recreational areas. The plans shall clearly indicate whether such open space areas are intended to be offered for dedication to public use or to remain privately owned.

5.7.1.19. Landscaping and buffering plan showing what will remain and what will be planted, indicating names of plants, trees, and dimensions, approximate time of planting, and maintenance plans per the requirements of Article 10, Part II. The plan shall include the tree line of wooded areas and individual trees eight (8) inches in diameter or more, identified by common or scientific name.

5.7.1.20. Proposed site lighting.

5.7.1.21. Location, dimensions, and details of signs per the requirements of Article 10, Part III.

5.7.1.22. The method of refuse disposal and storage and the location of dumpsters and screening as required by Article 10, Part II.

5.7.1.23. North arrow or compass rose.

ARTICLE 5. DEVELOPMENT REVIEW PROCESS

5.7.1.24. Building elevations, except for single- and two-family homes and townhouses designed under the NC Residential Building Code.

5.7.2. Certificate of Zoning Compliance/Building Permit.

An application for a certificate of zoning compliance may be requested in advance of or concurrently with an application for a building permit in accordance with Sections 5.5.6 and 5.5.7.

5.7.3. Inspections and Certificates of Occupancy.

No new building, or part thereof, shall be occupied; no addition or enlargement of any existing building shall be occupied; no existing building after being altered or moved shall be occupied; and no change of use shall be made in any existing building or part thereof, until the Building Inspector has issued a Certificate of Occupancy as provided in Section 5.5.8, above.

SECTION 5.8 SUBDIVISION PROCEDURES.

5.8.1. Review Procedure for Minor Subdivisions.

5.8.1.1. The developer may submit a sketch development plan, as specified in Section 5.4, to the UDO Administrator. At this stage, the UDO Administrator and the developer shall informally review the proposal.

5.8.1.2. After this initial review has been completed, the subdivider or his authorized representative shall prepare a final plat as specified in Section 10.97 and submit it to the UDO Administrator. At the time of submission, the subdivider shall pay to the Town an application fee as established by the Town Council in accordance with Section 2.7. Refer to Section 10.98 for plat requirements.

5.8.1.3. The UDO Administrator shall approve or disapprove the final plat, as provided in Section 5.5.

5.8.2. Review Procedure for Major Subdivisions.

5.8.2.1. Preliminary Plat.

5.8.2.1.1. At the time of submission of the preliminary plat and phasing plan (if applicable), the subdivider shall pay to the Town an application fee as established by the Town Council in accordance with Section 2.7. Refer to Section 10.98 for plat requirements.

5.8.2.1.2. The subdivider or his or her authorized agent shall submit five (5) copies of the preliminary plat to the UDO Administrator who shall evaluate the plan to determine whether or not it meets the requirements of this Ordinance. The UDO Administrator will solicit and receive comments from other persons or agencies

ARTICLE 5. DEVELOPMENT REVIEW PROCESS

before making its final recommendations. If the application is complete, the UDO Administrator will submit it to the Planning Board according to the schedule established in Section 5.6.4.

5.8.2.1.3. After the UDO Administrator determines that the preliminary plat meets the requirements of this Ordinance, it shall be submitted to the Planning Board for review and recommendation to the Town Council. At least ten (10) days prior to the ~~Planning Board~~ meeting, the Town shall prominently post a notice on the site proposed for subdivision or on an adjacent public street or ~~highway right-of-way~~ public right-of-way not less than ten calendar days prior to the Town Council meeting. In addition, notice shall be given to other potentially interested persons by publishing a notice in a newspaper having general circulation in the area one (1) time not less than ten (10) nor more than twenty-five (25) days prior to the hearing.

The Planning Board shall forward its recommendation to the Town Council within forty-five (45) days after first consideration by the Planning Board. If the Planning Board fails to act within the 45-day period, the subdivision will be placed on the next available Town Council agenda. The Town Council shall consider the preliminary plat and approve, approve with conditions acceptable to the applicant, or disapprove the plat.

5.8.2.2. Final Plat.

5.8.2.2.1. At the time of submission of the final plat, the subdivider or his or her authorized agent shall pay the Town an application fee as established by the Town Council in accordance with Section 2.7. Refer to Section 10.98 for plat requirements.

5.8.2.2.2. Within 24 months after approval of the preliminary plat by the Town Council, the subdivider shall submit a final plat showing that he or she has completed the subdivision according to the preliminary plan and phasing plan (if applicable). The final plat may include all or only a portion of the subdivision as proposed and approved on the preliminary subdivision plat, provided that all required improvements have been installed as called for in the approved preliminary plat or a surety bond or similar financial instrument has been approved by the Town Council, in accordance with Section 5.8.2.6.

The UDO Administrator shall determine whether or not the final plat substantially agrees with the approved preliminary plan and submit to the ~~Planning Board/~~ Town Council for approval. If substantial differences exist, the Town Council may deny the final plat and require that a new preliminary plat be submitted. If the plat substantially agrees with the preliminary plat, the Town Council ~~upon recommendation of the Planning Board~~ shall approve the final plat within thirty (30) days after first consideration, if the Town Council has accepted the publicly

ARTICLE 5. DEVELOPMENT REVIEW PROCESS

dedicated improvements or approved a performance bond agreement. Only after the final plat has been approved and recorded at the Johnston County Register of Deeds office shall any lots be transferred or conveyed. The plat must be recorded within 30 days after approval.

5.8.2.2.3. Five (5) copies of the final plat shall be submitted: the original, two mylar copies, and two paper copies. The mylar shall be three mil, suitable for reproduction. The three reproducible copies shall each have original signature. The original copy shall be returned to the subdivider, one mylar copy shall be recorded at the Johnston County Register of Deeds office, and one mylar copy of the recorded plat shall be returned to the UDO Administrator.

5.8.2.2.4. The final plat shall be prepared by a surveyor licensed and registered to practice in the state. It shall conform to the provisions of plats, subdivisions, and mapping requirements as set forth in GS 47-30, as amended, and the *Standards of Practice of Land Surveying in North Carolina*.

5.8.2.2.5. The final plat shall depict or contain the information specified in Section 10.98. Plats not illustrating or containing the information required in Section 10.98 shall be returned to the subdivider or his or her authorized agent for completion and resubmission.

5.8.2.2.6. For any replatting or resubdivision of land, the same procedures, rules, and regulations shall apply as prescribed herein for an original subdivision.

5.8.2.3. Time Limitation/Approval of Preliminary Plat. Preliminary plat approval shall be valid for two (2) years unless a greater time period is granted through a Vested Rights request. If final plat approval has not been obtained within said two-year period, preliminary plat approval is void. A new preliminary plat shall be required to be submitted and such plat shall be in conformance with all current and applicable standards in this Ordinance. Notwithstanding, the developer may submit a request to the UDO Administrator for a time extension for up to one (1) year for final plat submittal. Said request must be submitted to the UDO Administrator thirty (30) days prior to the original plat expiration date. No more than one (1) such extension may be granted by the UDO Administrator per subdivision. The developer may submit a final plat for one or more phases of a subdivision given preliminary plat approval. Said submission shall extend the expiration date for the remaining phases of the subdivision for an additional two (2) years past the date of said final plat approval or approval of one or more phases.

5.8.2.4. As-Built Drawing Submittal. Prior to final plat approval or release of performance guarantees, As-Built Drawings shall be submitted and administratively approved.

5.8.2.5. Property Owners Association Covenants Review. Prior to approval of any final plat for a major subdivision, the UDO Administrator shall review the covenants of the

ARTICLE 5. DEVELOPMENT REVIEW PROCESS

Property Owners Association to ensure compliance with Town requirements. The covenants shall include provisions for the ownership and maintenance of all privately-held facilities. The UDO Administrator will refer the covenants to the Town Attorney for review and approval.

5.8.2.6. Performance Guarantees. In lieu of requiring the completion, installation, and dedication of all improvements prior to final plat approval, the Town of Smithfield may enter into an agreement with the subdivider whereby the subdivider shall agree to complete any remaining required improvements as specified by the approved preliminary plat for that portion of the subdivision to be shown on the final plat within a mutually agreed upon specified time period not to exceed one (1) year. Once agreed upon by both parties and the security required herein is provided, the final plat may be approved by the Town Council, if all other requirements of this Ordinance are met. The Town shall require a certified cost estimate from a licensed contractor or engineer for the cost of completion of such improvements.

5.8.2.6.1. The subdivider shall provide one of the following Performance Guarantees, elected at the subdivider's discretion, in lieu of installation:

5.8.2.6.1.1. Surety bond issued by any company authorized to do business in this State.

5.8.2.6.1.2. Letter of credit issued by any financial institution licensed to do business in this State.

5.8.2.6.1.3. Other form of guarantee that provides equivalent security to a surety bond or letter of credit.

5.8.2.6.2. The performance guarantee shall be returned or released, as appropriate, in a timely manner upon the acknowledgment by the Town that the improvements for which the performance guarantee is being required are complete. If the improvements are not complete and the current performance guarantee is expiring, the performance guarantee shall be extended, or a new performance guarantee issued, for an additional period until such required improvements are complete. A developer shall demonstrate reasonable, good faith progress toward completion of the required improvements that are the subject of the performance guarantee or any extension. The form of any extension shall remain at the election of the developer.

5.8.2.6.3. The amount of the performance guarantee shall not exceed one hundred twenty-five percent (125%) of the reasonably estimated cost of completion at the time the performance guarantee is issued. Any extension of the performance guarantee necessary to complete required improvements shall not exceed one hundred twenty-five percent (125%) of the reasonably estimated cost

ARTICLE 5. DEVELOPMENT REVIEW PROCESS

of completion of the remaining incomplete improvements still outstanding at the time the extension is obtained.

5.8.2.6.4. The performance guarantee shall only be used for completion of the required improvements and not for repairs or maintenance after completion.

5.8.2.6.5. For subdivisions which are underwritten or constructed with federal funds and for which the specifications for facilities or improvements are equal to or of a higher standard than those required by the Town, the bond-posting requirement may be waived and the final plat approved prior to completion of facilities or improvements.

5.8.2.7. *Transfer of Lots in Unapproved Subdivision Plats, Conveyance of Unapproved Lot Subject to this Ordinance.* After the effective date of this Ordinance, it shall be illegal for any person being the owner or agent of the owner of any land located within the territorial jurisdiction of this Ordinance, to subdivide his land in violation of this Ordinance or to transfer or sell land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under the terms of this Ordinance.

The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this Ordinance.

Any person who, being the owner or agent of the owner of any land located within the jurisdiction of the Town, thereafter subdivides his land in violation of applicable Town ordinances or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under applicable Town ordinances and recorded in the office of the Johnston County Register of Deeds, or who transfers land otherwise subject to this Ordinance by reference to metes-and-bounds description shall be guilty of a Class 1 misdemeanor and in violation of this Ordinance, and are subject, upon conviction, to fine and/or imprisonment as provided by NCGS 14-4.

The Town Council, through its attorney or other official so designated, may take any action to enforce this Ordinance as provided in Section 1.8. Civil penalties may be issued in accordance with Section 1.8. The Town Council may direct the enforcement of this Ordinance by any method listed in NC General Statutes 160A-174, including enjoining the transfer or sale of land in an illegal subdivision. Building permits required pursuant to NCGS 160A-417 may be denied for lots that have been illegally subdivided.

5.8.3. *Procedure for Plat Recordation.*

After the effective date of this Ordinance, no subdivision plat of land within the Town=s jurisdiction shall be filed or recorded until it has been submitted to and approved by the appropriate agencies,

ARTICLE 5. DEVELOPMENT REVIEW PROCESS

and until this approval is entered in writing on the face of the plat by the chairperson or head of that agency. All publicly dedicated improvements must be accepted by the Town Council contingent upon final plat recordation or acceptance of an approved performance bond.

A plat shall not be filed or recorded by the Johnston County Register of Deeds of any subdivision located within the Town=s jurisdiction that has not been approved in accordance with this Ordinance, nor shall the Clerk of Superior Court order or direct the recording of a plat if the recording would be in conflict with the requirements of this Ordinance.

5.8.4. Issuance of Permits

Zoning permits and building permits may be issued by the Town of Smithfield for the erection of any building on any lot within a proposed subdivision prior to the final plat of said subdivision being approved in a manner as prescribed by this Ordinance and recorded at the Register of Deeds office, provided an improvements permit has been issued by the Johnston County Health Department, if required. **A certificate of occupancy may not be issued until the final plat has been approved and recorded.**

5.8.5. School Site Reservation.

In accordance with NCGS 160A-372, if the Town Council and the Johnston County Board of Education have jointly determined the specific location and size of any school sites to be reserved in accordance with the Town of Smithfield Comprehensive Plan, staff shall immediately notify the Board of Education in writing whenever a sketch plan for a subdivision is submitted which includes all or part of a school site to be reserved. The Board of Education shall promptly decide whether it still wishes the site to be reserved. If the Board of Education does wish to reserve the site, the subdivision shall not be approved without such reservation. The Board of Education shall then have 18 months beginning on the date of final approval of the subdivision within which to acquire the site by purchase or by initiating condemnation proceedings. If the Board of Education has not purchased or begun proceedings to condemn the site within 18 months, the developer may treat the land as freed of the reservation.

5.8.6. Dedication of Land for Park, Recreation, and Open Space.

A developer may provide funds to the Town whereby the Town may acquire recreational land or areas to serve the development or subdivision, including the purchase of land that may be used to serve more than one subdivision or development within the immediate area. All funds received by the Town pursuant to this paragraph shall be used only for the acquisition or development of recreation, park, or open space sites. Any formula enacted to determine the amount of funds that are to be provided under this paragraph shall be based on the value of the development or subdivision for property tax purposes. A combination or partial payment of funds and partial dedication of land when the governing body of the Town determines that this combination is in the best interests of the citizens of the area to be served. Refer to Article 10, Part X.

SECTION 5.9 CONSTRUCTION DRAWING REVIEW REQUIREMENTS.

5.9.1. Applicability and Process.

ARTICLE 5. DEVELOPMENT REVIEW PROCESS

The Construction Drawings for Site Plans, and Major Subdivision Preliminary Plats shall be submitted with the site plan or preliminary plat. The construction drawings shall be reviewed concurrent with the major site plan or major subdivision preliminary plat. Construction drawings shall be approved administratively prior to the issuance of a zoning permit.

5.9.2. Submittal Requirements.

Construction Drawings shall include the following:

- Site Plan or Preliminary Plat
- Existing Conditions
- Grading Plan
- Soil and Erosion Control Plan
- Landscaping Details
- Lighting Plan
- Street Details, if applicable
- Infrastructure Details
- Stormwater Control Plan

NOTE: Improvements such as roads, curbs, bumpers, and sidewalks shall be indicated with cross-sections, design details, and dimensions.

**THE TOWN OF SMITHFIELD
UNIFIED DEVELOPMENT ORDINANCE
AMENDMENT CONSISTENCY STATEMENT
BY THE SMITHFIELD TOWN COUNCIL
ZA-18-06**

Whereas the Smithfield Town Council, upon acting on a zoning ordinance amendment to the *Unified Development Ordinance* and pursuant to NCGS §160A-383, is required to approve a statement describing how the action is consistent with the Town of Smithfield *Comprehensive Growth Management Plan*; and

Whereas the Smithfield Town Council, upon acting on a zoning ordinance amendment to the *Unified Development Ordinance* and pursuant to NCGS §160A-383, is required to provide a brief statement indicating how the action is reasonable and in the public interest.

NOW THEREFORE, BE IT ADOPTED BY THE SMITHFIELD TOWN COUNCIL AS APPROPRIATE:

IN THE EVENT THAT THE MOTION TO RECOMMEND APPROVAL OF THE ORDINANCE AMENDMENT,

That the final action regarding zoning ordinance amendment ZA-18-06 is based upon review of and consistency with, the Town of Smithfield *Comprehensive Growth Management Plan* and any other officially adopted plan that is applicable, along with additional agenda information provided to the Town Council and information provided at the regularly scheduled meeting of Town Council; and

It is the objective of the Town of Smithfield Town Council to have the *Unified Development Ordinance* promote regulatory efficiency and consistency and the health, safety, and general welfare of the community. The zoning ordinance amendment promotes this by offering fair and reasonable regulations for the citizens and business community of the Town of Smithfield as supported by the staff report and attachments provided to the Town Council at their regularly scheduled meeting. Therefore, the ordinance amendment is reasonable and in the public interest.

IN THE EVENT THAT THE MOTION TO RECOMMEND APPROVAL OF THE ORDINANCE FAILS,

That the final action regarding zoning ordinance amendment ZA-18-06 is based upon review of, and consistency, the Town of Smithfield *Comprehensive Growth Management Plan* and other officially adopted plans that are applicable; and

It is the objective of the Town Council to have the *Unified Development Ordinance* promote regulatory efficiency and consistency and the health, safety, and general welfare of the community. The zoning ordinance amendment does not promote this and therefore is neither reasonable nor in the public interest.



Town of Smithfield
 Planning Department
 350 E. Market St Smithfield, NC 27577
 P.O. Box 761, Smithfield, NC 27577
 Phone: 919-934-2116
 Fax: 919-934-1134

Petition for Amendment to the Unified Development Ordinance

Pursuant to Article 4 of the Town of Smithfield Unified Development Ordinance, Proposed amendments may be initiated by the Town Council, Planning Board, Board of Adjustment, members of the public, or by one or more interested parties. The application for any amendment shall contain a description of the proposed zoning regulation.

APPLICANT INFORMATION:

<u>Town of Smithfield</u>	<u>350 East Market Street</u>
Petitioner's Name	Address or PO Box
<u>Smithfield, NC 27577</u>	<u>919-934-2116</u>
City, State, Zip Code	Telephone

Proposed amendment to the Town of Smithfield Unified Development Ordinance:
Update/make corrections to the development review process contained in Article 5.

(Attach additional sheets as necessary)

This application must be accompanied by a Statement of Justification which addresses the following:

1. How the amendment proposed would serve the public interest or correct an obvious error in the existing ordinance.
2. How the amendment proposed will enhance or promote the purposes and goals of the adopted plans and policies of the governing body.

The undersigned hereby authorizes the filing of this petition and certifies that the information contained herein stands alone based on the merits of this request and is accurate to the best of their knowledge and belief.

 Signature of Petitioner

6/1/18
 Date

FOR OFFICE USE ONLY

File Number: <u>ZA-18-06</u>	Date Received: <u>6/1/18</u>	Amount Paid: <u>\$00.00</u>
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**Town of Smithfield
Planning Board Minutes
Thursday, January 3, 2019
6:00 P.M., Town Hall, Council Chambers**

Members Present:

Chairman Stephen Upton
Vice Chairman Mark Lane
Teresa Daughtry
Oliver Johnson
Ashley Spain
Leslie Lazarus
Alisa Bizzell
Michael Johnson

Members Absent:

Staff Present:

Stephen Wensman, Planning Director
Mark Helmer, Senior Planner
Julie Edmonds, Administrative Support Specialist

Staff Absent:

CALL TO ORDER

Chairman Stephen Upton asked each board member to state their names.

APPROVAL OF MINUTES from November 1, 2018

Oliver Johnson made a motion, seconded by Ashley Spain, to approve the minutes as written.
Unanimously approved

APPROVAL OF THE 2019 MEETING SCHEDULE

Mark Lane made a motion, seconded by Ashley Spain. Unanimously approved

NEW BUSINESS

RZ-18-07 Michael Stewart, P.E.:

Mr. Wensman stated that Michael Stewart is the applicant and he is present tonight. The property is located on Galilee Road about 1900 feet south of Black Creek Road, near West Smithfield Elementary School. The property is partially within the ETJ and partially outside. This came before the Planning Board a few months ago prior to annexation. The board chose to wait until annexation happened before hearing it. It was annexed by the Town Council. Currently it has AR zoning which is a County zoning designation and it needs a Town of Smithfield zoning designation which would be R-20A.

The 32.79 acre parcel with the Johnston County Property ID# 15I09011B received preliminary plat approval by the Johnston County Board of Commissioners around 2007-2008 when the property was fully within the jurisdiction of Johnston County. That development was never constructed and the preliminary plat expired. In 2009, the Town of Smithfield's ETJ was expanded to include the 11.53 acre portion of the property and was rezoned to R-20A (Residential-Agricultural). The remainder of the property, 21.26 acres, remained in the County's jurisdiction. In early 2018, the development was picked up and the County approved the preliminary plat for the 21.26 acres under County jurisdiction into 62 lots meeting the County's zoning and subdivision standards. The Town had first right to serve the property with water and sewer for the portion in the ETJ and the County wanted the entire parcel serviced together. As a result the applicant requested annexation which was approved on December 5, 2018. Smithfield will

provide sewer and water utilities with a master meter on Johnston County's service lines and electricity will be provided by Duke Energy. Johnston County Utilities has requested that the entire development be served by the Town of Smithfield. Staff finds the rezoning to be consistent with the Strategic Growth Plan, which guides this area for low density residential. It's consistent with the Unified Development Ordinance except for the nonconformities that were adopted by the Council with the annexation. The existed platted parcel has different setbacks and there isn't a sidewalk on the residential street.

Mr. Upton asked if the nonconformities have to be acknowledged by the Planning Board.

Mr. Wensman said you can acknowledge it. With a consistency statement you could say it's consistent except those nonconformities that have been identified with the annexation.

Mr. Lane asked what nonconforming is.

Mr. Wensman said the setbacks are. The County setbacks are 20 and the Towns are 30 so that is nonconformity. The Town requires a sidewalk on one side of the street. There are no sidewalks it is a ditch section. Those are the primary nonconformities.

Mrs. Daughtry asked if there was going to be a lift station on this plan.

Mr. Wensman said yes there will be a lift station.

Mrs. Daughtry asked if this subdivision will be built in phases.

Mr. Wensman said he wasn't sure, but the developer is planning to plat the plan as a whole so it will function as one development.

Mr. Spain asked if the Town was responsible for only internal areas. What is the Town responsible for?

Mr. Wensman said the Town is responsible for trash and yard pickup, as well as utilities.

Mr. Lane said he thought the subdivision would be serviced with County water.

Mr. Wensman said no it will be serviced with Town water and sewer pumped to the County lines through a master meter.

Mr. Lane said the plat that was not in the ETJ, is it zoned RA-Johnston County.

Mr. Wensman said that portion is platted already while it belonged to them. It now belongs to the Town, we've accepted vested rights. We are rezoning that portion to match both properties.

Michael Stewart from 4716 Carlton Drive Raleigh, NC came forward to answer any questions anyone might have. He stated this subdivision was turned in years ago before the economy took a downfall. They will have two subdivisions with two cul-de-sacs that will be connected with walking paths along the sewer corridor. The intention is to build this subdivision in two phases.

Mrs. Daughtry asked Mr. Stewart if there would be sidewalks on either side of the street.

Mr. Stewart said at this time it is just designed to be a ribbon street as in a typical county subdivision.

Mr. Lane said he thought one side on the street was required to have a sidewalk.

Mr. Wensman said sidewalks are required on one side the Town streets. With the new unplatted half of the development that will come up in discussion.

Mrs. Daughtry stated she thought when anything came before the board; the applicant would be required to up their standards and have at least one sidewalk on the road.

Mr. Wensman said yes, we are having a similar discussion with our Comprehensive Plan Committee. As long as we have a rural standard, we should ask where would that be appropriate to use and should a sidewalk be included or not given the difficulty of constructing sidewalks with that rural standard. That is

an issue we are working through. It is our policy and we have been trying to enforce that. We definitely need to have this discussion with the unplatted phase.

Mr. Lane asked what does the UDO say.

Mr. Wensman said the UDO requires sidewalks on one side of the street but gives the Town the right to waiver that.

Mrs. Daughtry said she understood the waiver but the requirement wasn't put in the UDO for them to waiver.

Mr. Lane said so at this time we don't need to worry about setbacks, sidewalks or anything other than the rezoning. He asked if this plan would come back before us.

Mr. Wensman said yes it will come back before this Planning Board.

Mrs. Daughtry made a motion to recommend that the Town Council approve rezoning map amendment RZ-18-07, seconded by Oliver Johnson. Unanimously approved

RZ-18-09 Studio TK:

The applicant is requesting to rezone a 3.12 acre portion of a 9.92 acre tract of land from the B-3(Highway Entrance Business) and R-20A (Residential-Agricultural) to the LI (Light Industrial) zoning district. Mr. Wensman stated the owners were Teknion North America LLC. The property considered for rezoning is located on the east side of US 70 Business West, approximately 200 feet north of its intersection with Cloverdale Drive. The Planning Department recommends approval of the Zoning Map Amendment; and recommends that the Town Council approve a consistency statement declaring the request to be consistent with the Town of Smithfield Comprehensive Growth Management Plan and that the request is reasonable and in the public interest.

Mrs. Daughtry made a motion to recommend Town Council approve the rezoning of RZ-18-09, seconded by Ashley Spain. Unanimously approved

ZA-18-08 Town of Smithfield:

Mr. Helmer stated The Town of Smithfield Planning Department is requesting an amendment to the Unified Development Ordinance (UDO) to amend and incorporate the Town of Smithfield Code of Ordinances, Chapter 15, Planning, Article III, Historic Properties Commission into the Unified Development Ordinance, Article 3, and to make certain amendments to other sections as they pertain to the UDO Administrator's duties, the Board of Adjustments, the Planning Board, and the Town Council.

The proposed ordinance amendment to the Unified Development Ordinance (UDO) will:

1) Incorporate the Town of Smithfield Code of Ordinances, Chapter 15, Planning, Article III, Historic Properties Commission (HPC) into the Unified Development Ordinance, Article 3 with a few minor changes:

- Title of the Historic Properties Commission is recommended to be renamed to Historic Preservation Commission. Renaming the Commission will be consistent with the title of the Town of Smithfield Historic Preservation Design Guidelines manual and more accurately reflect the intent and mission of the Commission as defined by Section 3.5.1.
- To define types of work considered as normal maintenance for contributing and noncontributing properties, and work requiring certificates of appropriateness.
- And to update the ordinance as it pertains to demolitions of historic landmarks and buildings.

2) Provide needed corrections and clarifications including:

- Minor edits to UDO Administrator's duties to reflect code changes.

- Add Historic Preservation Commission throughout Article 3 as needed.
- Make certain corrections to Section 3.3 Planning Board.
- Make certain corrections to Section 3.4 Board of Adjustments including quorum and voting procedure (3.4.2.4.1) to reflect state statutes.
- Minor additions and deletions as needed to reflect Town operations and code changes, (i.e., eliminating reference to Town Building Inspector as secretary for boards).
- To renumber Section 3.5 Town Council to 3.6 and to amend the procedural requirement for Town Council approval of site-specific development plan.

The Planning Board reviewed ZA-18-08 as it pertains to moving the HPC regulations into Article 3 at the July 2018 Planning Board meeting. Since that time, Staff has found other needed amendments to Article 3. The UDO Sub-committee met to review these changes and recommends approval.

Planning staff finds the zoning text amendment is consistent with the Town of Smithfield Comprehensive Growth Management Plan and other adopted plans, and that the amendment is reasonable and in the public interest.

Mr. Wensman added when he started working with the Town the ordinance had changed and the second public hearing was taken away from the Planning Board. Now we only have one public hearing at Town Council. Mr. Lane expressed his concern about not having the public hearing at Planning Board any longer. Mr. Wensman stated he went back and looked at older ordinances and never was it required that Planning Board hold a public hearing. It was a historical practice the Town did. So no change took place in the ordinance just in the practice.

Mr. Upton asked if the Planning Board could request to hold the public hearings as an add on, instead of taking it for granted like before.

Mr. Wensman said he'd like to point out in terms of having an official public hearing; the public has an expectation where they would go to leave their comments. If there are two I believe it may be confusion by the public as to which body they should go to in order to present their concerns. As a Town we could publicly notify a meeting at Planning Board but not classify it as a Public Hearing.

Mrs. Daughtry asked if this practice of holding two public hearings worked before, why it was ever changed.

Mr. Wensman said well there are two issues here. Legislatively it doesn't cause real conflict. However with quasi-judicial there is potential for conflict. Testimony gets out to the public, prior to the official public hearing which is at Town Council. At that point, Town Council can catch wind of any information that has been released and it distorts their opinion and creates a legal situation for the Council.

Mr. Lane asked Mr. Helmer if there had been any legal issues by Planning Board holding public hearings in the past.

Mr. Helmer answered yes, the RV Park. It was quasi-judicial. When you have two public hearings with evidence submitted, you make a recommendation to Council based on that evidence. Then Council could be making their decision based on your recommendation and information that was received outside of their public hearing. That is an example of ex parte communication and that's a problem. I think the thought behind the change is the Town is exposed to litigation when two public hearings are held and both boards are not present.

Mr. Upton asked what the Town Councils thoughts were on the public hearing change.

Mr. Helmer said several councilmen were on the UDO committee a couple years ago and they were fully aware of this change. The meeting minutes reflect it was discussed and the ordinance was adopted to make the change. It was a substantial change, so I'd hope everyone was on board when they voted.

Mr. Lane asked why major subdivision final plats aren't coming to the Planning Board.

Mr. Wensman said there's no requirement in statute, even for Council to approve it. It can be administrative. It used to go to both which isn't necessary. We're trying to make the Town developer friendly and speed up the process for them. A Council check-in is useful because they need to dedicate park land and streets anyway. It's a good opportunity for them when requesting final plat to also present their park land and street dedication. In terms of reviewing a final plat, you have to approve them unless there is a significant change.

Mr. Lane asked if the procedure about public hearings was in Article 5.

Mr. Wensman said not entirely, Article 4 has some of it.

Mr. Lane said he'd like to see Article 5 at section 5.8.2.1.3 on page 5-14; he wants Planning Board reinserted where it has been stricken and public hearing added back in. If Town Council turns the Planning Board down to hold Public hearings, the meeting should still be posted. The adjoining landowner should be notified of all meetings.

Mr. Helmer said additional changes need to be made if you intend to have a public hearing. These talks about notification, it's not saying you have to conduct a public hearing. It only says adjacent properties have to be notified.

Mrs. Daughtry said she would be a very upset landowner if a new development or business was coming beside her and the Town didn't notify her.

Mr. Wensman said planning staff will bring these recommendations to Town Council. That you would want both legislative and quasi-judicial to have public hearings twice.

Mr. Upton stated that he thought in the past, Town Council relied upon the Planning Board's recommendations from public hearings.

Mr. Wensman said the board needs to make a recommendation that the Town Council approve for legislative and quasi-judicial public hearings go before both Planning Board and Town Council.

Ashley Spain made a motion to recommend the Town Council approve ZA-18-06, seconded by Mark Lane. Unanimously approved

ZA-18-06 Town of Smithfield:

Mr. Helmer said the Town of Smithfield Planning Department is requesting an amendment to the Unified Development Ordinance (UDO) to update the development review process contained in Article 5. On January 2, 2018 the Town of Smithfield approved an ordinance amendment to allow for administrative approval by the UDO Administrator when major site plans and final plats are found to meet or exceed minimum development standards. Additional amendments are needed and these were reviewed with the UDO sub-committee on December 5, 2018 and recommended for approval. The January 2, 2018 amendment to Article 5 removed the requirement for Planning Board review and Town Council approval for major site plans, returning the process to the pre-UDO update process.

Oliver Johnson made a motion to approve ZA-18-06, seconded by Mark Lane. Unanimously approved

Voluntary Annexation Policy

Mr. Wensman presented a voluntary annexation policy. The purpose of this Annexation Policy is to set forth guidelines for the annexation of parcels to the Town of Smithfield, whether those parcels are in the existing extraterritorial jurisdiction (ETJ) or not, and whether they are contiguous or to be a satellite to the town. You can have annexation which is adding land to the town municipal boundary. If it's contiguous its land that's adjacent to current boundary and it gets annexed in. The legislature treats that as acceptable. Satellite annexation is when you accept land detached from the current corporate boundaries. The Town of Smithfield received an exemption in the statues from that requirement. We can have as much satellite annexation as we want.

1. Parcels Contiguous to Municipal Boundary

It is the policy of the Town of Smithfield to consider most favorably the voluntary annexation of parcels that are contiguous to the existing town boundaries and that are within the ETJ of the Town when:

- a) The site has access to Town of Smithfield utilities, or
- b) A development plan has been approved which will extend utilities to the site.
- c) If a site has access to only one utility, then the Town will have the option of adopting an ordinance of annexation with conditions requiring the property owner to pay all applicable fees and connect to the other utility within ninety (90) days of the date when it becomes adjacent to the site.

2. Noncontiguous Parcels within the ETJ of the Town

The Town of Smithfield will consider voluntary annexation of noncontiguous property that lies within the ETJ of the Town based on whether the property meets the requirements of satellite annexation, prior to annexation or recording of a subdivision plat.

3. Parcels outside the ETJ of the Town

If the property is not contiguous to the municipal limits of the town and not within the defined ETJ of the Town of Smithfield, but meets the requirements of satellite annexation, prior to annexation or recording of a subdivision plat, the property owners shall enter into a binding written agreement with the town that there will be full compliance, if annexed, with the applicable provisions of the Town's UDO prior to further development. All nonconforming issues will be brought into compliance

4. Annexation Required for Provision of Water and Sewer and Electric Services

It is the Town of Smithfield's intent that the future annexations of the town shall match the existing and future utility service extensions of the Town. Therefore, new applicants for utility services shall be required to voluntarily annex to the Town for delivery of those services. If those properties do not meet the requirements of satellite annexation they will enter into a binding written agreement that the present or future owners will voluntarily petition for annexation for the provision of those municipal services. That future petition will be made at the time of any of the following occurrences:

- a) The property meets the requirements for satellite annexation; or,
- b) The property becomes contiguous to any annexed portion of town; or,
- c) At the convenience of the Town of Smithfield.

If the property is annexed into the Town of Smithfield, the property owner shall be responsible for installing any infrastructure necessary for connection to the Town utilities, and all infrastructures shall be turned over to the Town upon final acceptance from the Town.

Connection to Town of Smithfield public water and/or sewer systems is required when a proposed residential structure or subdivision is located within 350 feet of Town water and/or sewer. In such cases where the public water and/or sewer supply system is of insufficient capacity to permit the delivery of

water or sewer supply, the subject proposed structure or subdivision shall be relieved of the requirement to connect to such public system.

Mr. Wensman asked the board if they had any questions before this policy was brought before the Council.

Mr. Upton stated no he didn't.

Mrs. Daughtry suggested everyone read the policy and bring it back before the board.

Mr. Upton said ok then we will table the Voluntary Annexation Policy until next time.

Mr. Oliver Johnson made a motion to table the policy, seconded by Ashley Spain. Unanimously approved

Adjournment

Being no further business, Ashley Spain made a motion seconded by Mark Lane to adjourn the meeting. Unanimous approved.

Respectfully Submitted,

A handwritten signature in black ink that reads "Julie Edmonds". The signature is written in a cursive, flowing style.

Julie Edmonds
Administrative Support Specialist



Request for Town Council Action

**Agenda
Item:** ZA-18-08
Date: 02/21/2019

Subject: Unified Development Ordinance Text Amendment
Department: Planning
Presented by: Stephen Wensman, Planning Director
Presentation: Public Hearing

Issue Statement

The Town of Smithfield Planning Department is requesting an amendment to the Unified Development Ordinance (UDO) to amend and incorporate the Town of Smithfield Code of Ordinances, Chapter 15, Planning, Article III, Historic Properties Commission into the Unified Development Ordinance, Article 3, and to make certain amendments to other sections as they pertain to the UDO Administrator's duties, the Board of Adjustments, the Planning Board, and the Town Council.

Financial Impact

There will be no financial impact to the Town.

Action Needed

To hold a public hearing, review the requested application and to make a decision whether to approve, deny or approve with changes.

Recommendations

The Planning Department and Planning Board recommend approval of the proposed amendment to Article 3 of the UDO with statement declaring the request is consistent with the Town of Smithfield Comprehensive Growth Management Plan and that the request is reasonable and in the public interest.

Approved: Town Manager Town Attorney

Attachments:

1. Staff Report
2. Ordinance Amendment
3. Full draft amendment to Article 3
4. Consistency Statement
5. Application and Petition for Amendment to the UDO



Staff Report

Public ZA-18-08
Hearing:
Date: 02/21/2019

PURPOSE:

The purpose of the proposed ordinance amendment to the Unified Development Ordinance (UDO) is to:

- 1) Incorporate the Town of Smithfield Code of Ordinances, Chapter 15, Planning, Article III, Historic Properties Commission (HPC) into the Unified Development Ordinance, Article 3 with a few minor changes:
 - Title of the Historic Properties Commission is recommended to be renamed to Historic Preservation Commission. Renaming the Commission will be consistent with the title of the Town of Smithfield Historic Preservation Design Guidelines manual and more accurately reflect the intent and mission of the Commission as defined by Section 3.5.1.
 - To define types of work considered as normal maintenance for contributing and noncontributing properties, and work requiring certificates of appropriateness.
 - And to update the ordinance as it pertains to demolitions of historic landmarks and buildings.

- 2) Provide needed corrections and clarifications including:
 - Minor edits to UDO Administrator's duties to reflect code changes.
 - Add Historic Preservation Commission throughout Article 3 as needed.
 - Make certain corrections to Section 3.3 Planning Board.
 - Make certain corrections to Section 3.4 Board of Adjustments including quorum and voting procedure (3.4.2.4.1) to reflect state statutes.
 - Minor additions and deletions as needed to reflect Town operations and code changes, (i.e., eliminating reference to Town Building Inspector as secretary for boards).
 - To renumber Section 3.5 Town Council to 3.6 and to amend the procedural requirement for Town Council approval of site-specific development plan.

PLANNING BOARD REVIEW:

The Planning Board subcommittee reviewed ZA-18-08 and recommended approval to the full Planning Board. The full Planning Board reviewed the amendment at the January 2019 meeting and recommended approval.

CONSISTENCY STATEMENT:

The zoning text amendment as proposed is consistent with the Town of Smithfield Comprehensive Growth Management Plan and other adopted plans, and that the amendment is reasonable and in the public interest.

RECOMMENDED MOTION:

The Planning Department and Planning Board recommend approval of the proposed amendment to Article 3 of the UDO with statement declaring the request is consistent with the Town of Smithfield Comprehensive Growth Management Plan and that the request is reasonable and in the public interest.

**DRAFT ORDINANCE # ZA-18-03
AN ORDINANCE TO AMEND ARTICLE 3
OF THE TOWN OF SMITHFIELD
UNIFIED DEVELOPMENT ORDINANCE
TO INCLUDE THE HISTORIC PRESERVATION COMMISSION.**

WHEREAS, the Smithfield Town Council wishes to amend certain provisions in the Unified Development Ordinance by making changes to the Town of Smithfield Unified Development Ordinance to incorporate the Town of Smithfield Code of Ordinances, Chapter 15, Planning, Article III, Historic Properties Commission into the Unified Development Ordinance, to change the Board of Adjustments voting procedures to reflect statutory requirements , amending the UDO Administrator’s duties, and other minor amendments.

WHEREAS, it is the objective of the Smithfield Town Council to have the UDO promote regulatory efficiency and consistency and the health, safety, and general welfare of the community;

NOW, THEREFORE, be it ordained that the following Articles are amended to make the following changes set forth in the deletions (strikethroughs) and additions (double underlining) below:

Part 1

[Revise Article 3, ADMINISTRATIVE / LEGISLATIVE / QUASI-JUDICIAL AUTHORITY, to amend Section 3.1 as it pertains to UDO Administrator’s duties.]

3.1.2.5. Review and approve zoning permit applications, ~~minor~~ site plans, minor subdivisions, ~~and~~ engineering drawings, ~~and final plats.~~

...

3.1.2.7. Provide nonconformity determinations, ~~including expansions of nonconforming uses and structures.~~

And,

[Revise Article 3, ADMINISTRATIVE / LEGISLATIVE / QUASI-JUDICIAL AUTHORITY, to amend Section 3.2 as it pertains to the Planning Board.]

3.3.3.2. Organization, Rules, Meetings and Records. A Chair and Vice-Chair shall be nominated from among the board membership and shall be appointed by majority vote of the board. Chair and Vice-Chair term shall be for two (2) years. Upon completion of a two-year term, the board shall make nominations and appoint new officers or reappoint existing officers. The ~~Town Building Inspector and~~ UDO Administrator shall serve as Secretary and advisor to the Planning Board and shall be responsible for keeping the record of minutes of the Planning Board. The Board shall adopt rules for transaction of its business subject to review and approval by the Town Council and shall keep a record of its member attendance and of its resolutions, discussions, findings and recommendations, which record

shall be a public record. Except as otherwise stated in Section 3.3.3.4 below, the Board shall hold at least one meeting monthly, and all of its meetings shall be open to the public. There shall be a quorum of four (4) members for the purpose of taking any official motion required by this Ordinance.

...

3.3.4.11. To review and make recommendations to the Town Council on major site plans and major subdivisions in accordance with Section 5.6.

And,

[Revise Article 3, ADMINISTRATIVE / LEGISLATIVE / QUASI-JUDICIAL AUTHORITY, to amend Section 3.2 as it pertains to the Board of Adjustments.]

3.4.2.1. The Zoning Board of Adjustment shall be governed by the terms of the General Statutes of North Carolina (160A - 388).

...

3.4.2.4.1. The concurring vote equal to four-fifths of the full membership of the board present at a meeting and not excused from voting (a quorum being present), shall be necessary to grant any variance. All other actions of the board, including decisions relating to special use permits, shall be taken by majority vote of those present and not excused from voting, a quorum being present. A quorum shall consist of the number of members equal to four-fifths of the regular board membership (excluding vacant seats).

...

3.4.2.5.3. Secretary. The Zoning UDO Administrator shall serve as Secretary.

And,

[Revise Article 3, ADMINISTRATIVE / LEGISLATIVE / QUASI-JUDICIAL AUTHORITY, to create a section titled Section 3.5, Historic Preservation Commission. All text is carried over from the Town of Smithfield Code of Ordinances, Chapter 15, Planning, Article III. Historic Properties Commission with the exception of the commission's formal name to be changed to Historic Preservation Commission and add references to the Historic Preservation Commission throughout the Article as needed.]

3.1.2.9. Maintain the public records of the Planning Board, and Board of Adjustment and Historic Preservation Commission.

...

SECTION 3.2 CONFLICTS OF INTEREST.

Members of the Town Council, Planning Board, and Board of Adjustment and Historic Preservation Commission. must act in the public interest and not to advance their own financial interests. A member of an elected board, planning board, or board of adjustment or Historic Preservation Commission. may not vote on a UDO action where there is a potential financial conflict of interest. A board or council member with a financial interest in the outcome of the decision may not participate in making rezonings and other legislative zoning decisions. With quasi-judicial zoning decisions, board members may not participate in a matter involving someone with whom they have a close family or business relationship, nor may they participate if they have a bias (defined as fixed opinion that is not susceptible to change upon hearing the facts at the hearing). When a member is disqualified for a conflict of interest, that member must not participate in the hearing in any way, neither asking questions, nor debating, nor voting on the case. If an objection is raised to a member's participation or the member states a conflict of interest, the remaining members shall by majority vote to decide if the member is excused from participation.

...

3.3.4.11. To review and make recommendations to the Town Council on major site plans and major subdivisions in accordance with Section 5.6.

...

3.4.2.1. The Zoning Board of Adjustment shall be governed by the terms of the General Statutes of North Carolina (160A - 388).

...

3.4.2.4.1. The concurring vote equal to four-fifths of the full membership of the board present at a meeting and not excused from voting (a quorum being present), shall be necessary to grant any variance. All other actions of the board, including decisions relating to special use permits, shall be taken by majority vote of those present and not excused from voting, a quorum being present. A quorum shall consist of the number of members equal to four-fifths of the regular board membership (excluding vacant seats).

...

SECTION 3.5 HISTORIC PRESERVATION COMMISSION.

3.5.1. Intent. The purpose of this district is to promote and provide for land use activities which will reflect and preserve the heritage of the district through the cultural, educational, architectural and economic elements of the district.

3.5.2. Commission Designated. The State of North Carolina authorizes cities to safeguard the heritage of the town by preserving any historic site therein that embodies important elements of its cultural, social, economic, political, archaeological or architectural history

and to promote the use and conservation of such site for the education, pleasure and enrichment of the residents of the town, county, and state as a whole. Pursuant to G.S. chapter 160A, article 19, part 3C, and the provisions of this chapter, the Town Council of Smithfield designates a commission to be known as the Smithfield Historic Preservation Commission.

3.5.3. Qualification of Members; Terms, Appointments, and General Duties.

3.5.3.1. Effective May 3, 2005, the commission shall consist of seven (7) members appointed by the Town Council. All members shall reside within the Town limits. In addition, all members shall have demonstrated special interest, experience or education in history, architecture, archaeology or related fields. The commission shall serve without compensation except that they may be reimbursed for actual expenses incident to the performance of their duties within the limits of any funds available to the commission.

3.5.3.2. Commission members shall serve overlapping terms of two (2) years. The terms of office for all initial reappointments after the adoption of this section shall be configured as follows:

3.5.3.2.1 Three (3) commissioners, with terms to expire on June 30 of odd years.

3.5.3.2.2. Four (4) commissioners, with terms to expire on June 30 of even years. Thereafter, all appointments shall be for three-year terms.

3.5.3.3. The commission shall select from among its members a chairperson and vice-chairperson who shall be elected annually by the commissioners.

3.5.3.4. Upon its first formal meeting, and prior to performing any duties under this article or under G.S. chapter 160A, article 19, part 3C, the commission shall adopt rules of procedure governing the commission's actions which are not governed by this article or the General Statutes. The commission shall also adopt principles and guidelines for new construction, alterations, additions, moving and demolition of designated historic landmarks and properties in historic districts. The guidelines may be amended by the Historic Preservation Commission. All guidelines and amendments shall be subject to approval by the Town Council.

3.5.4. Attendance at Meetings. Any member of the commission who misses more than three (3) consecutive regular meetings or more than four (4) meetings in a calendar year shall lose his or her status as a member and shall be replaced or reappointed by the Town Council. The council shall act within sixty (60) days to fill vacancies on the commission. Absence due to sickness, death in the family or other emergencies of like nature shall be recognized as approved absences and shall not affect the member's status on the commission, except that in the event of a long illness or any other such cause for prolonged absence, the member shall be replaced.

3.5.5. Meetings. The commission shall establish a meeting time and shall meet at least quarterly and more often as it shall determine and require.

3.5.6. Minutes. The commission shall keep permanent minutes of all its meetings, which

shall be a public record. The minutes shall record attendance of commission members and the commission's resolutions, findings, recommendations and actions.

3.5.7. Receipt of Gifts and Authority to Acquire Historic Properties. The Town Council shall have the right to accept gifts and donations in the name of the town for historic preservation purposes. It is authorized to make appropriations to the commission in any amount necessary for the expenses of the operation of the commission, and acquisition, restoration, preservation, operation, and management of historic buildings, structures, sites, areas, or objects designated as historic landmarks or within designated historic districts, or of land on which such buildings or structures are located, or to which they may be removed.

3.5.8. Role of Council. The designation of a historic landmark or district shall be effected through the adoption of an ordinance by the Town Council. No landmark or district shall be recommended for designation unless it is deemed to be of special significance in terms of its historical, prehistoric, architectural or cultural importance, and to possess integrity of design, setting, workmanship, materials, feeling and/or association. The landmark or district must lie within the planning and zoning jurisdiction of the town.

3.5.8. Overlay District Established; Boundaries; Permitted Uses. An overlay district is hereby established to overlap with other zoning districts established by this Code. The boundaries of the historic district are established as indicated on the official zoning map of the town, which is on file for public inspection in the office of the department of planning and development. All uses permitted within zoning districts established by the town, whether by permitted use or by special use, shall be permitted within this overlay district according to procedures established by this section. No historic district or districts shall be designated until:

3.5.8.1. An investigation and report describing the significance of the buildings, structures, features, sites or surroundings included in any such proposed district, and a description of the boundaries of such district has been prepared, and

3.5.8.2. The department of cultural resources, acting through the state historic preservation officer or his or her designee, shall have made an analysis of and recommendations concerning such report and description of proposed boundaries. Failure of the department to submit its written analysis and recommendations to the Town Council within thirty (30) calendar days after a written request for such analysis has been received by the department of cultural resources shall relieve the municipality of any responsibility for awaiting such analysis, and said council may at any time thereafter take any necessary action to adopt or amend its zoning ordinance.

The Town Council may also, in its discretion, refer the report and the proposed boundaries to any other interested body for its recommendation prior to taking action to amend the zoning ordinance. With respect to any changes in the boundaries of such district subsequent to its initial establishment, or the creation of additional districts within the jurisdiction, the investigative studies and reports required by subsection (1) shall be prepared by the commission and shall be referred to the local planning agency for its review and comment according to procedures set forth in the zoning ordinance. Changes in the boundaries of an initial district or proposal for additional districts shall also be submitted to the department of cultural resources in accordance with the provisions of section 3.5.8.2. Upon receipt of these reports and recommendations, the town may proceed

in the same manner as would otherwise be required for the adoption or amendment of any appropriate zoning ordinance provisions.

3.5.9. Designation of Landmarks. Upon complying with the landmark designation procedures as set forth in this article, the Town Council may adopt and from time to time amend or repeal an ordinance designation one or more historic landmarks.

3.5.9.1. No property shall be recommended for designation as a landmark unless it is deemed and found by the Historic Preservation Commission to be of special significance in terms of its historical, prehistoric, architectural or cultural importance and to possess integrity of design, setting, workmanship, materials, feeling and/or association.

3.5.9.2. The ordinance shall describe each property designated in the ordinance, the name or names of the owner or owners of the property, those elements of the property that are integral to its historical, architectural, or prehistoric value, including the land areas of the property so designated and any other information the Town Council deems necessary. For each building, structure, site, area or object so designated as a historic landmark, the ordinance shall require that the waiting period set forth in G.S. part 3C be observed prior to its demolition. For each designated landmark, the ordinance may also provide for a suitable sign on the property indicating that the property has been so designated. If the owner consents, the sign shall be placed upon the property. If an owner objects, the sign shall be placed on a nearby public right-of-way.

3.5.10. Required Landmark Designation Procedures. As a guide for the identification and evaluation of landmarks, the commission shall undertake at the earliest possible time, and consistent with the resources available to it, an inventory of properties of historical, architectural, prehistoric and cultural significance within its jurisdiction. Such inventories and any additions or revisions thereof shall be submitted as expeditiously as possible to the division of archives and history. No ordinance designating an historic building, structure, site, area or object as a landmark nor any amendment thereto may be adopted, nor may any property be accepted or acquired by the commission or the Town Council, until all of the following procedural steps have been taken:

3.5.10.1. The Historic Preservation Commission shall prepare and adopt rules of procedure, and prepare and adopt principles and guidelines, not inconsistent with this part [article], for altering, restoring, moving, or demolishing properties designated as landmarks.

3.5.10.2. The commission shall make or cause to be made an investigation and report on the historic, architectural, prehistoric, educational or cultural significance of each building, structure, site, area or object proposed for designation or acquisition. Such investigation or report shall be forwarded to the Division of Archives and History, North Carolina Department of Cultural Resources.

3.5.10.3. The department of cultural resources, acting through the state historic preservation officer, shall either upon request of the department or at the initiative of the Historic Preservation Commission be given an opportunity to review and comment upon the substance and effect of the designation of any landmark

pursuant to this part [article]. Any comments shall be provided in writing. If the department does not submit its comments or recommendation in connection with any designation within thirty (30) days following its receipt of the investigation and report of the commission, the commission and the Town Council shall be relieved of any responsibility to consider such comments.

3.5.10.4. The Historic Preservation Commission and the Town Council shall hold a joint public hearing or separate public hearings on the proposed ordinance. Reasonable notice of the time and place thereof shall be given. All meetings of the commission shall be open to the public in accordance with the North Carolina Open Meetings Law.

3.5.10.5. Following the joint public hearing or separate public hearings, the Town Council may adopt the ordinance as proposed, adopt the ordinance with any amendments it deems necessary, or reject the proposed ordinance.

3.5.10.6. Upon adoption of the ordinance, the owners and occupants of each designated landmark shall be given written notification of such ordinance and all amendments thereto shall be filed by the commission in the office of the register of deeds of the county in which the landmark or landmarks are located, and the copy shall be made available for public inspection at any reasonable time. Each designated landmark shall be indexed according to the name of the owner of the property in the grantee and grantor indexes in the register of deeds office, and the commission shall pay a reasonable fee for filing and indexing. A second copy of the ordinance and all amendments thereto shall be given the town building inspector. The fact that a building, structure, site, area, or object has been designated a landmark shall be clearly indicated on all tax maps maintained by the town for such period as the designation remains in effect.

3.5.10.7. Upon the adoption of the landmarks ordinance or any amendment thereto, it shall be the duty of the commission to give notice thereof to the tax supervisor of the county in which the property is located. The designation and any recorded restrictions upon the property limiting its use for preservation purposes shall be considered by the tax supervisor appraising it for tax purposes.

3.5.11. Powers of the Commission. The commission shall be authorized, within the planning and zoning jurisdiction of the town, to:

3.5.11.1. Undertake an inventory of properties of historical, prehistoric, architectural and/or cultural significance;

3.5.11.2. Recommend to the Town Council structures, buildings, sites, areas or objects to be designated by ordinance as "historic landmarks" and areas to be designated by ordinance as "historic districts;"

3.5.11.3. Acquire by any lawful means the fee or any lesser included interest, including options to purchase, to any such properties designated as landmarks, to hold, manage, preserve, restore and improve the same, and to exchange or dispose of the property by public or private sale, lease or otherwise, subject to covenants or other legally binding restrictions which will secure appropriate rights of public access and promote the preservation of the property;

3.5.11.4. Restore, preserve and operate historic properties;

3.5.11.5. Recommend to the Town Council that designation of any area as a historic district or part thereof, of any building, structure, site, area or object as a historic landmark be revoked or removed;

3.5.11.6. Conduct an educational program with respect to historic landmarks and district within its jurisdiction;

3.5.11.7. Cooperate with the state, federal and local government in pursuance of the purpose of this article; to offer or request assistance, aid, guidance or advice concerning matters under its purview or of mutual interest. The Town Council, or the commission when authorized by the council, may contract with the state or the United States of America, or any agency of either, or with any other organization provided the terms are not inconsistent with state or federal law;

3.5.11.7. Enter, solely in performance of its official duties and only at reasonable times, upon private lands for examination or survey thereof. However, no member, employee, or agent of the commission may enter any private building or structure without express consent of the owner or occupant thereof;

3.5.11.8. Prepare and recommend the official adoption of a preservation element as part of the town's comprehensive plan;

3.5.11.9. Review and act upon proposals for alterations, demolition, or new construction within historic districts, or for the alteration or demolition of designated landmarks pursuant to this section;

3.5.12.10 Negotiate at any time with the owner of a building, structure, site, area or object for its acquisition or its preservation when such action is reasonable, necessary or appropriate; and

3.5.11.11. Approve all design plans and sketches so insure that they meet the guidelines of the Historic Preservation Commission as established by the Smithfield Town Council.

3.5.12. Certificate of Appropriateness Required. From and after September 6, 2005, no exterior architectural features of any building or structure shall be altered, restored, erected or moved within the district until a certificate of appropriateness is issued by the Historic Preservation Commission; or under special circumstances, its staff person. For the purposes of this article, "exterior features" shall include the architectural style, general design, and general arrangement of the exterior of a building or other structure, including the kind and texture of the building material, the size and scale of the building, and the type and style of all windows, doors, light fixtures, signs, and other appurtenant features. In the case of outdoor advertising signs, "exterior features" shall be construed to mean the style, material, size and location of all such signs. Such "exterior features" may, at the discretion of the Town Council, include historic signs, color and significant landscape, archaeological, and natural features of the area.

3.5.12.1. Except as provided in subsection (2) below, the commission shall have no jurisdiction over interior arrangement and shall take no action under this section except to prevent the construction, reconstruction, alteration, restoration, moving,

or demolition of buildings, structures, appurtenant features, or outdoor advertising signs or other significant features in the district of the landmark which would be incongruous with the special character of the landmark or district.

3.5.12.2. Notwithstanding subsection (1) above, the jurisdiction of the commission over interior space shall be limited to specific interior features of architectural, artistic or historical significance in publicly owned landmarks; and of privately owned historic landmarks for which consent for interior review has been given by the owner. Said consent of any owner for interior review shall bind future owners and/or successors in title, provided such consent has been filed in the office of the register of deeds of the county and indexed according to the name of the owner and the specific nature of the commission's jurisdiction over the interior.

All of the provisions of this article are applicable to the construction, alteration, moving, and demolition by the state, its political subdivisions, agencies and instrumentalities, provided however that they shall not apply to interiors of buildings or structures owned by the state. The state and its agencies shall have a right of appeal to the North Carolina Historical Commission or any successor agency assuming its responsibilities under G.S. 121-12(a) from any decision of the local commission. The decision of the North Carolina Historical Commission shall be binding upon both the state and the Historic Preservation Commission.

3.5.12.3. The town and all public utility companies shall be required to obtain a certificate of appropriateness prior to initiating work in a historic district for any changes in the character of street paving, sidewalks, trees, utility installations, lighting, walls, fences, structures and buildings on property, easements or streets owned or franchised by the town or public utility companies.

3.5.13. Requirements for Issuance of Certificate of Appropriateness. An application for a certificate of appropriateness shall be obtained from, and when completed, filed with the responsible staff person.

3.5.14. Contents of Application for Certificate of Appropriateness. The application shall, in accordance with the commission's rules of procedure, contain data that is reasonably necessary to determine the nature of the application. An application for a certificate of appropriateness shall not be considered complete until all required data has been submitted. Applications shall be considered by the commission at its next regular meeting, provided the applications have been filed, complete in form and content, at least fifteen (15) calendar days before the regularly scheduled meeting of the commission. Otherwise, they shall be deferred until the next meeting or considered at a special called meeting of the commission. Nothing shall prevent the applicant from filing, with the application, additional relevant information bearing on the application.

3.5.15. Notification of Commission and Affected Property Owners. Upon receipt of an application the responsible staff person shall notify the commission at least seven (7) days before the regularly scheduled meeting. Prior to any action taken on a certificate of appropriateness application, the owners of any property likely to be materially affected by the application shall be notified in writing, and the applicant and such owners shall be given an opportunity to be heard.

3.5.16. Public Hearing. When an application is presented to the commission a public hearing may be held when deemed necessary. All meetings of the commission shall be open to the public, in accordance with the North Carolina Open Meetings Law, G.S. chapter 143, article 33C.

3.5.17. Action on an Application. The action on an application shall be approval, approval with amendments, or denial.

3.5.17.1. Prior to any final action on an application, the review criteria in subsection (m) shall be used to make findings of fact indicating the extent to which the application is or is not congruous with the historic aspects of the district or landmark.

3.5.17.2. All applications for certificates of appropriateness shall be reviewed and acted upon within a reasonable time as defined by the rules of procedure, and not exceeding ninety (90) days from the date the application is filed. As part of its review procedure, the commission may view the premises and seek the advice of the department of cultural resources or other such experts as it may deem necessary under the circumstances.

3.5.18. Appeals. An appeal may be taken to the board of adjustment from the commission's action in granting or denying any certificate, which appeal:

3.5.18.1. May be taken by any aggrieved party,

3.5.18.2. Shall be taken within times prescribed by the commission in the rules of procedure, and

3.5.18.3. Shall be in the nature of certiorari.

Any appeal from the board of adjustment's decision in any such case shall be heard by the Superior Court of Johnston County.

3.5.19. Submission of New Applications. If a certificate of appropriateness is denied, a new application affecting the same property may be submitted only if substantial change is made in plans for the proposed construction, reconstruction, alteration, restoration, or moving.

3.5.20. Review Criteria for Certificates of Appropriateness. To provide reasonable standards to assist in the review of the application for a certificate of appropriateness, the commission shall take into account the following elements to ensure that they are consistent with the historic or visual character or characteristics of the district:

3.5.20.1. The height and width of the building in relation to the height and width of adjacent, opposite and surrounding buildings.

3.5.20.2. The setbacks and placement of the building in relation to the setback of adjacent, opposite and surrounding buildings.

3.5.20.3. Exterior construction materials, including textures, but not to include color.

3.5.20.4. Architectural detailing such as lintels, cornices, brick bond and foundation

materials.

3.5.20.5. Roof shapes, forms and materials.

3.5.20.6. Proportions, shapes, positions and locations, patterns and sizes of any elements of fenestration.

3.5.20.7. General form and proportions of buildings and structures.

3.5.20.8. Appurtenant fixtures and other features such as lighting and fencing.

It is the intention of these regulations to insure, so far as possible, that buildings or structure shall be in harmony with other buildings or structures located herein. It is not the intent of these regulations to require the reconstruction or restoration of individual or original buildings.

~~**3.5.21. Minor Works.** A certificate of appropriateness application, when determined to involve a minor work, may be reviewed and approved by the responsible staff person in the department of planning and development according to specific review criteria and guidelines. Minor works are defined as those exterior changes that do not involve substantial alterations, additions or removals that could impair the integrity of the property and/or the district as a whole. Such minor works shall be limited to those listed in the commission's rules of procedure. No application involving a minor work may be denied without the formal action of the commission.~~

3.5.21 Classification of Approvals

The following lists classify the types of approvals required for work in a local historic district or landmark. Classifications are based on the scope of work, project scale, and amount of deviation from historic materials and methods.

3.5.21.1 Normal Maintenance

The Commission considers the following activities to be routine maintenance of historic properties. The following activities do not require a Certificate of Appropriateness. However, other Town permits may be necessary.

3.5.21.1.1 For All Properties:

3.5.21.1.1.1. All interior work as long as it has no exterior impact (i.e., window replacement is not considered interior work for these purposes).

3.5.21.1.1.2. Minor repairs to windows, including caulking or reglazing and replacement of window glass as long as window size and style are not altered.

3.5.21.1.1.3. Minor repairs to doors, siding, trim, gutters, flooring, steps, fences, and walls, as long as the replacements match existing materials in scale, style, design, and materials.

3.5.21.1.1.4. Roofing, foundation, and chimney work, if no change in appearance occurs;

3.5.21.1.1.5. Replacement of roofing material with matching material.

3.5.21.1.1.6. Removing screen doors or storm doors.

3.5.21.1.1.7. Caulking and weather stripping.

3.5.21.1.1.8. Exterior painting of a previously painted surface, including when a change of color is proposed.

3.5.21.1.1.9. Replacement of existing mechanical equipment (including vents).

3.5.21.1.1.10. Repairing or repaving of flat paved areas, such as driveways, walkways, and patios, if the material used is the same or similar in appearance

3.5.21.1.1.11. Installing landscaping, including vegetable, flower, and rain gardens, shrubs, and trees.

3.5.21.1.1.12. Landscape maintenance, including pruning trees and shrubs (this does not include removal of landscaping required to screen mechanical equipment or utilities).

3.5.21.1.1.13. Curb, gutter, and pavement work involving granite curbs requires public works approval.

3.5.21.1.1.14. Non-fixed elements (that can be moved without the use of heavy equipment) such as rain barrels, planters, dog houses, bird baths, and similar decorative or functional items.

3.5.21.1.2 For Noncontributing Properties:

3.5.21.1.2.1. Painting of nonhistoric material, whether previously painted or not

3.5.21.1.2.2. Installation of prefabricated outbuilding or outbuilding of 80 square feet or less when located in the rear yard

3.5.21.1.2.3. Modifications to or demolition of outbuildings

3.5.21.1.2.4. Addition of new rear decks or porches

3.5.21.1.2.5. Modification, installation, or replacement of windows and doors not facing the street

3.5.21.1.2.6. Addition of screen doors or storm windows

3.5.21.1.2.7. Alteration or replacement of roof materials

3.5.21.1.2.8. Installation of skylights and solar panels not visible from the street

3.5.21.1.2.9 Installation of gutters

3.5.21.1.2.10. Alterations to ornamentation or to cladding material

3.5.21.2. Work Requiring a Certificate of Appropriateness

3.5.21.2.1 Minor Works. Certain activities are considered by the Commission to not have a significant impact on the exterior appearance of the historic structures, and are delegated to the appropriate staff person for administrative approval.

3.5.21.2.2. Major Works. Major Works consist of modifications which significantly alter the appearance of the structure or site. These projects are required to be reviewed by the Commission. The Commission shall hold public hearings for these cases.

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3.5.21.2.3. Classification of Approvals by Scope of Work The following chart indicates the level of approval required for various types of work.

Type of Work	Minor Work <i>Staff</i> <i>Approved</i>	Major Work <i>HPC</i> <i>Approved</i>
Architectural Work		
New Construction		
Installation of new pre-fabricated outbuilding or new structure 80 sq. ft. or less.	☐	
New structure greater than 80 sq. ft. and less than 144		☐
New structure greater than 144 sq. ft.		☐
Relocation of Structures		
Outbuilding less than 144 sq. ft.	☐	
Outbuilding greater than 144 sq. ft.		☐
Primary structure		☐
Demolition		
Contributing primary structure		☐
Non-contributing primary structure		☐
Contributing outbuilding		☐
Non-contributing outbuilding	☐	
Additions to Primary Structures		
Addition of substantial spaces such as rooms		☐
Addition of front or side decks or porches		☐
Addition of new rear decks or porches	☐	
Additions to Accessory Structures		
Addition to contributing accessory structure		☐
Addition to non-contributing accessory structure	☐	
Windows and Doors		
Replacement of original windows		☐
Replacement of non-original windows	☐	
Modification or installation of windows and doors facing the street		☐
Modification or installation of windows and doors not facing the street	☐	
Modification, installation, or replacement of storm windows or storm doors	☐	
Alteration or new construction of storefronts	☐	
Restoration of original window or door openings where doors and windows match original or existing	☐	
Installation of window air conditioning units not visible from the street	☐	
Roofs		
Alteration of roof material	☐	

Alteration of roof form (including alteration, removal, or construction of dormers)		<input type="checkbox"/>
Installation of skylights or solar panels visible on front facade		<input type="checkbox"/>
Installation of skylights and solar panels not visible on front facade	<input type="checkbox"/>	
Construction of new or modification of character-defining chimneys		<input type="checkbox"/>
Installation of gutters	<input type="checkbox"/>	
Other Building Alterations		
Alterations or construction of building elements (including columns, railings, stairs, landings, ramps and flooring)	<input type="checkbox"/>	
Alterations or construction of architectural details (including molding, brackets, or decorative woodwork)	<input type="checkbox"/>	
Change in original cladding material or style		<input type="checkbox"/>
Change in non-original cladding material or style	<input type="checkbox"/>	
Painting of previously unpainted surface on contributing structure		<input type="checkbox"/>
Changes to any non-contributing outbuilding	<input type="checkbox"/>	
Building additions, porches, or other extant features		<input type="checkbox"/>
Character defining building elements or details without reconstruction		<input type="checkbox"/>
Non-character defining building elements or details without reconstruction	<input type="checkbox"/>	
Site Work		
Parking areas		
New residential driveways or changes to existing residential driveways	<input type="checkbox"/>	
Changes to existing parking lots	<input type="checkbox"/>	
New surface parking lots	<input type="checkbox"/>	
Fences or Walls		
Within the street yard (between the facade of the structure and the ROW)		<input type="checkbox"/>
Within the rear or side yard	<input type="checkbox"/>	
Planting or removal of trees and planting of shrubs in the street yard	<input type="checkbox"/>	
Light fixtures and poles (new or replacement)	<input type="checkbox"/>	
Walkways, patios or other paving	<input type="checkbox"/>	

ADA Compliance		
Installation of ADA compliance updates (including ramps, etc.) where staff determines that the proposal will have a significant impact on the		<input type="checkbox"/>
Installation of ADA compliance updates (including ramps, etc.) where staff determines that the proposal will not have a significant impact on the character of the structure	<input type="checkbox"/>	
Installation, relocation, or removal of mechanical	<input type="checkbox"/>	
Additional site work or structure not described above	<input type="checkbox"/>	
Minor modifications within the right-of-way	<input type="checkbox"/>	
Modifications within the right-of-way deemed significant by staff		<input type="checkbox"/>
Other Work		
Renewal of Expired COA	<input type="checkbox"/>	
Minor Amendments	<input type="checkbox"/>	
Substantial amendments		<input type="checkbox"/>
Any project for which the State Historic Preservation Office has approved the scope of work through the state and/or federal tax credit process	<input type="checkbox"/>	
Work items not listed here for which a clear citation can be made for conformance with the local review criteria	<input type="checkbox"/>	
Work items not listed here that are deemed by staff to be substantial in nature, precedent setting, not addressed by the local review criteria, or not in conformance with the criteria		<input type="checkbox"/>
Installation of temporary features to protect a historic resource that do not permanently alter the resource. Six month duration with in-kind reconstruction or an approved COA.	<input type="checkbox"/>	

3.5.22. Certain Changes Not Prohibited. Nothing in this article shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature of a historic landmark or in a historic district which does not involve a change in design, materials, or outer appearance thereof, nor to prevent the construction, reconstruction, alteration, restoration, or demolition of any such feature which the building inspector or similar official shall certify is required by the public safety because of an unsafe or dangerous condition. Nothing herein shall be construed to prevent a property owner from making any use of his property not prohibited by other statutes, ordinances, or regulations. Nothing in this ordinance shall be construed to prevent (1) the maintenance or (2) in the event of an

emergency, the immediate restoration of any existing above-ground utility structure without approval by the commission.

3.5.23. Conflict with Other Laws. Whenever any ordinance adopted for the designation of landmarks or districts requires a longer waiting period or imposes higher standards with respect to a designated landmark or district than are established under any other statute, Charter provision, or regulation, this article shall govern. Whenever the provisions of any other statute, Charter provision or regulation require a longer waiting period or impose higher standards than are established under this article, such other statute, Charter provision, ordinance, or regulation shall govern.

3.5.24. Enforcement and Remedies. Compliance with the terms of the certificate of appropriateness shall be enforced by the responsible staff person. Failure to comply with the certificate of appropriateness shall be a violation of the zoning ordinance and is punishable according to established procedures and penalties for such violations.

3.5.24.1. A certificate of appropriateness shall expire one (1) year after the date of issuance if the work authorized by the certificate has not commenced.

3.5.24.2. If after commencement, the work is discontinued for a period of six (6) months the permit shall immediately expire.

3.5.24.3. No work authorized by any certificate which has expired shall thereafter be performed until a new certificate has been secured.

In case any building, structure, site area or object designated as a historic landmark or located within a historic district established pursuant to this article is about to be demolished whether as a result of deliberate neglect or otherwise, materially altered, remodeled, removed or destroyed, except in compliance with the article, the town, the commission, or other party aggrieved by such action may institute any appropriate action or proceeding 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 a building, structure, site, area or object. Such remedies shall be in addition to any others authorized for violation of a municipal ordinance.

3.5.25. Delay in Demolition of Landmarks and Buildings.

3.5.25.1. An application for a certificate of appropriateness authorizing the demolition or destruction of a designated landmark or a building, structure, or site within the district may not be denied except as provided in subsection (3) below. However, the effective date of such a certificate may be delayed for a period of up to three hundred sixty-five (365) days from the date of approval. The maximum period of delay authorized by this section shall be reduced by the commission where it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use of or return from such property by virtue of the delay. During such period the commission shall negotiate with the owner and with any other parties in an effort to find a means of preserving the building or site. If the commission finds that a building or site within the historic district has no special

significance or value toward maintaining the character of the district, it shall waive all or part of such period and authorize earlier demolition or removal.

If the commission has voted to recommend designation of a property as a landmark or designation of an area as a district, and final designation has not been made by the Town Council, the demolition or destruction of any building, site or structure located on the property of the proposed landmark or in the proposed district may be delayed by the commission for a period of up to three hundred sixty-five (365) days or until the Town Council takes final action on the designation, whichever occurs first.

3.5.25.2. The Town Council may enact an ordinance to prevent the demolition by neglect of any designated landmark or any building or structure within an established historic district. Such ordinance shall provide appropriate safeguards to protect property owners from undue economic hardship.

3.5.25.3. An application for a certificate of appropriateness authorizing the demolition or destruction of a building, site, or structure determined by the state historic preservation officer as having statewide significance, as defined in the criteria of the National Register of Historic Places, may be denied except where the commission finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return by virtue of the denial.

And,

[Revise Article 3, ADMINISTRATIVE / LEGISLATIVE / QUASI-JUDICIAL AUTHORITY, to relocate the text of Section 3.5 Town Council to a new section titled Section 3.6 Town Council and to amend the procedural requirements for site-specific development plans to reflect changes in the UDO.]

SECTION 3.6 TOWN COUNCIL.

3.6.1. The Town Council, in considering special use permit applications, acts in a quasi-judicial capacity and, accordingly, is required to observe the procedural requirements set forth in Sections 4.11.1 through 4.11.4.

3.6.2. In considering proposed changes in the text of this Ordinance or in the zoning map, the Council acts in its legislative capacity and must proceed in accordance with the requirements of Section 4.10.1.

3.6.3. Unless otherwise specifically provided in this Article, in acting upon special use permit requests or in considering amendments to this Article or the zoning map, the council shall follow the regular, voting, and other requirements as set forth in other provisions of the Town code, the Town charter, or general law.

3.6.4. The Town Council, in considering the approval of a site-specific development plan (as defined in Section 4.7, Establishment of Vested Rights), shall follow the procedural requirements set forth in Section 4.69 for the issuance of a special use permit.

PART 2

That the Unified Development Ordinance shall be page numbered and revision dated as necessary to accommodate these changes.

PART 3

That these amendments of the Unified Development Ordinance shall become effective upon adoption.

Duly adopted this the ___ day of _____, 2019.

M. Andy Moore, Mayor

ATTEST

Shannan L. Parrish, Town Clerk

Section 3.1	UDO Administrator.....	3-2
Section 3.2	Conflicts of Interest	3-3
Section 3.3	Planning Board.....	3-3
Section 3.4	Board of Adjustment.....	3-8
Section 3.5	Town Council.....	3-12

SECTION 3.1 UDO ADMINISTRATOR.

3.1.1. The UDO Administrator, to be designated by the Town Manager, is hereby authorized and it shall be his/her duty to enforce the provisions of this Ordinance. This official shall have the right to enter upon any premises regulated by this Ordinance at any reasonable time necessary to carry out his/her duties. If the suspected violation involves areas which cannot be viewed from public areas, an administrative search warrant must be obtained from a magistrate or judge authorizing a reasonable inspection. It is the intention of this Ordinance that all questions arising in connection with enforcement and interpretation shall be presented first to the UDO Administrator. Appeal from his/her decision may be made to the Board of Adjustment. The UDO Administrator may be assisted by other Town staff in performing the duties herein.

3.1.2. In administering the provisions of this Ordinance, the UDO Administrator shall:

3.1.2.1. Make and maintain records of all applications for permits, special uses, and requests listed herein, and records of all permits issued or denied, with notations of all special conditions or modifications involved.

3.1.2.2. File and safely keep copies of all plans submitted, and the same shall form a part of the records of his/her office and shall be available for inspection at reasonable times by any interested party.

3.1.2.3. Conduct pre-application and sketch plan meetings with applicants for development approval as necessary or appropriate in accordance with Section 5.4.

3.1.2.4. Transmit to the Planning Board, Town Council, and/or the Board of Adjustment all applications and plans for which their review and approval is required along with a report of his/her recommendations as may be required.

3.1.2.5. Review and approve zoning permit applications, ~~minor~~ site plans, minor subdivisions, ~~and engineering drawings, and final plats.~~

3.1.2.6. Provide administrative interpretations of the UDO.

3.1.2.7. Provide nonconformity determinations, ~~including expansions of nonconforming uses and structures.~~

3.1.2.8. Conduct inspections of premises and, upon finding that any of the provisions of this Ordinance are being violated, notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. The UDO Administrator shall order discontinuance of illegal use of land, buildings or structures;

inform the building inspections department designated by the Smithfield Town Council of illegal buildings or of additions, alterations, or structural changes thereto which are not compliant with the UDO; order discontinuance of any illegal work being done; or shall take any other action authorized by this Ordinance to insure compliance with or to prevent violation of its provisions.

3.1.2.9. Maintain the public records of the Planning Board, ~~and~~ Board of Adjustment and Historic Preservation Commission.

3.1.2.10. Perform site inspections.

SECTION 3.2 CONFLICTS OF INTEREST.

Members of the Town Council, Planning Board, ~~and~~ Board of Adjustment and Historic Preservation Commission must act in the public interest and not to advance their own financial interests. A member of an elected board, Planning Board, ~~or~~ Board of Adjustment, or Historic Preservation Commission may not vote on a UDO action where there is a potential financial conflict of interest. A board or council member with a financial interest in the outcome of the decision may not participate in making rezonings and other legislative zoning decisions. With quasi-judicial zoning decisions, board members may not participate in a matter involving someone with whom they have a close family or business relationship, nor may they participate if they have a bias (defined as fixed opinion that is not susceptible to change upon hearing the facts at the hearing). When a member is disqualified for a conflict of interest, that member must not participate in the hearing in any way, neither asking questions, nor debating, nor voting on the case. If an objection is raised to a member's participation or the member states a conflict of interest, the remaining members shall by majority vote to decide if the member is excused from participation.

SECTION 3.3 PLANNING BOARD.

3.3.1. Creation.

The Planning Board for the Town of Smithfield is created under the authority of NCGS 160A-361 to serve the public interest by promoting the public health, safety, and general welfare of the residents of the Town of Smithfield and its extraterritorial jurisdiction. It is the intent of the Town to have representation of a broad cross-section of community interests.

3.3.2. Purpose.

The Planning Board shall act in an advisory capacity to the Town Council in the matter of guiding and accomplishing a coordinated and harmonious development of the area within the Town jurisdiction.

3.3.3. Creation and Organization.

3.3.3.1. Composition and Vacancies. The Planning Board shall consist of seven (7) members and two (2) alternate members. Five (5) members and one (1) alternate member shall be citizens and residents of the Town and shall be appointed by the Town Council. Two (2) members and one (1) alternate member shall be citizens and residents of the extraterritorial jurisdiction of the Town as described pursuant to GS § 160A-360 et seq. and shall be appointed by the Board of County Commissioners, upon receipt of a resolution from the Town Council requesting that such appointments be made. If the Board of County Commissioners fails to make the appointments requested within ninety (90) days of receipt of the resolution, the Town Council shall make the appointments. The Town Council will ensure that proportional representation on the Planning Board shall be maintained in accordance with NCGS 160A-362, as amended. Alternate members shall not be entitled to vote on matters before the Planning Board except when a regular Planning Board member is absent from a duly called meeting. In that situation, the alternate shall have the same privileges as the regular members and may count for quorum purposes and vote if a regular member is absent.

The terms of the members shall be for three (3) years. Vacancies, occurring for reasons other than expiration of terms shall be filled as they occur by the entity appointing them for the period of the unexpired term.

Faithful attendance of the meetings of the Planning Board is considered a prerequisite for the maintenance of membership on the Planning Board. Failure to attend three (3) consecutive meetings shall be deemed adequate reason for termination of membership on the Planning Board by the Town Council.

3.3.3.2. Organization, Rules, Meetings and Records. A Chair and Vice-Chair shall be nominated from among the board membership and shall be appointed by majority vote of the board. Chair and Vice-Chair term shall be for two (2) years. Upon completion of a two-year term, the board shall make nominations and appoint new officers or reappoint existing officers. The ~~Town Building Inspector and~~ UDO Administrator shall serve as Secretary and advisor to the Planning Board and shall be responsible for keeping the record of minutes of the Planning Board. The Board shall adopt rules for transaction of its business subject to review and approval by the Town Council and shall keep a record of its member attendance and of its resolutions, discussions, findings and recommendations, which record shall be a public record. Except as otherwise stated in Section 3.3.3.4 below, the Board shall hold at least one meeting monthly, and all of its meetings shall be open to the public. There shall be a quorum of four (4) members for the purpose of taking any official motion required by this Ordinance.

3.3.3.3. Offices and Duties.

3.3.3.3.1. Chair. A Chair shall be elected by the voting members of the Planning Board. The Chair shall decide all matters of order and procedure, subject to these rules, unless directed otherwise by a majority of the Board in session at the time. The Chair shall appoint any committees found necessary to investigate any matters before the Board.

3.3.3.3.2. Vice-Chair. A Vice-Chair shall be elected by the Board from among its citizen members in the same manner and for the same term as the chair. He/She shall serve as acting chair in the absence of the chair, and at such times he shall have the same powers and duties as the chair.

3.3.3.3.3. Secretary. The secretary, subject to the direction of the Chair and the Board, shall keep all records, shall conduct all correspondence of the Board and shall generally supervise the clerical work of the Board. The secretary shall keep the minutes of each meeting of the Board. These shall show the record of all important facts pertaining to every meeting and hearing, every resolution acted upon by the Board and all votes of members of the Board upon any resolution or other matter, indicating the names of members absent or failing to vote.

3.3.3.3.4. Member Responsibilities. A member shall request to be excused from discussion of or voting on any matter where the outcome of the matter being considered is reasonably likely to have a direct, substantial, or readily identifiable impact on the member. A member shall represent him or herself as a board member and not undermine board recommendations at any other public meetings that address planning issues.

3.3.3.4. Meetings.

3.3.3.4.1. Regular Meetings. Regular meetings of the Board shall be held in the Council Chambers of Town Hall in accordance with a schedule as established by the Planning Board.

3.3.3.4.2. Special Meetings Special meetings of the Board may be called at any time by the Chair, or in his absence, the Vice-Chair. At least twenty-four (24) hours' notice of the time and place of special meetings shall be given, by the secretary or by the Chair, to each member of the Board; provided, that this requirement may be waived by a majority of all the members.

3.3.3.4.3. Cancellation of Meetings. Whenever there is no business for the Board, the Chair may dispense with a regular meeting by giving notice to all members not less than twenty-four (24) hours prior to the time set for the meeting.

3.3.3.4.4. Quorum. A quorum shall consist of four (4) members of the Board for zoning changes and amendments.

3.3.3.4.5. Conduct of Meetings. All meetings shall be open to the public. The order of business at regular meetings shall be as follows:

3.3.3.4.5.1. Roll call

3.3.3.4.5.2. Reading of minutes of previous meetings

3.3.3.4.5.3. Reports of committees

3.3.3.4.5.4. Unfinished business

3.3.3.4.5.5. New business

3.3.3.4.6. Vote. Except as otherwise specified herein, the vote of a majority of those members present shall be sufficient to decide matters before the Board, provided a quorum is present.

3.3.3.5. Expenditures; Gifts and Donations. The expenditures of the Planning Board, exclusive of gifts or grants, shall be within the amounts appropriated for the purpose by the Town Council and no indebtedness for which the Town shall be liable shall be contracted or incurred by the Planning Board unless an appropriation is made by the Town Council for such purpose, as authorized by law, and then only to the extent of such appropriation. The Planning Board shall have the right to accept gifts and donations for the exercise of its functions and may expend the money received from such gifts and donations in a manner, which in the judgment of the Planning Board is consistent with the best interests of the planning program.

3.3.4. General Powers and Duties.

The general powers and duties of the Planning Board are:

3.3.4.1. To make studies of the area within its jurisdiction and present recommendations to the Town Council.

3.3.4.2. To determine objectives to be sought in the development of the study area and present recommendations to the Town Council.

3.3.4.3. To prepare and recommend plans for achieving these objectives.

3.3.4.4. Develop and recommend policies, ordinances, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;

3.3.4.5. Advise the Town Council concerning the use and amendment of means for carrying out plans;

3.3.4.6. Exercise any functions in the administration and enforcement of various means for carrying out plans that the council may direct.

3.3.4.7. Perform any other related duties that the Town Council may direct.

3.3.4.8. To prepare and from time to time amend and revise a comprehensive and coordinated plan for the physical, social, and economic development of the area and present recommendations to the Town Council for consideration.

3.3.4.8.1. The comprehensive plan, with the accompanying maps, plats, charts, and descriptive matter, shall show the Planning Board's recommendation to the Town Council for the development of the area, including, among other things, the general location, character, and extent of streets, bridges, boulevards, parkways, playgrounds, squares, parks, and aviation fields; and other public ways, grounds, and open spaces; the general location and extent of public utilities and terminals, whether publicly or privately owned or operated, for water, power, gas, sanitation, transportation, communication and other purposes; and the removal, relocation, widening, narrowing, vacating, abandonment, change of use, or extension of any of the foregoing ways, buildings, grounds, open spaces, properties, utilities, or terminals.

3.3.4.8.2. The comprehensive plan and any ordinances or other measures to effectuate the plans shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted, and harmonious development of the Town and its environs which will, in accordance with present and future needs, best promote health, safety, and the general welfare, as well as efficiency and economy in the process of development, including, among other things, adequate provision for traffic, the promotion of safety from fire and other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of population, the promotion of good civic design and arrangement, the wise and efficient expenditure of public funds, and the adequate provision of public utilities, services, and other public requirements.

3.3.4.9. To prepare and recommend ordinances promoting orderly development along lines indicated in the Comprehensive Plan and advise concerning proposed amendments of such ordinances.

3.3.4.10. To determine whether proposed developments conform to the principles and requirements of the Comprehensive Plan for the growth and improvement of the area and ordinances adopted in furtherance of such plan.

3.3.4.11. To review and make recommendations to the Town Council on major site plans and major subdivisions in accordance with Section 5.6.

3.3.4.12. To keep the Town Council and the general public informed and advised as to these matters.

3.3.4.13. To perform any other duties that may lawfully be assigned to it.

3.3.5. Planning Board Initiated UDO Amendments.

The Planning Board may initiate from time to time proposals for amendments of the UDO and Zoning Map, based upon its studies and plans. It shall review and make recommendations to the Town Council concerning all proposed amendments to the UDO and Zoning Map. The Planning Board and Planning Department shall meet once per quarter to discuss the UDO, its application, any problems, and any changes that may be needed. This meeting can occur as part of a regularly scheduled meeting.

3.3.6. Advisory Committees.

3.3.6.1. From time to time, Town Council may appoint one (1) or more individuals to assist the Planning Board to carry out its planning responsibilities with respect to a particular subject area. By way of illustration, without limitation, the Council may appoint advisory committees to consider thoroughfare plan(s), bikeway plan(s), housing plans, and economic development plans, etc.

3.3.6.2. Members of such advisory committees shall sit as nonvoting members of the Planning Board when such issues are being considered and lend their talents, energies, and expertise to the Planning Board. However, all formal recommendations to the Town Council shall be made by the Planning Board.

3.3.6.3. Nothing in this Article shall prevent the Council from establishing independent advisory groups, committees, or boards to make recommendations on any issue directly to the Council.

SECTION 3.4 BOARD OF ADJUSTMENT.

3.4.1. Powers and Duties.

3.4.1.1. The Board of Adjustment shall hear and decide:

3.4.1.1.1. Appeals of decisions of administrative officials charged with enforcement of this Ordinance (as provided in Section 4.10.1) and requests for variances (as provided in Section 4.10.2). As used in this subsection, the term "decision" includes any final and binding order, requirement, or determination. The board shall hear and decide all matters upon which it is required to pass under any statute or ordinance that regulates land use and development.

3.4.1.1.2. Questions involving interpretations of the zoning map, including disputed district boundary lines and lot lines (as provided in Section 2.4.6).

3.4.1.1.3. Any other matter the Board is required to act upon by any other Town ordinance.

3.4.1.2. The Board may adopt rules and regulations governing its procedures and operations not inconsistent with the provisions of this Article.

3.4.2. Creation and Organization.

3.4.2.1. The **Zoning** Board of Adjustment shall be governed by the terms of the General Statutes of North Carolina (160A - 388).

3.4.2.2. Membership and Vacancies. The Board of Adjustment shall consist of seven (7) regular members and two (2) alternate members. Five (5) members and one (1) alternate member shall be citizens and residents of the town and shall be appointed by the Smithfield Town Council. Two (2) members and one (1) alternate member shall be citizens and residents of the extraterritorial jurisdiction surrounding the Town of Smithfield, and shall be appointed by the Board of Commissioners of Johnston County. Alternate members shall not be entitled to vote on matters before the Board of Adjustment except when a regular Board of Adjustment member is absent from a duly called meeting. In that situation, the alternate shall have the same privileges as the regular members and may count for quorum purposes and vote if a regular member is absent.

The term of office of the members of the Board shall be for three (3) years. All members shall be subject to any appointee policy in effect by the Town of Smithfield during the term of appointment. Any vacancy which may occur will be filled according to this Ordinance and any appointee policy in effect at that time. Members may be paid or reimbursed as current Town of Smithfield policy allows.

3.4.2.3. Meetings of the Board of Adjustment.

3.4.2.3.1. Regular Meetings. Regular meetings of the Board shall be held in Town Hall in accordance with a schedule as established by the Board of Adjustment; provided, however, that meetings may be held at some other convenient place in the Town if directed by the Chair in advance of the meeting, and provided further that if no business needing the attention of the Board has arisen since the last meeting and no unfinished business is pending, then the Chair may notify 24 hours in advance the other members through the Secretary that the meeting for that month will not be held.

3.4.2.3.2. Special Meetings. Special meetings of the Board may be called at any time by the Chair, or in his absence, the Vice-Chair. At least twenty-four (24) hours written notice of the time and place of special meetings shall be given by the Secretary or the Chair to each member of the Board.

3.4.2.3.3. The Board shall conduct its meetings in accordance with the quasi-judicial procedures set forth in Sections 4.11.1 through 4.11.4.

3.4.2.3.4. Conflicts on Quasi-Judicial Matters. A member of the Board of Adjustment or any other body exercising the functions of the Board of Adjustment 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. If an objection is raised to member's participation and that member does not recuse himself or herself, the remaining members shall, by majority vote, rule on the objection.

3.4.2.3.5. All meetings of the Board shall be open to the public and whenever feasible the agenda for each board meeting shall be made available in advance of the meeting.

3.4.2.4. Quorum and Voting.

3.4.2.4.1. The concurring vote equal to four-fifths of the **full membership** of the board **present at a meeting** and not excused from voting (a quorum being present), shall be necessary to grant any variance. All other actions of the board, including decisions relating to special use permits, shall be taken by majority vote of those present and not excused from voting, a quorum being present. A quorum shall consist of the

number of members equal to four-fifths of the regular board membership (excluding vacant seats).

3.4.2.4.2. Once a member is physically present at a board meeting, any subsequent failure to vote shall be recorded as an affirmative vote unless the member has been excused in accordance with subsection 3.4.2.3.4 or 3.4.2.4.3 or has been allowed to withdraw from the meeting in accordance with Subsection 3.4.2.4.4.

3.4.2.4.3. A member may be excused from voting on a particular issue by majority vote of the remaining members present under the following circumstances:

3.4.2.4.3.1. If the matter at issue involves the member's own official conduct;
or

3.4.2.4.3.2. If the participation in the matter might violate the letter or spirit of the member's code of professional responsibility.

3.4.2.4.4. A member may be allowed to withdraw from the entire remainder of a meeting by majority vote of the remaining members present for any good and sufficient reason other than the member's desire to avoid voting on matters to be considered at the meeting.

3.4.2.4.5. A roll call vote shall be taken upon the request of any member.

3.4.2.5. Board of Adjustment Officers and Duties.

3.4.2.5.1. Chair. The Chair shall be elected by majority vote of the membership of the Board from among its members. His term of office shall be for one year, and until his successor is elected, beginning on July 1st, and the Chair shall be eligible for re-election. Subject to these rules, the Chair shall decide upon all points of order and procedure, unless directed otherwise by a majority of the Board in session at the time. The Chair shall appoint any committees found necessary to investigate any matter before the Board.

3.4.2.5.2. Vice-Chair. A Vice-Chair shall be elected by the Board from among its members in the same manner and for the same term as the Chair. He shall serve as acting Chair in the absence of the Chair, and at such times he shall have the same powers and duties as the Chair.

3.4.2.5.3. Secretary. The **Zoning UDO** Administrator shall serve as Secretary.

3.4.3. Rules of Procedure.

All meetings held by the Board of Adjustment shall be held in accordance with NCGS Chapter 143A, Article 33B, or as may be amended, and should be recorded. The Board shall keep accurate minutes of its proceedings suitable for review in Court showing:

3.4.3.1. The record of all procedural requirements of the meeting including number and names of all Board members present, names of witnesses heard, whether parties were represented by council, whether subpoenas were issued and to who, whether cross-examination of witnesses was requested and allowed, and any other event at the hearing that had any effect on the outcome.

3.4.3.2. The factual evidence presented to the Board of Adjustment by all parties concerned.

3.4.3.3. The findings of fact and the reasons for the determinations by the Board of Adjustment.

3.4.3.4. The vote of each member, or if absent or failing to vote, indicating such fact, all of which shall be public record and be filed with the office of the Town Clerk.

3.4.3.5. The Board may issue subpoenas. If there is noncompliance with the subpoena, the Board may apply to the courts for an order to comply.

SECTION 3.5 HISTORIC PRESERVATION COMMISSION.

3.5.1. Intent. The purpose of this district is to promote and provide for land use activities which will reflect and preserve the heritage of the district through the cultural, educational, architectural and economic elements of the district.

3.5.2. Commission Designated. The State of North Carolina authorizes cities to safeguard the heritage of the town by preserving any historic site therein that embodies important elements of its cultural, social, economic, political, archaeological or architectural history and to promote the use and conservation of such site for the education, pleasure and enrichment of the residents of the town, county, and state as a whole. Pursuant to G.S. chapter 160A, article 19, part 3C, and the provisions of this chapter, the Town Council of Smithfield designates a commission to be known as the Smithfield Historic Preservation Commission.

3.5.3. Qualification of Members; Terms, Appointments, and General Duties.

3.5.3.1. Effective May 3, 2005, the commission shall consist of seven (7) members appointed by the Town Council. All members shall reside within the Town limits. In addition, all members shall have demonstrated special interest, experience or education in history, architecture, archaeology or related fields. The commission shall serve without compensation except that they may be reimbursed for actual expenses incident to the performance of their duties within the limits of any funds available to the

commission.

3.5.3.2. Commission members shall serve overlapping terms of two (2) years. The terms of office for all initial reappointments after the adoption of this section shall be configured as follows:

3.5.3.2.1 Three (3) commissioners, with terms to expire on June 30 of odd years.

3.5.3.2.2. Four (4) commissioners, with terms to expire on June 30 of even years. Thereafter, all appointments shall be for three-year terms.

3.5.3.3. The commission shall select from among its members a chairperson and vice-chairperson who shall be elected annually by the commissioners.

3.5.3.4. Upon its first formal meeting, and prior to performing any duties under this article or under G.S. chapter 160A, article 19, part 3C, the commission shall adopt rules of procedure governing the commission's actions which are not governed by this article or the General Statutes. The commission shall also adopt principles and guidelines for new construction, alterations, additions, moving and demolition of designated historic landmarks and properties in historic districts. The guidelines may be amended by the Historic Preservation Commission. All guidelines and amendments shall be subject to approval by the Town Council.

3.5.4. Attendance at Meetings. Any member of the commission who misses more than three (3) consecutive regular meetings or more than four (4) meetings in a calendar year shall lose his or her status as a member and shall be replaced or reappointed by the Town Council. The council shall act within sixty (60) days to fill vacancies on the commission. Absence due to sickness, death in the family or other emergencies of like nature shall be recognized as approved absences and shall not affect the member's status on the commission, except that in the event of a long illness or any other such cause for prolonged absence, the member shall be replaced.

3.5.5. Meetings. The commission shall establish a meeting time and shall meet at least quarterly and more often as it shall determine and require.

3.5.6. Minutes. The commission shall keep permanent minutes of all its meetings, which shall be a public record. The minutes shall record attendance of commission members and the commission's resolutions, findings, recommendations and actions.

3.5.7. Receipt of Gifts and Authority to Acquire Historic Properties. The Town Council shall have the right to accept gifts and donations in the name of the town for historic preservation purposes. It is authorized to make appropriations to the commission in any amount necessary for the expenses of the operation of the commission, and acquisition, restoration, preservation, operation, and management of historic buildings, structures, sites, areas, or objects designated as historic landmarks or within designated historic districts, or of land on which such buildings or structures are located, or to which they may be removed.

3.5.8. Role of Council. The designation of a historic landmark or district shall be effected through the adoption of an ordinance by the Town Council. No landmark or district shall be recommended for designation unless it is deemed to be of special significance in terms of its historical, prehistoric, architectural or cultural importance, and to possess integrity of design,

setting, workmanship, materials, feeling and/or association. The landmark or district must lie within the planning and zoning jurisdiction of the town.

3.5.8. Overlay District Established; Boundaries; Permitted Uses. An overlay district is hereby established to overlap with other zoning districts established by this Code. The boundaries of the historic district are established as indicated on the official zoning map of the town, which is on file for public inspection in the office of the department of planning and development. All uses permitted within zoning districts established by the town, whether by permitted use or by special use, shall be permitted within this overlay district according to procedures established by this section. No historic district or districts shall be designated until:

3.5.8.1. An investigation and report describing the significance of the buildings, structures, features, sites or surroundings included in any such proposed district, and a description of the boundaries of such district has been prepared, and

3.5.8.2. The department of cultural resources, acting through the state historic preservation officer or his or her designee, shall have made an analysis of and recommendations concerning such report and description of proposed boundaries. Failure of the department to submit its written analysis and recommendations to the Town Council within thirty (30) calendar days after a written request for such analysis has been received by the department of cultural resources shall relieve the municipality of any responsibility for awaiting such analysis, and said council may at any time thereafter take any necessary action to adopt or amend its zoning ordinance.

The Town Council may also, in its discretion, refer the report and the proposed boundaries to any other interested body for its recommendation prior to taking action to amend the zoning ordinance. With respect to any changes in the boundaries of such district subsequent to its initial establishment, or the creation of additional districts within the jurisdiction, the investigative studies and reports required by subsection (1) shall be prepared by the commission and shall be referred to the local planning agency for its review and comment according to procedures set forth in the zoning ordinance. Changes in the boundaries of an initial district or proposal for additional districts shall also be submitted to the department of cultural resources in accordance with the provisions of section 3.5.8.2. Upon receipt of these reports and recommendations, the town may proceed in the same manner as would otherwise be required for the adoption or amendment of any appropriate zoning ordinance provisions.

3.5.9. Designation of Landmarks. Upon complying with the landmark designation procedures as set forth in this article, the Town Council may adopt and from time to time amend or repeal an ordinance designation one or more historic landmarks.

3.5.9.1. No property shall be recommended for designation as a landmark unless it is deemed and found by the Historic Preservation Commission to be of special significance in terms of its historical, prehistoric, architectural or cultural importance and to possess integrity of design, setting, workmanship, materials, feeling and/or association.

3.5.9.2. The ordinance shall describe each property designated in the ordinance, the name or names of the owner or owners of the property, those elements of the property that are integral to its historical, architectural, or prehistoric value, including the land

areas of the property so designated and any other information the Town Council deems necessary. For each building, structure, site, area or object so designated as a historic landmark, the ordinance shall require that the waiting period set forth in G.S. part 3C be observed prior to its demolition. For each designated landmark, the ordinance may also provide for a suitable sign on the property indicating that the property has been so designated. If the owner consents, the sign shall be placed upon the property. If an owner objects, the sign shall be placed on a nearby public right-of-way.

3.5.10. Required Landmark Designation Procedures. As a guide for the identification and evaluation of landmarks, the commission shall undertake at the earliest possible time, and consistent with the resources available to it, an inventory of properties of historical, architectural, prehistoric and cultural significance within its jurisdiction. Such inventories and any additions or revisions thereof shall be submitted as expeditiously as possible to the division of archives and history. No ordinance designating an historic building, structure, site, area or object as a landmark nor any amendment thereto may be adopted, nor may any property be accepted or acquired by the commission or the Town Council, until all of the following procedural steps have been taken:

3.5.10.1. The Historic Preservation Commission shall prepare and adopt rules of procedure, and prepare and adopt principles and guidelines, not inconsistent with this part [article], for altering, restoring, moving, or demolishing properties designated as landmarks.

3.5.10.2. The commission shall make or cause to be made an investigation and report on the historic, architectural, prehistoric, educational or cultural significance of each building, structure, site, area or object proposed for designation or acquisition. Such investigation or report shall be forwarded to the Division of Archives and History, North Carolina Department of Cultural Resources.

3.5.10.3. The department of cultural resources, acting through the state historic preservation officer, shall either upon request of the department or at the initiative of the Historic Preservation Commission be given an opportunity to review and comment upon the substance and effect of the designation of any landmark pursuant to this part [article]. Any comments shall be provided in writing. If the department does not submit its comments or recommendation in connection with any designation within thirty (30) days following its receipt of the investigation and report of the commission, the commission and the Town Council shall be relieved of any responsibility to consider such comments.

3.5.10.4. The Historic Preservation Commission and the Town Council shall hold a joint public hearing or separate public hearings on the proposed ordinance. Reasonable notice of the time and place thereof shall be given. All meetings of the commission shall be open to the public in accordance with the North Carolina Open Meetings Law.

3.5.10.5. Following the joint public hearing or separate public hearings, the Town Council may adopt the ordinance as proposed, adopt the ordinance with any amendments it deems necessary, or reject the proposed ordinance.

3.5.10.6. Upon adoption of the ordinance, the owners and occupants of each designated landmark shall be given written notification of such ordinance and all amendments thereto shall be filed by the commission in the office of the register of deeds of the

county in which the landmark or landmarks are located, and the copy shall be made available for public inspection at any reasonable time. Each designated landmark shall be indexed according to the name of the owner of the property in the grantee and grantor indexes in the register of deeds office, and the commission shall pay a reasonable fee for filing and indexing. A second copy of the ordinance and all amendments thereto shall be given the town building inspector. The fact that a building, structure, site, area, or object has been designated a landmark shall be clearly indicated on all tax maps maintained by the town for such period as the designation remains in effect.

3.5.10.7. Upon the adoption of the landmarks ordinance or any amendment thereto, it shall be the duty of the commission to give notice thereof to the tax supervisor of the county in which the property is located. The designation and any recorded restrictions upon the property limiting its use for preservation purposes shall be considered by the tax supervisor appraising it for tax purposes.

3.5.11. Powers of the Commission. The commission shall be authorized, within the planning and zoning jurisdiction of the town, to:

3.5.11.1. Undertake an inventory of properties of historical, prehistoric, architectural and/or cultural significance;

3.5.11.2. Recommend to the Town Council structures, buildings, sites, areas or objects to be designated by ordinance as "historic landmarks" and areas to be designated by ordinance as "historic districts;"

3.5.11.3. Acquire by any lawful means the fee or any lesser included interest, including options to purchase, to any such properties designated as landmarks, to hold, manage, preserve, restore and improve the same, and to exchange or dispose of the property by public or private sale, lease or otherwise, subject to covenants or other legally binding restrictions which will secure appropriate rights of public access and promote the preservation of the property;

3.5.11.4. Restore, preserve and operate historic properties;

3.5.11.5. Recommend to the Town Council that designation of any area as a historic district or part thereof, of any building, structure, site, area or object as a historic landmark be revoked or removed;

3.5.11.6. Conduct an educational program with respect to historic landmarks and district within its jurisdiction;

3.5.11.7. Cooperate with the state, federal and local government in pursuance of the purpose of this article; to offer or request assistance, aid, guidance or advice concerning matters under its purview or of mutual interest. The Town Council, or the commission when authorized by the council, may contract with the state or the United States of America, or any agency of either, or with any other organization provided the terms are not inconsistent with state or federal law;

3.5.11.7. Enter, solely in performance of its official duties and only at reasonable times, upon private lands for examination or survey thereof. However, no member, employee, or agent of the commission may enter any private building or structure without express

consent of the owner or occupant thereof;

3.5.11.8. Prepare and recommend the official adoption of a preservation element as part of the town's comprehensive plan;

3.5.11.9. Review and act upon proposals for alterations, demolition, or new construction within historic districts, or for the alteration or demolition of designated landmarks pursuant to this section;

3.5.12.10 Negotiate at any time with the owner of a building, structure, site, area or object for its acquisition or its preservation when such action is reasonable, necessary or appropriate; and

3.5.11.11. Approve all design plans and sketches so insure that they meet the guidelines of the Historic Preservation Commission as established by the Smithfield Town Council.

3.5.12. Certificate of Appropriateness Required. From and after September 6, 2005, no exterior architectural features of any building or structure shall be altered, restored, erected or moved within the district until a certificate of appropriateness is issued by the Historic Preservation Commission; or under special circumstances, its staff person. For the purposes of this article, "exterior features" shall include the architectural style, general design, and general arrangement of the exterior of a building or other structure, including the kind and texture of the building material, the size and scale of the building, and the type and style of all windows, doors, light fixtures, signs, and other appurtenant features. In the case of outdoor advertising signs, "exterior features" shall be construed to mean the style, material, size and location of all such signs. Such "exterior features" may, at the discretion of the Town Council, include historic signs, color and significant landscape, archaeological, and natural features of the area.

3.5.12.1. Except as provided in subsection (2) below, the commission shall have no jurisdiction over interior arrangement and shall take no action under this section except to prevent the construction, reconstruction, alteration, restoration, moving, or demolition of buildings, structures, appurtenant features, or outdoor advertising signs or other significant features in the district of the landmark which would be incongruous with the special character of the landmark or district.

3.5.12.2. Notwithstanding subsection (1) above, the jurisdiction of the commission over interior space shall be limited to specific interior features of architectural, artistic or historical significance in publicly owned landmarks; and of privately owned historic landmarks for which consent for interior review has been given by the owner. Said consent of any owner for interior review shall bind future owners and/or successors in title, provided such consent has been filed in the office of the register of deeds of the county and indexed according to the name of the owner and the specific nature of the commission's jurisdiction over the interior.

All of the provisions of this article are applicable to the construction, alteration, moving, and demolition by the state, its political subdivisions, agencies and instrumentalities, provided however that they shall not apply to interiors of buildings or structures owned by the state. The state and its agencies shall have a right of appeal to the North Carolina Historical Commission or any successor agency assuming its responsibilities under G.S. 121-12(a) from any decision of the local commission. The decision of the North

Carolina Historical Commission shall be binding upon both the state and the Historic Preservation Commission.

3.5.12.3. The town and all public utility companies shall be required to obtain a certificate of appropriateness prior to initiating work in a historic district for any changes in the character of street paving, sidewalks, trees, utility installations, lighting, walls, fences, structures and buildings on property, easements or streets owned or franchised by the town or public utility companies.

3.5.13. Requirements for Issuance of Certificate of Appropriateness. An application for a certificate of appropriateness shall be obtained from, and when completed, filed with the responsible staff person.

3.5.14. Contents of Application for Certificate of Appropriateness. The application shall, in accordance with the commission's rules of procedure, contain data that is reasonably necessary to determine the nature of the application. An application for a certificate of appropriateness shall not be considered complete until all required data has been submitted. Applications shall be considered by the commission at its next regular meeting, provided the applications have been filed, complete in form and content, at least fifteen (15) calendar days before the regularly scheduled meeting of the commission. Otherwise, they shall be deferred until the next meeting or considered at a special called meeting of the commission. Nothing shall prevent the applicant from filing, with the application, additional relevant information bearing on the application.

3.5.15. Notification of Commission and Affected Property Owners. Upon receipt of an application the responsible staff person shall notify the commission at least seven (7) days before the regularly scheduled meeting. Prior to any action taken on a certificate of appropriateness application, the owners of any property likely to be materially affected by the application shall be notified in writing, and the applicant and such owners shall be given an opportunity to be heard.

3.5.16. Public Hearing. When an application is presented to the commission a public hearing may be held when deemed necessary. All meetings of the commission shall be open to the public, in accordance with the North Carolina Open Meetings Law, G.S. chapter 143, article 33C.

3.5.17. Action on an Application. The action on an application shall be approval, approval with amendments, or denial.

3.5.17.1. Prior to any final action on an application, the review criteria in subsection (m) shall be used to make findings of fact indicating the extent to which the application is or is not congruous with the historic aspects of the district or landmark.

3.5.17.2. All applications for certificates of appropriateness shall be reviewed and acted upon within a reasonable time as defined by the rules of procedure, and not exceeding ninety (90) days from the date the application is filed. As part of its review procedure, the commission may view the premises and seek the advice of the department of cultural resources or other such experts as it may deem necessary under the circumstances.

3.5.18. Appeals. An appeal may be taken to the board of adjustment from the commission's action in granting or denying any certificate, which appeal:

3.5.18.1. May be taken by any aggrieved party.

3.5.18.2. Shall be taken within times prescribed by the commission in the rules of procedure, and

3.5.18.3. Shall be in the nature of certiorari.

Any appeal from the board of adjustment's decision in any such case shall be heard by the Superior Court of Johnston County.

3.5.19. Submission of New Applications. If a certificate of appropriateness is denied, a new application affecting the same property may be submitted only if substantial change is made in plans for the proposed construction, reconstruction, alteration, restoration, or moving.

3.5.20. Review Criteria for Certificates of Appropriateness. To provide reasonable standards to assist in the review of the application for a certificate of appropriateness, the commission shall take into account the following elements to ensure that they are consistent with the historic or visual character or characteristics of the district:

3.5.20.1. The height and width of the building in relation to the height and width of adjacent, opposite and surrounding buildings.

3.5.20.2. The setbacks and placement of the building in relation to the setback of adjacent, opposite and surrounding buildings.

3.5.20.3. Exterior construction materials, including textures, but not to include color.

3.5.20.4. Architectural detailing such as lintels, cornices, brick bond and foundation materials.

3.5.20.5. Roof shapes, forms and materials.

3.5.20.6. Proportions, shapes, positions and locations, patterns and sizes of any elements of fenestration.

3.5.20.7. General form and proportions of buildings and structures.

3.5.20.8. Appurtenant fixtures and other features such as lighting and fencing.

It is the intention of these regulations to insure, so far as possible, that buildings or structure shall be in harmony with other buildings or structures located herein. It is not the intent of these regulations to require the reconstruction or restoration of individual or original buildings.

3.5.21. Minor Works. A certificate of appropriateness application, when determined to involve a minor work, may be reviewed and approved by the responsible staff person in the department of planning and development according to specific review criteria and guidelines. Minor works are defined as those exterior changes that do not involve substantial alterations, additions or removals that could impair the integrity of the property and/or the district as a whole. Such minor works shall be limited to those listed in the commission's rules of procedure. No application involving a minor work may be denied without the formal action of the commission.

3.5.21 Classification of Approvals

The following lists classify the types of approvals required for work in a local historic district or

landmark. Classifications are based on the scope of work, project scale, and amount of deviation from historic materials and methods.

3.5.21.1 Normal Maintenance

The Commission considers the following activities to be routine maintenance of historic properties. The following activities do not require a Certificate of Appropriateness. However, other Town permits may be necessary.

3.5.21.1.1 For All Properties:

3.5.21.1.1.1. All interior work as long as it has no exterior impact (i.e., window replacement is not considered interior work for these purposes).

3.5.21.1.1.2. Minor repairs to windows, including caulking or reglazing and replacement of window glass as long as window size and style are not altered.

3.5.21.1.1.3. Minor repairs to doors, siding, trim, gutters, flooring, steps, fences, and walls, as long as the replacements match existing materials in scale, style, design, and materials.

3.5.21.1.1.4. Roofing, foundation, and chimney work, if no change in appearance occurs;

3.5.21.1.1.5. Replacement of roofing material with matching material.

3.5.21.1.1.6. Removing screen doors or storm doors.

3.5.21.1.1.7. Caulking and weather stripping.

3.5.21.1.1.8. Exterior painting of a previously painted surface, including when a change of color is proposed.

3.5.21.1.1.9. Replacement of existing mechanical equipment (including vents).

3.5.21.1.1.10. Repairing or repaving of flat paved areas, such as driveways, walkways, and patios, if the material used is the same or similar in appearance

3.5.21.1.1.11. Installing landscaping, including vegetable, flower, and rain gardens, shrubs, and trees.

3.5.21.1.1.12. Landscape maintenance, including pruning trees and shrubs (this does not include removal of landscaping required to screen mechanical equipment or utilities).

3.5.21.1.1.13. Curb, gutter, and pavement work involving granite curbs requires public works approval.

3.5.21.1.1.14. Non-fixed elements (that can be moved without the use of heavy equipment) such as rain barrels, planters, dog houses, bird baths, and similar decorative or functional items.

3.5.21.1.2 For Noncontributing Properties:

3.5.21.1.2.1. Painting of nonhistoric material, whether previously painted or not

3.5.21.1.2.2. Installation of prefabricated outbuilding or outbuilding of 80 square feet or less when located in the rear yard

3.5.21.1.2.3. Modifications to or demolition of outbuildings

3.5.21.1.2.4. Addition of new rear decks or porches

3.5.21.1.2.5. Modification, installation, or replacement of windows and doors not facing the street

3.5.21.1.2.6. Addition of screen doors or storm windows

3.5.21.1.2.7. Alteration or replacement of roof materials

3.5.21.1.2.8. Installation of skylights and solar panels not visible from the street

3.5.21.1.2.9 Installation of gutters

3.5.21.1.2.10. Alterations to ornamentation or to cladding material

3.5.21.2. Work Requiring a Certificate of Appropriateness

3.5.21.2.1 Minor Works. Certain activities are considered by the Commission to not have a significant impact on the exterior appearance of the historic structures, and are delegated to the appropriate staff person for administrative approval.

3.5.21.2.2. Major Works. Major Works consist of modifications which significantly alter the appearance of the structure or site. These projects are required to be reviewed by the Commission. The Commission shall hold public hearings for these cases.

3.5.21.2.3. Classification of Approvals by Scope of Work The following chart indicates the level of approval required for various types of work.

Type of Work	Minor Work Staff Approved	Major Work HPC Approved
Architectural Work		
New Construction		
Installation of new pre-fabricated outbuilding or new structure 80 sq. ft. or less.	✓	
New structure greater than 80 sq. ft. and less than 144		✓
New structure greater than 144 sq. ft.		✓
Relocation of Structures		
Outbuilding less than 144 sq. ft.	✓	
Outbuilding greater than 144 sq. ft.		✓
Primary structure		✓
Demolition		
Contributing primary structure		✓
Non-contributing primary structure		✓
Contributing outbuilding		✓
Non-contributing outbuilding	✓	
Additions to Primary Structures		
Addition of substantial spaces such as rooms		✓
Addition of front or side decks or porches		✓
Addition of new rear decks or porches	✓	
Additions to Accessory Structures		
Addition to contributing accessory structure		✓
Addition to non-contributing accessory structure	✓	
Windows and Doors		
Replacement of original windows		✓
Replacement of non-original windows	✓	
Modification or installation of windows and doors facing the street		✓
Modification or installation of windows and doors not facing the street	✓	
Modification, installation, or replacement of storm windows or storm doors	✓	
Alteration or new construction of storefronts	✓	
Restoration of original window or door openings where doors and windows match original or existing	✓	
Installation of window air conditioning units not visible from the street	✓	

Roofs		
Alteration of roof material	✓	
Alteration of roof form (including alteration, removal, or construction of dormers)		✓
Installation of skylights or solar panels visible on front facade		✓
Installation of skylights and solar panels not visible on front facade	✓	
Construction of new or modification of character-defining chimneys		✓
Installation of gutters	✓	
Other Building Alterations		
Alterations or construction of building elements (including columns, railings, stairs, landings, ramps and floors)	✓	
Alterations or construction of architectural details (including molding, brackets, or decorative woodwork)	✓	
Change in original cladding material or style		✓
Change in non-original cladding material or style	✓	
Painting of previously unpainted surface on contributing structure		✓
Changes to any non-contributing outbuilding	✓	
Building additions, porches, or other extant features		✓
Character defining building elements or details without reconstruction		✓
Non-character defining building elements or details without reconstruction	✓	
Site Work		
Parking areas		
New residential driveways or changes to existing residential driveways	✓	
Changes to existing parking lots	✓	
New surface parking lots	✓	
Fences or Walls		
Within the street yard (between the facade of the structure and the ROW)		✓
Within the rear or side yard	✓	

Planting or removal of trees and planting of shrubs in the street yard	✓	
Light fixtures and poles (new or replacement)	✓	
Walkways, patios or other paving	✓	
ADA Compliance		
Installation of ADA compliance updates (including ramps, etc.) where staff determines that the proposal will have a significant impact on the		✓
Installation of ADA compliance updates (including ramps, etc.) where staff determines that the proposal will not have a significant impact on the character of the structure	✓	
Installation, relocation, or removal of mechanical equipment	✓	
Additional site work or structure not described above	✓	
Minor modifications within the right-of-way	✓	
Modifications within the right-of-way deemed significant by staff		✓
Other Work		
Renewal of Expired COA	✓	
Minor Amendments	✓	
Substantial amendments		✓
Any project for which the State Historic Preservation Office has approved the scope of work through the state and/or federal tax credit process	✓	
Work items not listed here for which a clear citation can be made for conformance with the local review criteria	✓	
Work items not listed here that are deemed by staff to be substantial in nature, precedent setting, not addressed by the local review criteria, or not in conformance with the criteria		✓
Installation of temporary features to protect a historic resource that do not permanently alter the resource. Six month duration with in-kind reconstruction or an approved COA.	✓	

3.5.22. Certain Changes Not Prohibited. Nothing in this article shall be construed to prevent

the ordinary maintenance or repair of any exterior architectural feature of a historic landmark or in a historic district which does not involve a change in design, materials, or outer appearance thereof, nor to prevent the construction, reconstruction, alteration, restoration, or demolition of any such feature which the building inspector or similar official shall certify is required by the public safety because of an unsafe or dangerous condition. Nothing herein shall be construed to prevent a property owner from making any use of his property not prohibited by other statutes, ordinances, or regulations. Nothing in this ordinance shall be construed to prevent (1) the maintenance or (2) in the event of an emergency, the immediate restoration of any exiting above-ground utility structure without approval by the commission.

3.5.23. Conflict with Other Laws. Whenever any ordinance adopted for the designation of landmarks or districts requires a longer waiting period or imposes higher standards with respect to a designated landmark or district than are established under any other statute, Charter provision, or regulation, this article shall govern. Whenever the provisions of any other statute, Charter provision or regulation require a longer waiting period or impose higher standards than are established under this article, such other statute, Charter provision, ordinance, or regulation shall govern.

3.5.24. Enforcement and Remedies. Compliance with the terms of the certificate of appropriateness shall be enforced by the responsible staff person. Failure to comply with the certificate of appropriateness shall be a violation of the zoning ordinance and is punishable according to established procedures and penalties for such violations.

3.5.24.1. A certificate of appropriateness shall expire one (1) year after the date of issuance if the work authorized by the certificate has not commenced.

3.5.24.2. If after commencement, the work is discontinued for a period of six (6) months the permit shall immediately expire.

3.5.24.3. No work authorized by any certificate which has expired shall thereafter be performed until a new certificate has been secured.

In case any building, structure, site area or object designated as a historic landmark or located within a historic district established pursuant to this article is about to be demolished whether as a result of deliberate neglect or otherwise, materially altered, remodeled, removed or destroyed, except in compliance with the article, the town, the commission, or other party aggrieved by such action may institute any appropriate action or proceeding 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 a building, structure, site, area or object. Such remedies shall be in addition to any others authorized for violation of a municipal ordinance.

3.5.25. Delay in Demolition of Landmarks and Buildings.

3.5.25.1. An application for a certificate of appropriateness authorizing the demolition or destruction of a designated landmark or a building, structure, or site within the district may not be denied except as provided in subsection (3) below. However, the effective date of such a certificate may be delayed for a period of up to three hundred sixty-five

(365) days from the date of approval. The maximum period of delay authorized by this section shall be reduced by the commission where it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use of or return from such property by virtue of the delay. During such period the commission shall negotiate with the owner and with any other parties in an effort to find a means of preserving the building or site. If the commission finds that a building or site within the historic district has no special significance or value toward maintaining the character of the district, it shall waive all or part of such period and authorize earlier demolition or removal.

If the commission has voted to recommend designation of a property as a landmark or designation of an area as a district, and final designation has not been made by the Town Council, the demolition or destruction of any building, site or structure located on the property of the proposed landmark or in the proposed district may be delayed by the commission for a period of up to three hundred sixty-five (365) days or until the Town Council takes final action on the designation, whichever occurs first.

3.5.25.2. The Town Council may enact an ordinance to prevent the demolition by neglect of any designated landmark or any building or structure within an established historic district. Such ordinance shall provide appropriate safeguards to protect property owners from undue economic hardship.

3.5.25.3. An application for a certificate of appropriateness authorizing the demolition or destruction of a building, site, or structure determined by the state historic preservation officer as having statewide significance, as defined in the criteria of the National Register of Historic Places, may be denied except where the commission finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return by virtue of the denial.

SECTION 3.5 6 TOWN COUNCIL.

3.5.6.1 The Town Council, in considering special use permit applications, acts in a quasi-judicial capacity and, accordingly, is required to observe the procedural requirements set forth in Sections 4.11.1 through 4.11.4.

3.5.6.2. In considering proposed changes in the text of this Ordinance or in the zoning map, the Council acts in its legislative capacity and must proceed in accordance with the requirements of Section 4.10.1.

3.5.6.3. Unless otherwise specifically provided in this Article, in acting upon special use permit requests or in considering amendments to this Article or the zoning map, the council shall follow the regular, voting, and other requirements as set forth in other provisions of the Town code, the Town charter, or *general* law.

3.5.6.4. The Town Council, in considering the approval of a site-specific development plan (as defined in Section 4.7, Establishment of Vested Rights), shall follow the procedural requirements

set forth in Section 4. ~~69 for the issuance of a special use permit.~~

SECTION 3.6 TOWN COUNCIL.

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3.5.4. The Town Council, in considering the approval of a site-specific development plan (as defined in Section 4.7, Establishment of Vested Rights), shall follow the procedural requirements set forth in Section 4. ~~69 for the issuance of a special use permit.~~

**THE TOWN OF SMITHFIELD
UNIFIED DEVELOPMENT ORDINANCE
TEXT AMENDMENT CONSISTENCY STATEMENT
BY THE SMITHFIELD TOWN COUNCIL
ZA-18-08**

Whereas the Smithfield Town Council, upon acting on a text amendment to the *Unified Development Ordinance* and pursuant to NCGS §160A-383, is required to approve a statement describing how the action is consistent with the Town of Smithfield *Comprehensive Growth Management Plan*; and

Whereas the Smithfield Town Council, upon acting on a text amendment to the *Unified Development Ordinance* and pursuant to NCGS §160A-383, is required to provide a brief statement indicating how the action is reasonable and in the public interest.

NOW THEREFORE, BE IT RECOMMENDED FOR ADOPTION BY THE SMITHFIELD TOWN COUNCIL AS APPROPRIATE:

IN THE EVENT THAT THE MOTION TO RECOMMEND APPROVAL OF THE ORDINANCE IS ADOPTED,

That the recommended approval of text amendment ZA-18-08 is based upon review of and consistency with, the Town of Smithfield *Comprehensive Growth Management Plan* and any other officially adopted plan that is applicable, along with additional agenda information provided to the Town Council and information provided at the public meeting; and

It is the objective of the Town of Smithfield Town Council to have the *Unified Development Ordinance* promote regulatory efficiency and consistency and the health, safety, and general welfare of the community. The text amendment promotes this by offering fair and reasonable regulations for the citizens and business community of the Town of Smithfield as supported by the staff report and attachments provided to the Town Council and information provided at the public meeting. Therefore, the amendment is reasonable and in the public interest.

IN THE EVENT THAT THE MOTION RECOMMEND APPROVAL THE ORDINANCE FAILS,

That the recommended approval of text amendment ZA-18-08 is based upon review of, and consistency, the Town of Smithfield *Comprehensive Growth Management Plan* and other officially adopted plans that are applicable; and

It is the objective of the Town Council to have the *Unified Development Ordinance* promote regulatory efficiency and consistency and the health, safety, and general welfare of the community. The text amendment does not promote this and therefore is neither reasonable nor in the public interest.



Town of Smithfield
 Planning Department
 350 E. Market St Smithfield, NC 27577
 P.O. Box 761, Smithfield, NC 27577
 Phone: 919-934-2116
 Fax: 919-934-1134

Petition for Amendment to the Unified Development Ordinance

Pursuant to Article 4 of the Town of Smithfield Unified Development Ordinance, Proposed amendments may be initiated by the Town Council, Planning Board, Board of Adjustment, members of the public, or by one or more interested parties. The application for any amendment shall contain a description of the proposed zoning regulation.

APPLICANT INFORMATION:

<u>Town of Smithfield</u>	<u>350 East Market Street</u>
Petitioner's Name	Address or PO Box
<u>Smithfield, NC 27577</u>	<u>919-934-2116</u>
City, State, Zip Code	Telephone

Proposed amendment to the Town of Smithfield Unified Development Ordinance:

Incorporate the Town of Smithfield Code of Ordinances, Chapter 15, Planning, Article III, Historic Properties Commission into the Unified Development Ordinance. Amends other sections as they pertain to the UDO Administrator's duties, the Board of Adjustments, the Planning Board, and the Town Council. (Attach additional sheets as necessary)

This application must be accompanied by a Statement of Justification which addresses the following:

1. How the amendment proposed would serve the public interest or correct an obvious error in the existing ordinance.
2. How the amendment proposed will enhance or promote the purposes and goals of the adopted plans and policies of the governing body.

The undersigned hereby authorizes the filing of this petition and certifies that the information contained herein stands alone based on the merits of this request and is accurate to the best of their knowledge and belief.

 Signature of Petitioner

6/1/18
 Date

FOR OFFICE USE ONLY

File Number: <u>ZA-18-08</u>	Date Received: <u>6/1/18</u>	Amount Paid: <u>\$00.00</u>
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PLANNING DEPARTMENT

Stephen Wensman, AICP, RLA
Planning Director

Notice of Public Hearings

Notice is hereby given that the Town Council of the Town of Smithfield will conduct public hearings during the course of their open meeting which starts at 6:30 P.M. on Thursday, February 21, 2019 in the Town Hall Council Chambers located at 350 East Market Street to consider the following requests:

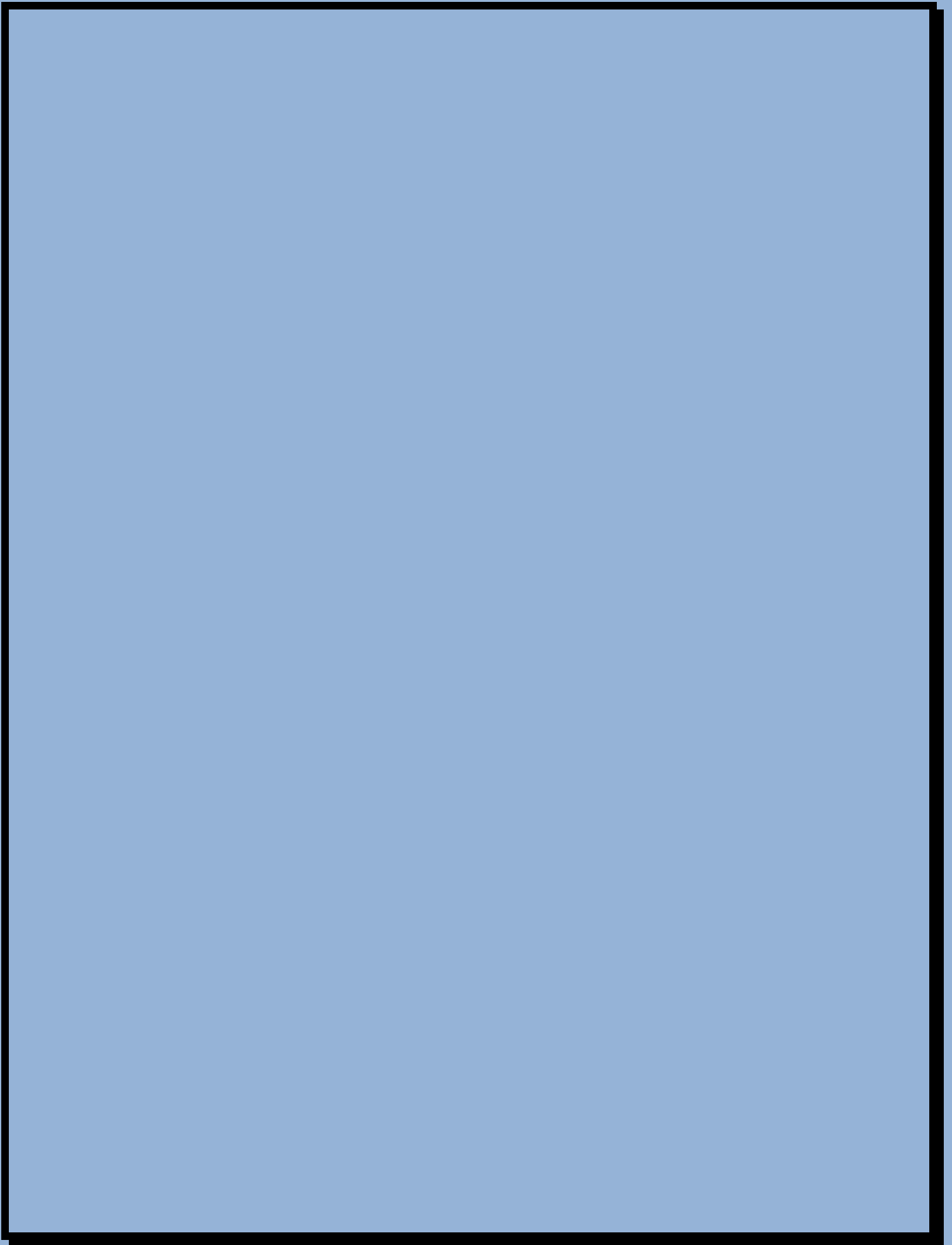
ZA-18-06 Town of Smithfield: The Smithfield Planning Department is requesting an amendment to the Unified Development Ordinance (UDO), Article 5, to update the development review process to include adding a required public notice prior to preliminary subdivision approval.

ZA-18-08 Town of Smithfield: The Smithfield Planning Department is requesting an amendment to the Unified Development Ordinance (UDO) to amend and incorporate the Town of Smithfield Code of Ordinances, Chapter 15, Planning, Article III, Historic Properties Commission into the Unified Development Ordinance, Article 3, and to make certain amendments to other sections as they pertain to the UDO Administrator's duties, the Board of Adjustments, the Planning Board, and the Town Council.

All interested persons are encouraged to attend. To accommodate disabilities and to comply with ADA regulations, please contact the town office if you need assistance. Further inquiries regarding this matter may be directed to the Smithfield Planning Department at (919) 934-2116 or online at www.smithfield-nc.com.

**Run "Legal Ad" in the News and Observer on 2/9/2019 and
Run "Legal Ad" in the News and Observer Zone Edition on 2/15/2019**

Business Item





Request for Town Council Action

Agenda Item: Annexation Policy
Date: 2/21/2019

Subject: Annexation Policy
Department: Planning Department
Presented by: Stephen Wensman, Planning Director
Presentation: Business Item

Issue Statement

Staff has drafted an annexation policy to provide a guideline for annexation to the Town

Financial Impact

A sound policy will provide clear expectations to perspective petitioners, staff and officials and assist in making decisions that are in the best financial interest of the Town.

Action Needed

Staff is requesting the Council review the draft annexation policy and provide feedback or adopt the policy if it is acceptable.

Recommendation

Staff is requesting the Council adopt the draft annexation policy if it is acceptable.

Approved: Town Manager Town Attorney

Attachments:

1. Staff report
2. Voluntary Annexation Policy



Staff Report

Agenda Item: **Annexation Policy**

Issue:

There have been several subdivisions this past year that have or will be voluntarily annexing to the Town of Smithfield. With these subdivisions, staff has struggled to provide clear guidance on the expectations of the Town as it pertains to voluntary annexations. As a result, the Planning Staff has drafted a Voluntary Annexation Policy to provide clear expectations to perspective petitioners, staff and officials and assist in making decisions that are in the best interest of the Town.

Guideline:

Being a policy, the document is a guideline and is not binding on the Council. The Council would use the policy as a starting point for consideration, but would make its decisions on a case-by-case basis.

Key Policy Provisions:

The policy provides expectations as it pertains to access to utility connections and conformity with the Town's UDO.

- All requests for Town utilities shall first be accompanied by a request for annexation.
- If utilities are provided without annexation, the party will enter into a binding agreement to petition for annexation in the future when the property meets the requirements for satellite annexation; the property becomes contiguous to the town limits, or the town requests annexation.
- If a residential structure or subdivision is within 350 feet of Town water and or sewer, connection is required.
- Annexed subdivisions are required to be in conformance with the Town of Smithfield UDO.



VOLUNTARY ANNEXATION POLICY

PURPOSE:

The purpose of this Annexation Policy is to set forth guidelines for the annexation of parcels to the Town of Smithfield, whether those parcels are in the existing extraterritorial jurisdiction (ETJ) or not, and whether they are contiguous or to be a satellite to the town.

COVERAGE:

This policy upon adoption shall be applicable to all voluntary annexations petitions received by the Town. In order that the Town can continue to provide efficient delivery of services and seek orderly development for the health, safety, and welfare of all citizens within its extraterritorial jurisdiction, the Town Council shall have the authority to waive any requirements of this policy.

POLICY:

It shall be the policy of the Town of Smithfield to review and consider annexations individually according to the terms and conditions of this policy. Decision to annex shall be at the discretion of the Town Council, and the decision regarding any annexation does not cause a precedence to be set for future consideration of annexations. The property owners shall irrevocably petition for annexation of said property into the municipal limits of the town.

1. Parcels Contiguous to Municipal Boundary

It is the policy of the Town of Smithfield to consider most favorably the voluntary annexation of parcels that are contiguous to the existing town boundaries and that are within the ETJ of the Town when:

- a) The site has access to Town of Smithfield utilities, or
- b) A development plan has been approved which will extend utilities to the site.
- c) If a site has access to only one utility, then the Town will have the option of adopting an ordinance of annexation with conditions requiring the property owner to pay all applicable fees and connect to the other utility within ninety (90) days of the date when it becomes adjacent to the site.

2. Noncontiguous Parcels Within the ETJ of the Town

The Town of Smithfield will consider voluntary annexation of noncontiguous property that lies within the ETJ of the Town based on whether the property meets the requirements of satellite annexation, prior to annexation or recording of a subdivision plat.

3. Parcels Outside the ETJ of the Town

If the property is not contiguous to the municipal limits of the town and not within the defined ETJ of the Town of Smithfield, but meets the requirements of satellite annexation, prior to annexation or recording of a subdivision plat, the property owners shall enter into a binding written agreement with the town that there will be full compliance, if annexed, with the applicable provisions of the Town's UDO prior to further development. All nonconforming issues will be brought into compliance

4. Annexation Required for Provision of Water and Sewer and Electric Services

It is the Town of Smithfield's intent that the future annexations of the town shall match the existing and future utility service extensions of the Town. Therefore, new applicants for utility services shall be required to voluntarily annex to the Town for delivery of those services. If those properties do not meet the requirements of satellite annexation they will enter into a binding written agreement that the present or future owners will voluntarily petition for annexation for the provision of those municipal services. That future petition will be made at the time of any of the following occurrences:

- a) The property meets the requirements for satellite annexation; or,
- b) The property becomes contiguous to any annexed portion of town; or,
- c) At the convenience of the Town of Smithfield.

If the property is annexed into the Town of Smithfield, the property owner shall be responsible for installing any infrastructure necessary for connection to the Town utilities, and all infrastructures shall be turned over to the Town upon final acceptance from the Town.

Connection to Town of Smithfield public water and/or sewer systems is required when a proposed residential structure or subdivision is located within 350 feet of Town water and/or sewer. In such cases where the public water and/or sewer supply system is of insufficient capacity to permit the delivery of either water or sewer supply, the subject proposed structure or subdivision shall be relieved of the requirement to connect to such public system.